



2024:DHC:7232



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 10th SEPTEMBER, 2024

IN THE MATTER OF:

+ **CRL.REV.P. 665/2022 & CRL.M.A. 20658/2022**

MS. X

.....Petitioner

Through: Ms. Archana Sharma, Advocate with
Petitioner in-person.

versus

THE STATE (NCT OF DELHI) AND ORS.Respondents

Through: Mr. Tarang Srivastava, APP for the
State.

Mr. Ashwani Kumar Singh, Sr. Adv,
Ms. Astha Singh, Mr. Chandan Malav
and Mr. Ashish Anshuman,
Advocates for R-2.

Mr. Kunal Sharma, Ms. Mehaq Rao
and Mr. Yash Punjabi, Advocates for
R-3.

SI Anshul, PS Dwarka North

SI Sangeeta, Delhi Police Academy

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. Petitioner has approached this Court challenging the Order dated 08.08.2022, passed by the learned ACMM, South-West, Dwarka Courts, disposing of the application filed by the Petitioner herein under Section 173(8) Cr.P.C.

2. The facts, leading to the present Petition, are as follows:

- a) It is stated that the Petitioner was working with the Airport Authority of India since 2012 and the Respondent No.2 joined the same workplace in 2017. It is stated that the Respondent



2024:DHC:7232



No.2 and the Petitioner herein became friends through Respondent No.3, who also worked in the same department.

- b) It is stated that throughout the course of their friendship, the Petitioner and Respondents No.2 & 3 used to hang out and used to have food together.
- c) It is stated that on 25.07.2018, after having dinner and alcohol, Respondent No.2 proposed marriage to the Petitioner herein, which was accepted by the Petitioner herein. It is stated that the Petitioner and the Respondent No.2 established physical relations on the same day, i.e. after accepting the marriage proposal of the Respondent No.2. It is stated that after that day, the Petitioner and the Respondent No.2 established physical relations on several occasions and they used to go on trips together.
- d) It is stated that in May, 2020 Respondent No.2 informed the Petitioner herein that his marriage was fixed to some other girl in his native place - Patna by his parents and he cannot decline the same as his parents disapprove of his relationship with the Petitioner herein due to age and caste differences.
- e) It is stated that on 15.06.2020, when the Petitioner was home alone, Respondent No.2 & 3 knocked her door twice and when the Petitioner opened the door, Respondent No.2 pushed her inside and took her to a room. It is stated that when she was resisting, Respondent No.3 threatened her and then left Respondent No.2 and the Petitioner alone in the house after which the Respondent No.2 committed rape on the Petitioner in



2024:DHC:7232



her house and left. It is stated that later on Respondent No.2 and Respondent No.3 sent her a sorry message.

- f) It is stated that the Petitioner's parents asked her not to file a complaint against the Respondent No.2 fearing social stigma.
- g) It is stated that from February to July, 2021, the Petitioner was sexually harassed by Respondent No.2 in her office multiple times after which on 23.07.2021, the Petitioner filed a complaint to the Internal Complaints Committee (ICC) against the Respondent No.2.
- h) On 01.10.2021, the ICC declined to entertain the complaint of the Petitioner against Respondent No.2 against which a protest e-mail was sent by the Petitioner and a Grievance Report was also submitted against the ICC.
- i) On 27.12.2021, FIR No.886/2021 was registered by the Petitioner herein against the Respondents No.2 & 3 herein at Police Station Dwarka North, for offences under Sections 376/506/401/34 IPC.
- j) Respondent No.2 was granted anticipatory bail *vide* Order dated 05.01.2022.
- k) On 15.01.2022, an e-mail was sent by the Petitioner to the Investigating Officer for supplying additional information and for further investigation.
- l) On 17.01.2022, the charge-sheet was filed against the Respondents No.2 & 3 under Sections 376/376D/506/451/34 IPC.
- m) It is stated that the charge-sheet was filed without taking into



2024:DHC:7232



consideration the e-mail sent by the Petitioner to the Investigating Officer.

- n) On 08.08.2022, an application under Section 173 (8) Cr.P.C was filed by the Petitioner before the Trial Court seeking further investigation in the matter. The said application was disposed of vide Order dated 08.08.2022, by the learned ACMM, holding that charge-sheet has been filed, cognizance has been taken and the case has been committed for trial to the Sessions Court. The learned ACMM held that the Court does not have any record to see whether further investigation is required or not as the entire case record has been sent to the Sessions Court for trial. The learned ACMM while disposing off the said application as not maintainable directed the Petitioner herein to approach the Sessions Court. It is this Order which has been challenged in the present Petition.

