THE HONOURABLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.28023 OF 2019

ORDER:

This Writ Petition is filed for issuance of writ of mandamus by declaring the inaction of 2nd respondent in entrusting the investigation in Crime No.94 of 2017 on the file of police station Ganneruvaram village and Mandal, Karimnagar District to another Investigating Officer for impartial investigation based on the representation of the petitioner dated 04.09.2019 and 15.10.2019 as being illegal, void and contrary to Articles 14 and 21 of the Constitution of India.

Heard learned counsel for the petitioner and learned Assistant Government Pleader for Home.

It is the case of the petitioner that he made a complaint before the 3rd respondent on 25.12.2017 that one Pullela Lakshmaiah @ Lakshman, (A.1 in Crime No. 94 of 2017), created a forged simple sale deed in order to grab the land standing in the name of the petitioner's mother by name late Pullela Lachamma admeasuring Ac.1.06 gts in Sy. No.19/A and Ac.1.06 gts in Sy. No.20/B of Ganneruvaram village, as if the mother of the petitioner sold her land to Pullala Laxmi, W/o Laman @ Laxmaiah named as Accused No.2 (A.2) in the Crime No. 94 of 2017, on 10.06.1998 for a valid consideration of Rs.59,000/-. Based on the alleged said simple sale deed stated to have been executed in her favour, the said Pullela Lakshmi applied to revenue authorities to regularise the land in Record of Rights (ROR). In the said complaint, it is stated that upon the Petitioner coming to know about the claim of execution of such a document by his mother, has collected the document, which appeared to be forged and prepared by A-1. Thereafter, the petitioner obtained document under the RTI Act from Tahsildar, Ganneruvaram and sent the same to Truth Labs, Hyderabad, for analysis and got the report that the writing in the simple sale deed matches with the writings of A-1 which are available in connection with Crime No.105 of 2017. Based on the above report, the petitioner made a complaint to the 3rd respondent authority with regard to the act of forgery by the A.1. Though, it is claimed that based on the said complaint made by the petitioner, the 3rd respondent authority registered a case in Crime No.94 of 2017 dated 25.12.2017 and took up investigation in the matter, it is urged by the learned Counsel for the petitioner, that the 3rd respondent authority did not conduct investigation in an impartial manner, since the authorities did not send the alleged sada sale deed for Forensic Science Laboratory for ascertaining as to whether the same is forged by A-1 and instead the authorities basing on the opinion of the learned Assistant Public Prosecutor claimed to have issued notice to A-1 and A-2 to produce the sada sale deed document which it is claimed by A.1 and A.2 as not being available with them.

Learned Counsel for the petitioner submits that the authorities basing on the said statement made by A-1 and A-2, proceeded to file the charge sheet after obtaining the permission from the higher authorities, only against A-1 who has forged the signature of the petitioner's mother as per the report of the Truth Labs, Hyderabad and excluded or deleted the name of the accused No.2 in the charge sheet filed before the concerned court. It is the exclusion of A.2 from the charge sheet, is being claimed as resulting in the investigation being vitiated, for which the petitioner is now seeking for reinvestigation by assigning the matter to another Investigating Officer.

Learned Assistant Government Pleader submits that basing on the evidence of L.Ws-2 to 6, the allegations levelled by the petitioner as L.W-1 against A-2 were not proved and thus the Investigating Officer i.e., L.W-8 filed requisition to the concerned authority for the deletion of A-2 from the case and obtained orders from the concerned authorities and thereafter filed charge sheet in the matter against A-1.

Learned Assistant Government Pleader would submit that the investigation carried into the matter is not vitiated and the authorities have conducted the investigation in an impartial manner and having regard to the material available on record, no fault can be found with regard to the investigation warranting reinvestigation by another authority as being sought by the petitioner. It is also submitted by the learned Assistant Government Pleader that the case has been investigated into in the shortest possible time and a charge sheet in the matter had been filed on 15.03.2018 against A-1 for having committed offences punishable under Sections 468 and 471 IPC. Learned Assistant Government Pleader would submit that since, a final report has been filed before the Ist Additional Judicial Magistrate of I Class at Karimangar, the petitioner has the remedy of approaching the concerned court to record its protest, if he is aggrieved by the manner and method of investigation into the crime. The learned Assistant Government Pleader submits that, the petitioner instead of approaching the concerned court before whom the case is pending consideration, has after a lapse of more than one and half year is seeking for reinvestigation into the matter by filing the representation on 04.09.2019 and 15.10.2019 and in furtherance thereof has filed the present writ petition which is liable to be dismissed.

