
(2013) 08 AP CK 0092

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 4440 of 2013

A. Bharat

APPELLANT

Vs

The State of Andhra Pradesh and G. Indra Karan

RESPONDENT

Date of Decision : 14-08-2013

Acts Referred:

Citation : (2014) 1 ALD(Cri) 211 : (2014) 1 ALD(Cri) 147

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : M.V. Subba Reddy, for the Appellant;

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This criminal petition is filed u/s 482 of Cr.P.C. to quash the investigation in Crime No. 27 of 2013 of Police Station, CCS, Hyderabad against A-4. I have heard the learned counsel appearing for the petitioner-A-4 and the learned Additional Public Prosecutor appearing for the State.

2. The brief facts of the case are that the de facto complainant G. Inderkaran went to the house of his brother-in-law A.S. Ramprasad, hereinafter referred to as "the deceased" at about 8.30 P.M. on 06.03.2010 and discussed with him about the theft of some cheques and other articles at the residence of the deceased. He returned back to his house and at about 11 P.M. he received information that Ramprasad died. Suspecting about the cause of sudden death of the deceased, he gave a report to the Station House Officer, Chikkadpally on 07.03.2010. Basing on the said report, a case in Crime No. 95 of 2010 was registered u/s 174 Cr.P.C. and the cause of death was enquired into. The police after obtaining the post mortem report of the deceased, which indicated that the death of the deceased was a natural death, closed the case file.

3. The de facto complainant lodged a complaint before the XII Additional Chief Metropolitan Magistrate, Hyderabad stating that A-1 to A-5 colluded with each other, cheated Ramprasad, committed forgery of his signature on cheques and

other documents, the learned Magistrate forwarded the complaint to the police, CCS, Hyderabad for investigation. Basing on the complaint, the police registered a case in Crime No. 186 of 2010 on 20.07.2010 for the offences under Sections 380, 420, 467, 468, 471, r/w 120B, 448, and 506 of IPC. In the said case, V. Sandeep Chowdhary A-1 was arrested and according to the police he gave a confession during the course of investigation in the aforesaid case to the effect that A-1 to A-4 conspired together and hatched a plan to grab the house property of the deceased Ramprasad situated in Chikkadpally, Hyderabad measuring about 520 Square Yards, became close to the deceased and came to know that the deceased was having lakhs of rupees in the bank and property worth crores of rupees, A-1 and A-2 as per the directions of A-3 to A-5 started giving sleeping pills to the deceased when he fell asleep, A-1 held stolen the cheques, FDRs, PAN cards, documents etc. from the house of the deceased and had withdrawn an amount of Rs. 10.54 lakhs from various banks. One month thereafter, the deceased came to know about the offence committed by the accused and withdrawal of the amount from the bank by forging his signatures. He summoned the de facto complainant and other persons and questioned the accused about the fraudulent withdrawal of money from the bank. A-1 voluntarily admitted his guilt and promised to return the amount within a month but A-1 did not return the amount and dodged the issue on one pretext or the other.

4. Subsequently, all the accused conspired with each other, and decided to eliminate the deceased, entered into the house of the deceased on the night of 06.03.2010, switched off the lights of front room, then A-1 and A-2 pounced upon the deceased, overpowered him and forcibly blocked his nose with a kerchief which is dipped in chloroform, the deceased struggled for some time and died on the spot, A-1 and A-2 lifted the dead body and sped away from the spot. Thus, the confession made by A-1 as well as A-2 disclosed the conspiracy of all the accused to kill the deceased and to share the amount of the deceased which had been withdrawn from the bank. The confessional statements of A-1 and A-2 also disclosed that they managed the doctors who conducted the post mortem over the body of the deceased to give a post mortem report stating that the death of the deceased is a natural death and accordingly got the crime registered u/s 174 Cr.P.C. closed.

5. Learned counsel appearing for the petitioner would contend that the police already conducted the investigation and filed the report stating that the death is a natural death and they cannot reinvestigate into the offence. In support of his contention, he relied on Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, wherein it was held that the Magistrate before whom a report u/s 173(2) Cr.P.C. is filed, is empowered to direct "further investigation", but he has no power to direct "reinvestigation or "fresh investigation" (de novo). Only the superior Courts, i.e. the High Court or the Supreme Court have the jurisdiction u/s 482 Cr.P.C. or even under Article 226 of the Constitution of India to direct further investigation fresh or de novo investigation or even reinvestigation.

