

HIGH COURT OF CHHATTISGARH, BILASPUR

Reserved for Orders on : 10.03.2021

Order Passed on : 12.04.2021

Cr.R. No.121 of 2021

- Samuel James S/o Late Shri Walis James Aged About 71 Years R/o Jarhabhatha, Near Mandir Chowk, Bilaspur, Police Station Civil Line Bilaspur District Bilaspur Chhattisgarh

---- Applicant

Versus

- State Of Chhattisgarh Through The Station House Officer, Police Station Civil Line Bilaspur District Bilaspur Chhattisgarh

---- Non-applicant

For Applicant	:	Mr. Rishi Rahul Soni, Advocate.
For State/Non-applicant	:	Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V Order

12/04/2021

1. This revision petition has been brought challenging the order dated 06.02.2021 passed by the First F.T.S.C. (POCSO Act), Bilaspur, C.G., dismissing the application of the accused persons filed under Section 173 (8) of Cr.P.C.
2. It is submitted by the learned counsel for the applicant that he has been arrayed as accused in the Special Sessions Trial No.129/19 and being prosecuted for commission of offence under Sections 354(A), 354(B), and 354(D), 506-B, 294, 323, 34 and 376 of I.P.C. and Sections 3, 4, 7 and 8 of POCSO Act. The application was filed under Section 173 (8) of Cr.P.C. for apprising the Court of the facts to show, that the applicant

and others have been falsely implicated and it was on this basis, a prayer was made for additional investigation in the case. The petitioner had also preferred the Writ Petition (Criminal) No.1216 of 2019, making a similar prayer of further investigation in the case, which was decided vide order dated 11.12.2019 by this Court, in which liberty was granted to him to file application for further investigation in accordance with law. Subsequent to filing of the application, the petitioner has filed a number of document in the case. The trial Court directed to the S.H.O. of Police Station, Civil Lines, to make additional inquiry with respect to the documents. The documents filed have not been verified by the police.

3. Relying on the judgment of Supreme Court in the case of ***Vinubhai Haribhai Malaviya and Ors. Vs. State of Gujarat and Anr.*** reported in A.I.R. 2019 Supreme Court 5233, it is submitted that the Supreme Court has held that the Magistrate has powers to order further investigation under Section 173 (8) of Cr.P.C. and such powers should be exercised for the protection of innocent persons.
4. It is submitted, that in the case of ***Hasanbhai Valibhai Qureshi Vs. State of Gujarat & Ors.*** reported in (2004) 5 Supreme Court Cases 347, it has been held that only for the reason that the trial will be delayed, the further investigation if necessary, cannot be withheld. Therefore, it is a fit case in which the learned trial Court should have directed for further investigation and by not doing so, the learned Court below has refused to exercise jurisdiction available to it. Hence, the impugned order is liable to be set aside. Hence, it is prayed that the revision petition may be allowed and the respondent may be directed to make further investigation in the case.
5. Learned State counsel appearing for respondent submits that the police

cannot be guided as to in what manner it has to investigate a case and the application was filed by the applicant only for the purpose of delaying the trial. Therefore, the application is not bona-fide. Charge-sheet has been filed after completion of investigation, in which there are sufficient evidence present to proceed against the applicant and others. Therefore, the applicant has no case present in this revision petition, which may be dismissed.

6. In reply, it is submitted by the learned counsel for the applicant that the applicant has taken the plea of alibi from the very beginning. The Article 21 of Constitution of India envisages fair investigation and fair trial. There is evidence present in support of the ground of alibi of the applicant which has not been taken into consideration by the police at the time of investigation. Therefore, this petition deserves to be allowed.
7. Heard learned counsel for both the parties and perused the documents present on record.
8. Considered on the submissions. The application under Section 173(8) of Cr.P.C. has been though rejected by the order dated 06.02.2021, which is the impugned order, but the learned trial Court has not only entertained the application under Section 173(8) of Cr.P.C. but also directed the police to submit a report on the additional documents filed by the applicant by it's order dated 21.01.2020. The report of the same has been submitted on 09.10.2020, which is now a part of charge-sheet. Therefore, in the trial at relevant stage, the applicant is entitled to make reference to that report to establish his case. Sub-Section 8 of Section 173 of Cr.P.C. provides that "after forwarding a report Sub-section 2, the officer in charge of the police station on obtaining any further evidence, oral or documentary, shall not be precluded from making any further

investigation and such additional evidence shall be forwarded to the Magistrate as per the report.”

9. In this case, the documents that were supplied by the applicant to the Court were sent for being inquired by the police and the inquiry report has been submitted in that respect. The charge-sheet against this applicant and others is based on the evidence of the witnesses and the case of the applicant is based on alibi. The case is at the stage of consideration on framing charge. The applicant is at liberty to make reference to the report submitted by the police, in compliance with order dated 25.01.2020 only for the reason that applicant is not satisfied with the report submitted, there appears to be no requirement for any further investigation. Hence, I am of this view that the learned trial Court has not committed any error in passing the impugned order.

10. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge