HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 38106 of 2015

ORDER:

1) The present writ petition came to be filed by one P.Visweshwara Rao, who was an informant, in Crime No.583 of 2013 which was registered before respondent No.2 police for an offence punishable under Section 304-B IPC. The said case was investigated into and later a charge sheet came to be filed for the offences punishable under Sections 498-A, 306 read with 34 IPC and Section 3 of the Dowry Prohibition Act. On committal the same came to be numbered as S.C.No.194 of 2014 on the file of the III Additional Metropolitan Sessions Judge, Hyderabad. Challenging the order taking cognizance for the offences punishable under Sections 498-A, 306 read with 34 IPC and Section 3 of the Dowry Prohibition Act, though the first information report discloses commission of offence punishable under Section 304-B IPC, the present writ petition came to be filed, to treat the investigation done as tainted one and consequently to direct re-investigation/denova investigation/fresh investigation and file fresh charge sheet.

2) The grievance of the petitioner is that as per the averments made in the first information report, the marriage between the deceased and accused No.1 (respondent No.4) was performed on 19.05.2008 as per Hindu rites and customs. On a demand made by respondent No.4 and his family members, the petitioner gave 3 kgs of silver, 15 kasula gold, agriculture land to an extent of

Ac.6.00 and cash of Rs.10,00,000/- towards dowry. Subsequent to the marriage, the husband and wife started living together at Hyderabad and thereafter disputes arose between them. It is alleged that the deceased was informing the petitioner about the demands made by the accused for additional dowry. About a week prior to the date of death of the deceased, she informed the petitioner over a phone that the parents of respondent No.4 were contemplating to perform another marriage to her husband for securing more dowry and they were also discussing that if the deceased dies, the whole property will go to her husband. On 24.07.2013, the petitioner made a call to his deceased daughter but the same remained un-answered. Thereafter, he claims to have called respondent No.4, who told him that the deceased committed suicide. Immediately thereafter, all his family members rushed to Hyderabad and found the body of the deceased. He lodged a report making the allegations referred to above, which came to be registered as Crime No.583 of 2013 for an offence punishable under Section 304-B IPC. It is alleged that during the course of investigation, respondent No.3 recorded the statements of the informant, his wife and their two sons. In their statements though they made specific allegations with regard to the harassment meted out by the deceased for additional dowry and also the manner in which the death was caused, the official respondents in collusion with un-official respondents herein filed a charge sheet for the offences punishable under Sections 498-A, 306 read with 34 IPC and Section 3 of the Dowry Prohibition Act. He also states that respondent No.3 deleted the names of respondent Nos.7 to 10 herein from the array of the accused in the charge sheet and showed only respondent Nos.4 to 6 as accused Nos.1 to 3. This action of the official respondents in deleting the names of some of the accused in the charge sheet and also altering the section of law from 304-B IPC to Sections 498-A and 306 IPC is subject matter of challenge in the writ petition.

3) By an order dated 01.12.2015, this Court granted interim stay of all further proceedings in S.C.No.194 of 2014 on the file of the III Additional Metropolitan Sessions Judge, Hyderabad.

4) Respondent Nos.4 to 6 filed their counter disputing the averments made in the affidavit filed in support of the writ petition. It is stated that if the petitioner is not satisfied with the investigation conducted by the official respondents, he should file a protest petition as required under the Code of Criminal Procedure (hereinafter referred to as "Cr.P.C.") and then contest the matter in accordance with the provisions of Cr.P.C. Without availing the remedy available under Cr.P.C., the petitioner could not have approached this Court under Article 226 of the Constitution of India. It is further stated that as per the contents of the charge sheet, no offence under Section 304-B IPC is made out and hence, the police were right in filing the charge sheet for the offences punishable under Sections 498-A, 306 read with 34 IPC and Section 3 of the Dowry Prohibition Act. He further submits that the endorsements made in the diary of the deceased cannot be made a basis to alter the section of law or implicate the

accused, whose names were already deleted in the array of the accused. Since there are various versions in the statements recorded under Section 161 Cr.P.C., it is urged that the judgment of the Apex Court in Vinay Tyagi v. Irshad Ali @ Deepak and others[1], wherein the Apex Court held that fresh/de-novo investigation/reinvestigation should be directed by superior courts sparingly, only in exceptional cases where investigation already conducted is so unfair, tainted, malafide and in violation of settled principles of law is not applicable to the case on hand.

