

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.9189 of 2015

ORDER:

The petitioners to the quash petition are accused Nos.1 to 5 by names CVR Reddy, CSK Reddy, CV Subbamma, Supraja Chandra and SS Reddy. The 2nd respondent V.Lakshmi Narasamma is the defacto complainant in crime No.85 of 2014 of SHO, Badvel Urban Police Station dated 11.05.2014 for the offences punishable under Sections 323, 420, 506 r/w 34 IPC. It was outcome of a private complaint of her referred to police for investigation by the learned Magistrate. The police after investigation filed charge sheet before the Judicial Magistrate of First Class, Badvel and the learned Magistrate has taken cognizance therefrom by allotting CC.No.507 of 2014.

2. The 2nd respondent is no other mother in law of A.4-Smt. Supraja wife of Krishna Reddy, no other son of 2nd respondent-defacto complainant. A.1 & A.3 are parents of A.4 and A.2 is brother of A.4 & A.5 is the relative of them as alleged. The marriage of son of 2nd respondent with A.4 performed in India and the couple lived for a short time. Later the 2nd respondent's son left USA. The allegation in the complaint is son of 2nd respondent, 2nd respondent and her husband allegedly ill-treated the 4th petitioner-A.4 for which she reported to the Women Police Station, Kadapa in January 2013 covered by crime No.1/2013 for the offence punishable

under Section 498-A IPC. Whereas the private complaint of the 2nd respondent referred to police for investigation covered by the present crime is that accused persons herein who are petitioners 1 to 5 on 22.04.2014 went to Badvel and demanded return of so called dowry amount and withdrawal of LR.No.331/2012 filed against the 4th petitioner by her husband for the alleged commission of offence under Section 66-A of IT Act in Bangalore.

3. The petitioners earlier filed quash petition No.12358 of 2014 of said crime No.85/2014 and while same was pending police filed the charge sheet on 30.10.2014 and the learned Magistrate taken cognizance by allotted CC number supra for the offences under Sections 448, 323, 506, 420 r/w 34 IPC and the petitioners impugning the CC.No.507 of 2014 filed another quash petition No.14930 of 2014 and the petitions are stated pending with no stay and the learned Magistrate is proceeding with the case.

4. While so, the 2nd respondent as defacto complainant therein filed objections to the police charge sheet taken cognizance by the learned Magistrate as CC.No.507 of 2014 seeking further investigation pointing out defects in the police charge sheet and the learned Magistrate rejected the said objection of the 2nd respondent in CFR.No.175/2015 on 28.01.2015 and impugning the same when she filed Crl.R.C.No.419 of 2015 before the High Court another bench of this Court by order dated 19.03.2015 disposed of the same

directing the learned Magistrate to treat the petition filed by the 2nd respondent as a protest petition and to proceed according to law. However surprisingly according to the quash petitioners herein the learned Magistrate entertained fresh objections of the 2nd respondent on 06.05.2015 by numbered as Crl.M.P.No.1425 of 2015 by order dated 03.08.2015 allowed and directed police to conduct investigation into the matter. Same is the present impugment saying the order of the learned Magistrate is contrary to the directions for the revision order of this Court supra and the further investigation cannot be ordered after post cognizance being ceased by such power and thereby liable to be set aside.

5. The learned counsel for the petitioners reiterated the same, whereas the learned counsel for the defacto complainant supported the impugned order saying for this Court while sitting against the order there is nothing to interfere.

6. Heard both sides and perused the material on record.

7. As brought to the notice of this Court in the course of hearing both sides, the 2nd respondent's son, no other than husband of A.4 by name Krishna Reddy made a representation dated 26.11.2015 through the Government of India, Ministry of Law & Justice forwarded to the Registrar General of the High Court and kept in the file that his mother 2nd respondent's complaint was registered as crime No.85 of

