
(2015) 01 JH CK 0002
In the Jharkhand High Court
Case No : Cr.M.P. No. 2802 of 2014

Bachna Singh and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 05-01-2015

Acts Referred:

Arms Act, 1959 — Section 27
Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(2), 173(8), 311, 482
General Clauses Act, 1897 — Section 21, 6
Penal Code, 1860 (IPC) — Section 120-B, 302, 34, 376, 386

Citation : (2015) 2 AJR 343

Hon'ble Judges : Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : A.K. Kashyap, Senior Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Rongon Mukhopadhyay, J.—Heard Shri A.K. Kashyap, learned senior counsel appearing on behalf of the petitioners, learned counsel appearing on behalf of the State as well as Mr. S.K. Murari, learned counsel appearing on behalf of the informant.

2. In this application, the prayer of the petitioners is for quashing the order dated 20.11.2014, passed by the learned Additional Sessions Judge-VIth, Dhanbad in Sessions Trial No. 7/2000, whereby and whereunder the application filed on behalf of the petitioners under Section 311 of Cr.P.C was rejected.

3. The prosecution story in brief is that on 15.7.1998, the deceased-Binod Singh was traveling on an ambassador car, which was being driven by Manu Ansari and it is said that when they reached near Shahid Bhagat Singh Chowk, Katras, three persons in a Maruti Van reached there and fired at Binod Singh and thereafter fled away. It was also alleged that two accused persons could be identified and the informant claimed that both the named accused persons along with Bachha Singh (petitioner No. 1) had hatched a conspiracy to kill the deceased-Binod

Singh.

After investigation, chargesheet was submitted by the police on 16.09.1998 against the accused persons under sections 302/120-B/34 of the Indian Penal Code and section 27 of the Arms Act and upon submission of the chargesheet, cognizance was taken for the offences mentioned above by the learned Chief Judicial Magistrate, Dhanbad.

4. It appears that since the Deputy Inspector General of Crime Investigation Department (C.I.D.) had come to the conclusion that the investigation into the offence was not properly conducted by the police, as such vide Memo No. 2838/C dated 23.10.1999, the investigation of the case was handed over to the C.I.D. However, the C.I.D. closed the investigation finding that the District Police had submitted final form after proper enquiry. After commitment of the case to the Court of Sessions, the same was registered as Sessions Trial No. 7 of 2000 and subsequent thereto charge was framed on 23.04.2004 and on examination of the prosecution witnesses, the prosecution evidence was closed on 22.05.2012.

5. Learned senior counsel for the petitioners has assailed the impugned order dated 20.11.2014, passed by the learned Additional Sessions Judge-VIIth, Dhanbad by submitting that since the C.I.D. had also conducted an investigation pursuant to the order of the Deputy Inspector General, C.I.D., as such for a just decision of the case, it is necessary to examine Shri J.P. Mallick, the then Deputy Superintendent of Police, C.I.D., who had conducted the investigation and therefore the application preferred by the petitioners under section 311 of Cr.P.C. should have been allowed by the learned trial court. He has further submitted that the Investigating Officer of C.I.D. had submitted the closure report showing the case as untrue against the petitioners and as such the examination of the Investigating Officer is absolutely necessary to arrive at a correct conclusion. He has also submitted that in the facts and circumstances of the case, the Investigating Officer of C.I.D., who had conducted the investigation in the present case is a material witness and his non examination will greatly prejudice the petitioners.

6. Learned senior counsel for the petitioners has also referred to section 311 of the Code of Criminal Procedure and has submitted that the second part of the provision mandates the court to summon and examine or recall and reexamine any such person if his evidence appears to it to be essential to the just decision of the case and therefore he submits that it was incumbent upon the learned trial court to allow the application under section 311 Cr.P.C. of the petitioners since the evidence of the Investigating Officer of C.I.D. is essential to the just decision of the case.

7. Augmenting his argument, learned senior counsel for the petitioners has referred to some judgments of the Hon"ble Supreme Court, which have been reported in State of A.P. Vs. A.S. Peter, . He has also referred to a judgment of this Court reported in 2008 (3) JCR 113 (Jhr).

