

THE HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION NO. 2679 of 2013

ORDER :

Heard both sides.

2. The present writ petition came to be filed seeking issuance of writ of mandamus declaring the action of respondent Nos. 2 to 5 in not reopening or reinvestigating Crime No.186 of 2007 of Gandhinagar Police Station, Secunderabad, registered for an offence punishable under Section 304-A of IPC, inspite of the directions from the first respondent and pursuant to the observations made by the X Additional Chief Metropolitan Magistrate at Secunderabad, in its judgment in CC No.622 of 2008, dated 08.07.2010, as illegal and arbitrary.

3. The averments in the writ affidavit would show that the petitioner who is a private employee, worked in other countries and returned to India in the recent past. It is stated that the father of the petitioner was working as Jr.Accounts Officer in the office of Commissioner of police. On 23.06.2017 at 10.00 p.m. while he was standing outside the house of the petitioner, a car bearing No.AP 9 AY 1923 driven by its driver in a rash and negligent manner, dashed against him causing his death. In respect of the said accident, a case in Crime No.186 of 2007 of Gandhinagar Police Station, came to be registered for an offence punishable under Section 304-A of IPC. Pursuant to the investigation made, a charge sheet vide CC No.622 of 2008 came to be filed. Thereafter, vide its judgment dated 08.07.2010, the trial Court acquitted the accused. Three years thereafter, i.e., in the year 2013, the present writ petition came to be filed seeking re-investigation of the case.

4. It is to be noted that the Apex Court in ***Rama Chaudhary v. State of Bihar***¹ while referring to Section 173 (8) of Cr.P.C. held that “the above 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. On the other hand, further investigation is permissible. 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” investigate 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. It is stated that 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.

In ***Manu Sharma v. State (NCT of Delhi)***² 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 de hors his position and influence in the society. The maximum *contra veritatem lex nunquam aliquid permittit* applies

¹ (2009) 5 SCC 366

² (2010) 6 SCC 1

to exercise of powers by the Courts while granting approval or declining to accept the report. In ***Gudalure M.J.Cherian v. Union of India***³ 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.”

In ***Vinay Tyagi v. Irshad Ali @ Deepak and others***⁴ 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. 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’.”

³ (1992) 1 SCC 397

⁴ (2013) 5 SCC 762

5. 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 foul play. Only after coming to such a conclusion, it can *set aside* such investigation and direct fresh investigation or denova investigation. Though the power is not wiped out but as held by the Apex Court it has to be exercised sparingly and only in rarest of rare cases. Direction of a re-investigation, however, being forbidden in law, no superior could would ordinarily issue such a direction. (***Mithabai Pashabhai Patel and others v. State of Gujarat***).

6. In the instant case, the request of the petitioner is not for further investigation, but for denova/fresh investigation, thereby making the entire investigation done earlier illegal and improper. The crime was registered in the year 2007, charge sheet was filed in the year 2008. Thereafter, the trial Court acquitted the accused on 08.07.2010. The petitioner herein approached this Court at a belated stage i.e. after completion of trial and pronouncement of judgment, making allegations against the prosecution with regard to the manner in which investigation was conducted. Further, it is also to be noted that when the present writ petition was listed on 31.01.2013, there was no representation on behalf of the petitioner. No steps were taken for posting of the case, till 2017.

7. In view of the above circumstances and judgments referred to above, I see no reason to entertain the present writ petition at this stage and the writ petition is accordingly dismissed. No costs.

Consequently, miscellaneous petitions, if any pending, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

19.07.2017
vhb