

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL REVISION CASE No.199 of 2019

ORDER:

The present revision under Sections 397 and 401 Cr.P.C., has been filed by the revision petitioner/accused against the impugned docket order, dated 08.02.2019, passed in C.F.No.659 of 2019 in Crime No.100 of 2016 of Huzurabad Police Station, by the I Additional Judicial Magistrate of First Class, Huzurabad, wherein the learned Magistrate, while returning the Final Report, ordered for further investigation in the above Crime.

The relevant facts, in brief, are that on 19.04.2016, one Dr.Narendra, in charge Senior Public Health Officer, Community Health Nutrition Centre, Huzurabad, Karimnagar District, lodged a complaint stating that the petitioner/accused, who was working as Civil Surgeon (Spl.), Government Civil Hospital, Huzurabad, has been transferred to Area Hospital, Godavarikhani, but she did not report for duty and did not give charge of the Government Civil Hospital, Huzurabad, till that date. It is further mentioned in the complaint that the petitioner/accused did not hand over the records pertaining to JSY, JSSK and HDS funds to the Superintendent, Government

Civil Hospital, Huzurabad and that the records are not available in the hospital. During the visit of Vigilance Monitoring Committee, the issue of misappropriation of funds was discussed and decided to take action against the petitioner/accused. Further, the JSY and other funds, which were released during the years 2013 to 2015, the SOE's were not submitted to the NRHM Audit. In this connection, an enquiry has been conducted by RDM&HS, Warangal, with regard to the aforesaid allegations and in the enquiry, it was stated that the present in charge Medical Superintendent, Government Civil Hospital, Huzurabad, has informed that the records were not handed over by the previous Medical Superintendent to him. Thereafter, the Government, directed the petitioner/accused to hand over the records to the RDM & HS, Warangal, but she has not handed over the records. Thereafter, the petitioner/accused was directed to meet Principal Secretary to Government, HM&FW Department on 09.10.2015, but she did not attend before the higher authorities. Further, the DPH & FW., TS., Hyderabad, has instructed to inspect and send the detailed report regarding JSY funds released to Government Civil Hospital, Huzurabad, accordingly, the RDM & HS, Warangal, was called for the information from the Medical Superintendent, Government Civil Hospital, Huzurabad. It is

informed that the then Medical Superintendent i.e., the petitioner/accused did not submit the S.O.E. to the tune of Rs.29,75,000/- till today. The bank statements of the Government Civil Hospital, Huzurabad, shows that the amounts were drawn in favour of one B.Uday Kumar, Lab Technician (Contract basis), Blood Storage Unit, Government Civil Hospital, Huzurabad and the expenditure for an amount of Rs.77,56,052/- was not available. The Enquiry Officer stated that the enquiry cannot be conducted without records to find out the amounts misused and fraudulent drawals. Hence, the District Collector, Karimnagar, has issued a show-cause notice dated 07.04.2016, to the petitioner/accused to submit her explanation within five days, but she failed to submit the explanation. Hence, the District Collector, Karimnagar, directed the complainant to lodge a complaint against the petitioner/accused. Basing on the said complaint, a case in Crime No.100 of 2016 came to be registered against the petitioner/accused for the offences punishable under Sections 406 and 409 I.P.C. While the investigation was under progress, the petitioner/accused obtained anticipatory bail and released on 23.06.2016. As such, on 29.09.2016 and 20.12.2016, two notices were issued to the petitioner/accused directing her to hand over the records pertaining to the case within a week for

the purpose of investigation, but she did not hand over the same and submitted her explanation stating that she was not possessing any of the hospital records including JSY, JSSK and HDS funds records of Government Civil Hospital, Huzurabad. Hence, the Inspector of Police, Huzurabad Police Station, filed a requisition before the Assistant Commissioner of Police, Huzurabad, to permit him to refer the case as "lack of evidence" for the time being as no departmental enquiry was conducted against the petitioner/accused and that the investigation cannot be continued further without relevant records of the Government Civil Hospital, Huzurabad, to find out the misappropriation of funds by the petitioner/accused. Vide letter dated 31.12.2017, the Assistant Commissioner of Police, Huzurabad, permitted to refer the case as "lack of evidence" in Crime No.100 of 2016. Hence, the Inspector of Police, Huzurabad, filed a final report before the I-Additional Judicial Magistrate of First Class, Huzurabad, requesting to refer the case as "lack of evidence".