8. Learned counsel for the informant on the other hand has supported the impugned order dated 20.11.2014 by submitting that the application preferred by the petitioners under section 311 Cr.P.C. was at a belated stage when the case has been fixed for argument. He has also submitted that several opportunities were given to the petitioners to produce defence witnesses but the petitioners did not ever endeavour to avail the opportunity of examining Shri J.P. Mallick, Dy. S.p. for his evidence as a defence witness. He has submitted that in fact Shri J.P. Mallick, Dy.S.P., C.I.D., is not at all a material witness since as per his report, no further investigation was required to be done by the C.I.D. and the final form, which was submitted by the District Police was supported by the C.I.D. Therefore, he submits that the closure report of C.I.D. was at the nascent stage of the investigation and since the I.O., C.I.D. is not a material witness in the case, his evidence is not at all necessary and the same does not come within the purview of the second part of the provisions of section 311 of Cr.P.C.

9. In the case of State of A.P. Vs. A.S. Peter, , which has been referred to by learned senior counsel for the petitioners, the Hon"ble Supreme Court while considering the powers of Magistrate for directing further investigation had held thus:--

"9. Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge sheet is a statutory right of the police. A distinction also exists between further investigation and reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not.

18. Reliance placed by the High Court as also by Mr. Rao on K. Chandrashekhar is misplaced. Therein investigation had been carried out by the Central Bureau of Investigation with the consent of the State. However, the State withdrew the same. The question which arose for consideration therein was as to whether it was permissible for the State to do so. The said issue was answered in the negative stating that the investigating officer must be directed to complete the investigation. In the aforementioned situation it was opined: (SCC p. 237, para 24)

24. From a plain reading of the above section It is evident that even after submission of police report under Sub-section (2) on completion of investigation, the police has a right of "further" investigation under Sub-section (8) but not "fresh investigation" or" reinvestigation". That the Government of Kerala was also conscious of this position is evident from the fact that though initially it stated in the Explanatory Note of their Notification dated 27.6.1996(quoted earlier) that the consent was being withdrawn In public interest to order a "reinvestigation" of the case by a special team of the State police officers, in the amendatory Notification (quoted earlier) It made it clear that they wanted a "further Investigation of the case" Instead of reinvestigation of the case". The dictionary meaning of "further" (when used as an adjective) is "additional; more; supplemental. "Further" investigation therefore is the continuation of the earlier

investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that Sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a "further" report or reports-and not fresh report or reports- regarding the "further" evidence obtained during such Investigation. Once it is accepted -and it has got to be accepted in view of the judgment in Kazi Lhendup Dorji- that an investigation undertaken by CBI pursuant to a consent granted under Section 6 of the Act is to be completed, notwithstanding withdrawal of the consent and that "further investigation" is a continuation of such investigation which culminates in a further police report under Sub-section (8) of Section 173, it necessarily means that withdrawal of consent in the instant case would not entitle the State Police, to further investigate into the case. To put it differently, if any further investigation is to be made it is CBI alone which can do so, for it was entrusted to investigate into the case by the State Government. Resultantly, the Notification issued withdrawing the consent to enable the State Police to further investigate into the case is patently invalid and unsustainable in law. In view of this finding of ours we need not go into the questions, whether Section 21 of the General Clauses Act applies to the consent given under Section 6 of the Act and whether consent given for investigating into Crime No. 246 of 1994 was redundant in view of the general consent earlier given by the State of Kerala."

We do not see any application of the said ratio herein".

10. In the case of Radhey Shyam Vs. Kunj Behari and Others, is quoted hereunder:--

"8. On a consideration of the matter, we find the grievance of the appellants to be well founded. The High Court has failed to give due consideration to the fact that the investigation of the case had been handed over to the C.I.D. because of unsatisfactory investigation by the authorities of Todabhim Police Station. As such the C.I.D. was under an obligation to examine once again the witnesses already examined and to examine other persons whom the original investigating agency ought to have examined but had failed to examine. In the very nature of things, a fuller and effective investigation by the C.I.D. is bound to bring out several materials not discovered or recorded by the first investigating agency. As to how much acceptance has to be given to the Investigation done by the C.I.D. and the statements of witnesses recorded by its officers is a matter which can be determined only after the trial is held and the witnesses and the investigating officer adduce their evidence on oath. As regards the non-mention of the date of recording of the statement of Sravan Lal, a finding can be recorded on the omission only after the C.I.D. officer who recorded the statement is given opportunity to explain the reason for the omission. In so far as the High Court's view that "in the interest of justice, it is the duty of the Court under S. 482, Cr.P.C. to go into the merits of the evidence and appreciate correctly the

