

HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.25459 OF 2019

ORDER:

This Writ Petition is filed to declare the inaction of the respondent No.3 in taking action on the petitioner's representation dated 30.10.2019 by which the petitioner sought for addition of Section 307 IPC in FIR No.393 of 2019 dated 24.10.2019 registered by the 3rd respondent, as being illegal, arbitrary and violative of Article 21 of the Constitution of India.

Heard the learned Counsel for the petitioner and learned Government Pleader for Home.

Learned Government Pleader for Home on written instructions dated 28.11.2019, submits that based on the compliant received from the petitioner herein on 24.10.2019, a case was registered in Crime No.393 of 2019 under Sections 448, 324, 506 read with 34 IPC of Hanamkonda Police Station on 24.10.2019. In the course of investigation, L.Ws.1 to 8 were examined and their statements were recorded and collected CCTV footage and also medical certificates of the injured person wherein the doctor gave medical certificate stating that injuries sustained are simple in nature. It is submitted that as per the evidence collected so far, no case is made out for the offence under Section 307 IPC. He would further submit that the investigation in the case is completed, except for issuing notice under Section 41-A Cr.P.C. to the

accused persons. After issuing notice to the accused persons, final report will be filed before the concerned court. On the basis of the said written instructions, learned Assistant Government Pleader for Home submits that if the petitioner is aggrieved by the provisions of IPC under which the accused are charged with in the crime, it is open for the petitioner to question the same before the concerned court where final report will be filed whereupon the concerned Magistrate if satisfied can direct further investigation under Section 156(3) of the Cr.P.C. In support of the above plea learned Assistant Government Pleader for Home draw attention of this Court to the judgment of the Hon'ble Supreme Court in the case of **Vinubhai Haribhai Malaviya v. The State of Gujarat**¹, wherein it is observed thus:

We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct "further investigation" on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the

¹ (Judgment of the Supreme Court in CrI.A. Nos.478-479 of 2017 dated 16.10.2019)

principles of law. It will be a travesty of justice, if the court cannot be permitted to direct “further investigation” to clear its doubt and to order the investigating agency to further substantiate its charge-sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct “further investigation” or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct “further investigation” or “reinvestigation” as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation.

Having regard to the said submissions made, and in view of the decision of the Hon’ble Supreme Court in **Bikash Ranjan Rout v. State (NCT of Delhi)**² wherein the Supreme Court having regard to the provisions of Criminal Procedure Code has observed that the Court before which the final report is filed, it is empowered to either (i) accept the report and take cognizance of the offences and issue process; or (ii) may disagree with the report and drop the proceedings; or (iii) may direct further investigation under Section 156(3) and require the police to make a further report; it cannot be said the petitioner is left with no means or manner to record its protest with regard to the course of investigation adopted by the Investigating Officer. Thus, this Court is of the view that having regard to the law laid down by the Supreme Court in **Bikash Ranjan Rout**, since it is open for the petitioner to approach the Court concerned, if the petitioner has any

² (2019) 5 SCC 542

grievance on the final report filed, and avail the remedies in accordance with law, no specific orders/directions in the Writ Petition need be passed.

Subject to the above observation, the Writ Petition is closed. No order as to costs.

The miscellaneous petitions pending, if any, shall stand closed.

T. VINOD KUMAR, J

Date: 03.12.2019.

MRKR