3. Learned Counsel for the Petitioner contends that submission Report under Section 173 (2) Cr.P.C does not preclude the power of the Magistrate to direct further investigation and submission of supplementary charge-sheet. He further submits that supplementary charge-sheet has yet not been filed and the Court records ought to have been summoned by the learned ACMM. Learned Counsel for the Petitioner also submits that the Sessions Court has no jurisdiction to maintain an application under Section 173(8) Cr.P.C. Learned Counsel for the Petitioner relies on the Judgment passed by the Apex Court in Vinu Bhai Hari Bhai Malviya v. State of Gujarat in which the power and jurisdiction of the Magistrate with respect to Section 156(3) and 173(8) lies. He states that the Apex Court in the said Judgment has held



2024:DHC:7232



that submission of a report under Section 173(2) Cr.P.C. does not preclude the power of the Magistrate to direct further investigation by the Investigating agency and submission of supplementary charge-sheet thereon notwithstanding the Magistrate has taken the cognizance of the offence on a police report submitted under the said provisions. He also states that the learned ACMM was apprised of the abovementioned Judgment. However, the learned ACMM has disposed of the said application directing the Petitioner to approach the Sessions Court. Learned Counsel for the Petitioner submits that the charge-sheet has been filed in haste, i.e. within 18 days of the registration of the FIR and without taking note of the e-mail sent by the Petitioner before filing of the charge-sheet.

4. *Per contra*, learned Counsel for Respondents No.2 and 3 states that the power of further investigation can be exercised *Suo Moto* by the Magistrate depending upon the facts of each case. He states that it is within the discretion of the Magistrate to exercise this power depending upon the facts and circumstances of each case and in accordance with law. He states that Section 209 CrPC provides that the moment the Magistrate commits the case to the Court of Session the Magistrate become *functus officio* to that case. He states that after commitment, Section 193 Cr.P.C comes to play its role. He further states that upon commitment of the case under section 209 Cr.P.C, the Court of Session gets complete and unfettered jurisdiction as the court of original jurisdiction to take cognizance of the offence. He states that in this case, the Magistrate has ceased to have jurisdiction as the case has been committed to the Sessions Court. He further contends that the Petitioner herein by way of e-mail dated 15.01.2022 wants investigation into a separate offence of sexual harassment which is not included in the present



2024:DHC:7232



FIR. He further contends that the present FIR was filed after a considerable delay of one and a half years from the date of occurrence of alleged offence of rape on 15.06.2020. He further submits that the filing of the application under Section 173(8) Cr.P.C is only an afterthought only to delay the trial proceedings as the e-mail does not contain any new information and the entire record of the alleged offence is mentioned in the charge-sheet. He states that the ICC in its investigation report has observed that the complaints dated 23.07.2021, 28.07.2021 and 04.08.2021, filed by the Petitioner herein do not reflect any incident which would constitute sexual harassment of women at workplace and Respondent No.2 was exonerated from all allegations levelled against him.

5. Heard the learned Counsels for the parties and perused the material on record.

6. A perusal of the impugned Order shows that the only reason given by the learned Metropolitan Magistrate, while dismissing the application filed by the Petitioner, is that since the case has been committed to the Sessions Court for trial, he does not have any record of the case to see as to whether any further investigation is required in the matter or not. The learned Metropolitan Magistrate was of the opinion that it would be appropriate for the Petitioner to approach the Sessions Court seeking further investigation in the matter. The Apex Court in Ram Lal Narang v. State (Delhi Admn.), (1979) 2 SCC 322, has held that when defective investigation comes to light during the course of trial, it can be cured by ordering further investigation, if circumstances permit to do so. It is well settled that even if the Police does not come forward to seek formal permission to make further investigation when fresh facts comes to light of the Trial Court, the Trial Court cannot be



2024:DHC:7232



a mere spectator and raise its hands that the investigation is complete. The purpose of any trial is to unearth truth. The Apex Court in Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347, has observed as under:

“11. Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.

12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognisance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.

*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)

7. Similarly, the Apex Court in Hemant Dhasmana v. CBI, (2001) 7 SCC 536, has observed as under:

“16. Although the said sub-section does not, in specific terms, mention about the powers of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by a court which has the jurisdiction to do so, it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation, the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back on that track. If they come to the same conclusion, it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the Special Judge's direction would be of



advantage for the ends of justice. It is too premature for the High Court to predict that the investigating officer would not be able to collect any further material at all. That is an area which should have been left to the investigating officer to survey and recheck.