It is to be seen that the petitioner and the person against whom the petitioner made a complaint are real brothers and the claim relates to the immoveable property standing in the name of the mother of petitioner and A-1. The accused No.1 claims to have got the said land transferred in favour of his wife (A.2) by creating document shown to have been executed by his mother. It is to be seen that the petitioner has made a complaint to the authorities in December, 2017, wherein it is alleged that the accused No.1 had resorted to the act of forgery. In the said complaint made by the petitioner, though the petitioner named the accused No.2 also, such inclusion is only as being the beneficiary on account of the simple sale deed said to have been executed in her favour. In support of the above complaint made, the petitioner enclosed the report issued by the Truth Labs, Hyderabad which indicates that the writing in the sada sale deed matches with the writing of the accused No.1 in the other documents.

With regard to the submission of the learned counsel for the petitioner that the authorities did not send the document for FSL authorities, the learned Assistant Government Pleader has drawn the attention of this Court to the final report submitted by the authorities concerned wherein it is stated that the RTC Depot authorities, where the Accused No.1 had worked earlier, informed the investigation authority that there is no hand written documents of the accused available with the said authorities, since the same were submitted earlier in connection with Crime No.107 of 2017 registered against the accused No.1. Since, the hand writing of the petitioner was already sent for FSL authorities in Cr. No. 107 of 2017, wherein the FSL authorities had furnished a report vide File No.Doc/445/2017 dated 24.10.2017, the same was relied upon in the present crime. Further, also having regard to the admission on the part of the accused No.1 that the said sada sale deed is executed by him and is in his hand writing, the authorities proceeded with the finalisation of the case and filed the charge sheet and prayed for the dismissal of the writ petition.

The submission of the learned counsel for the petitioner that the authorities did not conduct investigation in an impartial manner, since they did not add the wife of accused No.1 as co-accused in the charge sheet, it is to be seen that the document which is being claimed as forged, is only at the hands of single person. It is also not the case of the petitioner in the complaint made to the 3rd respondent that accused No.2 is also a party to the alleged act of forgery of the document. That being so, the claim of the petitioner now that the deletion of accused No.2 in the charge sheet filed having vitiated the investigation is without any basis. Since, the authorities have taken action with regard to the alleged act of forgery against A-1 and the accused No.2 not being a party to the said act of forgery, though the accused No.2 may be the beneficiary of such act of forgery, the accused No.2 cannot be made as a co-accused by charging her under Section 469 IPC.

Thus, the claim of the petitioner in the present Writ Petition that the authorities did not conduct the investigation in an impartial manner, requiring reinvestigation by assigning the case to another investigating authority is on account of misconstruing the operation of the provision of law.

Further, it is to be seen that the Criminal Procedure Code does not provide for reinvestigation. Thus, it can safely be concluded that the concept of reinvestigation being alien to Cr.P.C., the same is clearly forbidden. However, a superior court can order de-novo / reinvestigation in exercise of extraordinary jurisdiction. The Hon'ble Supreme Court dealing with such exercise of power by High Court or by the Supreme Court in ***Vinay Tyagi V. Irshad Ali and Others***[1], observed - *"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."* By observing so, the Supreme Court further held that direction of "fresh / denovo" investigation can be issued are "few and far between" and only where the "investigation *ex facie* is unfair, tainted, mala fide and smacks of foul play". Thus, only if the investigation conducted on the face of it appears to be proceeded in a manner contrary to the procedure envisaged under the Criminal Procedure Code, only then the Court should exercise such power of directing reinvestigation.

In a recent judgment in the case of **Vinubhai Haribhai Malaviya v. The State of Gujarat**[2], the Hon'ble Supreme

[1] (2013) 5 SCC 762
[2] (Judgment of the Supreme Court in Crl.A. Nos.478-479 of 2017 dated 16.10.2019) – 2019 SCC Online SC 1346

Court dealing with Section 173(8) Cr.P.C. observed that the authorities not denuded from causing further investigation even after a charge sheet is filed would go to show that if any material evidence are being brought to the notice of the authority, the authority can cause further investigation or even otherwise the Magistrate has the power for further investigation which also includes filing of a supplementary charge sheet by adding other accused to a crime.

Having regard to the law laid down by the Supreme Court as above, it is to be seen whether the alleged claim being made by the petitioner in this case with regard to the enquiry being vitiated and not being conducted in an impartial manner requiring the matter being reinvestigated by assigning the same to another Investigating Officer, can be considered as rarest of rare cases. As noted hereinabove, the case of the petitioner is with regard to the alleged forgery, an act undertaken by the accused No.1, mere non-inclusion of accused No.2 for the said offence cannot lead to the conclusion that the investigation being vitiated. Further, as observed hereinabove, since the act of forgery is an act of an individual, it is only that person who can be charged with the act of forgery and not others. Thus, the claim of the petitioner that the authorities have deleted the name of the accused No.2 from being included in the charge sheet filed does not merit consideration and is liable to be rejected. The present Writ Petition is thus misconceived and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

T. VINOD KUMAR, J

Date: 22.01.2020
MRKR