

HONOURABLE SRI JUSTICE N. BALAYOGI

Criminal Petition No.6520 of 2007

ORDER:

The petitioners/A.1 and A.2, aggrieved by the order dated 25.10.2007 passed in Criminal M.P. No.936 of 2007 in S.C.No.13/S/2005 on the file of the Special Sessions Judge-cum-IV Additional Sessions Judge, Guntur, preferred this Criminal Petition to quash the order of the Special Sessions Judge.

2. The contention of petitioners is that the respondent No.2 filed application under section 173(8) Cr.P.C., seeking permission for further investigation. While dismissing the application, the Session Judge, Guntur, observed that the investigating agency is not precluded from making further investigation in respect of an offence after forwarding the report under section 173(8) Cr.P.C. Taking advantage of the same, the respondent No.2 proceeded to examine the witnesses whose names were found in the original charge sheet. The petitioners are prejudiced by the act of the respondent No.2 at belated stage of nearly three years after filing the charge sheet. The petitioners filed Criminal Petition No.1396/2007 to quash the order passed in the said application. While disposing of the Criminal Petition No.1396 of 2007 along with Criminal R.C.No.339 of 2007 vide order dated:22.3.2007 this High Court directed the Special Court to reopen the matter by restoring the same and examine whether it can grant

permission or the Magistrate has to grant permission to proceed with further investigation, whether C.I.D. is different from regular police and whether C.I.D cannot be permitted to do further investigation, except the agency which conducted the original investigation and give a specific finding while passing order on the petition filed by the Deputy Superintendent of Police, Bapatla.

3. While so, the respondent No.1 filed Criminal M.P. No.936 of 2007 in S.C.No.13/S/2005, requesting to accord permission to the respondent No.2 for taking up further investigation and the Sessions Court allowed the petition on 25.10.2007.

4. The main contention of the petitioners is that further investigation can be done only by the original investigating agency and not by any other investigating agency. As the Sub-Divisional Police Officer, Bapatla investigated and filed charge sheet, the respondent No.2 has no power to further investigate in this matter.

5. *Per contra*, the learned Public Prosecutor contended that the Sub-Divisional Police Officer, Bapatla, filed charge sheet against the petitioners/A.1 and A.2 for the offence punishable under section 302 IPC and section 3(2) (v) of S.C. & S.T. (POA) Act of 1989 and after committal, Court of sessions taking cognizance of the same, numbered it as S.C.No.13/S/2005. Koneru Vara Prasad Rao, who filed Criminal Revision Case No.339/2007 is neither an accused nor a witness in S.C.No.13/S/2005. Public Prosecutor further contended that further investigation can be done after obtaining prior permission

from the Court. Therefore, the Court can grant permission to proceed with further investigation by Sub-Divisional Police Officer, C.I.D., Guntur. Further, regular police and C.I.D are investigating agencies working under the control of the State Government and they are one and the same and there is no difference between the two agencies and the investigation of an offence is statutory power of police and further stated that under section 36 of Cr.P.C, the Sub-Divisional Police Officer, CID, Guntur is having jurisdiction and he is superior to the Station House Officer, Ponnur Rural Police, therefore, he is competent to conduct further investigation in the matter.

The learned Public Prosecutor further contended that after receiving representation from the Sub-Divisional Police Officer, Bapatla by the Director General of Police, further investigation was ordered in accordance with the provisions of the Cr.P.C., under section 173(8) Cr.P.C., and there is no prohibition for the investigating agency to place fresh material before the Court. The complainant aggrieved by the conduct of investigating police officer has right to give complaint to higher officials against the police officials who conducted earlier investigation and he finally prayed to grant permission to C.I.D of Police to conduct further investigation.

The learned Public Prosecutor further argued that the power of the State Government under the provisions of Indian Police Act, 1981 to entrust the investigation to superior officers cannot be questioned. Further contention of the Public Prosecutor is that after some more

fresh facts came to the light, the Additional Director General of Police, CID, Hyderabad, issued directions vide Memo., dated:14.2.2006 for getting transfer of the said case to CID of Police and addressed a letter to the Superintendent of Police, Guntur in this regard. The State in its discretion may get the investigation done by any agency, unless there exists an extraordinary situation.

