

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.30294 OF 2018

O R D E R

Based on the complaint of the 2<sup>nd</sup> respondent – Superintendent of Police, Adilabad District at Adilabad, in connection with communal clashes that arose on 10-10-2008 near Panjesha Mosque, Bhainsa town, Adilabad District, case in Cr.No.126 of 2008 under Sections 147, 148, 448, 302, 307, 324, 435, 436, 427, 332, 153(A) read with 149 of IPC and Section 7(1) of Criminal Law Amendment Act, was registered on the file of Station House Officer, Bhainsa Town Police Station, Adilabad District, against the petitioners and others as A-1 to A-24. Petitioners were arrested and released on bail. In the said incident, three injured persons viz., SK.Quayyum (D-1), Md. Sami (D-2) and Bharati Butham (D-3) died. The police, after conducting investigation, filed charge sheet before the court of Judicial First Class Magistrate at Adilabad, Adilabad District, for the alleged murder of Bharati Buthan (D-3). On committal by the court of Judicial First Class Magistrate, Adilabad, Adilabad District, cognizance was taken and the case was numbered as S.C.No.102 of 2012 on the file of I Additional District and Sessions Judge, Adilabad, charges were framed and schedule was fixed for trial. At this stage, petitioners filed Crl.M.P.No.394 of 2016 in S.C.No.102 of 2012 on the file of I Additional District and Sessions Judge, Adilabad, under Section 173(8) of Cr.P.C., for a direction to the police to submit additional or supplementary charge

sheet or report, by making impartial investigation in Cr.No.126 of 2008 by Central Investigation Agency. The trial court by order dated 11.07.2018 dismissed the petition as not maintainable. Aggrieved by the same, petitioners preferred revision in CrI.R.C.No.1971 of 2018 on the file of this court. The learned counsel for the petitioner submits that the said criminal petition is dismissed today i.e., 05-09-2018, as withdrawn.

2. The case of the petitioners in this writ petition is that when three injured persons in the incident in question died, investigation shall be conducted in an impartial manner and charge sheet shall be filed after completing investigation in respect of cause of death of all the three deceased. But instead of that, filing charge sheet only in respect of one deceased, would amount to filing of charge sheet on incomplete investigation, and proceeding with the trial based on such incomplete investigation, would defeat the ends of justice. Therefore, in this writ petition, petitioners are seeking for a direction to respondents 2 and 3 – police authorities, to conduct further investigation in relation to death of Shaik Quayyum (D-1) and Mohammed Sami (D-2) and consequently direct the trial court i.e., the I Additional Sessions Judge, Adilabad, to conduct trial against the petitioners in S.C.No.102 of 2012, only after completion of further investigation relating to death of deceased 1 and 2.

3. Sri B.Vijaysen Reddy, learned counsel for the petitioners, reiterating the above facts, would submit that out of the same incident,

three persons died and charge sheet is filed only in respect of one deceased (D-3) and, therefore, proceeding with the trial based on such incomplete investigation, would prejudice the case to the petitioners. He submits that when there is no statutory provision enabling the accused to seek for further investigation, Constitutional Courts, in order to meet the ends of justice, can come to the rescue of the accused, in exercise of jurisdiction under Article 226 of the Constitution of India, and can order for further investigation. In support of his contention, learned counsel relied on the judgments of the Apex Court reported in *DHARAM PAL v. STATE OF HARYANA*<sup>1</sup> and *VINAY TYAGI v. IRSHAD ALI*<sup>2</sup>.

4. On the other hand, learned Government Pleader for Home submits that the alleged crime was of the year 2008 and charge sheet was filed in the year 2009 and cognizance was taken in the year 2012 and that when the trial is about to commence, petitioner approached the trial court and also this court belatedly, as a after thought. He submits that investigation in respect of one of the deceased (D-3) was completed, therefore, charge sheet was filed in respect of his death and after taking cognizance and also after framing charges, trial court fixed schedule for trial. He submits that in respect of death of other two accused, some more evidence has to be collected to be placed before the court. He submits that in these circumstances, action of the trial court in seeking to

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<sup>1</sup> (2016) 4 SCC 160

<sup>2</sup> (2013) 5 SCC 762

proceed with the trial, cannot be found fault with and that with similar averments, accused filed CrI.P.No.394/2016 in S.C.No.102 of 2012 before the trial court and the same was dismissed on 11.07.2018, as not maintainable and the revision filed before this court is also stated to be dismissed today i.e., 5.9.2018, as withdrawn and hence the same grounds cannot be agitated by the accused before this court under the writ jurisdiction and that in case, they are aggrieved by the charge sheet, their remedy would be under Section 482 of Cr.P.C. He submits that jurisdiction of this court under Article 226 of the Constitution of India, is discretionary in nature and the petitioners have not made out any case for exercise of said jurisdiction.

