

THE HON'BLE DR. JUSTICE SHAMEEM AKTHER

CRIMINAL REVISION CASE No.536 OF 2018

ORDER:

This Criminal Revision Case, under Sections 397 & 401 of Code of Criminal Procedure, 1973, is filed by the petitioner-accused, challenging the order, dated 27.01.2018, passed in CrI.M.P.No.6 of 2017 in S.C.No.119 of 2014, by the VIII Additional Assistant Sessions Judge, Ranga Reddy District at L.B.Nagar, whereby, the petition filed by the respondent-State was allowed permitting the police to conduct further investigation and to file the additional report under Section 173(8) of Cr.P.C.

2. Heard learned counsel for the petitioner-accused, learned Assistant Public Prosecutor representing the respondent-State and perused the record.

3. The learned counsel for the petitioner-accused would submit that charge for the offence punishable under Section 306 IPC was already framed against the petitioner-accused by the Court below and nine prosecution witnesses were examined. Further investigation, under Section 173(8) of Cr.P.C., is ordered without any basis. It is not the police who are seeking further investigation, but it is the father of the deceased at whose initiative, the police filed the subject application seeking (i) correction of the date of examination of witness under Section 161 Cr.P.C.; (ii) to file mobile phone call data record of the deceased; and (iii) to examine crucial witness. The subject application was filed before the Court below after four years from the date of incident. Ordering further investigation to collect call data of mobile phone of the deceased and to examine crucial witnesses without giving details of the data to be collected or witnesses to be examined by the prosecution, is highly

irregular. Call data of the mobile phone of the deceased was already collected and the crucial witnesses were already examined and charge sheet was filed. At this stage, there is no need to further investigate into in the instant case. Learned counsel placed reliance upon a decision in *Athul Rao v. State of Karnataka and another*¹, wherein, it was held that the question as to whether, after framing of charges and taking cognizance, it is open to the Magistrate to direct further investigation, either *suo motu* or on an application filed by the complainant/informant, is no more *res integra*. In a recent decision of the Apex Court in the case of *Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel and others* {2017 (4) SCC 177}, after analysing earlier decisions on the point, it has been held that neither the Magistrate *suo motu* nor on an application filed by the complainant/informant can direct further investigation. Further investigation in a given case may be ordered 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; and, ultimately prayed to set aside the impugned order.

4. On the other hand, the Assistant Public Prosecutor would submit that the Court below had assigned valid reasons and permitted the prosecution to further investigate into matter in terms of Section 173(8) Cr.P.C. The Court has power to do so. The impugned order is a reasoned order and ultimately prayed to sustain the impugned order.

5. In view of the submissions made by both sides, it is apt to refer to Section 173(8) Cr.P.C., which read as follows:-

Section 173(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

¹ 2017 (2) ALD (CrL.) 877

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).

The above provision envisages the investigating officer to conduct further investigation to collect oral or documentary evidence etc., and file supplementary charge sheet.

6. In the instant case, as per the requisition of the investigating officer, dated 08.09.2017, filed before the trial Court, a discrete enquiry was conducted. Pursuant to the said enquiry, it was found that some more oral and documentary evidence was required to be collected. It is apparent from the requisition, dated 08.09.2017 that some of the crucial witnesses were not examined to prove the guilt of the accused and some call data pertaining to the mobile phone of the deceased was required to be collected. The Court is empowered to do so under Section 173(8) of Cr.P.C. To meet the ends of justice, the Sessions Judge, has power to order further investigation either *suo motu* on an application filed by the complainant/informant.

7. Learned counsel for the petitioner/accused also relied on a decision reported in *Athul Rao's* case (1 supra), wherein, the Apex Court held as follows:-

“If the power of the Magistrate, in such a scheme envisaged by the Cr.P.C. to order further investigation even after the cognizance is taken, 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 the 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) of the Cr.P.C. would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof.

Not only such power to the Magistrate to direct further investigation *suo motu* or on the request or prayer of the complainant/informant after cognizance is taken and the

accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 Cr.P.C., whereunder any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant.”

8. It is brought to the notice of this Court that relevant material was already with the investigating officer. So by invoking Section 311 Cr.P.C., the same can be brought on record. In the instant case, the investigating agency intended to further investigate into the matter and file material documents. There is nothing wrong on the part of the trial Court in accepting the request made by the investigating officer. The Court below, while dealing with subject application, had elaborately dealt with all the contentions raised and ultimately allowed the application. There is no miscarriage of justice. There is nothing to take a different view. The Criminal Revision Case is devoid of merit and is liable to be dismissed.

9. The offence took place in the year 2011. Seven years have elapsed. Under these circumstances, the investigating officer shall expedite the investigation, complete the same and file report positively within a period of three months from the date of receipt of a copy of this order.

10. With the above observation, the Criminal Revision Case is dismissed.

Miscellaneous Petitions, if any, pending shall stand closed.

23rd April, 2018
ssp

Dr. SHAMEEM AKTHER, J