

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
Criminal Revision Case No.3105 OF 2016

ORDER:

The revision petitioner Venkat Ramdev is A.1 of C.C.No.109 of 2014 on the file of the XII Additional Chief Metropolitan Magistrate, Hyderabad, among the three accused therein. He maintained the revision impugning the reversal order in the first revision i.e. CrI.R.P.No.147 of 2016 dated 28.11.2016 of the learned II Additional Metropolitan Sessions Judge, Hyderabad, on the application of the defacto-complainant, by sitting against the order in CrI.M.P.No.522 of 2014 passed by the Magistrate supra dated 13.04.2016.

2. Heard both sides at length and perused the material on record.

3. Before considering the legality and correctness of the impugned order in the first revision of the learned Sessions Judge, apart from the revision is maintainable for not a bar for not maintained by the same person within the meaning of Section 397(3) CrPC for this Court even otherwise inherent power u/s 482 CrPC apart from the power u/sec. 483 CrPC available besides under Article 227 of the Constitution of India. Now coming to the factual background, the Cr.No.156 of 2012 dated 14.08.2012 was registered by the WCO Team-IV, CCS, Hyderabad for the offences punishable u/ ss. 406 and 420 IPC, on the complaint of Sri V.Reddappa Naidu against the suspects/ accused persons by names Venkat Ramdev, Ramgopal M/s Uma Laminated Productions Private Limited (for short, 'the Uma Company') and K.Ramakotaiah, ex-employee of the complainant's company M/s. Premier Acetylene Private Limited (for short, 'the Premier company') and it is based on a written report of the defacto-complainant on even date claiming as Manager of the Premier company addressed to the Deputy Commissioner of Police,

CCC Hyderabad against the three accused persons supra for the offence punishable under Section 120-B, 403 and 406 IPC saying he is the Manager of the Premier Company which manufacturing and selling industrial Oxyzen, Nitrozen and medical Oxyzen, The Uma company and other companies founded and run by T.Y.Naidu and under his guidance the consortium of companies achieved successes and the complainant and Uma Company shared their registered office at LB Stadium, Hyderabad, that Venkat Ramdev-A.1 since November, 2010 was under control and managing two entities when the complainant was asked by A.1 vide letter dated 11.11.2011 for moving registered office of Uma Company from LB Stadium that was later run by Umadevi D/o T.Y.Naidu and her husband which belongs to the complainant and no files or cylinders details at the erstwhile office were allowed to be taken even several representations made to Venkat Ramdev-A.1 to return the same but he failed to return. There are more than 3500 cylinders belongs to the complainant left behind at the premises of Uma Company and its associated companies each worth of Rs.8,00,000/- in possession of Venkat Ramdev-A.1 who had hidden files and documents evidencing the ownership of it which are worth of Rs.2,80,00,000/- and the documents are important to the complainant including for statutory filings besides day-to-day business and Venkat Ramdev-A.1 with the help of Ramgopal-A.2 holding those documents with an intent to sabotage the complainant's working and bent on demolishing the complainant's business. The Ramkotaiah-A.3 who has been working with the complainant since 1987 as a Stores Manager and during the course of employment was entrusted with custody of certain documents and from mid November, 2011 he has not been attending duties with any valid permission of the complainant and all the documents that were in his

exclusive possession as Stores Managers were subsequently unavailable that effected regular course of business of complainant and even several reminders sent to Ramkotaiah-A.3 to come forward with the files and records of the documents, said Ramkotaiah-A.3 started raising baseless contentions stating that he resigned from the post and did not owe any obligation to the complainant and even representations and legal notice of the complainant to him were of no avail and he was entrusted with the documents (in print and electronic) like cylinder count details, cylinder master details and consumer details which are confidential and vital for running day-to-day activities which are in his possession and he has been working for the past 25 years, a fiduciary relationships developed and resulted in entrusting to him sensitive information and it came to know that he joined Uma Company right from the date of his unauthorized absence and he joined by flouting all conditions of termination of service set by the complainant with all confidential and vital information in his possession for which the complainant is apprehending that the documents would be turned over to Uma Company and cause irreparable loss and obliterate the clientage and reputation of complainant it is by conspiracy by Venkat Ramdev-revision petitioner to cause breach of trust which reposed on him by the complainant, turned over the documents which are in his possession belongs to the complainant to the Uma Company. Hence to take action by registering the crime.