Subsequently, on 07.02.2019, on the instruction of the Commissioner of Police, Karimnagar, the Assistant Commissioner of Police, Huzurabad, filed a requisition before the I-Additional Judicial Magistrate of First Class, Huzurabad,

requesting to re-open the case and issue proceedings. By an order, dated 08.02.2019, the learned Magistrate, returned the final report with a direction to the Station House Officer, Huzurabad Police Station, to proceed with the investigation in the above crime. Challenging the same, the present Criminal Revision Case is filed.

Heard learned Counsel for the revision petitioner/accused and learned Additional Public Prosecutor appearing for the respondents.

Learned Counsel for the revision petitioner/accused submitted that the provisions of Section 173 (8) of Cr.P.C., gets attracted only when the office-in-charge of Police Station obtains further evidence either oral or documentary and if the same is forwarded to the Magistrate a further report regarding such evidence in the form prescribed. In the present case, the requisition of the Assistant Commissioner of Police is not disclosing any further evidence. Without there being any additional evidence or material, the question of returning the Final Report and direction to investigate further, does not arise. It is also submitted that filing of final report is the exclusive jurisdiction of the police. If the final report is unsatisfactory, a protest petition or a private complaint can be filed by the

de facto complainant. In the absence of such additional evidence forthcoming from the complainant, there is no jurisdiction to the Court of Magistrate to return a final report and ordered for further investigation.

Learned Additional Public Prosecutor appearing for the respondents submitted that there is sufficient material to take judicial notice of the offences leveled against the petitioner/accused as she has misused the funds pertaining to JSY, JSSK and HDS of Government Civil Hospital, Huzurabad, and as such the order under revision is sustainable in law.

In order to appreciate the rival contentions, it would be useful to refer to Section 173 (8) of Cr.P.C., which reads as under:

"173. Report of police officer on completion of investigation:

(1) to (7): xxxxxxxxxxxxxxxxx

(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-section (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)."

The power of police to conduct further investigation after final report is recognized under Section 173 (8) Cr.P.C. is dealt with in *Sri Bhagwan Samardha Sreepada V.Venkata Viswanadha Maharaj vs. State of Andhra Pradesh and others*¹ case, wherein the Apex Court held as under:

"Even after the Court took cognizance of any offence on the strength of the report of the police, it is open to the police to conduct further investigation. This has been so stated by the Apex Court in *Ram Lal Narang v. State (Delhi Admn.)*². 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."

In *Rama Chaudhary v. State of Bihar*³ while referring to Section 173 (8) of Cr.P.C. the Apex Court held that "the above said provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. Referring to Sub-section (2) and Sub-section (8) of Section 173, the Court held that even after

¹ AIR 1999 SC 2332

² AIR 1979 SC 1791

³ (2009) 5 SCC 366

submission of police report under Sub-section (2) on completion of investigation, the police has a right to "further" investigation under Sub-section (8) of Section 173 but not "fresh investigation" or "reinvestigation". The meaning of "Further" is additional; more; or supplemental. "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started *ab initio* wiping out the earlier investigation altogether.

From the judgments referred to above, it is clear that the Court has got the power to order for further investigation even after filing of the charge sheet and the police on their own can also further investigate into the matter.

Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation.

In the instant case, on the requisition made by the Assistant Commissioner of Police, Huzurabad, the learned Magistrate accorded permission to reopen the case for investigation and the final report was returned directing the Station House Officer, Huzurabad, to proceed with the

investigation. Reopening of the case is nothing but re-investigation of the case, but not further investigation. There is a specific bar under Section 173 (8) of Cr.P.C., the police has a right to "further" investigation but not fresh investigation or re-investigation. In view of the judgment of the Apex Court in *Rama Chaudhary v. State of Bihar (3 supra)* and having regard to the facts and circumstances of the case, the order passed by the learned Magistrate to reopen the case for investigation is *prima facie* illegal, improper and incorrect and is liable to be set aside.

Accordingly, the Criminal Revision Case is allowed and the order dated 08.02.2019, passed in C.F.No.659 of 2019 in Crime No.100 of 2016 by the I Additional Judicial Magistrate of First Class, Huzurabad, is hereby set aside.

Miscellaneous petitions, if any, pending, shall stand closed.

JUSTICE G. SRI DEVI

20.12.2019
gkv/Gsn