6. Now, the point that arises for determination is:

Whether the Sub-Divisional Police Officer, Bapatla and the C.I.D. of Police are one and the same and that whether the Government is empowered to direct the C.I.D of Police to further investigate into the matter and that the order of the Sessions Judge, Guntur, can be sustained?

7. From the above arguments, the main question involved in the Revision Petition is that whether the Sub-Divisional Police Officer, Bapatla and the C.I.D of Police are different or one and the same. According to the revision petitioners, they are different and further investigation cannot be entrusted to the C.I.D., but the Magistrate is empowered to entrust further investigation to the same police who earlier investigated, but not to CID of Police.

8. The undisputed facts spell out from the record are that the Sub-Divisional Police Officer, Bapatla, filed charge-sheet against A.1 and A.2. A.2 is the foster daughter of de facto-complainant. Whereas, A.1 is the husband of A.2. A.1 was addicted to bad vices and he was removed from Chit Fund Company. Since then, A.1 hatched up a plan to grab property of the de facto-complainant, who is the foster mother of A.2. De facto-complainant gave financial aid to

the deceased to erect house and that A.1 and A.2 / petitioners herein suspected that the de facto-complainant will spare all her properties to the deceased, therefore, A.1 and A.2 hatched up a plan to eliminate the deceased.

9. While so, on intervening night of 16/17.10.2003, while the de facto-complainant was sleeping, petitioner No.2 caught hold of the hands of the deceased and petitioner No.1 stabbed him indiscriminately, which resulted instantaneous death. The dog squad identified the petitioners as culprits. One of the witnesses expressed suspicion over the petitioners and three others. But their involvement is not elicited in the charge sheet. Initially, the Inspector of Police took up the investigation, but after adding the offence under section 3(2)(v) of the Act, the Sub-Divisional Police Officer took up the investigation and filed charge sheet for the offence under section 302 IPC and section 3(2)(v) of the Act.

10. The petitioners herein, who are A.1 and A.2, filed Criminal M.P. No.1396/2007 under section 482 of Cr.P.C praying to quash the investigation commenced by respondent No.2 against the State of Andhra Pradesh, represented by its Deputy Superintendent of Police, CID, RCIU, Guntur in S.C.No.13/S/2005 and Koneru Vara Prasad Rao filed Criminal R.C.No.339 of 2007 against the State of Andhra Pradesh and the petitioners herein. By common order dated:22.3.2007, this High Court, while disposing of both the cases, observed that permission of the Court is necessary to conduct further

investigation. Therefore, the order of the learned Special Judge rejecting the application on the ground that no formal permission is required cannot stand, therefore, the order is liable to be set aside. This High Court further ordered that the lower Court shall reopen the matter by restoring the same and examine whether it can grant permission or the Magistrate has to grant permission to proceed with the further investigation, whether the CID is different from regular police and whether CID cannot be permitted to do further investigation, except the agency which conducted the original investigation and directed the lower court to give a specific finding while passing order on the petition filed by the Deputy Superintendent of Police, Bapatla.

11. In pursuance of the said order, the Special Sessions Judge-cum-IV Additional Sessions Judge, Guntur, by its order dated:25.10.2007 ordered that the investigation of an offence is a statutory power of the police. The State in its discretion may get the investigation done by any agency, unless there exists an extraordinary situation. In the present case, the Investigating Agency collected fresh material and approached this Court seeking permission to conduct further investigation through CID of Police and the IV Additional Sessions Judge, Guntur, can grant permission to proceed with further investigation to the Investigating Officer. The CID of Police can do further investigation in this case, as the investigation of an offence is a statutory power of the police and the State in its discretion may get the

investigation done by any agency, unless there exists an extraordinary situation. In this case, there is no extraordinary situation exists. Therefore, the C.I.D of Police can be permitted to do further investigation.

