

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 22.06.2022  
Pronounced on : 01.07.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

Crl.R.C.No.654 of 2022

Ganesan

... Petitioner / Defacto Complainant

Versus

1. SHO,  
District Crime Branch,  
Villupuram.  
(Crime No.25 of 2019)

2. Kirubasankar

... Respondents / Complainants / Accused

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records in pertaining to the order in CMP.No.951 of 2021 in C.C.No.220 of 2020 on the file of the Judicial Magistrate No.I, at Villupuram, dated 06.04.2022 and set aside the same, consequently allow the CMP.No.951 of 2021 in C.C.No.220 and 2020 on the file of Judicial Magistrate No.I, at Villupuram.

For Petitioner : Mr.G.Vijayakumar

For Respondents: Mr.S.Vinoth Kumar, (for R1)  
Government Advocate (Criminal side)

: Mr.A.Arasu Ganesan (for R2)

ORDER

This Criminal Revision Case is filed by the petitioner aggrieved by the order dated 06.04.2022 passed by the learned Judicial Magistrate No.I, Villupuram, in CMP.No.951 of 2021 in C.C.No.220 of 2020, whereby the application filed for further investigation on behalf of the prosecution under Section 173(8) of Cr.P.C., was rejected by the Trial Court.

2.The gist of the allegation in this case against the accused is that making a false promise to get a job as Assistant Engineer in the TNEB the accused had obtained money from the defacto complainant and cheated him. By directing the de-facto complainant to come to various places to hand over the amount, payments of money in cash were accepted by the accused. On 28.07.2018, a sum of Rs.10 Lakhs, was given at Woodlands Hotel at Villupuram. On 29.07.2018, a further sum of Rs.2 Lakhs was given at Elles Chatham Road corner. Another sum of Rs.3 Lakhs was given on 09.08.2018 at Appollo Medical Shop situated at Trichy to Chennai Road in Villupuram, a sum of Rs.5 Lakhs was given on 07.09.2018, at Avin Milk Shop situated at Villupuram District Collector office and a sum of Rs.2,50,000/- was given on 14.11.2018, near the Central Co-operative Bank. In the places mentioned in the complaint by the de-facto complainant, the CCTV footages were not collected by the prosecution during the course of investigation. This apart the accused had also contacted the defacto complainant in his mobile No.9443152542 to 9894298278 and the CDR particulars were not collected during the course of investigation. Further, in respect to certain documents produced along with the final report certificates as required under Section 65B of The Indian Evidence Act were not furnished. Therefore, for conducting further investigation and bringing all these materials on record and the application was filed on behalf of the prosecution. The said application was dismissed by the Trial Court by passing the following order :-

'The petition has been filed by the learned Additional Public Prosecutor for ordering further investigation. Accordingly to him the CCTV footage and CDR details are not collected by the Investigation Officer. Perused records it is seen that the trial has already been commenced hence the petition filed and the learned APP on his own instance is not maintainable. Accordingly this Petition is dismissed.'

3.The learned Counsel appearing on behalf of the revision petitioner would submit that firstly, the reasoning that the application is filed by the Additional Public Prosecutor on his own is factually incorrect and it is filed on the instructions of the respondent/Police. The second reasoning that the trial has already commenced and the petition need not to be entertained is fallacious. In support of his contention, he would rely upon the Judgment of the Hon'ble Supreme Court of India, in Sri Bhagwan Samardha Sreepada Vs. State of Andhra Pradesh & Ors<sup>1</sup>, wherein in paragraph No.2 it was held as follows:-

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<sup>1</sup> AIR 1999 SC 2267

' ' ..... Powers of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.) (AIR 1979 SC 1791). 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 such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition.....'

4.He would further rely upon the Judgment of the Hon'ble Supreme Court of India, in Rama Chaudhary v. State of Bihar<sup>2</sup>, more specifically mentioned the paragraph Nos.12 & 13, which reads as follows:-

'12.If we consider the above legal principles, the order dated 19.02.2008 of the trial Court summoning the witnesses named in the supplementary charge-sheet cannot be faulted with. It is true that after enquiry and investigation charges were framed on 11.03.2004 and thereafter in the course of trial about 21 witnesses were examined. In the meantime, Police submitted supplementary charge-sheet with certain new materials and on the basis of supplementary charge-sheet, the prosecution filed an application on 12.01.2008 in a pending Sessions Trial No.63 of 2004 to the trial Court for summoning the persons named in the charge-sheet for their examination as prosecution witnesses. On a careful perusal of the application, the trial Court, by order dated 19.02.2008, allowed the same and has summoned those witnesses named in the supplementary charge-sheet.

13.The law does not mandate taking prior permission from the Magistrate for further investigation. It is settled law that carrying out further investigation even after filing of the charge-sheet is a statutory right of the Police. [vide K.Chandrasekar vs. State of

Kerala and Others, (1998) 5 SCC 223.] The material collected in further investigation cannot be rejected only because it has been filed at the stage of trial. The facts and circumstances show that the trial Court is fully justified to summon witnesses examined in the course of further investigation. It is also clear from Section 231 of the Cr.P.C., that the prosecution is entitled to produce any person as witness even though such person is not named in the earlier charge-sheet. All those relevant aspects have been taken note of by the learned Magistrate while summoning the witnesses based on supplementary charge-sheet. This was correctly appreciated by the High Court by rightly rejecting the revision. We fully agree with the said conclusion.''

