

HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Revision Case No.910 of 2013

Date: 18-01-2016

Between:

P. Shiva

... Petitioner

AND

State of A.P., represented by Public Prosecutor,
High Court of A.P., Hyderabad and another

... Respondents

HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Revision Case No.910 of 2013

ORDER:

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This Criminal Revision Case is filed against the order dated 01-03-2013 in CrI.M.P.No.206 of 2012 in C.C.No.154 of 2012 passed by the Judicial Magistrate of First Class, Kuppam, dismissing the petition filed under Section 173 (8) Cr.P.C., seeking impleadment of driver of the vehicle by name Syed Ameer, who was engaged by the petitioner and who drove the crime vehicle on the date of incident.

2. The petitioner herein was shown as A-2 in the case. The 2nd respondent herein is the *de facto* complainant. One Sivappa, who was shown as A-1 in the case, was alleged to have driven the crime vehicle bearing No.AP-03-TA-9005 in a rash and negligent manner and caused the accident, which resulted in the death of one person and receiving grievous injuries by four persons. The petitioner-A2 is stated to be owner of the crime vehicle. A charge sheet came to be filed for the offences punishable under Sections

304-A, 338 and 337 IPC and Sections 134 (a) & (b) read with Section 187 of the Motor Vehicles Act insofar as A-1 is concerned being the alleged driver of the crime vehicle and for the offences punishable under Section 5 read with Section 180 of the Motor Vehicles Act insofar as A-2 is concerned being the owner of the crime vehicle, on which the learned Magistrate took cognizance of the case. Thereafter, the petitioner-A2 filed CrI.M.P.No.206 of 2012 in C.C.No.154 of 2012 under Section 173 (8) Cr.P.C., seeking a direction to the investigating agency to make further investigation in the case. The petitioner/A2 stated that he is using the crime vehicle for transportation of water cans and supply of them to different shop keepers and at the relevant time Accused-1 was only a labourer, who was engaged for loading and unloading the water cans. In fact one Syed Ameer was the driver of the crime vehicle at the relevant time. It is further alleged that immediately after the incident the said driver Syed Ameer ran away from the scene of offence due to fear. But the police have falsely implicated A-1, who was a labourer and who was not even having a valid driving licence nor was he driving the vehicle at the relevant time. Therefore, the request of the petitioner is to give a direction to the investigating agency under Section 173 (8) Cr.P.C. to make further investigation into the case. The learned Magistrate dismissed the said application holding that there are no valid grounds to direct the police to make further investigation into the case.

3. Learned counsel for the petitioner submits that there is voluminous evidence on record, which clearly show that at the relevant time the crime vehicle was driven by one Syed Ameer, but not A-1. The investigating agency, without properly investigating the case, has filed the charge sheet showing one

Sivappa as A-1 being the driver of the crime vehicle and the petitioner as A-2 being the owner of the crime vehicle. Therefore, the learned Magistrate ought to have directed the further investigation into the crime and directed the police to place the evidence before the Court for adjudging as to whether it is a non-petitioner Syed Ameer, who was alleged to have driven the crime vehicle at the relevant time or whether it is the A-1, who was shown as driver of the crime vehicle. He further submits that the learned Magistrate has got all powers under Section 156 (3) Cr.P.C. to direct further investigation into the crime even after the police filed the report/charge sheet in the crime. The learned counsel fairly stated that a mistake was crept in, in mentioning specific provision of law as Section 173 (8) Cr.P.C. instead of Section 156 (3) Cr.P.C. However, that does not preclude the learned Magistrate from granting the relief as sought for. In support of his contentions, the learned counsel for the petitioner relied on a decision reported in **Sakiri Vasu v. State of U.P. and**

others^[1], wherein it was held as follows:

“.....The power in the Magistrate to order further investigation under [Section 156\(3\)](#) is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide [Section 173\(8\)](#). Hence the Magistrate can order re-opening of the investigation even after the police submits the final report, vide [State of Bihar vs. A.C. Saldanna](#) AIR 1980 SC 326 (para 19).

17. In our opinion [Section 156\(3\)](#) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. [Section 156\(3\)](#) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.....”

4. In view of authoritative pronouncement by the Apex Court, there is no doubt that the Magistrate is having wide discretionary

power to direct further investigation into the crime even after the charge sheet has been laid if there exist valid and sufficient grounds to do so. The learned Magistrate can order further investigation under Section 156 (3) Cr.P.C. *dehors* Section 173 (8) Cr.P.C. The learned counsel for the petitioner has produced some material, which, *prima facie*, show that it is the non-petitioner Syed Ameer, who drove the crime vehicle at the relevant time, but not A-1. However, unless the crime is properly investigated by the investigating agency, the truth will not come out. The learned Magistrate, in the interest of justice, ought to have allowed the request of the petitioner/A-2 exercising the powers under Section 156 (3) Cr.P.C. to direct the investigating agency to make further investigation or reinvestigation, as the case may be, into the case and submit report.

5. In that view of the matter, the order dated 01-03-2013 in CrI.M.P.No.206 of 2012 in C.C.No.154 of 2012 passed by the Judicial Magistrate of First Class, Kuppam is liable to be set aside and the petitioner/A-2 is directed to make a fresh application before the learned Magistrate under Section 156 (3) Cr.P.C. seeking the relief and on such application being made by the petitioner/A-2, the learned Magistrate shall forward the same to the concerned investigating agency for further investigation and for submission of report by them in the matter. Till such report is submitted by the investigating agency, the learned Magistrate shall not proceed further with the case.

With the above observations, the Criminal Revision Case is allowed accordingly. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

M.S.K. JAISWAL, J

Date: 18-01-2016

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[\[1\]](#) AIR 2008 Supreme Court 907