

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Criminal Petition No.1247 of 2018

Between:

Kacharagarala Venkateswarlu @ Venkatesh Naidu
and 15 others.

... Petitioners/Accused

AND

The State of Andhra Pradesh
Rep. by its Public Prosecutor,
High Court of Judicature at Hyderabad,
For the State of Telangana and
the State of Andhra Pradesh
and another.

... Respondents

DATE OF JUDGMENT PRONOUNCED: **23.08.2018**

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO

1. Whether Reporters of Local Newspapers
may be allowed to see the judgment? Yes / No
2. Whether the copies of judgment may be
marked to Law Reporters / Journals? Yes / No
3. Whether Their Lordship wish to
see the fair copy of the Judgment? Yes / No

U. DURGA PRASAD RAO, J

*** THE HON'BLE SRI JUSTICE U. DURGA PRASAD RAO**

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... Respondents

! Counsel for Petitioner : Sri T.Pradyumna Kumar Reddy

^ Counsel for Respondent No.1 : Public Prosecutor (AP)

^ Counsel for Respondent No.2 : None appeared.

< Gist:

> Head Note:

? Cases referred:

- 1) AIR 1998 SC 2001
- 2) (1985) 2 SCC 537
- 3) AIR 2017 SC 774 = (2017) 4 SCC 177
- 4) (2009) 9 SCC 129
- 5) 1990 CriLJ 456 = MANU/UP/0285/1988
- 6) 2002 CriLJ 1754 = MANU/OR/0468/2002
- 7) (2013) 5 SCC 762
- 8) Cri.L.C.No.1569/2008 dt.21.03.2012 of High Court of Judicature at Madras

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Criminal Petition No.1247 of 2018

ORDER:

The important and interesting point involved in this Criminal Petition is:

“Whether after taking cognizance of a case and accused made their appearance, a Court can direct further investigation by Investigating Officer (IO) at the request of the accused?”

2) The factual matrix of the case briefly is thus:

a) In Crime No.31 of 2015 of Pedavadugur PS of Anantapur District, the facts are that the deceased contested and elected as President of Primary Agricultural Cooperative Society (PACS), Kristipadu village in February, 2013 which became an eye-sore for accused, who belonged to rival political party and they were waiting for an opportunity to get rid. On 30.03.2015, the deceased requested LW7—Chief Executive Officer, PACS, Kristipadu to hold General Body Meeting on 31.03.2015 and to inform the same to the Directors of the society and accordingly LW7 informed the same to all concerned. Then it is alleged, A1 and others hatched a plan to eliminate the deceased and in furtherance of their common intention, all the accused conspired together and came to the PACS office on vehicles by getting sticks in the vehicles. On 31.03.2015 at about 10:00 AM, the deceased along with LWs.5, 9 to 12 reached the PACS office, Kristipadu for attending the General Body Meeting. At about 10.30 AM, A2 and A4 went to the meeting place and informed the

deceased that one of the Directors by name Gopal Reddy of Kodaraguttapalli Village died and asked the deceased to enter the said information in the Minutes book and send proposals for which the deceased replied that it was not under his purview. On that, wordy altercation took place between deceased and accused and in that melee the deceased pushed A2 towards wall and he sustained injury. Then A1, A3, A5 to A16 picked up the sticks from the Bolero vehicle and went upon the deceased. A1, A2, A4 attacked the deceased with sticks. A3, A7, A10 and A12 also attacked the deceased and beat him indiscriminately causing severe injuries. When LWs.9 to 12 questioned, A9 to A16 attacked them and caused injuries. The deceased sustained grievous injuries to his head and other parts of the body and died on the spot. On the report given by wife of the deceased, the police registered a case in Cr.No.31 of 2015 for the offences under Sections 147, 148, 324, 307, 302 r/w 34 IPC and after investigation filed charge sheet. The learned Additional Judicial Magistrate of First Class, Gooty has taken cognizance of the charge sheet and registered as PRC No.18 of 2015 and committed the case to Sessions Court, Anantapur. The case was registered as S.C.No.421 of 2016 and made over to the VI Additional Sessions Judge, Gooty, Anantapur District.

