

(2014) 05 MP CK 0203
In the Madhya Pradesh High Court
Case No : Cr. Rev. No. 763/2014

Bony @ Anupam Yadav

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Penal Code, 1860 (IPC) — Section 302

Citation : (2014) 05 MP CK 0203

Hon'ble Judges : T.K. Kaushal, J

Bench : Single Bench

Advocate : Ahadulla Usmani, Advocate for the Appellant; Y.D. Yadav, Panel Lawyer, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Tarun Kumar Kaushal, J.—Present petition is directed against the order dated 29.3.2014 passed by 1st Additional Sessions Judge, Sagar in S.T. No. 115/2014 by which application of petitioner u/s 173(8) of Cr.P.C. (in short Cr.P.C.) was dismissed and also prayed for direction for further investigation by C.B.I.

2. Brief facts of the case are that, on 16.10.2012 at about 5.30 p.m., while Manoj Yadav who happens to be an Advocate (since deceased) was going on a bike with Golu @ Jitendra Yadav and reached on Testing Road near Shreeram Mandir, petitioners chased them and made a quarrel. Petitioner Bony shot at the revolver and remaining other persons helped him. Petitioners are facing a trial u/s 302 of IPC in the matter.

3. Learned counsel for the petitioners submits that deceased was an Advocate. Under undue influence and tremendous pressure of the lawyers, Police has falsely implicated them on the strength of two false eye witnesses. Police concerned did not investigate the matter properly and ignored the evidence of call details of respective mobiles of so called eye witnesses. On receiving

anonymous telephonic information at Police Station that a person is lying in the injured condition on road, Police proceeded on the scene of occurrence. Petitioner Rajesh Yadav was present with his sister Kavita Yadav but this fact has not been investigated properly.

4. Placing reliance on State of West Bengal and Others Vs. The Committee for Protection of Democratic Rights, West Bengal and Others, , learned counsel for petitioners submits that if investigating agency under pressure under undue influence of some extraneous consideration then investigation should be directed to be done by independent agency i.e. C.B.I. Further submits that petitioner has no faith in independence of local Police because it was working under undue influence of lawyers hence investigation should be done by independent agency.

5. Learned counsel for petitioners pointed out few news paper cuttings of the relevant dates in which reports have been published showing the crowd, pressure and anger of the Advocates and further submits that not only they have created a pressure on Police but they misbehaved in the Courts also. From order sheets of trial Court dated 5.10.2013, 11.10.2013, 16.11.2013, 7.12.2013 and 21.12.2013 it becomes clear that none of the lawyer was made available to the petitioners during aforesaid period. Learned counsel further submits that on the basis of communication of trial Court and Sessions Judge Jabalpur, considering the pressure of Lawyers in the matter, this court has transferred the trial from Jabalpur to Sagar vide order dated 21.1.2014 in M.Cr.C. No. 4396/2013.

6. Learned Panel Lawyer submits that in this case investigation has been completed and charge sheet has already been submitted hence now there is no need and justification for further investigation.

7. In response, learned counsel for petitioners submits that vide order dated 2.1.2014 in W.P. No. 18254/13, writ petition under Article 226 of the Constitution preferred by the petitioners has been disposed of with a liberty to raise the objections in trial Court regarding merits of the charge sheet.

8. On considering the rival contention of the parties, it is clear that there is no controversy in so far as powers of High Court to direct the C.B.I. for investigation of a particular case. It is also clear that u/s. 173(8) of Cr.P.C., Courts can direct further investigation if new relevant matter and material is brought to notice.

9. It is true that Police began the investigation with a message received at Police Station regarding lying of a body of injured person on the spot and then on the strength of eye witnesses, investigation proceeded and after completing the investigation charge sheet has been filed.

10. In present case, controversy is that-whether eye witnesses are false and they were not present on the scene of occurrence and petitioners have been falsely implicated because they were present somewhere else. Certainly it is a matter of trial and from evidence of prosecution witnesses it can very well be ascertained whether version of eye witnesses is false or true. Similarly, fact, that

petitioners have been falsely implicated in this case as accused, in fact they were present somewhere else meaning thereby if they intend to plead alibi that also is a matter of trial and by way of cross examination on prosecution witnesses and by an independent defence evidence, it can be established.

11. Nothing came in charge sheet to show that as a result of pressure of the lawyers, these false witnesses have been introduced in the story or as a result of pressure and anger of lawyers, petitioners have been falsely implicated in this case.

12. This is a routine case of a murder based on story of eye witnesses. Deceased was a lawyer hence anger and demonstration of lawyer was a first reaction in the matter. But that has adversely affected the working of Police and/or Court has not come on record.

13. In West Bengal case (supra) Apex Court in para 46 has observed:-

The very plenitude of the power under the said Articles requires great caution in its exercise. In so far as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has leveled some allegations against the local police. This extra-ordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instill confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations.

14. There is nothing to presume that as a result of pressure of the lawyers community false eye witness have been introduced or accused persons have been falsely implicated in this case without any evidence. Police has completed the investigation and prepared the charge sheet. To ensure the protection of rights of the petitioners and to ensure a fair trial, case has been duly transferred from Jabalpur to Sagar. In a case which is based on eye witnesses, there is hardly any role of any agency of investigation. More important is whether these eye witnesses are true witnesses or false witnesses and it will be decided in the trial.

15. In application u/s 173(8) of Cr.P.C., in trial Court, emphasis has been given on mobile call details, Police Rojnamcha entry and complaints of friends and relatives of the petitioners made to police time to time, to prove their alibi and fact of false implication.

16. In considered opinion of this Court, when charge sheet containing eye

witnesses and some other evidence has been submitted, no useful purpose would be served of handing over the case to C.B.I. for investigation. No new facts came on record to issue the directions for further investigation also.

17. Whatever has been averred in this petition and application u/s 173(8) of Cr.P.C., can be established through evidence during trial.

For want of merits, this petition is dismissed.