2014 supra and investigation not properly done therein and earlier the matter went in WP.No.20495 of 2014 and Contempt Case No.66 of 2014. The police filed incomplete final report covered by CC.No.507 of 2014 and High Court directed to file objections pending disposal of the CC and objections filed before the learned Magistrate in CFR.No.175 of 2015 were returned by the Magistrate saying PP only has to file and his mother moved Crl.R.C.No.419 of 2015 and the High Court directed to treat the same as protest petition and the same numbered as Crl.M.P.No.1425 of 2015 and the accused filed objections to proceed with the protest impugning the investigation in further directed and accused cause stopped the further investigation by filing the present quash petition No.9189 of 2015 and the High Court orders are self contradictory and not outcome of proper scrutiny hence expressed his grievance to consider. The order of the learned Magistrate dated 03.08.2015 in ordering further investigation in Crl.M.P.No.1425 of 2015 speaks that after registration of the private complaint as FIR No.85/2014, WP.No.20495 of 2014 for early completion of investigation in 2 months sought and for not completing CC.No.66 of 2014 filed and it was closed from the charge sheet filed by the IO and the defacto complainant having verified the charge sheet obtained certified copy later found investigation incomplete raised objections against the investigation. The learned Magistrate taken cognizance of the police investigation report

for the offences as CC.No.507 of 2014 and the defacto complainant is seeking further investigation and there is nothing to preclude further investigation under Section 173 Cr.P.C. which is not a re-investigation as several kinds of issues not disclosed and beyond from lots of doubts to be cleared by suitable investigation thoroughly for having true picture so to find and thereby to meet the ends of justice ordered further investigation.

8. The main issue is whether the Magistrate got any power to direct even further investigation after police final report and accepted by allotting CC.No.507 of 2014 which is not even in tune to the High Court revision order which only directs to consider the application as protest petition on the police final report and its acceptance no way takes away the right of the complainant to raise a protest and the direction for further investigation on the protest is since different from proceeding on the protest as a separate private complaint to the above extent. In this regard, it is necessary to mention the scope of investigation under Sections 156 to 173 Cr.P.C. with reference to crime registered under Section 154 Cr.P.C. even outcome of private complaint referred to police under Section 156(3) Cr.P.C.

9. This Court in this regard in **Kanumuri Venkata Subba Raju Vs. State of AP**¹ dealt with vividly as follows:

¹ Crl.P.No.2811 of 2017 dated 31.12.2018

“3. It is not even mentioned that the learned Magistrate did not accept the final report filed by the police. Before accepting the final report filed by police, there is no necessity of hearing the complainant by the learned Magistrate. Once such is the case, the final report if at all accepted by the learned Magistrate but for to treat the petition as protest to proceed as a private complaint procedure from said protest against the police referred report in showing how the investigation is not proper and how cognizance can be taken by recording sworn statement of complainant and other witnesses by the Court with what referred facts of those already examined by the police during investigation. The learned Magistrate did not even resort to the recourse in its docket order referred supra which is no doubt mistakenly put up note as if asked for re-investigation in ordering by the impugned docket order, dt.26.06.2014 by the AJFCM, Kothapet in nominating the DSP Amalapuram for re-investigation contemplated by Section 156(3) CrPC and if at all to know progress of investigation and to conduct further investigation pending acceptance of the final report by the Magistrate. After acceptance the Magistrate has no power at all even to order further investigation, leave about the re-investigation is outside the power of the Magistrate from the settled expressions of the Apex Court which stated vividly by referring to 31 expressions earlier of the Apex Court and of some High Court's in **Vinay Tyagi Vs. Irshad Ali**² where it is held para-21 onwards that investigation can be initial investigation, further investigation, fresh/ de-novo/re-investigation and initial investigation is being conducted by the police in furtherance of registration of crime leading to filing of final report u/sec.173(1)CrPC within the police prerogative to investigate including from any order of Magistrate on any private complainant referred to police under Section 156 (3) CrPC. So far as the further investigation concerned, which is to collect further oral or documentary material after police final report filed, which is in terms of