5. In this case, it is to be seen that the alleged crime was of the year 2008 and charge sheet was filed in the year 2009 and cognizance was taken in the year 2012 and after framing of charges, schedule was fixed for trial and at this stage, petitioners filed the petition before the trial court under Section 173(8) of Cr.P.C. in the year 2016, which was dismissed, holding that petitioners have no *locus standi* and that the said petition is not maintainable. These circumstances and the length of time taken by the petitioners in moving the court under Section 173(8) of Cr.P.C., from the date of filing charge sheet, taking cognizance and commencement of trial, suggest that they are not serious in pursuing the matter. Further, criminal revision filed before this court is stated to be withdrawn today i.e.,

5.9.2018, obviously on the ground that parallel proceedings cannot be pursued both under the revisional as well as writ jurisdictions of this court.

6. Even according to the learned counsel for the petitioner, there are no statutory provisions under the Criminal Procedure Code, 1973, which enable the accused to seek for further investigation. In these circumstances, the issue that arises for consideration is – ‘whether this court in exercise of its extraordinary, equitable and discretionary jurisdiction, under Article 226 of the Constitution of India, can direct the investigating agency to conduct further investigation at the instance of the accused, into the alleged crime and file charge sheet and then direct the trial court to proceed with the trial?’

7. With regard to ordering further investigation or de novo or fresh investigation or reinvestigation by some other investigating agency, the Apex Court in *DHARMPAL v. STATE OF HARYANA* (1 supra), held as under:

“24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth

remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the “faith” in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idée fixe” but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one’s wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts and self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an “orphan under law”.

8. In another judgment, in *VINAY TYAGI vs. IRSHAD ALI* (2 supra),

the Apex Court held as under:

20. Having noticed the provisions and relevant part of the scheme [of the Code](#), now we must examine the powers of the Court to direct investigation. Investigation can be ordered in varied forms and at different stages. Right at the initial stage of receiving the FIR or a complaint, the Court can direct investigation in accordance with the provisions of [Section 156\(1\)](#) in exercise of its powers under [Section 156\(3\)](#) of the Code. Investigation can be of the following kinds:

- (i) Initial Investigation.
- (ii) Further Investigation.
- (iii) Fresh or de novo or re-investigation.

22. ‘Further investigation’ is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of [Section 173\(8\)](#). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a ‘further investigation’. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as ‘supplementary report’. ‘Supplementary report’ would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a ‘reinvestigation’, ‘fresh’ or ‘de novo’ investigation.

23. However, in the case of a ‘fresh investigation’, ‘reinvestigation’ or ‘de novo investigation’ there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or

conduct 'fresh investigation'. This is primarily for the reason that it would be opposed to the scheme [of the Code](#). It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a 'fresh investigation'.

43. At this stage, we may also state another well-settled canon of criminal jurisprudence that the superior courts have the jurisdiction under [Section 482](#) of the Code or even [Article 226](#) of the Constitution of India to direct 'further investigation', 'fresh' or 'de novo' and even 'reinvestigation'. 'Fresh', 'de novo', and 'reinvestigation' are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

9. The quintessence of the above judgments is that Constitutional Courts have jurisdiction under Section 482 of Cr.P.C. or under Article 226 of the Constitution of India, to direct fresh investigation, or de novo and even reinvestigation and that they are also vested with the power of transferring the investigation from one agency to another, provided the ends of justice demand such a course of action and that such power has to be exercised sparingly, with great circumspection and that commencement of trial and examination of some witnesses, i.e., stage of the proceedings, cannot be an impediment for exercising such power.

10. Facts in the above cases relied on by the learned counsel for the petitioners disclose that the victims of the crime therein approached the apex court. In the present case, the petitioners are the accused and

investigation in respect of death of one of the deceased i.e., D-3 was completed, charge sheet was filed and the cognizance was taken and trial court is commencing the trial. Though it is not a bar, but as held in Vinay Tyagi's case (2 supra), it has to be exercised in rarest of rare cases, when unfairness of investigation is such that it pricks the judicial conscience of the court, but in the present case, the only allegation of petitioners is that though three deaths took place at a time, charge sheet is filed in respect of one death, with incomplete investigation. Therefore, the facts in the present case are different from the facts dealt with by the Apex Court in the above cited decisions and the law laid down in the said decisions, cannot be made applicable in a straitjacket formula.

11. It is to be seen that exercise of plenary jurisdiction of this court under Article 226 of the Constitution of India, to meet the ends of justice, cannot be limited by any statutory provision. But, as already noted above, the Apex Court held that such jurisdiction of this court, has to be exercised sparingly, with great circumspection and the facts and circumstances of the case, shall demand for exercise of such jurisdiction. In the present case, petitioners have not made out any exceptional circumstances, for exercise of plenary jurisdiction of this court for ordering further investigation.

12. For the foregoing reasons, writ petition is devoid of any merit and the same is accordingly dismissed at the stage of admission.

13. Interlocutory applications pending, if any, shall stand closed.

No costs.

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A.RAJASHEKER REDDY,J

DATE:05—09—2018  
AVS