5.The learned Government Advocate (Crl.side) appearing on behalf of the first respondent/Police would support the petitioner by stating that in this case, the findings of the learned Magistrate that the learned Additional Public Prosecutor filed the application on his own is incorrect and the application was filed on behalf of the prosecution. He would submit that further investigation is necessary to establish the truth in this case.

6.Mr.A.Arasu Ganesan, learned Counsel appearing on behalf of the second respondent/accused would submit that the accused resisted the application before the trial court. He would submit that only the prosecution is entitled to file the application for further investigation. In this case, it is the de-facto complainant who filed the revision before this Court and therefore, the revision is not maintainable. In respect of this proposition, he would rely upon the Judgment of this Court, in M.Viswanathan vs. State and Ors<sup>3</sup>, more specifically mentioned in paragraph No.9, which reads as follows:-

'As per the order of the Hon'ble Supreme Court in the above case, the Hon'ble Supreme Court has clarified the terms re-investigation and further investigation. As per the interpretation, further investigation is ordered, based on the additional material or evidence collected by the Police/Prosecution. However, re-investigation is ordered when the earlier investigation improperly conducted and not sustainable in law, to meet the ends of justice. Therefore, as per the provision of

Section 173(8) of Cr.P.C., the aggrieved parties namely, the Police/Prosecution on collection of additional materials or evidence, the prosecution can seek for further investigation, but the case in hand, the defacto-complainant have no right for further investigation through the second respondent Central Bureau of Investigation.'

7. It is his second contention that after the commencement of the trial, the application was filed. For the same proposition, he would rely upon another Judgment of the Hon'ble Supreme Court of India, in *Reetha Nag vs. State of West Bengal & Ors*<sup>4</sup>, more specifically in paragraph No.20 of the said Judgment, which reads as follows:-

'20. In the instant case, the investigating authorities did not apply for further investigation and it was only upon the application filed by the defacto complainant under Section 173(8), was a direction given by the learned Magistrate to re-investigate the matter. As we have already indicated above, such a course of action was beyond the jurisdictional competence of the Magistrate. Not only was the Magistrate wrong in directing a re-investigation on the application made by the de facto complainant, but he also exceeded his jurisdiction in entertaining the said application filed by the de facto complainant.'

8. He would further submit that this revision preferred by the de-facto complainant that too belatedly should not be entertained by this Court and he prayed for dismissal of the revision petition.

9. I have considered the rival submissions made on either side and perused the material records of this case. The following questions arise for consideration in the present Revision:-

(i) Whether or not the Revision filed by the de-facto complainant against the order of the learned Magistrate dismissing the application filed by the prosecution under Section 173(8) of Cr.P.C., is maintainable?

(ii) Whether the learned Magistrate was right in rejecting the application for further investigation on the ground that the trial is commenced?

Question No.1:-

10. In this case, the application for further investigation is filed by the prosecution and not by the de-facto complainant. As far as the judgments relied upon the learned Counsel for the petitioner in M.Viswanathan vs. State and Ors. (cited supra), it may be seen from the passage extracted above, when the prosecution has filed the Final Report, the de-facto complainant made a prayer that there should further investigation by the Central Bureau of Investigation, which was rejected in that case. As far as the case in Reetha Nag vs. State of West Bengal & Ors. (cited supra) is concerned, it was again holding that the learned Magistrate was not competent in directing the re-investigation and the power is given only to the prosecution under Section 173(8) of Cr.P.C. It is also pertinent to state here that even in respect of the power of the learned Magistrate, the judgment in Reetha Nag vs. State of West Bengal & Ors. (cited supra) has been expressly overruled by the Hon'ble Supreme Court of India in Vinubhai Haribhai Malaviya Versus the State of Gujarat<sup>5</sup>. On the other hand, the application in this case is filed only by the prosecution and if the learned Magistrate had rejected the same, this Court, in exercise of its power under Section 397 of Cr.P.C., is entitled to examine the correctness of the said revisable order.

11. In this connection, the de-facto complainant, by filing the Revision, is only bringing to the notice of this Court. In this context, it is relevant to refer to the dictum of the Hon'ble Supreme Court of India in Rekha Murarka Vs. The State of West Bengal<sup>6</sup>, which is reproduced hereunder, reads as follows:-

"12.5. However, even if there is a situation where the Public Prosecutor fails to highlight some issue of importance despite it having been suggested by the victim's counsel, the victim's counsel may still not be given the unbridled mantle of making oral arguments or examining witnesses. This is because in such cases, he still has a recourse by channelling his questions or arguments through the Judge first. For instance, if the victim's counsel finds that the Public Prosecutor has not examined a witness properly and not incorporated his suggestions either, he may bring certain questions to the notice of the Court. If the Judge finds merit in them, he may take action accordingly by invoking his powers under Section 311 of the CrPC or Section 165 of the Indian Evidence Act, 1872. In this regard, we agree with the observations made by the Tripura High Court in Smt. Uma Saha v. State of Tripura 2014 SCC OnLine Tri 859 that the victim's counsel has a limited right of assisting the

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<sup>5</sup> (2019) 17 SCC 1

<sup>6</sup> (2020) 2 SCC 474

prosecution, which may extend to suggesting questions to the Court or the prosecution, but not putting them by himself.'''

