

REETA NAG
v.
STATE OF WEST BENGAL & ORS.
(Slp (Crl.) No. 3062 of 2007)

AUGUST 13, 2009

[ALTAMAS KABIR AND CYRIAC JOSEPH, JJ.]

[2009] 13 SCR 276

The Order of the Court was delivered by

ORDER

ALTAMAS KABIR, J. 1. In this Special Leave Petition we are called upon to decide whether after charge-sheet has been filed by the investigating agency under Section 173(2) of the Code of Criminal Procedure, hereinafter referred to as “Cr.P.C.”, and charge has been framed against some of the accused on the basis thereof and the other co-accused have been discharged, the Magistrate can direct the investigating authorities to conduct a re-investigation or even further investigation under Sub-section (8) of Section 173 Cr.P.C.

2. In the instant case, on the basis of a charge-sheet filed by the Investigating Officer, the Sub-Divisional Judicial Magistrate, Asansol, West Bengal, on 9th July, 2004, took cognizance of offences alleged to have been committed by six of the original sixteen accused persons under Sections 467/468/120B of the Indian Penal Code. The other ten accused persons were discharged on the prayer of the Investigating Officer. Subsequently, on 20th August, 2004, while considering an application filed by the de facto complainant, who is the petitioner before us, under Section 173(8) Cr.P.C., praying for reinvestigation of the case, the learned Magistrate directed the Officer in-Charge,

Asansol (South) Police Station, to reinvestigate the case and to submit a report.

3. The Respondents No.2 and 3 filed an application under Section 482 Cr.P.C., being CRR No.2318 of 2004, before the Calcutta High Court, for quashing the said order and the same was allowed by a judgment and order dated 31st January, 2007, which is the subject matter of challenge in the present Special Leave Petition

4. Before the learned Single Judge of the Calcutta High Court it was submitted on behalf of the above-mentioned respondents that after framing charge against six of the accused persons and discharging the rest, the learned Magistrate had no jurisdiction to order a reinvestigation as had been done in the instant case, having regard to the provisions of Section 362 Cr.P.C. as considered by this Court in the case of *Sooraj Devi vs. Pyare Lal & Anr.* [(1981) 1 SCC 500]. The said submission was accepted by the High Court.

5. Apart from the above, the learned Single Judge also took the view that merely because out of sixteen accused persons ten had been discharged, it did not necessarily mean that they could not be tried subsequently. The learned Judge then referred to the provisions of Section 319 Cr.P.C. which empowers the court to proceed against the other persons if any material is disclosed against them during the trial. The learned Single Judge observed that although the Magistrate could not direct reinvestigation on the basis of an application made by the de facto complainant and that too on the technical ground of non-service of notice upon him, he could take recourse to Section 319 Cr.P.C. at the stage of trial.

6. Having regard to the view taken by him, the learned Single Judge by his order dated 31st January, 2007, allowed the revisional application and directed the trial court to proceed with the case, in accordance with law.

7. Appearing on behalf of the petitioner, Mr. Jaideep Gupta, learned Senior Advocate, urged that the application filed on behalf of the petitioner herein was really for the purpose of further investigation, as contemplated under Section 173(8) Cr.P.C., and not for reinvestigation, which expression had been inadvertently included in the prayer of the said application. Mr. Gupta submitted that the use of the expression "reinvestigation" had been taken literally and a decision had been rendered on the basis thereof. Mr. Gupta urged that the application filed by the petitioner ought to have been considered for the purpose of further investigation as contemplated under Section 173(8) Cr.P.C.

8. Mr. Gupta submitted that on a plain reading of Sub-section (8) of Section 173 Cr.P.C., it cannot be argued that a further investigation could not be directed by the learned Magistrate even if the charge-sheet had been filed and charges had been framed. Mr. Gupta urged that if such a procedure was not barred under the law, the order passed by the learned Magistrate on 20th August, 2004 could not be faulted.