5) Respondent No.2 herein filed his counter denying the averments made in the affidavit filed in support of the writ petition. According to him, during the course of investigation the petitioner himself had stated that he has implicated accused Nos.4 to 7 ie. respondent Nos.7 to 10 because they were shocked by the death of the deceased and they gave large amount of cash, gold and agriculture land as dowry and by implicating all of them, they could get a leverage in getting back the dowry. The averments in the counter further show that the petitioner has received all valuables which were given as dowry including the land from the accused. The counter further show that the petitioner and the relatives of the deceased falsely stated about the proposal of second marriage for respondent No.4. It is stated that a comparison of the writing of the victim in the two written sources would disclose that only accused Nos.1 to 3 committed the offence. It is stated that the deceased did not mention the

[1] (2013) 5 SCC 762

names of accused Nos.4 to 7 in her writings and accusations were made only against accused No.1. Such being the position, it is stated that there is no other go except filing a charge sheet for the offences punishable under Sections 498-A, 306 read with 34 IPC and Section 3 of the Dowry Prohibition Act by deleting the names of accused Nos.4 to 7 though named in the First Information Report.

6) Respondent No.3 also filed his counter disputing the averments made in the affidavit filed in support of the writ petition. It is stated in the counter that there are no grounds to reinvestigate the case and only to wreck vengeance against respondent Nos.4 to 10, the petitioner made false and frivolous allegations. It is stated that if there is any evidence available, the petitioner is at liberty to put forth the same before the trial Court. In Para No.27 of the counter it is stated that during the course of investigation, the petitioner along with respondent No.5 and two elders approached the investigating officer on 31.07.2013 and showed an agreement dated 26.07.2013 requesting the Investigating Officer to drop the case, but respondent No.3 did not agree for it and proceed with the investigation as per the material available on record. He placed on record the agreement between the parties along with the counter in support of his plea. Since the writings/endorsements of the deceased in the diary were directed only against accused Nos.1. to 3 and having regard to the statements of the witnesses recorded under Section 161 Cr.P.C. during the course of investigation, a charge sheet was

filed for the offences referred to above. It is further stated that when the material on record discloses commission of offences punishable under Sections 498-A and 306 read with 34 IPC and as the same is directed against accused Nos.1 to 3 only, the question of re-investigating the matter again would not arise. It is submitted that the petitioner is always at liberty to raise his pleas before the trial Court by placing relevant material.

7) Respondent Nos.7 to 10 also filed counter denying the averments made in the affidavit filed in support of the writ petition. It is stated in the counter that if the victim or the member of the family of the deceased are not satisfied with the investigation conducted, they should file a protest petition. The petitioner without filing any protest petition and without leading evidence before the trial Court, filed the present writ petition seeking re-investigation. It is also stated in the counter that LWs.2 to 4 admitted in their 161 Cr.P.C. statements that these respondents were implicated falsely. Respondent Nos.7 to 10 were not living with the deceased and accused No.1 and they are in no way concerned with the family of the deceased and accused No.1.

8) From the material available on record, two issues would arise for consideration. Firstly, whether it is a fit case for ordering fresh investigation and whether this Court has got power to order fresh investigation. Secondly, whether the authorities were right in deleting the names of accused Nos.4 to 7 from the array of accused and if so, what is the remedy available to the

petitioner with regard to addition of the accused or alteration of section of law.

9) In order to appreciate the same, it would be useful to refer to Section 173 (8) of Cr.P.C., which reads as under:

> "173. Report of police officer on completion of investigation:
>
> (1) to (7): xxxxxxxxxxxxxxxx
>
> (8) Nothing in this Section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate, and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

10) As seen from the record, a charge sheet was filed for the offences punishable under Sections 498-A, 306 read with 34 IPC and Section 3 of the Dowry Prohibition Act, which was taken on file by the III Additional Chief Metropolitan Magistrate at Nampally and later committed to the Court of Sessions, wherein it was numbered as S.C.No.194 of 2014. After taking the case on file, summons were issued to the accused, who have appeared before the Court. Now question would be whether the Court has got power to order fresh/denova investigation when the Court has already taken cognizance of the matter.