12. The facts indispensable for the present adjudication, portray that after investigation, the Sub-Divisional Police Officer, Bapatla, filed charge sheet against the petitioners/A.1 and A.2 for the offence punishable under section 302 IPC and section 3(2) (v) of S.C. & S.T. (POA) Act of 1989 in the month of December, 2004 before the Judicial I Class Magistrate, Ponnur, who in turn committed the case to the Court of Special Sessions Judge-cum-IV Additional Sessions Judge, Guntur under Section 209 Cr.P.C. and the same was numbered as S.C. No.13/S/2005.

13. Thereafter, the 2nd respondent filed Memo in C.F.R. No.1452 of 2006 on 17.3.2006 by wrongly typing the causetitle as Deputy Superintendent of Police, C.I.D., R.C.I.U., Vijayawada requesting permission for further investigation. The same was dismissed on 4.9.2006 with an observation that the investigating agency is not precluded from making further investigation. Thereafter, the 2nd respondent, who is no way connected with the investigation, proceeded and examined some more witnesses as eyewitnesses, whose names are not found in the original charge-sheet or in the memo of evidence enclosed to the charge-sheet.

14. The petitioners herein filed CrI.P. No.1396 of 2007 to quash the proceedings in C.F.R. No.1452 of 2006 in S.C. No.13/S/2005, which was disposed of by this High Court along with CrI.R.C.No.339 of 2007 by order dated 22.3.2007 directing the Special Court to re-open the matter by restoring the same and to examine (i) Whether it can grant permission or the Magistrate has to grant permission to proceed with the further investigation; (ii) Whether the CID is different from regular police and (iii) Whether CID cannot be permitted to do further investigation, except the agency which conducted the original investigation; and give a specific findings while passing order on the petition filed by the Deputy Superintendent of Police, Bapatla.

15. The main contention of the petitioners is that the trial Court with an erroneous view of law and facts has not recorded a finding as directed by the High Court in CrI.P. No.1396 of 2007 by order dated 22.3.2007 directing the Special Court to re-open the matter by restoring the same and to examine (i) Whether it can grant permission or the Magistrate has to grant permission to proceed with the further investigation; (ii) Whether the CID is a different from regular police and (iii) Whether CID cannot be permitted to do further investigation, except the agency which conducted the original investigation; and give a specific findings while passing order on the petition filed by the Deputy Superintendent of Police, Bapatla.

16. Normally, report under Section 173 Cr.P.C. is the end of the investigation. Sometimes, however, the Police Officer after submitting the report under Section 173 Cr.P.C. comes up with the evidence bearing on the guilt or innocence of the accused. I am of the view that the Police Officer can collect that evidence and send it to the Magistrate concerned. However, the Courts for sometimes taken the narrow view that once a final report under Section 173 Cr.P.C. 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 that in Section 173 Cr.P.C. the competent police officer can examine such evidence and send report to the Magistrate. Copies concerning the fresh material must, of course, be furnished to the accused.

17. Where a superior officer of Police has been appointed under Section 158 Cr.P.C., the report shall in any case in which the State Government by general or special order so directs be submitted to that officer and he may, pending the orders of the Magistrate, direct the officer in-charge of the Police Station to make further investigation.

18. It is true, nothing in Section 161 Cr.P.C. shall be deemed to preclude further investigation in respect of an offence after report under Sub-Section (2) has been forwarded to the Magistrate. Whereupon such investigation the officer in-charge of the Police

Station obtains further oral or documentary evidence, he will forward a further report to the Magistrate.

19. The newly added Sub-Section (8) to the Section 173, as its text evinces, permits further investigation by the Officer in-charge of the Police Station concerned in respect of an offence after report under Sub-Section (2) had been forwarded to the Magistrate and also to lay before the Magistrate a further report in the form prescribed. The integration of Sub-Section (8) is axiomatically subsequent to the 41st report of the Law Commission Report of India conveying its recommendation that after the submission of a final report under Section 173, a competent police officer, in the event of availability of evidence bearing on the guilt or innocence of the accused ought to be permitted to examine the same and submit a further report to the Magistrate concerned.

