

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.11.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.No.1309 of 2014
and
CRL.M.P.No.1 of 2014

Arvind

.. Petitioner

Vs.

1.State rep. by its
The Inspector of Police,
F5, Choolaimedu Police Station,
Chennai.

2.Rajam

3.S.Devi Prasad

.. Respondents

Criminal Revision Petition filed under Sections 397
r/w 401 of Cr.P.C. praying to set aside the order dated
19.09.2014 passed by the VI Addl. Sessions Judge, Chennai in
Crl.MP.No.10232/2014 in S.C.No.452 of 2011.

For Petitioner: Mr.R.Ganesh Kumar
For R1 : Ms.P.Kritika kamal,
Government Advocate (Crl.Side)
For R2 : Mr.N.Paul Sunder Singh

सत्यमेव जयते
O R D E R

Pursuant to the suicide of one Manickam on 16.05.2010,
the respondent Police registered a case in Crime No.946 of
2010 under Section 306 IPC and after completing the
investigation, filed a final report for the said offence
before the jurisdictional Magistrate against Rajam (A1) and
Devi Prasad (A2). The case was committed to the Court of
Session and was taken on file as S.C.No.452 of 2011 and was
made over to the VI Additional District and Sessions Judge,
Chennnai, for trial. Charges were framed against the accused
for the offence under Section 306 IPC and they denied the
same. When the trial was yet to begin, Arvind, son of the
deceased Manickam, who is the petitioner herein filed
Crl.M.P.No.10232 of 2014 in S.C.No.452 of 2011 under Section
173(8) Cr.P.C. for further investigation, on the ground that,
the suicide note left by Manickam revealed the name of four
persons. But whereas, the Police have filed the Final Report

only as against two persons. He further contended that, the Investigating Officer has created record, as if he had examined the relatives of the deceased Manickam, including the petitioner herein on 17.05.2010 and that, they have exonerated the other two. But, the relatives were busy in the funeral of the deceased on 17.05.2010 and no such statement was ever given by them, exonerating the other two. Hence, the learned counsel submitted that, further investigation in this case is essential. However, the trial Court by order dated 19.09.2014, dismissed CrI.M.P.No. 10232 of 2014, challenging which, Arvind is before this Court.

2. Heard Mr.R.Ganesh Kumar, learned counsel appearing for Arvind and the learned Government Advocate (CrI.Side) and Mr.N.Paul Sunder Singh, learned counsel appearing for the 2nd respondent.

3. On a perusal of the impugned order, this Court does not find any infirmity warranting interference, especially, in the light of the following statement of law of the Supreme Court in Amrutbhai Shambhubai Patel Vs. Sumanbhai Kantibhai Patel and others [(2017) 4 SCC 177] hereunder:

"49. On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and the accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant can direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand."

4. A Full Bench of this Court in Chinnathambi @ Subramani Vs. State rep. by the Inspector of Police, Vellakovil Police Station, Tirupur District. [2017(2) CTC 241] has relied upon the aforesaid dictum and held as under:

"44(vii). The power to grant permission for further investigation under Section 173(8) of Cr.P.C after cognizance has been taken on the Police Report can be exercised by the Magistrate only on a request

made by the Investigating Agency and not, at the instance of anyone other than the Investigating Agency or even suo motu. [vide Judgment of the Hon'ble Supreme Court in Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, 2017 (2) SCALE 198]."

5. In the result, the present petition filed by the son of the deceased seeking further investigation under Section 173(8) Cr.P.C., cannot be sustained and this petition is dismissed. However, as rightly observed by the trial Court, the power under Section 319 Cr.P.C. can be invoked, bearing in mind, the law laid down by the Supreme Court in Jogendra Yadav Vs. State of Bihar (2015) 8 Scale 442. The Registry is directed to despatch the original records in S.C.No.452 of 2011, if received, to the VI Additional Sessions Court, Chennai immediately.
Gya

Sd/-
Assistant Registrar (CS IX)

//True copy//

Sub Assistant Registrar

To

1. The VI Addl. Sessions Court, Chennai.
2. The Inspector of Police,
F5, Choolaimedu Police Station,
Chennai.
3. The Section Officer, Criminal Sec.
High Court, Madras.
4. The Public Prosecutor, High Court, Madras.

+1cc to Mr.N.Paul Sunder Singh, Advocate SR.No.78989
+1cc to Mr.S.Shernik Raj, Advocate SR.No.78981

KR/23/11/18

CRL.R.C.No.1309 of 2014