11) It is not in dispute that there is a distinction between further investigation, re-investigation and fresh investigation. Further investigation and re-investigation stands on different footing. In a given situation a superior Court in exercise of its constitutional power either under Article 226 or under Article 32 of the Constitution of India, could direct a State to get an offence investigated or further investigated by a different agency. Direction of a re-investigation, however, being forbidden in law, no superior Court would ordinarily issue such a direction. (*Mithabai Pashabhai Patel and others v. State of Gujarat)*

12) The power of police to conduct further investigation after final report is recognized under Section 173 (8) Cr.P.C. is dealt with in *Sri Bhagwan Samardha Sreepada V.Venkata Viswanadha Maharaj vs. State of Andhra Pradesh and others*[2] case, wherein the Apex Court held as under:

> "Even after the Court took cognizance of any offence on the strength of the report of the police, it is open to the police to conduct further investigation. This has been so stated by the Apex Court in *Ram Lal Narang v. State (Delhi Admn.)*[3]. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation."

13) In *Rama Chaudhary v. State of Bihar*[4] while referring to Section 173 (8) of Cr.P.C. the Apex Court held that "the above

---

[2] AIR 1999 SC 2332
[3] AIR 1979 SC 1791
[4] (2009) 5 SCC 366

said provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. Referring to Sub-section (2) and Sub-section (8) of Section 173, the Court held that even after submission of police report under Sub- section (2) on completion of investigation, the police has a right to "further" investigation under Sub-section (8) of Section 173 but not "fresh investigation" or "reinvestigation". 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. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation.

14) In the instant case, the request of the petitioner is not for further investigation, but for denova/fresh investigation meaning thereby that the entire investigation done is illegal and improper. Had it been a case of further investigation, definitely the judgments referred to above could have come to the rescue of the petitioner in some form or the other, but situation here is otherwise.

15) In *Manu Sharma v. State (NCT of Delhi)*[5] the Apex Court held that "it is not only the responsibility of the investigating agency, but also that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not *prima facie* be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law dehors his position and influence in the society. The maximum *contra veritatem lex nunquam aliquid permittit* applies to exercise of powers by the Courts while granting approval or declining to accept the report."

16) In *Gudalure M.J.Cherian v. Union of India*[6] the Apex Court held that "the principle that in cases where charge-sheets have been filed after completion of investigation and request is made belatedly to reopen the investigation, such investigation being entrusted to a specialized agency would normally be declined by the court of competent jurisdiction but nevertheless in a given situation to do justice between the parties and to instil confidence in public mind, it may become necessary to pass such orders."

[5] (2010) 6 SCC 1
[6] (1992) 1 SCC 397

17) In *R.S.Sodhi v. State of U.P.*[7] the Apex Court held that "where allegations were made against a police officer, the Court ordered the investigation to be transferred to CBI with an intent to maintain credibility of investigation, public confidence and in the interest of justice. Ordinarily, the courts would not exercise such jurisdiction but the expression 'ordinarily' means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. 'Ordinarily' excludes extra- ordinary or special circumstances. In other words, if special circumstances exist, the court may exercise its jurisdiction to direct 'fresh investigation' and even transfer cases to courts of higher jurisdiction which may pass such directions."

18) In *Vinay Tyagi v. Irshad Ali @ Deepak and others (1 supra)* the Apex Court held as under:

> "However, in the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation' there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct 'fresh investigation'. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted.

[7] (1994) SCC (Cri) 247

> The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a 'fresh investigation'."

19) From the judgments of the Apex Court referred to above, it is clear that fresh investigation or denova investigation, even if ordered by the higher judiciary, should give reasons as to why it requires fresh investigation. The Court has to specifically say as to how the investigation is unfair, tainted, malafide and smacks of foul play and only after coming to such conclusion it can *set aside* such investigation and direct fresh investigation or denova investigation. Though the power is wiped out, but as held by the Apex Court it has to be exercised sparingly and only in rarest of rare cases.

