

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.27695 of 2018, 25685 of 2018 & 23013 of 2018

COMMON ORDER:

All these writ petitions can be disposed by a common order as the issue raised is identical.

2. Factual matrix leading to the filing of these writ petitions; WP No.27695 of 2018, that on 10-08-2007, without the consent of the petitioner nor his parents certain persons viz., 1.Puppala Rajeswar, 2.Puppala Anil, 3.Kasturi Dinesh and 4.Kasturi Mallaiah have kidnapped Puppala Prasuna, his wife and performed second marriage to her with one Kasturi Dinesh (3rd accused) without dissolution of marriage with Puppala Prasuna, his wife. Petitioner allege that the said persons did not follow the procedure in respect of conduct of second marriage of his wife (Puppala Prasuna) with Kasturi Dinesh (3rd accused) particularly without dissolution of marriage with him. Petitioner lodged a complaint with the 3rd respondent-Police and based on the complaint, a case in Cr.No.28 of 2017 was registered for the offences punishable under Section 365 IPC, r/w. Section 34 IPC.

3. The grievance of the petitioner is the 3rd respondent wilfully and intentionally not added proper sections of law vis-à-vis the allegations made in the complaint by him. Hence, this writ petition for a direction to the respondent-Police to add proper sections of law and to bring the accused to justice.

4. WP No.25685 of 2018; that on 02-02-2018 at around 4:30 pm, the petitioner went to Kamalapur to see Sammakka Sarakka jatara and while he was going on bike with his friend, one Bairi Dasaratham, President of Kamalapur Padmashali Society along with few other persons viz., Aparadhi Sudhakar, Ali, Bairi Vijay Kumar, Kolipaka Ramulu, Kannuri Srinivas, Nagababu (SI of Police), Pulluri Ramachander, Venkata Krishan Reddy, Nagapuri Aagaiah attacked him and pelted stones on him; that one of them in the group punched him on the face and head with a view to kill him. According to the petitioner, the said persons bore grudge against him as he earlier filed writ petition against them and in that connection he also filed a contempt case being CC No.1279 of 2017 on Nagabubu (SI of Police), one of the assailant. The petitioner lodged the complaint with the 3rd respondent-Police and when the same was not taken, he had to approach to the Human Rights Commission and ultimately as per the orders of the Police Commissioner, a case in Cr.No.17 of 2018 was registered for the offences punishable under Sections 290, 324, 506 IPC, r/w. Section 34 IPC.

5. The grievance of the petitioner is that though complaint has been lodged against the accused, only three people were shown as accused and the name of Nagababu (SI of Police) is deleted by the 3rd respondent-Police and the Police have not added the proper section of law against the accused. According to the petitioner the allegations made in the complaint and the nature of injuries sustained by him attract framing of Section 307 IPC against the accused, but instead the case is booked for

the offences under Sections 290, 324, 506 IPC, r/w.34 IPC against three persons only though Nagababu (SI of Police) was also involved in the attack.

6. WP No.23013 of 2018; that on 20-12-2014 on the occasion of the birthday of the husband (5th respondent) of the petitioner, the mother-in-law and sister-in-law of the petitioner came to their house and at that time an altercation took place with regard to demand of dowry and at their instigation, the 5th respondent harassed the petitioner to get additional dowry and scolded in filthy language and bet her with belt; that when the petitioner was in the company of the 5th respondent, the 5th respondent secretly photographed and video graphed her in bath room and bed room and started threatening to circulate the same in the village, if she fails to bring additional dowry of Rs.15 lacs.

7. The grievance of the petitioner is though she lodged a complaint against the 5th respondent and a case in Cr.no.187 of 2016 was registered under Section 498-A IPC and Sections 3 and 4 of the Dowry Prohibition Act, the Police failed to add proper sections of law against the 5th respondent for blackmailing her with the videos and photos secretly taken by him.

8. In the all these writ petitions, the petitioners seek for appropriate directions for further investigation of the case on the premise that the respondent-Police have failed to frame proper sections of law commensurate with the allegations made in the complaints by them.