² 2013 5 SCC 762

Section 173(8) CrPC vested with the police as executive power in continuation to the previous investigation to discover further oral or documentary material only from what they discovered at a subsequent stage to the initial investigation from which final report filed to file from such further investigation as supplementary report to supplement the primary investigation and it does not effect by wiping out directly or indirectly initial investigation covered by the final report and the basis of discovery of fresh material is in continuation of same offence and chain of events relating to same occurrence as a complete contra-distinction to re-investigation or fresh investigation or de-nova investigation for which, there must be definite order of the Court and neither investigating agency nor the Magistrate are empowered to do so but for by the constitutional courts with wide plenitude power to exercise sparingly that too in rarest of the rare cases and that too where the earlier investigation is unfair to the judicial conscience of the Court otherwise Court should be reluctant to interfere. It was also observed so far as further investigation after final report from initial investigation to conduct by police within their right u/sec.173(8) CrPC concerned, the procedural propriety requires to seek a permission of the Magistrate concerned, to do and to file supplementary charge sheeting, the power of the learned Magistrate to direct further investigation from police final report filed to exercise sparingly in exceptional cases to meet the ends of justice. So far as the constitutional Courts, power of fresh or de-novo or re-investigation which are the synonymous accusations including the power to transfer investigation from one agency to other to meet the ends of justice where the facts so demand that to be exercised by the superior Courts sparingly and when the Court circumspection by invoking u/sec.482 or Article 226 of the Constitution of India that too by a specific order and for reasons to be recorded if at all the earlier investigation is entirely interfered but tainted, undesirable are being based on no truth. Even the expressions of the Apex Court in **Hemant Dhasmana vs**

Central Bureau Of Investigation³ to Section 173(8) CrPC by the Special Court with the Magistrate Powers, by quoting with approval from the expressions of **Bhagwant Singh Vs. Commissioner of Police**⁴ a 3 Judge Bench of at the option of the learned Magistrate from the police investigation and report u/sec.173(2) CrPC is to accept the police report and drop the proceedings or to disagree with the report and to take cognizance of the offences and issue process against any of the accused from any sufficient ground for proceeding further or the court may direct further investigation to be made by police before acceptance of the final report. It also quoted the other 3 Judge Bench expression in **M/s India Carat Private Limited Vs.State of Karnataka**⁵ in similar lines was a Magistrate got power to defer with the police final report under Section 173(2) CrPC and at para-21 in **Hemant**(supra) observed that the Magistrate could not direct a particular Police Officer or an Officer of particular rank should conduct further investigation u/sec.173(8) CrPC. Referring to and relying upon **Vinay Tyagi** supra, in the 2 Judge Bench expression **Chandrababu @ Moses Vs. State Transport Inspector of Police**⁶, it was observed that the Magistrate's order directing further investigation is proper, to direct by another investigating agency is not sustainable and fresh or de-nova or re-investigation can be ordered only by the superior Courts within their inherent powers in the rarest of rare cases and Magistrate has no such power. It also referred constitution Bench expression of the Apex Court in **Dharampal Vs. State of Haryana**⁷, **Chandrababu** Supra on the scope of the Magistrate's power to accept or not the final report from Magistrate got power to defer with the police opinion expressed in the final report if at all to take cognizance, leave about remedy of the complainant to raise protest for the Magistrate to consider on said protest by following the procedure to take cognizance after recording the

³ AIR 2001 SC 2721

⁴ 1985 (2) SCC 537

⁵ 1989 (2) SCC 132

⁶ 2016 8 SCC 774

⁷ (2014) 3 SCC 306

sworn statement of the complainant and other witnesses if any. So far as the scope under Section 188CrPC concerned, the expressions of the Apex Court in **Thota Venkateshwarlu Vs. State of Andhra Pradesh**⁸ is very clear that the power is for post-cognizance enquiry or investigation from the wording of Section with the proviso and for that the earlier expressions of the Apex Court in **Ajay Agarwal** in saying without permission of the Central Government for the offences committed by native national even outside India post-cognizance trial or enquiry cannot be proceeded. The bar has no application thereby to the police investigation or before acceptance of final report for further investigation by the learned Magistrate if at all, leave about the complainant pending investigation can ask as laid down in **Sakiri Vasu Vs. State of Uttar Pradesh**⁹ from the power of Magistrate u/sec.156 and 157 to direct progress of investigation including for further investigation. However the fact remains after final report of the police under Section 173(2) CrPC filed and accepted by the Magistrate, but for any further investigation, the police if at all to do under Section 173(8) CrPC, the Magistrate has no power to reopen accepted final report to direct further investigation where it is accepted to close the case from mistake of fact or mistake of civil in nature or the like by not chosen to take cognizance deferred with police opinion and not chosen to direct further investigation before its acceptance by the learned Magistrate. It is observed in **Sarabjit Rick Singh vs Union of India**¹⁰ that at para-35 referring to however earlier that if the final report of the police has been accepted by the Magistrate and no appeal or revision was filed against the order of Magistrate accepting final report, then that is the end of the matter. However, if the Magistrate has not yet passed any order on the police report, he may do so in accordance with law for further investigation if not or the like. Even the latest 2 Judge Bench expression of the Apex Court in **Amruta Bai S.Patel**