20. In the case of *Chandra Babu Vs. State* ((2015) 8 SCC 774) the Apex Court held that the superior courts alone have the jurisdiction under Section 482 Cr.P.C. or under Article 226 of the Constitution of India to direct “further investigation”, “fresh”, or “*de novo*” and even “reinvestigation”. While the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further investigation, reinvestigation or even investigation *de novo* or by a different agency, depending on the facts of a given case.

21. In the subsequent decision in *Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel* ((2017) 4 SCC 177) the Apex

Court held that 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 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 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. In this decision, **Chandra Babus' case** (supra) was considered.

22. In the case on hand, as already stated above, charge-sheet was filed, it was taken on file, Magistrate took cognizance of the same and committed the case to the Court of Sessions, which numbered it as S.C. No.13/S/2005 and thereafter only the 2nd respondent filed the present application for further investigation.

23. Accordingly, on the face of the record, after completion of the investigation, charge-sheet was filed, the learned Magistrate took cognizance of the offence, issued summons to the accused and on appearance of the accused, copies of the documents were furnished and informed that the offences with which accused is charged are

triable by the Court of Sessions and committed the case under Section 209 Cr.P.C. and it was numbered as S.C. No.13/S/2005 by the Sessions Court.

24. Having analysed the provisions of the code and the various judgments, conclusions with regard to the powers of the Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code, it is clear that (i) the Magistrate has no power to direct 'reinvestigation' or 'fresh investigation' (de novo) in the case initiated on the basis of a police report; (ii) A Magistrate has the power to direct 'further investigation' after filing of a police report in terms of Section 173(6) of the Code. It is the only superior court under Section 482 Cr.P.C. has the power to order re-investigation, further investigation and *de novo* investigation. The Investigating Officer, who investigated the case in crime No.91 of 2003, filed the charge-sheet. The District & Sessions Court by the impugned order in CrI.M.P. No.936 of 2007 in S.C. No.13/S/2005 ordered CID of Police to do further investigation, which is altogether a different agency. Though in the petition the petitioner stated that basing on the facts Additional DGP, CID, Hyderabad issued directions vide Memo. C. No.6127/C18/CID/2004, dated 14.2.2016 for getting transfer of the said case to CID vide C.No.13223/C2/2004, dated 29.2.2004 of Superintendent of Police, Guntur for making further investigation, such a letter or proof was not filed along with the application. The application filed is according to the petition filed by DSP, Bapatla.

The trial Court did not state in clear terms whether CID is different from regular Police and Whether CID cannot be permitted to do further investigation, except the agency which conducted the original investigation as directed by the High Court as per orders in CrI.P. No.1396 of 2007, dated 22.3.2007.

25. Certainly CID is different from the agency which really investigated and filed the charge-sheet. The permission is granted by the District & Sessions Court, but not by the Magistrate as contemplated under Section 173(2) read with Section 173(8) and Section 156(3) of the Code. The Court which ordered further investigation is not the Magistrate Court, but it is the District & Sessions Court. In my view, the Magistrate has a role to play while committing the case to the Court of Sessions upon taking cognizance on the police report submitted under Section 173(2) Cr.P.C. But, this order is passed by the District & Sessions Judge which cannot be normally exercised after taking cognizance, committal of the case, numbering it as sessions case for trial. The order is silent with regard to whether investigating police and CID are one and the same. According to my view, the police department is different from CID Department, which is altogether a different agency and which has no authority to conduct further investigation. The Sessions Court has fallen into error while permitting the CID to further investigation. It is well settled canon of the criminal jurisprudence that under Section 482 Cr.P.C. or even under Article 226 of the Constitution of India, the

High Court can direct further investigation, but not the District & Sessions Court. The said power has to be exercised sparingly with the great circumspection.

26. In the result, the Criminal Petition is allowed while quashing the order dated 25.10.2007 in Criminal M.P. No.936 of 2007 in S.C.No.13/S/2005 on the file of the Special Sessions Judge-cum-IV Additional Sessions Judge, Guntur.

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

08.10.2018

GNR/SKMR



JUSTICE N.BALAYOGI