b) The petitioners/accused filed CrI.M.P.No.113 of 2017 under Section 173(8) Cr.P.C before the Trial Court seeking a direction for further investigation of the case on the ground that LWs.5 to 12 stated in their 161 Cr.P.C. statements that four Directors of Kristipadu PACS were

also present and witnessed the incident but those four Directors were not examined and their statements were not recorded by the IO. Their evidence is important and material to unravel the truth relating to the incident. The petitioners sent petitions and representations to all higher authorities including the Honourable the Chief Minister seeking further investigation. Further, the petitioners filed W.P.No.42807 of 2016 wherein the High Court in its order dated 19.01.2017, has given liberty to the petitioner/A4 to move the concerned Court for appropriate directions. The accused thus prayed for further investigation. Learned Additional Public Prosecutor filed counter and opposed the petition contending that further investigation can be ordered only on the request of investigating agency on finding additional material but not on the request of either the complainant or the accused. The Trial Court agreeing with the Addl.P.P, dismissed the petition.

Hence, the Criminal Petition at the instance of petitioners/A1 to A16.

3) Heard arguments of Sri T.Pradyumna Kumar Reddy, learned counsel for petitioners and learned Public Prosecutor for the State (A.P). Though notice to respondent No.2 was served but there is no representation on his behalf.

4) The term “further investigation” with which we are now concerned has been succinctly narrated by the Apex Court in *K.Chandra Sekhar v. State of Kerala*¹, thus:

¹ AIR 1998 SC 2001

“Para 25: x x x x ... The dictionary meaning of further' (when used as an adjective) is 'additional'; more; 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. In drawing this conclusion we have also drawn inspiration from the fact that Sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports - and not fresh report or reports-regarding the 'further' evidence obtained during such investigation.”

Thus the above decision differentiates further investigation on one hand and fresh investigation/re-investigation on the other, as per which, further investigation is only a sequential to the earlier investigation made in quest of further evidence by the investigating agency to add to the stock of evidence already gathered and stored. Thus, further investigation is not to sequester the earlier investigation unlike in the case of fresh investigation or re-investigation or *de novo* investigation. This difference is expounded pellucidly in the above decision.

5) The concept of “further investigation” was alien to Code of Criminal Procedure, 1898 and it was ofcourse, introduced in Section 173(8) of Code of Criminal Procedure, 1973 due to the recommendation made in 41st Report of Law Commission of India, wherein at Para 14.23, it was observed thus:

“Para 14.23: Re-opening Investigation—A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under section 173

comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the magistrate concerned. It appears, however, that courts have sometimes taken the narrow view that once a final report under section 173 has been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and for that matter, even to the accused. It should be made clear in section 173 that the competent police officer can examine such evidence and send a report to the magistrate. Copies concerning the fresh material must of course be furnished to the accused.”

The Law Commission of India in fact recommended the recast Section 173 also, wherein under sub-Section (7) it postulated a provision for further investigation. The reinforced Section 173 has been incorporated in Cr.P.C, 1973. This Section as it stands now reads thus:

“Section 173-Report of police officer on completion of investigation

(1) x x . . .

(2) x x . . .

(3) x x . . .

(4) x x . . .

(5) x x . . .

(6) x x . . .

(7) x x . . .

(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-sections (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).”

