NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 706 of 2018

1. Ashok Agrawal S/o Late Biharilal Agrawal Aged About 51 Years R/o- Subhash Nagar, Near Talvar Building, Barfani Village- Durg, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

2. Smt. Shashi Agrawal W/o Ashok Agrawal Aged About 46 Years R/o- Subhash Nagar, Near Talvar Building, Barfani Village- Durg, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

3. Akshay Agrawal S/o Ashok Agrawal Aged About 25 Years R/o- Subhash Nagar, Near Talvar Building, Barfani Village- Durg, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

---- Petitioners

Versus

1. State Of Chhattisgarh Through- District Magistrate, Durg, District- Durg, Chhattisgarh., District : Durg, Chhattisgarh

2. Smt. Champa Bai Agrawal Wd./o. Late Shri Jogiram Agrawal Aged About 70 Years Presently R/o- Village And Post- Ratanpur, District- Bilaspur, Chhattisgarh., District : Bilaspur, Chhattisgarh

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For Petitioners	:	Shri Amiyakant Tiwari, Advocate
For State	:	Smt. M. Asha, Panel Lawyer

S.B. : Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

13/09/2018

Heard.

1. This petition is directed against order dated 23rd February 2018 by which revision of the State against order dated 4.8.2017 passed by the Magistrate has been allowed with a direction to get disputed cheques examined by the Handwriting Expert and report be submitted before the trial Court.

2. The background in which the petition has been filed before this Court is that a report was lodged in the police station by victim- Champa Bai

Agrawal that she has been cheated by her own son-in-law. The allegation was that the son-in-law asked the complainant to open another account and get some money transferred in the new account to save her from tax liability and on such lure and false pretext, the complainant opened another account jointly along with her son-in-law, the petitioner No.1-Ashok Agrawal. Later on, she came to know that Ashok Agrawal got about Rs.9 lakh transferred in the account of his son Akshay Agrawal, grand-son of the victim. During the course of trial, the Prosecution Officer advised to get the matter further investigated and supplementary charge sheet filed in the case, upon which, an application was made before the Court for grant of permission for further investigation and to file supplementary charge sheet. The application was, however, rejected. Thereafter, another application was filed which was also rejected vide order dated 4.8.2017. Against this order, revision was filed by the State/Prosecution which was allowed giving rise to this petition.

3. Relying upon the judgment of the Supreme Court in the case of **Vinay Tyagi Vs. Irshad Ali** Alias **Deepak and Ors.** (2013) 5 SCC 762, learned counsel for the petitioners argues that the permission sought and granted by the revisional Court amounts to allowing afresh and *de novo* investigation on a line which is entirely different and inconsistent from the case originally made by the prosecution. Referring to the Court statement of victim Champa Bai Agrawal, it is submitted that signing of cheques and document was never disputed, therefore, grant of permission to hold further investigation and file supplementary charge sheet towards the allegation of forgery is not further investigation or collection of further evidence, but is a case of *de novo* investigation.

4. On the other hand, learned counsel for the State submits that the power under Section 173 (8) Cr.P.C. entitles investigating agency to hold further investigation and whatever material is collected that may be submitted before the Court in the form of supplementary charge sheet. In the present case, it is argued, during the pendency of trial, it was borne out that the two cheques under which the amount of Rs.9 lakh is alleged to have been transferred from the account of complainant Champa Bai Agrawal to the account of her grand-son Akshay were forged and, therefore, it is necessary

to get those two cheques examined by Handwriting Expert to ensure just and fair trial.

5. The prosecution case as is reflected from the case diary statement particularly the statement of Champa Bai Agrawal is that she had signed two cheques. Her case is that she was misled by her own son-in-law Ashok Agrawal to open another account and get some money transferred in that account and later on, her signatures were obtained in two cheques which was used for transferring amount of Rs.9 lakh in the another account standing in the name of her grand-son Akshay. She has now been examined in the Court and she states that she had signed two blue papers.

6. The attempt which is now being made is to bring about altogether different case of use of forged cheques whereas it has not been the case of the victim because she herself says that she had signed two documents. Nowhere in her statement before the Court she had stated that her signatures have been forged in the cheques.

7. If that be so, it could not be said to be a case of further investigation but a fresh investigation, de-novo investigation or a re-investigation. In this regard the scope and extent of power of the investigating authority to hold further investigation under Section 173 (8) Cr.P.C. was examined by the Supreme Court in the case of **Vinay Tyagi** (supra), wherein, it was held as under:

> "21. The initial investigation is the one which the empowered police officer shall conduct in furtherance to registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.
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> 22. 'Further investigation' is where the Investigating Officer obtains further oral or documentary evidence

> after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation. "

8. Applying the aforesaid legal position, I am of the view that the impugned order dated 23rd February 2018 passed by the Revisional Court does not stand the scrutiny of law and deserves to be set aside and is, therefore, set aside.

9. The petition is accordingly allowed.

Sd/-
(Manindra Mohan Shrivastava)
Judge

Praveen