

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.28727 of 2018

ORDER:

This writ petition is filed seeking to issue a writ of mandamus declaring the action of the 2nd respondent in not taking action on the representations dated 17-07-2018 and 26-07-2018 to direct the 3rd respondent to conduct further investigation in Cr.No.181 of 2016, PS Mirchowk, by sending the copies of the complaint dated 12-11-2016, FIR No.181 of 2016, dated 12-11-2016, Vakalatas and written statements in OS No.510 of 2014 on the file of IX Addl. Chief Judge, City Civil Court, Hyderabad, to Forensic Science Laboratory (FSL) for comparison with disputed signatures as being illegal, arbitrary and for issuance of appropriate consequential directions in the interest of justice.

2. Factual matrix leading to the filing of this writ petition is that the petitioner and the complainant-4th respondent are near relatives and staying together with their families in the same premises. That 4th respondent is not in good terms with the petitioner and his family members, since the death of her husband. That disputes arose which led to the filing of civil suit being OS No.510 of 2014. That dispute relates to sharing of rental amounts in respect of a leased premises, which the petitioner and the 4th respondent claims to be owners. That the 4th respondent and her children made complaint against the petitioner and others alleging that petitioner and his sons have executed an affidavit and forged the signatures of the 4th respondent and her children and drawn monthly rent of the share of the 4th respondent

from Reliance Towers, who is stated to be lessee of the leased premises and thereby not only cheated the 4th respondent and her family members, but also the lessee-Reliance Towers.

3. The case of the petitioner is that the 4th respondent (who is his deceased younger brother's wife) and her children are chronic litigants the 4th respondent is in the habit of doing signatures differently. That the signature of the 4th respondent and her children made in the complaint dated 12-11-2016 is entirely different from the signature made by her on vakalats and written statement filed in the suit. That the vakalats by two different counsel in OS No.510 of 2014 bears different signatures of the same parties, which speaks volumes about the mala-fides and ulterior motives of the 4th respondent. It is the case of the petitioner that he has paid the proportionate share of rental amount to the 4th respondent and there is no iota of truth that he has forged their signatures.

4. Grievance of the petitioner that is that ventilating all these facts the above representations were made to the respondent-Police to conduct further investigation in Cr.No.181 of 2016 of PS Mirchowk, Hyderabad, but to no avail. Hence this writ petition.

5. Learned counsel for the petitioner submits 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 including by an accused 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. In support of his contention learned counsel relied on the decisions in **VINAY TYAGI vs. IRSHAD ALI**, (2013) 5 SCC 762 & **AMRUTBHAI SHAMBHUBAHI PATEL vs. SUMANBHAI KANTIBHAI PATEL**, (2017) 4 SCC 177).

6. Learned Government Pleader for Home, on the other hand, contended that further investigation can only be ordered by the Court on an application being filed by the complainant and not by the accused. It is also contended that the contention of the petitioner that the 4th respondent's signatures are not tallying with one another is a defence open for the petitioner to be raised during the course of hearing of the criminal and the civil cases, but is not a case warranting further investigation in the matter.

7. In **BHAGWANT SINGH vs. COMMISSIONER OF POLICE**, (1985) 2 SCC 537, 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 concludes that no case is weighed out against the accused, the Magistrate has to issue a notice to the informant/victim and hear him out.

8. In **VINAY TYAGI vs. IRSHAD ALI's** case (2013) 5 SCC 762), 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. It was held that in cases where vital evidence has been disregarded by the Police, 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. It was observed that basis of a fresh investigation is accused's right to just and fair investigation and trial under Articles 21 and 22 of the Constitution.

9. In **SAMAJ PARIVARTANA SAMUDAYA vs. STATE OF KARNATAKA**, (2012 (3) SCR (Criminal) 788, 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."

10. In **DINESH DALMIA vs. CBI's** case, (2007) 8 SCC 770), 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 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.

11. Learned Government Pleader for Home relied on the decision of the Supreme court in **AMRUTBHAI SHAMBHUBAHI PATEL vs. SUMANBHAI KANTIBHAI PATEL**, (2017) 4 SCC 177) 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) of 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.

12. In **AMRUTBHAI's** case (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 in a given case may be ordered 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.

13. A learned single Judge of this Court in **AKNURI KANKARAJ vs. STATE OF TELANGANA** 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**, 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.”

14. The Supreme Court in **SAKIRI VASU vs. STATE OF UP**, (2008) 2 SCC 409, vide paras 15 to 17 observed thus:-

“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. Saldanna](#) AIR 1980 SC 326 (para 19).

17. In our opinion Section 156 (3) Cr.P.C. 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 F.I.R. 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) Cr.P.C., 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.”

15. On the above analysis and having understood the ratio laid in the case laws, it is to be concluded that the powers of the Magistrate in terms of Section 173(8) and 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. In the instant case, the matter is at pre-cognizance stage and the respondent-Police are yet to file charge sheet/final report. There is no bar from taken up further investigation at the instance of the accused if fresh facts in relation to

the same crime are brought to the notice of the investigating officer for investigation if such facts warrants further investigation.

16. In the circumstances, the writ petition is disposed of directing the respondents to examine the representations made by the petitioner and conduct further investigation in the matter, if it discloses material facts and take action 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: 27-11-2018
NRG

A.RAJASHEKER REDDY, J



THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WP No.28727 of 2018

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