4. The DCP, DD., CCS, Hyderabad, endorsed to SI, DD, CCS, Hyderabad and the Cr.No.156 of 2010 registered therefrom for the offence under Section 406 and 420 IPC and handed over to Inspector of Police, WCO, Team-IV, CCS, DD, Hyderabad for investigation. It is from the investigation, the chargesheet u/ sec. 173 of CrPC (final report) to

take cognizance filed against the revision petitioner, Rajgopal and Ramakotaiah saying the evidence collected during investigation established that the A.1 Venkat Ramdev, A.2 Rajgopal and A.3 Ramkotaiah committed the offence u/ sec. 406, 420, 468 and 471 IPC. The learned Magistrate took cognizance for the same from the police final report dated 09.04.2014 by docket order dated 12.05.2014, and it is by the post-cognizance in the factual matrix supra, the complainant Premier Company represented by its Manager V.Reddappa Naidu-L.W.1 filed application in CrI.M.P.No.522 of 2014 before the learned Magistrate supra, referring u/ sec. 156(3) of CrPC, to direct investigating officer to carry out further investigation.

5. The averments in the application in nutshell are that during the course of investigation the A.1 approached the Station House Officer, DD, CCS and handed over the documents pertaining to the possession of the gas cylinders were refused to part with the cylinders as they were purchased by his late father T.Y.Naidu in the name of Uma Company and investigation reveals that T.Y.Naidu purchased the cylinders and he distributed them according to the documents received from the complainant company and as per the list of 31.03.2009 the complainant is entitled to 9189 gas cylinders and list was prepared by late T.Y.Naidu and it was relieved during investigation from scrutiny of documents for 3000 cylinders were still with the A.1 and A.1 produced the document alleged to have been executed by his late father T.Y.Naidu on Rs.100/- stamp paper stating the Venkat Ramdev-petitioner was allotted 3867 cylinders on 30.06.2011 in favour of Premier company represented by the A.1 and investigating officer found said documents is forged one and held that 3947 gas cylinders are in custody of A.1 but no cylinder was seized by the investigating officer, hence to direct the investigating

officer to carry out further investigation and to seize the cylinders as company's property in this case. The A.1,A.3, in their counter filed by denying averments opposing the petition, contending that the petitioner lodged a complaint on 14.08.2012 with CCS, Hyderabad and after investigation they filed chargesheet and the Court has taken cognizance and after appearance of accused, they were supplied with case copies and accused on 05.09.2014 and subsequently filed applications under Section 239Cr.P.C. seeking discharge contending for the accusation in the charge is with no basis and the petitioner has no locus standi to file. It is contended further that the petitioner has no locus standi to file application 156(3) Cr.P.C. that seeking further directions to investigating officer to conduct further investigation and the same is not maintainable and is liable to be dismissed and there is no even supporting affidavit and the opinion formed by the investigating officer during investigation in filing the final report if at all required for further investigation by the investigating officer to seek permission by filing petition under Section 173(8) CrPC only after discovery of any new material needed of further investigation and not otherwise apart from no new facts came to light even to invoke any further investigation. It is also contended that there was partition among the two accused and defacto-complainant and the cylinders that were allotted to accused come in the partition and to that effect document was already executed by father of A.1 and the contention of the same a forged one is outcome of imagination of the petitioner for the purpose of filing the petition for alleging further investigation and the dispute with regard to the alleged cylinders between the brother and sister that is accused No.1 and employer of defacto-complainant which is purely civil in nature if at all to file any civil suit or approach any appropriate forum for recovery and there are

no valid reasons to invoke u/ sec. 156(3) of CrPC to direct the investigating officer to conduct further investigation. Hence to dismiss the petition.

6. Pursuant to which after hearing by the order of the learned Magistrate dated 13.04.2016, the petition was dismissed holding that the police final report in the form of chargesheet from the offences taken cognizance and copies supplied to the accused and after appearance when the trial is in progress from the charges framed, evidence on behalf of accused and at this stage, the present petition filed seeking further investigation for the purpose of seizure of cylinder is baseless and unsustainable. It is observed that if at all further investigation is necessary, the Court got powers to direct the investigating officer who filed the final report u/ sec. 174 of Cr.P.C., investigating u/ sec. 173(8) of CrPC and even the petition to treat u/ sec. 173(8) of CrPC, the defacto-complainant has no locus to insist for further investigation for not even the petition of the investigation officer or prosecution agency by seeking permission by any need of further investigation. The defacto complainant himself seeking for further investigation only for the purpose of seizure of some of the gas cylinders thereby does not arise, that too, at this stage to introduce any new facts by prosecution agency from so called direction of further investigation, thereby absolutely there is no necessity so to direct even and the petition thereby deserves dismissal in so dismissing.