9. Heard the learned counsel for the petitioners and the learned Government Pleader for Home.

10. The issue that falls for consideration is whether on the complaint lodged by the complainants/petitioners to the Police and the registration of criminal cases with reference to the averments made in the complaint, can be revisited to add further sections of law, to the sections of law already framed, or add the culprits in the array of accused, at the instance of the complainants, purportedly that the Police have failed to frame the accused under appropriate sections of law.

11. Learned counsel for the petitioners in these writ petitions would submit that in view of Section 156 (3) and 173 (8) of Code of Criminal Procedure further investigation can be made by Police and can be directed to be done by Magistrate, as the case may be, if new facts come to light or Police failed to frame appropriate sections of law or add the person/s connected with the crime as culprits in the array of accused and such continuation of further investigation does not amount to reinvestigation or fresh investigation, but is only continuation of earlier investigation by the Police and such further investigation at the instance of the complainants/petitioners can be permitted to be made on an application being filed before the concerned Magistrate under Section 173 (8) of the Code or if the case is in a pre-cognizance stage, such a request can be examined by the Police .

12. In **BHAGWANT SINGH vs. COMMISSIONER OF POLICE**¹, which is an authoritative judgment and often quoted three Judge Bench decision of the Supreme Court observed that magisterial vigil does not terminate on the filing of the police report on the conclusion of the investigation and the court is not bound to accept the result of an investigation conducted by the police. In case the Police conclude that no case is weighed out against the accused, the Magistrate has to issue a notice to the informant/victim and hear him out.

13. In **VINAY TYAGI vs. IRSHAD ALI**², the Supreme Court held that to conduct fair, proper and an unquestionable investigation is the obligation of the investigation agency and the Court in its supervisory capacity is required to ensure the same. The Supreme Court in the said case distinguished “further investigation” from “re-investigation” or a de-novo investigation, and held that Magistrate can not order or conduct “fresh investigation”, and power to order or direct “fresh investigation” falls within the domain of higher Courts, though in exceptional cases and even the orders passed by higher Courts for “fresh investigation” should always be coupled with a specific direction as the fate of investigation already conducted. It was further held that in cases where vital evidence has been disregarded by the Magistrate, the Court can order further investigation into that aspect and the result of the further investigation is called a ‘supplementary report’ and can supplement the primary police report, already on record.

¹ (1985) 2 SCC 537

² (2013) 5 SCC 762

14. In **SAMAJ PARIVARTANA SAMUDAYA vs. STATE OF KARNATAKA**³, a three Judge Bench of the Supreme Court at para 36 held thus:-

"It is settled position of law that an investigating agency is empowered to conduct further investigation after institution of a charge-sheet before the Court of competent jurisdiction. A magistrate is competent to direct further investigation in terms of Section 173(8) Criminal Procedure Code in the case instituted on a Police report. Similarly, the Magistrate has powers under Section 202 Criminal Procedure Code to direct Police investigation while keeping the trial pending before him instituted on the basis of a private complaint in terms of that Section. The provisions of Section 210 Criminal Procedure Code use the expression 'shall' requiring the Magistrate to stay the proceedings of inquiry and trial before him in the event in a similar subject matter, an investigation is found to be in progress. All these provisions clearly indicate the legislative scheme under the Criminal Procedure Code that initiation of an investigation and filing of a charge sheet do not completely debar further or wider investigation by the investigating agency or police, or even by a specialized investigation agency. Significantly, it requires to be noticed that when the court is to ensure fair and proper investigation in an adversarial system of criminal administration, the jurisdiction of the Court is of a much higher degree than it is in an inquisitorial system. It is clearly contemplated under the Indian Criminal Jurisprudence that an investigation should be fair, in accordance with law and should not be tainted. But, at the same time, the Court has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law. It is the inherent duty of the Court and any lapse in this regard would tantamount to error of jurisdiction."

15. In **DINESH DALMIA vs. CBI**⁴, the Supreme Court observed that so long as charge-sheet is not filed within the meaning of section 173 (2) of the Code, investigation remains pending. Filing of a final police report or

³ (2012 (3) SCR (Criminal) 788

⁴ (2007) 8 SCC 770)

charge-sheet however does not preclude an investigating officer to carry on further investigation in terms of Section 173 (8) of the Code. It was further held that the power of the investigating officer to make a prayer for making further investigation in terms of Section 173 (8) of the Code is not taken away only because a charge-sheet has been filed under section 173(2) of the Code and further investigation is permissible even if an order of cognizance of an offence has been made by the Magistrate. Power of the Police to conduct further investigation, even after laying final report is recognised under section 178(8) of the Code.