9. Referring to the decision of this Court in *Union Public Service Commission vs. S. Papaiah & Ors.* [(1997) 7 SCC 614], learned counsel submitted that in the said case this Court had occasion to consider in detail the provisions of Section 173(8) Cr.P.C. and this Court had held that under Section 173(8) Cr.P.C. the Magistrate could direct further investigation to collect further

evidence and the new report to be submitted by the Investigating Officer would be governed by Sub-section (2) and (6) of Section 173 Cr.P.C. Mr. Gupta pointed out that in the said case, this Court had occasion to observe that by not ordering such further investigation on account of the facts, the learned Magistrate had, in fact, failed to exercise the jurisdiction vested in him. Setting aside the order of the learned Magistrate accepting the Final Report, this Court remitted the matter to the learned Metropolitan Magistrate to issue directions under Section 173(8) Cr.P.C. to the Central Bureau of Investigation (C.B.I.) to investigate the case further and to collect further evidence in the larger public interest in order to ensure the purity of the examination conducted by the Union Public Service Commission, hereinafter referred to as "U.P.S.C.", for All India Services, to select the best talent.

10. Reference was also made to the decision of this Court in *State of Rajasthan vs. Aruna Devi & Ors.* [(1995) 1 SCC 1], wherein it was held that acceptance of Final Report by the Magistrate does not debar him from taking cognizance of the offence if on further investigation fresh material came to be discovered.

11. Mr. Gupta urged that since in Sub-section (8) of Section 173 Cr.P.C. there is no express prohibition, the Magistrate was always within his jurisdiction to order a further investigation into the question of discharge of ten of the sixteen accused persons. Mr. Gupta submitted that the order of the High Court was contrary to the provisions of Section 173(8) Cr.P.C. and was, therefore, liable to be quashed.

12. Mr. K.K. Venugopal, learned Senior Advocate, on the other hand, urged that the order of the learned Magistrate, which had been quashed by High Court, could not be supported since it had been passed by the learned Magistrate without jurisdiction. Re-emphasizing the provisions of Section 362 Cr.P.C., Mr. Venugopal submitted that the order passed by the learned Magistrate on 20th August, 2004, amounted to review of his order dated 9th July, 2004, which he was not competent to do. Mr. Venugopal submitted that Magistrates being creatures of statute, cannot act in excess of the powers vested in them by the statute. Mr. Venugopal submitted that even if the intention was to direct further investigation, the order impugned in the Special Leave Petition could not be sustained having been passed in excess of the jurisdiction vested in the learned Magistrate.

13. Apart from the above, Mr. Venugopal also submitted that once a charge-sheet had been filed and charges had been framed against some of the accused, it was no longer available to the learned Magistrate to order even a further investigation as contemplated under Section 173(8) Cr.P.C., much less a reinvestigation, in view of the bar imposed under Section 362 Cr.P.C. In support of his submissions, Mr. Venugopal referred to the decision of this Court in *Randhir Singh Rana vs. State (Delhi Administration)* [(1997) 1 SCC 361], wherein this Court, while considering the provisions of Section 156(3), 173(8), 190, 200 and 204 Cr.P.C. had held that after taking cognizance of an incident on the basis of a police report and after appearance of the accused, a Judicial Magistrate cannot on his own order further investigation in the case, and if an order of discharge is passed, nothing would prevent the police from making further investigation on its own.

14. Mr. Venugopal submitted that the view taken by the High Court was on the basis of the settled position of law that having taken cognizance of an offence, the magistrate had no jurisdiction to direct a reinvestigation of the case under Sub-section (8) of Section 173 Cr.P.C. On the other hand, the High Court made it clear that if during the trial any fresh material surfaced against the discharged persons, the magistrate could take recourse to Section 319 Cr.P.C. It was urged that the High Court should have kept in mind the well-settled principle that whatever was required to be done under a statute, could only be done in the manner prescribed by the statute and in no other manner.