Thus in the context of Section 173(8), the power of a Magistrate to direct further investigation has to be tested now. Since the issue of a Court directing further investigation arises after the IO files his report under Section 173(2) Cr.P.C, it has now to be seen what are the different courses that are available to a Magistrate after IO files his report under Section 173(2) Cr.P.C. This aspect has been considered by the Apex Court in *Bhagwant Singh v. Commissioner of Police and another*², as follows:

“Para 4: Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under Sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situation may arise:

*The report may conclude that **an offence appears to have been committed** by a particular person or persons and in such a case, the Magistrate may do one of three things:*

- 1) he may accept the report and take cognizance of the offence and issue process or*
- 2) he may disagree with the report and drop the proceeding or*
- 3) he may direct further investigation under Sub-section(3) of Section 156 and require the police to make a further report.*

*The report may on the other hand state that, **in the opinion of the police, no offence appears to have been committed** and where such a report has been made, the Magistrate again has an option to adopt one of three courses:*

² (1985) 2 SCC 537

- 1) *he may accept the report and drop the proceeding or*
- 2) *he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or*
- 3) *he may direct further investigation to be made by the police under Sub-section (3) of Section 156.”*

In the above decision, Court’s adopting the third method i.e, directing IO to conduct further investigation under Section 156(3) Cr.P.C should be understood as further investigation at pre-cognizance stage. This aspect has been clarified in ***Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel and others***³, wherein the Apex Court observed thus:

*“**Para 40:** The rendition in Bhagwant Singh (supra) was also relied upon. It was eventually held, by drawing sustenance from the pronouncement in Bhagwant Singh (supra) that a Magistrate, before whom a report Under Section 173(2) of the Code had been filed, was empowered in law to direct further investigation and require the police to submit a further or a supplementary report. To reiterate, in Bhagwant Singh (supra), this Court had in particular dealt with the courses open to a Magistrate, once a charge-sheet or a closure report is submitted on the completion of investigation Under Section 173(2) of the Code and thus did essentially concentrate at the pre-cognizance stage of the proceedings (emphasis supplied).”*

6) Be that it may, whether a Court has power to direct further investigation at post-cognizance stage is precisely the question that is engaged with us now. After the IO filed report under Section 173(2) Cr.P.C, which was accepted and summons were issued to the accused

³ AIR 2017 SC 774 = (2017) 4 SCC 177

and they made their appearance, at this stage whether the Court under its *suo motu* power or on the application of either the complainant or the accused but not on the request of the investigating agency, can direct further investigation is a mootable question. When once the report filed by the IO is accepted and cognizance is taken, the Court is said to have applied its judicial mind to the facts and evidence submitted by the IO and at that stage the Court on its own or on the application of the complainant or the accused cannot order for further investigation as there is no enabling provision to undertake that exercise. Section 173(8) Cr.P.C can be pressed into service only at the instance of the investigating agency but not at the option of the complainant or accused. That the Magistrate has no *suo motu* power to order further investigation at the post-cognizance stage has been held by the Apex Court in ***Reeta Nag v. State of West Bengal and others***⁴, wherein it was observed thus:

“Para 25: What emerges from the above-mentioned decisions of this Court is that once a charge sheet is filed under Section 173(2) Cr.P.C. and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173(8). The Magistrate cannot suo motu direct a further investigation under Section 173(8) Cr.P.C. or direct a re-investigation into a case on account of the bar of Section 167(2) of the Code.”

a) In a recent judgment in ***Amrutbhai Shambhubhai Patel*** (3 supra), the Apex Court held that the Court cannot order further investigation at

⁴ (2009) 9 SCC 129

the post-cognizance stage on the request of the *defacto* complainant. On a survey of various judgments of its own, the Apex Court concluded thus:

“Para 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 (emphasis supplied). 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.

Para 51: In contradistinction, Sections 156, 190, 200, 202 and 204 Cr.P.C clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant.

x x x

If the power of the Magistrate, in such a scheme envisaged by Cr.P.C to order further investigation even after the cognizance is taken, the accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the

state of law, as enunciated by this Court and also the relevant layout of Cr.P.C adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) Cr.P.C would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof.”

Therefore, the Apex Court in this decision emphatically held that the Magistrate is not vested with either *suo motu* power or on the application of the complainant to order further investigation in a post-cognizance stage. It must be noted that this decision though rendered in the context of a complainant’s request for further investigation, in my considered view, the principle laid down therein applies in all its fours also to the instances where accused seeks further investigation as in the instant case.