7. When the defacto complainant maintained the revision against it in CRP No.147 of 2016 before the learned Sessions Judge, who after hearing, passed the order impugned herein reversing the finding of the learned Magistrate in allowing the petition by setting aside the dismissal order by directing the investigating officer to carry further investigation

by seizure of the cylinders-the case property or in saying or by referring to Section 102 CrPC apart from reiteration of the facts supra, Section 97 CrPC and Section 173(8)CrPC and by referring to the expression in Sakiri Vasu Vs. State of Uttar Pradesh¹, saying the aggrieved person can seek remedy on the improper investigation, to claim proper investigation and in the case on hand the complainant claiming that during investigation cylinders were not seized by the investigating officer and thereby it is improper investigation and as per the expression supra, the Magistrate can order for further investigation under Section 156(3) of CrPC. which is the independent power and the power of investigating officer for further investigation even after submission of final report u/ sec. 156(3), the Magistrate can order reopening of the investigation even after the police filing of final report as held in State of Bihar Vs. JAC Saldana² and in Union of India Vs. Prakash P.Hinduja³ held that the Magistrate cannot interfere with the investigation by police and if the Magistrate on application u/ sec. 156(3) CrPC satisfies the proper investigation has not been done or is not done by the officer in charge of police station concerned, he can certainly direct the Station House Officer, to make proper investigation and can monitor the same though he was not investigating and in view of the same the gas cylinders since not seized by investigating officer as case property and thereby it is necessary for the investigating agency to seize the cylinders in possession of A.1 and to submit the seizure report or produce case property before concerned Magistrate and commencement of trial and examination of witnesses cannot be an impediment for this order of further investigation. The same is now impugned in the revision.

¹ (2008) SCC 409

² 1980 1 SCC 554

³ AIR 1974 SC 183

8. The Apex Court in *Vinay Tyagi Vs. Irshad Ali*⁴ referring to Section 173 and 190 CrPC, in particular observed that the primary report on initial investigation and any further report shall be read together. So far as fresh or *denova* investigation concerned, it is the prerogative of the superior Courts so to direct specifically the trial Court has to consider entire record including the original police report as well as further report it may accept the application of accused for discharge or direct the trial Magistrate to proceed further in accordance with the law and if dissatisfied on any aspect of investigation already conducted and in its considered opinion it is just, proper and necessary in the interest of justice to direct further investigation under Article 226, 227 or 136 of the Constitution of India, thereby only higher judiciary can exercise inherent jurisdiction to such power to direct *denova* investigation or re-investigation or any other specified agency investigation, it is observed that initially investigation commenced in furtherance of registration of FIR including investigation pursuant to the order of Magistrate u/ sec.156(3), if it is in continuation and supplementary to the primary investigation, it is basis for discovery of fresh evidence and Magistrate has suo-moto jurisdiction to direct further investigation after filing of final report if satisfied on facts of the case is a condition precedent thereof and even investigating agency has to seek prior leave of the Court to conduct further investigation to file supplementary report from the necessary implication of Section 173(8) of CrPC. However further investigation power of the Magistrate under the Criminal Procedure Code must be exercised sparingly where the supplementary report also to be read as part of original investigation report to read both jointly. The expression clearly laid down that a *denova* or re-investigation or fresh investigation including by which agency cannot be ordered by Magistrate

⁴ 2013 5 SCC 762

but for by the High Court or the Apex Court. Whereas, any further investigation on coming to know of the additional facts required to be investigated can be ordered by the Magistrate, however only sparingly on factual foundation. Thus, even a further investigation is permissible, it must be done sparingly not as a matter of course for mere asking even by defacto-complainant, leave about either under Section 156(3) or under section 173(8) CrPC, what the expression in Sakiri Vasu supra stated as the appellant's son Major Ravishankar alleged to have been murdered and from the investigation which mentioned as either suicide or accidental death and not a case of murder, there is an allegation substantiates motive behind for his murder to say not a case of suicide or accidental death and not satisfied with the first count of enquiry for so concluding, the father of the deceased made a representation resulted on another Count of enquiry was held where came to the conclusion of it is a case of suicide. Aggrieved by it, he filed Writ Petition in the High Court since dismissed, approached the Apex Court in the factual scenario, praying to order investigation by the C.B.I. In the factual matrix the Apex Court held that in C.B.I.vs. Rajesh Gandhi⁵ at para-8 it was held that no one can insist that an offence be investigated by a particular agency, but for to ask for investigation properly. If a person has a grievance that police not registered FIR and when he approached the Superintendent of Police by written application that does not even yield result and even the FIR ultimately registered no proper investigation conducted, in those facts, if has been aggrieved to file application u/sec. 156(3) of CrPC, the powers of Magistrate concerned thereon that the Magistrate can direct the FIR to be registered and to direct for a proper investigation to be made and the Magistrate can also under the same provision monitor the investigation.