20) In order to test whether the instant case falls within any of those categories for fresh investigation, it would be necessary to go into the record, more particularly the statements of the witnesses and also the diary which was said to have been maintained by the deceased. But at the same time, it is also to be noted here that it is not a case where the police have referred the case as "false" or "lack of evidence".

21) The grievance of the petitioner in para No.5 of the affidavit is that respondent No.3 in collusion with respondent Nos.4 to 10 to have created false statements and added number of paragraphs to the statements of witnesses, thereby diluting the case. That being the position, Cr.P.C. provides a remedy to the informant or the aggrieved person. He can always file a private complaint, get the statement of witnesses recorded and then plead for trial of his case along with the present sessions case, for a just decision of the case. Even if fresh investigation is ordered and if the request of the petitioner for investigation of the said case by another agency is considered, the material that would be available before the Court would be two sets of 161 Cr.P.C. statement running contradictory to each other. Even otherwise, as held by the Apex Court, the Court ordering fresh investigation should give reasons for the same.

22) The 161 Cr.P.C. statements of witnesses which are placed on record by the petitioner himself do not anywhere clearly go to show that there was harassment of dowry soon before her death

warranting filing of charge sheet under Section 304-B IPC. It is true that 161 Cr.P.C. statement of the petitioner show that dowry was paid at the time of marriage, for which the accused have charged for the offences punishable under Section 3 of the Dowry Prohibition Act. It would be useful to extract the relevant portion of the statement of LW.1, who is the petitioner herein, which is as under:

> "While so on 24.07.2013 at about 14.00 hours I made a phone call to my daughter, but she did not respond to my phone; later, I made a call to my son-in-law, wherein he informed that, my daughter committed suicide by hanging herself at their residence. On receiving this information, I along with my family members rushed to Hyderabad and found the dead body of my daughter in the mortuary of Gandhi Hospital and lodged the petition on my son-in-law Jagan and his family members Smt. Kalpana, Satyanarayana, Gangadhar Rao, Purnachander Rao, Smt. Pramila and Srinivas Rao as having responsible for my daughter's death.
>
> I falsely stated to the inquest-tahsildar that the son-in-law's sister Smt. Uppala Kalpana and her husband Mr. Satyanarayana, who are also residing at Hyderabad, are frequently come to my daughter's residence and harass her and abuse her and used to bet her to bring additional dowry from her parents. My daughter informed the same to me."

23) Though the last para referred to above, show that there was harassment to bring additional dowry, which was informed to the petitioner but the same is silent as to when such a demand was

made as the marriage was performed in the month of March, 2008 and the death occurred in the month of July, 2013. Similar is the statement of LW.2, who is the wife of LW.1.

24) Apart from that, the averments in the counter of the Inspector clearly show that the entries made by the deceased in the diary relate to harassment in the hands of accused Nos.1 to 3 only. No doubt the contents of the diary are subject to their admissibility and relevancy, but *prima facie* the material before the agency was mainly against accused Nos.1 to 3. Therefore, this Court is of the view that it is not a case which warrants fresh investigation.

25) It is no doubt true that the police should have given a notice to the informant before accepting the final report filed by the police against accused Nos.1 to 3 only while deleting the names of other accused. It appears that such a procedure was not followed by the police or by the Court. If no notice was given to the informant before filing the final report as alleged, the petitioner is at liberty to file either a private complaint or a protest petition, which shall be dealt with in accordance with law. In fact such a suggestion also fell from the respondents in their counters.

26) Having regard to the material available on record, this Court is of the opinion that it is not a fit case where fresh/denova investigation can be ordered. But since the petitioner is aggrieved by the investigation done, he is always at liberty to avail the remedies available under Cr.P.C.

27) Accordingly, the writ petition is disposed of. There shall be no order as to costs.

28) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

JUSTICE C. PRAVEEN KUMAR

27.07.2017
gkv