17. In Bhagwant Singh v. Commr. of Police [(1985) 2 SCC 537 : 1985 SCC (Cri) 267] a three-Judge Bench of this Court has said, though in a slightly different context, that three options are open to the court on receipt of a report under Section 173(2) of the Code, when such report states that no offence has been committed by the persons accused in the complaint. They are: (SCC p. 542, para 4)

(1) The court may accept the report and drop the proceedings; or

(2) the court may disagree with the report and take cognizance of the offence and issue process if it takes the view that there is sufficient ground for proceeding further; or

(3) the court may direct further investigation to be made by the police.

18. Another three-Judge Bench in India Carat (P) Ltd. v. State of Karnataka [(1989) 2 SCC 132 : 1989 SCC (Cri) 306] has stated thus: (SCC pp. 139-40, para 16)

“16. The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the



investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused.”

19. *In Union Public Service Commission v. S. Papaiah [(1997) 7 SCC 614 : 1997 SCC (Cri) 1112] a two-Judge Bench considered the scope of Section 173(8) of the Code in extenso. Dr. A.S. Anand, J. (as the learned Chief Justice then was) after extracting Section 173(8) of the Code has observed thus: (SCC pp. 620-21, para 13)*

“The Magistrate could, thus in exercise of the powers under Section 173(8) CrPC direct the CBI to ‘further investigate’ the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the ‘new’ report to be submitted by the investigating officer would be governed by sub-sections (2) to (6) of Section 173 CrPC.””

8. In the facts of the present case, it is admitted that the Petitioner had sent an e-mail dated 15.01.2022 to the Investigating Officer giving information as to how an offence under Section 354 IPC is made out against the Petitioner and this e-mail has not been taken into consideration in the charge-sheet filed on 17.01.2022 and no investigation has been carried out



2024:DHC:7232



by the police on the information provided by the Petitioner. It was the duty of the Police to investigate into the matter after receiving the e-mail and file a supplementary charge-sheet. It was also the duty of the Magistrate to take cognizance of the e-mail and order further investigation which the Magistrate has failed to do so. The Magistrate ought not to have raised his hands and state that since the matter has been committed to the Sessions Court, he has lost the jurisdiction to order for further investigation. The Magistrate had the power to order the Police for further investigation and the Police could have filed the Supplementary charge-sheet before the Sessions Court.

9. The complainant had brought to the notice of the Investigating Officer certain new facts, which were ignored by the Investigating Officer while filing the charge-sheet. The Magistrate erred in dismissing the application of the Complainant seeking further investigation, citing lack of jurisdiction.

10. Under Section 482 Cr.P.C. the High Court has inherent powers to pass orders to prevent abuse of process of law or to secure ends of justice.

11. The Apex Court in Devendra Nath Singh v. State of Bihar, (2023) 1 SCC 48, has held as under:

“45.1. The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial

45.4. Even when the wide powers of the High Court in terms of Section 482CrPC are recognised for ordering further investigation or reinvestigation, such powers



are to be exercised sparingly, with circumspection, and in exceptional cases.

45.3. Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8)CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8)CrPC do not limit or affect such powers of the High Court to pass an order under Section 482CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.”

12. In view of the law laid down by the Apex Court and in the interest of justice, instead of directing the Sessions Court where the case stands committed to pass necessary directions for further investigation into the matter, this Court deems it fit to exercise its jurisdiction under Section 482 Cr.P.C., which empowers the High Court to intervene in criminal proceedings, and direct the Police to investigate further in the case based on new evidence given by the Complainant vide her e-mail dated 15.01.2022. The Police is directed to conduct investigation into the matter and file a Supplementary Charge-sheet before the Sessions Court within six weeks from today. The Sessions Court shall consider the Supplementary Charge-sheet and proceed accordingly.

13. With these directions, the petition is disposed of along with pending application(s), if any.



2024:DHC:7232



14. It is made clear that this order has been passed to ensure a fair and thorough investigation, and it is made clear that this Order shall not be construed as an expression of opinion on the merits of the case.

SUBRAMONIUM PRASAD, J

SEPTEMBER 10, 2024

Rahul

Signature Not Verified

Digitally Signed By: HARIOM
SINGH KIRMOJIYA
Signing Date: 19.09.2024
20:51:36

CRL.REV.P. 665/2022

Page 13 of 13