(Emphasis supplied)

Thus, (i) by filing the revision, the defacto complainant is only bringing to the notice of this court of his perception that an erroneous order is passed which according to him will lead to injustice and therefore, would not amount to taking over of the prosecution; (ii) second, there is no express embargo Section 372 of Cr.P.C., for the defacto complainant to invoke the jurisdiction of this Court and therefore the principle of private lawyer taking over the prosecution cannot be extrapolated to the situation on hand. Accordingly, I answer the question that the Revision filed by the de-facto complainant is maintainable and is in order.

Question No.2:-

12. As submitted by the learned Counsel for the petitioner, the Hon'ble Supreme Court of India in Rama Chaudhary v. State of Bihar (cited supra) of which paragraph No.12 is quoted supra, clearly holds that the application for further investigation can be made even after the commencement of trial. Further, the Hon'ble Supreme Court of India in Hasanbhai Valibhai Qureshi v. State of Gujarat<sup>7</sup>.

"13. In Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322 : 1979 SCC (Cri) 479 : AIR 1979 SC 1791] it was observed by this Court that further investigation is not altogether ruled out merely because cognisance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further

investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case."

(emphasis supplied)

13. Similarly, the Hon'ble Supreme Court of India in Ram Lal Narang and Ors. vs. State (Delhi Administration)<sup>8</sup>, held in paragraph No.21 as follows:-

"21. ....In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation."

(emphasis supplied)

Therefore, in view of the same, the application for further investigation is maintainable even after the commencement of trial.

14. As far as the judgment of the Hon'ble Supreme Court of India in Vinubhai Haribhai Malaviya Versus the State of Gujarat (cited supra), though in paragraph No.38, it has been mentioned that the power of Police to further investigate the offence continues till the stage of the trial commences, but, however, it may be seen that even in the said judgment, the views expressed in the above two judgments of the Hon'ble Supreme Court of India in Hasanbhai Valibhai Qureshi v. State of Gujarat (cited supra) and Ram Lal Narang and Ors. vs. State (Delhi Administration) (cited supra) were approved. Further, a learned Judge of this Court, already in Ravi vs. The Inspector of Police, Kothagiri Circle<sup>9</sup>, has considered the said judgment and has held that since the question decided was relating to the power of the learned Magistrate, the question as to whether the further investigation can be carried after commencement of the trial or not not being a question considered in the said judgment, the same cannot be considered as an authoritative pronouncement of the Hon'ble Supreme Court in respect of the question on hand and held that the prosecution is entitled to

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<sup>8</sup> (1979) 2 SCC 322

<sup>9</sup> 2021(4)MLJ(Cr)205

seek for further investigation even after commencement of trial. It is useful to extract the paragraph No.32 of the judgment, which reads as follows:-

"32. In view of the same, this Court holds that the investigating agency/Police invoking Section 173(8) Cr.P.C., at any stage of the criminal proceedings cannot be doubted, objected and faulted with."

15. Section 173(8) of Cr.P.C., does not place any fetter on the Police to conduct further investigation in the case after commencement of trial and whenever they come across any additional information it is just and necessary that the same be brought to the notice of the Court. It is important to note that the Hon'ble Supreme Court of India in Vinubhai Haribhai Malaviya Vs. the State of Gujarat (cited supra) itself has clearly held that the purpose of further investigation is that any person who has wrongly been prosecuted cannot suffer the same and any person, who was actually committed the offence, should not escape punishment. In that view of the matter, since bringing out the truth is the primordial purpose of investigation and the present application serves the said purpose, I am of the view that the application filed by the prosecution even after the commencement of the trial in this case is maintainable and I answered the question accordingly.

Result:-

16. In the result,

(i) The order of the learned Judicial Magistrate No.I, Villupuram in CMP.No.951 of 2021 in C.C.No.220 of 2020 is set aside.

(ii) The application filed in CMP.No.951 of 2021 in C.C.No.220 of 2020 on the file of the Judicial Magistrate No.I, Villupuram is allowed;

(iii) It is made clear that the observations made in this Order are for the purpose of disposing the application for further investigation alone and shall not have any bearing on the merits of the case.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I,  
Villupuram.
2. -do through- The Chief Judicial Magistrate,  
Villupuram.
3. The Station House Officer, (SHO),  
District Crime Branch, Villupuram.
4. The Public Prosecutor,  
High Court of Madras.

Copy to

The Section Officer,  
Criminal Section,  
High Court, Madras - 104.

+2ccs to Mr.A.Arasu Ganesan, Advocate, S.R.No.41691,38600

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