documents and the statements filed by the police", we may only refer to Mohd. Akbar Dar and Others Vs. State of Jammu and Kashmir and Others, , where it has been pointed out that at the stage of framing of charges, meticulous consideration of evidence and materials by Court is not required." 11. In the case of Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, , the Hon"ble Supreme Court while considering the kinds of investigation/investigation reports which are envisaged and permissible had formulated the following questions:--

"1.2 Whether the Central Bureau of Investigation (for short "CBI") is empowered to conduct "fresh"/"reinvestigation" when the cognizance has already been taken by the court of competent jurisdiction on the basis of a police report under Section 173 of the Code?" 12. The answer to the aforesaid question has been referred to at paragraph 53 of the judgment, which reads as follows"-

"53. The court of competent jurisdiction is duty-bound to consider all reports, entire records and documents submitted therewith by the Investigating agency as Its report in terms of Section 173(2) of the Code. This rule is subject to only the following exceptions:

(a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;

(b) Where an order is passed by the higher courts in exercise of its extraordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on "fresh investigation" or "reinvestigation" or any part of it be excluded, struck off the court record and be treated as non est."

13. In the case of Radhika Raman Prasad Singh and Others Vs. State of Jharkhand and Another, , this Court held as follows:--

"9. From the facts noticed above, it is clear that before the CID took up the investigation, the learned Magistrate had already taken cognizance for the offences under Sections 376, 386 and 120-B of the Indian Penal Code on the basis of the charge sheet submitted by the District Police and, therefore, even if subsequently, the CID submitted any final report finding the case to be maliciously false, it does not cut any ice and the order taking cognizance by the learned Magistrate cannot be said to be illegal or Invalid in any manner. The submissions of the learned counsel for the petitioners that the continuance of the criminal prosecution after submission of the final report by the CID would be an abuse of the process of the Court cannot be accepted and, hence, is rejected. What would be the value of the final report submitted by the CID has to be considered by the trial Court at an appropriate stage of the trial. There does not appear to be any illegality or irregularities in the matter and as such, no interference is required by this Court." 14. The aforesaid judgments, which have been cited by the learned senior counsel for the petitioners, are to substantiate the fact that the investigation done by the C.I.D. with respect to the same

offence, for which the District Police had also conducted an investigation and had submitted chargesheet against the petitioners is of primary importance and the report of C.I.D. cannot be discarded. However, reference in this connection may be made to the order dated 18.03.2004, passed in W.P.(Cr) No. 271 of 2003 with respect to the same petitioners, in which challenge was made to the order of commitment made on the basis of the charge sheet submitted by the District Police and this Court had categorically considered every aspect of the matter and had held as follows:--

"In this present case, the District Police after investigation submitted final form. The learned C.J.M. on the basis of the final report submitted, has taken cognizance of the offence and has committed the case to the Court of Sessions. The District Police had already found sufficient material to take cognizance and committed the case to the Court of Sessions. He has not stayed commitment of the case as the D.I.G., C.I.D. sumo motu has taken over the charge of the investigation of the case when the District Police has already submitted final form after completion of the investigation. At first instance, the I.O., C.I.D. observed that the District Police is not taking proper investigation, but after completion of the investigation, the I.O., C.I.D., Bokaro has submitted a report (Ext-A) addressed to the Additional Sessions Judge, Fast Track Court No. IV, Dhanbad stating therein that the District Police after investigation has submitted charge sheet against Rajiv Ranjan Singh, Sher Bahadur Singh, Ramdhin @ Ramdhir Singh and Bachha Singh showing Anil Yadav absconder under Sections 302/120-B/34 of IPC and Section 27 of the Arms Act. The I.O., C.I.D. after scrutiny found that no investigation is required by the C.I.D. which was closed supporting the final form submitted by the District Police. The learned C.J.M. has followed the procedure and has allowed the C.I.D. for further investigation under Section 173(8) Cr.P.C. It does not mean that the final form submitted by the District Police has to be discarded when the I.O., C.I.D. has not submitted final form rather closed the investigation finding that the District Police has submitted final form after proper inquiry. The learned Court below has not committed any error In passing the impugned order of commitment and thereafter directing the petitioners to appear for" framing preliminary charges against them." 15. Therefore at this stage, when the case has been fixed for arguments and the matter with respect to the investigation by the C.I.D. has been set at rest as would be evident from the order dated 18.03.2004, passed in W.P.(Cr) No. 271 of 2003, the petitioners cannot in the garb of an application under section 311 be allowed to revive the said issue.