15. Although, Mr. Jaideep Gupta based his submissions on the premise that the application filed by the petitioner (de facto complainant) was for a further investigation, the fact remains that the same was made for a direction for reinvestigation which was allowed by the magistrate by his order dated 20th August, 2004. By virtue of the said order, the magistrate directed the Officer-in-Charge, Asansol (South) Police Station, to reinvestigate the case and to submit a report, which the Magistrate could not do having regard to the fact that he had already passed an order of discharge of ten of the accused persons and such an order is contrary to the provisions of Section 362 Cr.P.C. As has been rightly held by the High Court, having regard to the decisions of this Court in the *Master Construction Co. (P) Ltd.'s* case [AIR 1966 SC 1047] and the *Sankatha Singh's* case [AIR 1962 SC 1028], which were reflected in *Sooraj Devi's* case (supra), having passed a final order framing charge against six persons and discharging the remaining accused persons, it was no longer within the Magistrate's jurisdiction to direct a re-investigation into the case.

16. The aforesaid question was considered by a three Judge Bench of this Court in *Adalat Prasad vs. Rooplal Jindal* [(2004) 7 SCC 338], on a reference made with regard to the correctness of the law laid down by the Supreme Court in *K.M. Mathew vs. State of Kerala* [(1992) 1 SCC 217], where it was held that the Court issuing summons was entitled to recall the same on being satisfied that the issuance of summons was not in accordance with law. Holding that the said decision did not lay down the correct law, this Court held that the Magistrate had no jurisdiction to recall his order issuing process in the absence of any power of review or inherent power which did not inhere in the subordinate Criminal Courts, but was available to the High Court under Section 482 Cr.P.C.

17. In addition to the above, the decision of this Court in *Randhir Singh Rana's* case (supra) also makes it clear that after taking cognizance of an offence on the basis of a police report and after appearance of the accused, a Judicial Magistrate cannot of his own order further investigation in the case, though such an order could be passed on the application of the investigating authorities. The view expressed in *Randhir Singh Rana's* case (supra) finds support in the decision of this Court in the case of *Dinesh Dalmia vs. CBI* [(2007) 8 SCC 770], wherein while considering various provisions of the Criminal Procedure Code including Section 173 thereof, this Court held that so long as the charge-sheet is not filed within the meaning of Section 173(2) Cr.P.C., investigation remains pending. But, even the filing of a charge-sheet did not preclude an Investigating Officer from carrying on further investigation in terms of Section 173(8) Cr.P.C. It was also observed that the power of the Investigating Officer to make a prayer for conducting further investigation in terms of

Section 173(8) of the Code is not taken away only because a charge-sheet has been filed under Section 173(2) and a further investigation is permissible even if cognizance has been taken by the Magistrate.

18. Although, the decision in *Dinesh Dalmia's* case (supra) was rendered in the context of the applicability of Section 167(2) and the proviso thereto, when a charge-sheet has not been filed, the interpretation of the provisions of Section 173(8) in the said decision is relevant in the facts of this case also.

19. What emerges from the above-mentioned decisions of this Court is that once a charge-sheet is filed under Section 173(2) Cr.P.C. and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173(8). The Magistrate cannot suo moto direct a further investigation under Section 173(8) Cr.P.C. or direct a re-investigation into a case on account of the bar of Section 167(2) of the Code.

20. In the instant case, the investigating authorities did not apply for further investigation and it was only upon the application filed by the de facto 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.

21. Since no application had been made by the investigating authorities for conducting further investigation as permitted under Section 173(8) Cr.P.C., the other course of action open to the Magistrate as indicated by the High Court was to take recourse to the provisions of Section 319 of the Code at the stage of trial.

22. We, therefore, see no reason to interfere with the order of the High Court since it will always be available to the Magistrate to take recourse to the provisions of Section 319 if any material is disclosed during the examination of the witnesses during the trial.

23. The Special Leave Petition is, accordingly, dismissed, but there will be no order as to costs.

