

AFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 796 of 2019**Order reserved on : 03.10.2019Order delivered on : 20.12.2019

- Abhishek Singh S/o R.P. Singh, aged about 28 years, R/o LIG-43, M.P. Nagar, Korba, District Korba (C.G.)

----Petitioner**Versus**

- State of Chhattisgarh, Through : Chowki Rampur, P.S. Kotwali, Korba, District Korba (C.G.)

---- Respondent

For Petitioner	:	Shri Sabyasachi Bhaduri, Adv.
For Respondent/State	:	Shri Akhtar Hussain, P.L.
For Objector	:	Shri Parag Kotecha, Adv.

Hon'ble Smt. Justice Rajani Dubey**C A V ORDER****20/12/2019**

01. This revision has been filed against the order dated 19.06.2019 passed by learned Sessions Judge, Korba, District Korba in Sessions Trial No.58/2016, whereby the learned Sessions Judge has allowed the application filed by the prosecution under sub Section 8 of Section 173 Cr.P.C. and taken the CD (audio recording) on record.

02. Brief facts of the case are that before the trial Court, a charge sheet has been filed against the applicant under

Section 306 IPC. The case was fixed for prosecution evidence. During trial, the prosecution filed an application under Section 173(8) of Cr.P.C. and prayed that the audio recording of the deceased and father of the deceased may be taken on record. The learned trial Court, under the impugned order dated 19.06.2019, allowing the application taken the audio recording on record. Hence, this revision petition by the applicant.

03. Learned counsel for the applicant submits that the learned trial Court, while passing the impugned order, has not considered the facts of the case in proper manner and thus the impugned order deserves to be set aside. The applicant has been falsely implicated in the case and no case under Section 306 IPC has been made out against the applicant. He further submits that the prosecution has presented the audio recording (CD) after a delay of about two years from the filing of the charge sheet. The charge sheet was filed on 15.06.2016, whereas the present CD has been submitted by the prosecution on 19.06.2019. The prosecution agency is well aware of the fact that the supplementing additional evidence on record at such a belated stage is fatal for the trial. The police filed the said evidence without conducting any investigation and placed the clip on record which was directly handed over to them by the complainant. He also submits that the complainant has made false allegation against the parents of the petitioner who were granted anticipatory bail by this High Court. They had made a false

allegation against the applicant too and because of which the charge under Section 302 was framed, but the Hon'ble High Court, vide order dated 13.11.2018 passed in CRR No.700/2018 set aside the erroneous order framing an additional charge of section 302 r/w section 34 IPC. The complainant also made a failed attempt to transfer the case from Korba to Bilaspur in order to harass the petitioner. He also submits that the present CD supplemented into the record of the case is another tactic from their end in order to delay the trial. It is next submitted that the complainant/father of the deceased, in para 9 and 11 of his examination in chief, has clearly stated that there was just one voice recording pertaining to the conversation between the complainant and her deceased daughter and the said voice recording was incorporated in a CD and the same was already seized by the police vide Ex.P/8. It is added that neither a seizure memo nor a seizure witness has been produced by the prosecution in order to bring the said CD on record. That apart, the learned trial Court has accepted the electronic record without conducting a proper forensic examination of the same. Thus, the order of the learned trial Court allowing the application of the prosecution filed under Section 178(8) of Cr.P.C. deserves to be set aside. In support of his argument, he placed reliance on the decisions of Hon'ble Supreme Court in the matter of **Madhu Limaye Vs. State of Maharashtra** reported in **AIR 1978 SC 47, Reeta**

Nag Vs. State of west Bengal and others reported in **(2009) 9 SCC 129** and the decision of this High Court in the matter of **Amamath Agrawal Vs. Jai Singh Agrawal & others** reported in **2015(2)CGLJ 261**.

04. On the other hand, learned State counsel supporting the impugned order submits that the order impugned is just and proper and does not call for any interference by this Court. He also placed reliance on the decisions of Hon'ble Supreme Court in the matter of **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh and others** reported in **(1999) AIR (SCW) 2429** and **Om Prakash Sharma Vs. Central Bureau of Investigation, Delhi** reported in **(2000) AIR (SCW) 2420**.

05. Shri Parag Kotecha, learned counsel for objector has supported the impugned order passed by the learned trial Court. He submits that the order passed by the learned trial Court, under Section 173 (8) of Cr.P.c. is an interlocutory order and hence the present revision is not maintainable and liable to be dismissed.

06. I have heard the learned counsel for the parties and perused the record.

07. In the instant case, the applicant is facing trail for the offence under Section 306 IPC, and one audio recording of conversation between the deceased and her father has been taken on record allowing the application filed under Section 173(8) of Cr.P.C. The power of the police to conduct further

investigation, after laying final report, is recognised under Section 173(8) of the CrPC. Even after the court can take cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This Court deem it appropriate to reproduce Section 173(8) of CrPC, which is as under:-

173. Report of police officer on completion of investigation -

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)

8. In this context, the Supreme Court in the matter of **Sri Bhagwan** (supra) held in paras 10 and 11, which read thus:-

“10. Power of the police to conduct further investigation, after laying final report, is recognised u/s 173(8) of the CrPC. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in *Ram Lal Narang Vs. State (Delhi Administration)*,. The only rider provided by

the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.

11. In such a situation the power of the Court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the Court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the Magistrate with such an obligation."

9. The learned trial Court also played the CD in the Court which is audio recording of conversation between deceased and her father and held that the effect of the presented CD on its merits cannot be seen at this stage. In my considered opinion, the trial Court while passing the impugned order has not committed any error warranting interference by this Court.

10. For the foregoing reasons and in the light of Supreme Court's order in the matter of **Sri Bhagwan** (supra), the revision petition preferred by the applicant is liable to be and is hereby dismissed.

Sd/-

(Rajani Dubey)
JUDGE