6. On the other hand, the learned Public Prosecutor would submit that merely because the crime registered was closed on the ground that the death of the deceased was a natural death, it cannot be said that the police have no power to investigate into the offence after fresh material with regard to the commission of the offence u/s 302 IPC came to their notice while investigating into another crime. Reliance is placed by the learned Public Prosecutor on Mahesh Chand Vs. B. Janardhan Reddy and Another, wherein the Supreme Court held as follows:

It is settled law that there is no statutory bar in filing a second complaint on the same facts. In a case where a previous complaint is dismissed without assigning any reasons, the Magistrate u/s 204 Cr.P.C. may take cognizance of an offence and issue process if there is sufficient ground for proceeding. As held in Pramatha Nath Talukdar case second complaint could be dismissed after a decision has been given against the complainant in previous matter upon a full consideration of his case. Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or where new facts which could not, with reasonable diligence, have been brought on record in the previous proceedings, have been adduced.

7. I have perused the aforesaid two judgments rendered by the Hon'ble Supreme Court and the material available on record. In my view, the facts of the present case are different to the facts of the case before the Supreme Court in the judgment first cited supra. In the instant case, Inderkaran, the brother-in-law of the deceased reported to the police expressing suspicion about the cause of death of the deceased, on his report, the police registered a case u/s 174 Cr.P.C., after obtaining the post mortem report which disclosed that the death of the deceased is a natural death, the police closed the case by filing a report stating that the death of the deceased is a natural death and no investigation is required.

8. The object of Section 174 Cr.P.C. is to ascertain the cause of death. The provision provides for investigation by the police into the unnatural or suspicious death. In the instant case, pursuant to registering the case u/s 174 Cr.P.C. basing on the report of the brother-in-law of the deceased was only limited to ascertain the cause of death of the deceased. By merely getting the inquest conducted and obtaining the post mortem report, the police closed the case holding that the death of the deceased was a natural death. Therefore, there is no full-fledged investigation basing on the report lodged by the brother-in-law of the de facto complainant initially. u/s 156 Cr.P.C. any officer incharge of a police station has the power to investigate into the cognizable offence without the order of a Magistrate. Therefore, the power to investigate into the cognizable offence by the police officer is not dependant on the authorization by any Court. In the instant case, the police closed the case accepting the post mortem report which showed that the death of the deceased was a natural death. Therefore, the police

did not investigate into the offence on the basis that a cognizable offence has been committed. The Magistrate forwarded the complaint lodged by the de facto complainant under Sections 380, 420, 467, 468, 471 r/w 120B, 448 and 506 of IPC for investigation by the police. The allegation in the said complaint was that the accused therein committed theft of cheques and other documents belonging to the deceased and have withdrawn the amount of Rs. 10.54 lakhs by forging the signatures of the deceased. Even the de facto complainant did not know at the time of the said complaint that the accused killed the deceased, and it came to light only in the course of investigation after registering a case in Crime No. 186 of 2010 pursuant to the said complaint forwarded by the learned Magistrate. Therefore, for the first time in the course of investigation in the said case, the police came to know about the commission of offence u/s 302 of IPC by the accused as A-1 and A-2 confessed before them that they conspired with the other accused, and killed the deceased in the manner aforesaid. Thereafter, the investigation commenced by the police on the basis of commission of cognizable offence by the accused. For the first time, they came to know about the commission of offence punishable u/s 302 of IPC by the accused. Therefore, the investigation cannot be said to be reinvestigation or de novo investigation. The police are vested with the power to investigate into the offence even without the authorisation of any Court since it is a fresh investigation but not further investigation. Since it is only a fresh investigation, the report filed by the police in the instant case earlier is only u/s 174 Cr.P.C. and it relates to cause of the death of the deceased, but not a report after investigation u/s 156 of Cr.P.C. I see absolutely no force in the contention urged by the learned counsel appearing for the petitioner that without the authorization by superior Court, the police cannot investigate into the offence u/s 302 r/w 34 of IPC in the present case. The present petition is devoid of merit and accordingly, the same is dismissed. Miscellaneous petitions, if any, filed in this petition shall stand closed.