⁵ 1996(11) SCC 253

For that in Mohd. Yousuf Vs. Afaq Jahan⁶ it was observed at para-11 that judicial Magistrate before taking cognizance of an offence can order investigation u/ sec. 156(3) of Cr.P.C. and if he does so, he is not to examine the complainant on oath because he was not taking cognizance on any offence thereon but to direct the police to register the FIR and there is nothing illegal in so doing as registration of FIR involves therefrom on entering the substance of information in a book to be kept by the officer in charge of the police station as indicated u/ sec. 154 of CrPC and once the FIR is directed to be registered u/ s.156(3) of CrPC, the officer in charge of police station by registering the FIR regarding cognizable offence once discloses to take further steps by investigation contemplated therefrom and same view also taken in Dilawar Singh Vs. State of Delhi⁷ that even the FIR registered and police either making or made investigation, if aggrieved feels it is not proper, he can approach the Magistrate u/ sec. 156(3) of CrPC, and if the Magistrate satisfies, can order proper investigation and to take suitable steps necessary to ensuring proper investigation and the power u/ sec. 156(3) is different to the further investigation by police u/ sec. 173(8) and even after failing which the Magistrate can order reopening of the investigation as held in Saldana supra, therefrom observes the power u/ sec. 156(3) is wide enough to include power of Magistrate where necessary for ensuring proper investigation and it includes power to order registration of FIR and proper investigation, if satisfied proper investigation has not been done or not being done by the police not saying grant of express powers carries with its necessary implications by authority to use of a reasonable means to make such grant effective. It is held further that a Magistrate cannot order investigation by further Agency like CBI as held

⁶ 2006(1) SCC 627

⁷ 2007 12 SCC 641

in CBI vs. State of Rajasthan⁸ and for the aggrieved there is also power u/ sec. 36 CrPC to approach the superior police officers for conducting investigation properly.

9. From this decision even for the power is of wide amplitude though not in the terminology of wording of Section 156(3) CrPC, where there are any existing necessary facts for the lower revision Court in reversing the order of the Magistrate dismissing the application in ordering seizure of so called cylinders as part of further investigation is the pertinent question. Even from the investigation material and from the version of accused and also from the documents produced among the dispute between the brother and sister of the so called documents partition of the cylinders, cylinders that of A.1 not that of the entity of complainant represented by its Manager as Defacto-complainant even locus standi is academic for he represents as a Manager in giving the report, there is no factual background for seizure of the cylinders in directing further investigation invoking Section 156(3) CrPC. Even the expressions supra clearly say, it is the power to be sparingly exercised in extraordinary circumstances where there is a factual foundation for it. Merely because the investigating officer filed report in this regard, for the seizure of cylinders, there is no need of ordering further investigation, that too during pending of the trial of the case for having kept quiet initially from the final report and even also immediately after taken cognizance and before hearing of charges. Thereby once the order of the lower Court that is of learned Magistrate with observation of even invoking power u/ sec. 156(3) or even to treat the same as u/ sec. 173(8) though both are in different perspectives ruling the field, there is no factual background to exercise the power. The lower appellate Court

⁸ 2001 3 SCC 333

committed a grave error while sitting in the revision within the limited scope under Section 397(1) CrPC to decide whether the impugned order is illegal or effected by the vice of impropriety or any grave incorrectness to interfere.

10. Having regard to the above, the revision is allowed. The impugned order of the lower revision Court directing further investigation pursuant to seizure of the cylinders is set aside and by restoring the consequences emanated therefrom by *quo ante* to return back the seized cylinders if any pursuant to the order of the lower revision Court and by upholding the order of the learned Magistrate.

11. Consequently, the pending miscellaneous petitions, in this revision, shall stand closed.

Date:03.02.2017
Vvr.

Dr. B.SIVA SANKARA RAO J,