16. Learned Government Pleader for Home relied on the decision of the Supreme court in **AMRUTBHAI SHAMBHUBAHI PATEL vs. SUMANBHAI KANTIBHAI PATEL**⁵, to contend that the Magistrate to espouse the cause of justice can order for further investigation even after a final report is submitted under Section 173(8) of the Code, and has power to direct investigation under Section 156(3) the Code at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, but 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 of the complainant.

17. In **AMRUTBHAI's** case (5 supra), the Supreme Court ruled that after framing of the charges and taking cognizance, neither the Magistrate *suo motu* nor on an application filed by the complainant, the Magistrate can direct for further investigation and further investigation

⁵ (2017) 4 SCC 177)

in a given case maybe order only on the request of the investigating agency and that too, in the circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of adjudication in hand. It is worthwhile to extract the observation made in the said decision at para 49 which is as follows:-

"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 therefore 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."

18. The facts appearing in the **AMRUTBHAI's** case (5 supra) are on a different footing which is noticeable from para 4 of the decision which reads as follows:-

"4. As would be gleanable from the records, the oral evidence of the appellant/first informant was concluded on 3-7-2012 followed by that of the investigating officer of the case on 10 - 9 - 2013. Subsequent thereto, the statements of the respondents were recorded under Section 313 of the Code on 3.12.2013, where after an application was filed at the culminating stages of the trial by the appellant/informant seeking a direction under Section 173 (8) from

the trial Court for further investigation by the police and in particular to call for a report from the Forensic Science Laboratory as regards one particular page of the register of the Notary (Public), which according to the appellant/informant was of debatable authenticity, as it appeared to have been affixed/pasted with another page thereof. To be precise, this application was filed at a stage when the case was fixed for final arguments." (emphasis supplied)

19. It was in this background of facts, when an application was filed in the said case, at the stage when the matter is posted for final arguments, it was observed at para 21 thus:-

"21. 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. This assumes significance, having regard to the language consciously applied to design Section 173 (8) in the 1973 Code. Noticeably, though the officer in-charge of a police station, in categorical terms, has been empowered thereby to conduct further investigation and to lay a supplementary report assimilating the evidence, oral or documentary, obtained in course of the said pursuit, no such authorization has been extended to the Magistrate as the Court is session of the proceedings. It is, however no longer res integra that a Magistrate, is exigent to do so, to espouse the cause of justice, can trigger further investigation even after a final report is submitted under Section 173 (8). Whether such a power is available suo motu or on the prayer made by the informant, in absence of request by the investigating agency after cognizance has been taken and the trial is in progress after the accused has appeared in response to the process issued is the issue seeking scrutiny herein."

20. Having examined and having given considered thought to the principles laid down in the decisions referred to above, in my considered

opinion ratio laid down in **AMRUTBHAI's** case (5 supra) is not applicable to the facts of the case on hand as that stage has not been reached. In these case, two cases (WP Nos.27695 & 25685 of 2018) are at the pre-cognizance stage and the Police have not filed charge-sheet and in one case (WP No.23013 of 2018) final report is filed stating that it is a case of lack of evidence.

21. Learned single Judge of this Court in **AKNURI KANKARAJ vs. STATE OF TELANGANA**⁶ in CrI.P.No.1904 of 2015, dated 27-03-2015 had an occasion to consider similar fact situation as to whether the Magistrate in a case which is pending investigation can interfere by directing the Police to add some more sections of offences in the FIR and investigate and by relying on the decision of the Supreme Court in **SAKIRI VASU vs. STATE OF UP**⁶ the question was answered in the affirmative. At para 24 it was observed thus:-

“24. In view of the above mentioned legal position, we are of the view that although Section 156 (3) CrPC is very briefly worded, there is an implied power in the Magistrate under section 156 (3) CrPC to order registration of a criminal offence and/or to direct the officer in charge of the concerned police station to hold the proper investigation and take all such necessary steps that may be necessary for ensuring a proper investigation including monitoring the same. Even though these powers have not been expressly mentioned in section 156 (3) CrPC, we are of the opinion that they are implied in the above provision.”