16. In the case of Mannan Sk. Vs. State of West Bengal, , while explaining the ambit of section 311 of Cr.P.C, the Hon''ble Supreme Court had held that since the power under section 311 Cr.P.C. is wide its exercise has to be done with circumspection. The exercise of this power cannot be untrammelled and arbitrary but must be only guided by the object of arriving at a just decision of the case.

17. In this context, it would also be necessary to refer to the case of Natasha

Singh Vs. CBI (State), , wherein it was held thus:--

"15. The scope and object of the provision is to enable the court to determine the truth and to render a just decision after discovering all relevant facts and obtaining proper proof of such facts, to arrive at a just decision of the case. Power must be exercised judiciously and not capriciously or arbitrarily, as any improper or capricious exercise of such power may lead to undesirable results. An application under Section 311 CrPC must not be allowed only to fill up a lacuna in the case of the prosecution, or of the defence, or to the disadvantage of the accused, or to cause serious prejudice to the defence of the accused, or to give an unfair advantage to the opposite party. Further, the additional evidence must not be received as a disguise for retrial, or to change the nature of the case against either of the parties. Such a power must be exercised, provided that the evidence that is likely to be tendered by a witness, is germane to the issue involved. An opportunity of rebuttal however, must be given to the other party. The power conferred under Section 311 CrPC must therefore, be invoked by the court only in order to meet the ends of justice, for strong and valid reasons, and the same must be exercised with great caution and circumspection. The very use of words such as "any court", "at any stage", or "or any enquiry, trial or other proceedings", "any person" and "any such person" clearly spells out that the provisions of this section have been expressed in the widest possible terms, and do not limit the discretion of the court in any way. There is thus no escape if the fresh evidence to be obtained is essential to the just decision of the case. The determinative factor should therefore be, whether the summoning/recalling of the said witness is in fact, essential to the just decision of the case." 18. The totality of the circumstances and the judicial pronouncements indicated above would reveal that the powers under section 311 CR.P.C. has to be invoked by the Court in order to determine the truth and to render a just decision after obtaining proper proof of the facts necessitating allowing of an application under section 311 Cr.P.C. The facts suggest that the present case was instituted in the year 1998 and after examination of the witnesses, the case has finally been fixed for argument. The petitioners have tried to focus on the fact that parallel investigation was done by the C.I.D. which culminated in filing of a report showing the case as untrue and therefore the examination of the investigating officer of C.I.D. is all the more necessary to arrive at a just decision of the case. However, the petitioners in the petition have clearly stated at paragraph 6 that ultimately, the DIG office had agreed with the action taken by the District Police, hence, no further report was submitted. Thus, the investigation by the CID was completed and the learned Trial Court was informed that no investigation was pending. Even in the order dated 18.03.2004 passed in W.P.(Cr) No. 271 of 2003, this Court had considered the fact that I.O., C.I.D. has not submitted final form, rather closed the investigation finding that the District Police has submitted final form after proper inquiry. Therefore, in such circumstances, the examination of Shri J.P. Mallick, the then Dy. S.P. CID, who was also the investigating officer of the parallel investigation, which was being done by the CID is in the facts and

circumstances unwarranted as summoning him" for giving evidence would not be germane to the issues involved.

19. In view of what has been discussed herein above, I find that the learned trial court while passing the impugned order dated 20.11.2014 did not commit any illegality and hence the same requires no interference. Accordingly, the present application is dismissed.