7) We have the decisions relating to the request made by accused for further investigation. In *Shyama Charan Dubey v. State of U.P.*⁵, the High Court of Allahabad encountered the question as to whether the accused possesses a right to get further investigation ordered through Magistrate’s Court in supposed exercise of powers under Section 173(8) Cr.P.C.

*“**Para 16:** Reverting back to the said sub-section as enacted by the legislature, it has to be noted that it is only permissive in character. The Investigating Officer (or Officer-in-Charge of Police Station) may undertake a further investigation even after filing of a charge-sheet. If he does so, the further evidence collected by him shall be forwarded to the Magistrate along with a further report. Therefore, I am clearly of the view that neither the prosecution, i.e. the*

⁵ 1990 CriLJ 456 = MANU/UP/0285/1988

informant nor the accused can claim as a matter of right a direction from a Court commanding further investigation by the Investigating Officer under Sub-section (8) of Section 173 after a charge-sheet was filed after investigation.”

Subsequently a similar issue had come up before the High Court of Orissa in ***Dara Singh alias Rabindra Kumar Pal and others v. Republic of India represented by the Superintendent of Police, Special Crime Branch, Central Bureau of Investigation***⁶. Relying upon the judgment of the High Court of Allahabad in ***Shyama Charan Dubey*** (5 supra), the High Court of Orissa also held that neither informant nor the accused can claim further investigation as of right after charge sheet was filed.

8) Therefore, the argument of learned counsel for petitioners that in the interest of justice and to exhume the truth, the Trial Court has power to direct further investigation cannot be countenanced, as, such a direction for further investigation in the words of Hon’ble Apex Court is discordant with state of law, as enunciated by the Apex Court and also relevant layout of the Code of Criminal Procedure.

9) It must be held at this juncture, the decision in ***Vinay Tyagi v. Irshad Ali @ Deepak and others***⁷, relied upon by the petitioners will not help their cause, because in that case the Apex Court on a perusal of the various judgments has held that the Magistrate has power to direct further investigation after filing of a police report in the light of Sections 156(3)

⁶ 2002 CriLJ 1754 = MANU/OR/0468/2002

⁷ (2013) 5 SCC 762

and 173(8) Cr.P.C. Obviously, the said power of further investigation refers to pre-cognizance stage. The Apex Court held thus:

***“Para 40:** Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:*

***40.1.** The Magistrate has no power to direct “reinvestigation” or “fresh investigation” (de novo) in the case initiated on the basis of a police report.*

***40.2.** A Magistrate has the power to direct “further investigation” after filing of a police report in terms of Section 173(6) of the Code.*

***40.3.** The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three-Judge Bench and thus in conformity with the doctrine of precedent.*

***40.4.** Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).”*

10) The petitioners also relied upon an unreported judgment of the High Court of Madras in ***Crl.R.C.No.1569 of 2008 dated 21.03.2012 (V.Siva Kumar v. Ravi Kapoor and another)***⁸, wherein the order of the Trial Court directing further investigation on the request of the accused

⁸ Crl.R.C.No.1569/2008 dt.21.03.2012 of High Court of Judicature at Madras

was upheld by the High Court. However, since the same is against the spirit of the Apex Court judgments, no reliance can be placed on the cited judgment.

11) In view of the judicial jurimetrics on the subject in issue, it can only be held that the Court at the post-cognizance stage, cannot direct the I.O to conduct further investigation at the request of the accused. As rightly observed by the Trial Court, the petitioners/accused should vindicate their defence by way of exposing the lacunae in the investigation if any, and also by way of cross-examination of the prosecution witnesses and by way of producing the defence witnesses if they are so advised.

12) Accordingly, this Criminal Petition is dismissed by confirming the order dated 10.01.2018 in CrI.M.P.No.113/2017 in S.C.No.421/2016 passed by the learned VI Additional Sessions Judge, Anantapur at Gooty.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

U. DURGA PRASAD RAO, J

Date: 23.08.2018
Murthy/scs