

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

CRIMINAL REVISION CASE No.3265 of 2015

ORDER:

1) Assailing the order dated 15.12.2015 passed in CrI.M.P.No.6484 of 2015 in C.C.No.283 of 2013 on the file of the XIII Additional Chief Metropolitan Magistrate (Mahila Court), Hyderabad, wherein and whereunder an application filed by the State seeking further investigation was allowed, the present Criminal Revision Case is filed by the petitioner/accused No.1 under Sections 397 and 401 Cr.P.C.

2) On the basis of a report given by the first respondent a case in Crime No.151 of 2013 of Women Police Station, D.D. C.C.S, Hyderabad, came to be registered against the petitioner and others for the offences punishable under Sections 498-A and 406 IPC and Sections 4 and 6 of the Dowry Prohibition Act, 1961. The police investigated into the said crime and filed a charge sheet which was taken on file as C.C.No.283 of 2013 for the above mentioned offences. Thereafter, an application came to be filed by the accused seeking discharge from the case. Thereafter, the first respondent filed an application under Section 216 Cr.P.C. through the prosecution vide CrI.M.P.No.3226 of 2015 for alteration of charges and addition of charges for the offences punishable under the provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short "the SC/ ST

Act”) and also filed CrI.M.P.No.3225 of 2015 seeking further investigation for the purpose of filing of an additional charge sheet. Later a memo came to be filed by the Assistant Commissioner of Police, WPS, DD, CCS, Hyderabad, seeking further investigation. After considering the rival arguments as to the scope of admissibility of the said memo and also as to whether the ingredients constituting the said offences are made out or not, the trial Court allowed the memo. Challenging the same, the present revision came to be filed.

3) Learned counsel for the petitioner mainly submits that the impugned order which came to be passed is bereft of any reasons. It is his case that except extracting the judgments no reasons are given as to why it requires further investigation. He further submits that re-investigation cannot be to the satisfaction of the informant and the Court on being satisfied that the matter requires further investigation can order re-investigation. He also submits that since the averments in the First Information Report and 161 Cr.P.C. Statements do not anywhere indicate offences punishable under the provisions of the SC/ST Act, he seeks interference with the impugned order. Apart from that he further submits that the present memo came to be filed at a belated stage. He lastly urges that in the absence of any new material before the Court, ordering further investigation is unwarranted.

4) The same is opposed by the learned counsel appearing for the first respondent. He submits that Section 173 (8) Cr.P.C.

gives ample power to the Court to order further investigation. It is his case that in the instant case though serious allegations are made with regard to the offences under the provisions of the SC/ST Act in the report and also in 161 Cr.P.C. Statement, no investigation was conducted by the police on those lines. The informant, who came to know about the same only after filing of the final report made applications seeking alteration of charges and also further investigation on the ground that the material given by her during the course of investigation was never considered while filing the final report. Later, a memo came to be filed by the prosecution seeking further investigation. Hence, it is urged that the situation on hand warrants further investigation.

5) The material placed before the Court show that during the pendency of the case before the trial Court, the informant gave a complaint to the Joint Commissioner of Police, wherein she mentioned that though she alleged offences under the provisions of the SC/ST Act, but for the reasons best known, the police have not investigated the case on those lines. On receipt of the said complaint and as per the directions of the Joint Commissioner of Police, LW.13 is alleged to have filed a memo before the trial Court seeking further investigation, which was allowed.

6) A reading of the order under challenge show that after referring to the arguments advanced and the cases on the subject, the Court came to a conclusion. The Court ought to have given some reasons on facts as to why it warranted further

investigation. But at the same time it cannot be said that the order was a bald one.

7) As urged, it may not be proper for this Court to remand the matter back asking the Court to give detailed reasons as to why it ordered further investigation at this length of time. In order to avoid further delay, this Court ventured to go into the merits of the case and decide the issue since all the documents required for deciding the case on merits are placed before this Court.

8) The main ground urged by the learned counsel for the petitioner is with regard to scope and power of the Court to order further investigation under Section 173 (8) Cr.P.C.

9) The issue came up for consideration on many occasions. In *Rama Chaudhary v. State of Bihar*¹ the Apex Court considered the features which demand further investigation, fresh investigation and re-investigation. In Para No.15 of the said judgment the Apex Court held that Section 173 (8) Cr.P.C. makes it clear that irrespective of the report under sub-section (2) forwarded to the Magistrate, if the officer in charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. The above said provision also makes it clear that further investigation is permissible, however, re-investigation is prohibited. The Apex Court also held that law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying

¹ (2009) 6 SCC 346

out a further investigation even after filing of the charge sheet is a statutory right of the police. From a plain reading of sub-section (2) of sub-section (8) of Section 173, it is evident that even after submission of the police report under sub section (2) on completion of the investigation, the police have a right to “further” investigation under sub-section (8) of Section 173 but not “fresh investigation” or “reinvestigation”. The Court categorically held that the meaning of “further” is additional, more, or supplemental. “Further” investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started *ab initio* wiping out the earlier investigation altogether.

10) In *Awadesh Kumar Jha Alias Akhilesh Kumar Jha and another v. State of Bihar*² the Apex Court held as under:

“It is well settled principle of law that there can be no second FIR in the event of any further information being received by the investigating agency in respect of the offence or the same occurrence or incident giving rise to one or more offences for which charge sheet has already been filed by the investigating agency. The recourse available with the investigating agency in the said situation is to conduct further investigation normally with the leave of the Court provided under sub-section (8) of Section 173 Cr.P.C.

11) From the judgments referred to above, it is clear that the Court has got the power to order further investigation even after

² (2016) 3 SCC 8

filing of charge sheet and the police on their own can also further investigate into the matter. Further investigation can only be in continuation of earlier investigation but cannot be fresh investigation starting afresh. Therefore, the order passed by the learned Magistrate ordering further investigation cannot be said to be *prima facie* illegal or improper or incorrect.

12) Coming to the merits of the case, a perusal of the first information report and also 161 Cr.P.C. statements of the witnesses including that of victim would *prima facie* show that the informant was abused as untouchable and belonging to a low caste, in front of her driver. The averments in the first information report also show that the accused grew wild, abused the informant in filthy language and also abused her in the name of her caste apart from man handling her. The said version is spelt out by the informant and also by her relatives during their examination under Section 161 Cr.P.C. Truth or otherwise of these allegations require to be investigated by the police to find out as to whether the same constitute an offence under the provisions of the SC/ ST Act. Hence, the order under challenge warrants no interference at this stage. It is needless to mention that the police authorities shall proceed with further investigation un-influenced by any of the observations made in this order. Further, the police shall not take any coercive steps against the accused namely arrest of the accused, during the course of further investigation.

13) With the above direction, the Criminal Revision Case is disposed of. Miscellaneous petitions, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

15.09.2016
gkv