⁸ (2011) 9 SCC 527

⁹ AIR 2007 SC 2739

¹⁰ 2007 14 SCALE 263

Vs. Sunita Bai¹¹ including from paras-23 to 29 referring to **Bhagwan Singh** supra among others no way says Magistrate got power to order re-investigation even after acceptance of the final report filed by the police under Section 173(2) CrPC, for what it stated is under Section 154 to 157 read with 177 CrPC, from registration of the crime and sending report of the opinion to the Magistrate empowered to take cognizance of such offence on police report by investigation, the police to notify the informant and from the final report under Section 173(2) CrPC filed by completion of investigation for the Magistrate if at all to take cognizance under Section 190CrPC therefrom, informant who lodges the FIR does not fade away therewith and is very much concerned with the action initiated by the Station House officer pursuant to the report lodged and crime registered that not only can be of said report to be supplied to him on free of costs he has to be notified as to the decision of the final report if any referred report filed without charging the accused and the course open to the Magistrate on the police final report, even any referred report filed Magistrate would be left at liberty either to accept the report to drop the proceedings or disagree with the police referred report and to take cognizance if satisfy of grounds for proceeding further and issue process or would direct further investigation to be made by the police which are of noticeable at the pre-cognizance stage and can be opted by the Magistrate depending upon satisfaction of assessment of the material than on record. It also speaks before acceptance of the final report, the Magistrate may order further investigation under Section 156CrPC. Thus even from this, once the police final report accepted by the Magistrate, he is ***functus officio*** and cannot direct thereafter any further investigation but for if at all the police to conduct further investigation and file supplementary final report invoking Section 173(8) CrPC by the intimation to the Magistrate concerned. However what is the right of the defacto-complainant after police final report and its intimation is to raise a protest and from that as

¹¹ 2017 (4) SCC 177

referred supra if at all final report once accepted and any cognizance taken even against the same or for some of the offences against all or some the accused may be respectively, the Magistrate is *Functus Officio* but for the power of hearing the accused also besides prosecution agency before framing of charges or not and otherwise under Section 319CrPC during trial. So far as proceeding under Section 319 Cr.P.C. concerned, the basis to proceed requires something more than material to frame charges that too during trial from any worth evidence to proceed as laid down by the Constitution bench of the Apex Court in **Hardeep Singh Vs. State of Punjab**¹².”

10. Thus the learned Magistrate has no power to order for further investigation after police final report accepted by allotting CC.No.507 of 2014 but for on the protest, even sought in the application of the defacto complainant for further investigation, pursuant to the High Court revision order, only to proceed as a private complaint from the procedure contemplated by Sections 200 to 204 Cr.P.C., for the reason once final report accepted in any manner the learned Magistrate has no power to direct further investigation and becomes *Functus Officio* though there is no such bar before acceptance of final report.

11. Having regard to the above and with these observations, this Criminal Petition is allowed setting aside the order of the learned Magistrate in directing the learned Magistrate on the said application of the defacto complainant that was directed to be treated by the Revision Court as a

¹² (2014) 3 SCC 92

protest application only to proceed thereon under Sections 200 to 204 Cr.P.C.

Miscellaneous petitions, if any, shall stand closed.

Date: 31.12.2018
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Dr. B. SIVA SANKARA RAO, J