22. The Supreme Court in **SAKIRI VASU vs. STATE OF UP**, (6 Supra), vide paras 15 to 17 observed thus:-

⁶ CrI.P.No.1904 of 2015

⁶ (2008) 2 SCC 409

“15. Section 156 (3) provides for a check by the Magistrate on the Police performing its duties under Chapter XII Cr. P. C. In cases where the Magistrate finds that the Police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the Police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156 (3) is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173 (8). Hence the Magistrate can order re-opening of the investigation even after the police submits the final report, vide State of Bihar vs. a. C. Sadanna AIR 1980 SC 326 (para 19).

17. In our opinion Section 156 (3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the Police. Section 156 (3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.”

23. On the analysis of the various case laws stated supra and having understood the ratio laid therein, it is to be concluded that the powers of the Magistrate in terms of Section 156 (3) of the Code are impeccable to direct the Police to conduct “further investigation” and the Magistrate cannot have any inhibition in adopting such a course of action. Neither the scheme of the Code nor any specific provision therein bars exercise of

such jurisdiction by the Magistrate. The Code of criminal procedure is a procedural document, and as has been the practice by the Courts that it must receive a construction which would advance the cause of justice and the legislative object sought to be achieved.

24. So also so, as observed in **DINESH DALMIA's** case (4 supra), so long as charge-sheet is not filed within the meaning of section 173 (2) of the Code, investigation remains pending and filing of a final police report or charge-sheet does not preclude an investigating officer to carry on further investigation in terms of Section 173 (8) of the Code. Power of the investigating officer to make a prayer for making further investigation in terms of Section 173 (8) of the Code is reserved and is not taken away only because a charge-sheet has been filed under section 173(2) of the Code.

25. This Court in the facts and circumstances of the case also deems it a fit case for further investigation having regard to the nature of allegations made in the affidavit filed along with writ petitions. The power of the Police to test the veracity of the facts on which further investigation is being sought and can conclude based on evidence gathered during the course of investigation.

26. In the result, the writ petitions are disposed of with the following directions:-

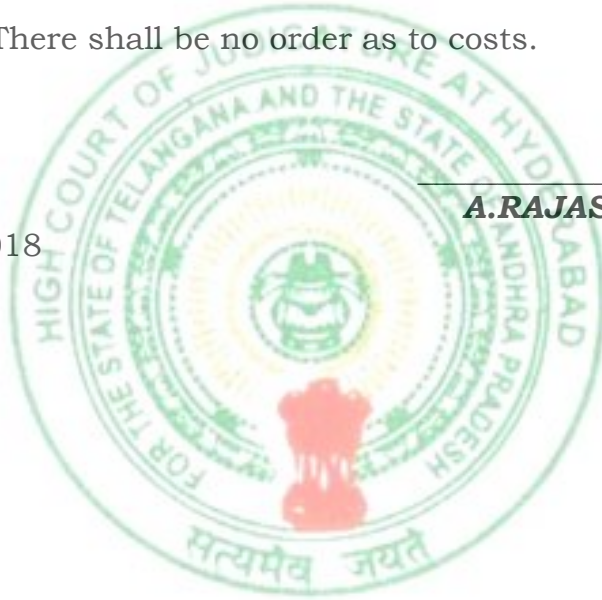
i) in WP Nos.27695 & 25685 of 2018, the cases are at the pre-cognizance stage and the Police have not filed charge-sheet, the concerned respondent-Police to consider the representations made by the

petitioners in that behalf to take up further investigation in the matter, if it is a case for further investigation and proceed further in the matter.

ii) in WP No.23013 of 2018, final report is filed stated that it is a case of lack of evidence, therefore, it is open for the petitioner to make an application to the concerned Court under Section 173 (8) of the Code with evidence in support of her case and can also make an application for adding the section of law and on such an application being filed appropriate orders be passed thereon in accordance with law.

Miscellaneous petitions if any pending shall stand disposed of in these matters. There shall be no order as to costs.

Dated: 10-10-2018
NRG



A.RAJASHEKER REDDY, J

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP Nos.27695 of 2018, 25685 of 2018 & 23013 of 2018

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Dated: 10-10-2018

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