
(2012) 03 JH CK 0071

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No.144 of 2010

Central Bureau of Investigation

APPELLANT

Vs

State of Jharkhand and another.

RESPONDENT

Date of Decision : 23-03-2012

Acts Referred:

Arms Act, 1959 — Section 27

Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(2), 173(8)

Penal Code, 1860 (IPC) — Section 120B, 302

Citation : (2012) CriLJ 3290 : (2012) 2 JLJR 441

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : M. Khan, For the C.B.I, for the Appellant; B.M. Tripathi, For the Opp.Party no.2, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Prasad

1. This application filed on behalf of the C.B.I is directed against the order dated 10.2.2010 passed by the learned A.J.C., F.T.C. X, Ranchi in Sessions Trial No.768 of 2009 holding therein that permission sought by the C.B.I for further investigation in terms of the provision contained in Section 173(8) of the Code of Criminal Procedure is never required as the C.B.I under the provision is free to submit further report to the Magistrate after collecting the evidences. The backdrop of the case is that one Anita Singh submitted a written complaint on 4.7.2009 stating therein that her husband Anil Kumar Singh, Range Officer in the Department of Forest was posted at Ranchi. On the fateful day, he had gone to the office. While she was in her house, she was telephonically informed that at about 7.15 P.M. when her husband came out of the office, miscreants came on a Motor Cycle and fired at him. The Motor Cycle got dashed by the Maruti Van of her husband and the miscreant left that place leaving the Motor Cycle at the place of occurrence. When her husband was removed to hospital, he succumbed

to his injuries.

2. It has been alleged that a contract for construction of building of the department had been given to a private contractor Sulochana Budhia. Since the construction was not up to the mark, payment was being not made to the contractor. The contractor and the then Principle Conservator of Forest, A.K. Singh had been pressurizing the complainant to make payment. Thus, it was alleged that under a deep conspiracy, the contractor and the higher officials of the department got her husband murdered through a contract killer. On such allegation, Doranda Police Station Case No.255 of 2009 has been registered u/s 302/120B of the Indian Penal Code and also u/s 27 of the Arms Act.

3. On completion of the investigation, police submitted charge sheet on 17.10.2009 against Bhagwan Prasad, the intervener and seven others. On submission of the charge sheet, cognizance was taken and the case was committed to the court of sessions which was transferred to the court of A.J.C., F.T.C.X, Ranchi. While the court was proceeding with the trial, C.B.I through an Investigating Officer filed an application on 22.12.2009 stating therein that with the consent of the State Government, Central Government has issued a notification on 16.12.2009 in terms of Section 5 of the D.S.P.E Act to investigate Doranda P.S case no.255 of 2009 which has been registered by the C.B.I as R.C. No. 15(S)/2009-AHD-R. On such factual aspect, prayer was made to stay further proceeding of Sessions Trial No.768 of 2009. That application was rejected on 6.1.2010. The said order never seems to have been challenged by the C.B.I. Subsequently, an application was filed by the C.B.I through Inspector of Police wherein prayer was made to allow the C.B.I to take up the matter for further investigation. That prayer was rejected by the impugned order.

4. Mr. Khan, learned counsel appearing for the C.B.I submitted that if he same investigating agency, who had earlier investigated the case and submitted charge sheet, he can proceed with further investigation in terms of the provision of Section 173(8) of the Code of Criminal Procedure without getting permission of the Court but if other agency takes up the matter for further investigation, permission is required to be taken by the Court and that it has been well settled that even after submission of the charge sheet, the case can be taken up for further investigation and under this situation, the Court should have permitted the C.B.I to go for further investigation, when earlier investigating agency had not investigated the case fairly as they have failed to collect adequate materials against the accused persons.

5. As against this, Mr. B.M. Tripathi, learned Sr. counsel appearing for the intervener-opposite party no.2 submitted that the trial has proceeded to a considerable extent where only few witnesses have remained to be examined by the prosecution. Nevertheless the power in terms of provision as contained in Section 173(8) of the Code of Criminal Procedure is there for the investigating agency to go for further investigation as it is a statutory power of the investigating agency but instead of going for further investigation after issuance

of the relevant notification, the C.B.I did not chose to go for further investigation and to collect materials but to seek permission of the Court which was never required and as such, the impugned order never warrants to be interfered with as it never suffers from any illegality.

6. It was further submitted that up-till now, no allegation seems to be there either from the complainant or from any quarter that the investigation made by the police was tainted, biased, slipshod and unfair, nor there appears to be any allegation that some important angles of the case have not been investigated and the offence alleged does have inter-state or international ramification. Thus, it was submitted that the instant application is fit to be set aside.

7. Intervention application of the persons who are facing trial also seems to be there wherein the statements made are on the similar line on which submission as aforesaid was made.

8. One application for intervention is also seems to be there of informant wherein it has been stated that investigation has not been made fairly and that there appears to be hand of the accused Bhagwan Prasad (who on being charge sheeted facing trial) as he was seeking help from the deceased to impress upon his father not to investigate the case from the angle which may have proved the hand of Bhagwan Prasad in case of murder of Ranjana Palit. Since no favour was made by the deceased, the accused Bhagan Prasad by hatching conspiracy from inside the jail got her husband killed through a contract killer but sufficient evidences have not been collected against him.

9. Having heard learned counsel appearing for the parties, I do not find any illegality with the impugned order. It be reiterated that when a notification was made for investigation of the case by the C.B.I. an application was filed before the court where the trial was going on from before to stay further proceeding. That application was dismissed but the C.B.I never chose to challenge that order. However, subsequently, another application was filed seeking permission of the court to go for further investigation.

10. The question does arise as to whether it was at all required to have permission of the court for further investigation ?

11. In this regard scheme of the Act as enunciated in Section 173 of the Code of Criminal Procedure needs to be taken notice of. Sub-Section (2) of Section 173 envisages that as soon the investigation is completed, Officer-in-Charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence a police report in the form prescribed by the State Government stating the facts mentioned in sub-clauses (a) to (f). Sub-Section (8) of Section 173 does stipulate as follows:

(8) Nothing in this section shall foe deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the

police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports, as they apply in relation to a report forwarded under sub-section (2).

12. Thus, from bare perusal of Section 173(8) of the Code of Criminal Procedure it is evident that the police has statutory right to carry out further investigation which right can be exercised when fresh information comes to light and for that there is no requirement of having prior permission of the court concerned for further investigation.

13. The Supreme Court in a case of State of A.P. Vs. A.S. Peter, has occasion to examine this aspect of the matter and has held as under;

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 a charge sheet is the 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.

14. Same view had earlier been taken in a case of Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Others, where it has been held as under:

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. Section 173(8) of the Code of Criminal Procedure permits further investigation, and even de hors any direction from the Court as such, it is open to the police to conduct proper investigation, even after Court took cognizance of any offence on the strength of a police report earlier submitted.

15. Here in the instant case, the C.B.I has been seeking permission of the court for further investigation which in view of the provision and also decision referred to above was not at all required. The C.B.I on being empowered for investigation of the case by virtue of issuance of the notification was free to go for further investigation but instead of proceeding for further investigation, it chose to have permission of the court which was never required which view has virtually been expressed by the trial court Accordingly, I do not find any illegality with the impugned order.

16. Before parting with this order it becomes pertinent to take notice of the decision of the Hon''ble Supreme Court rendered in a case of Babubhai Vs. State of Gujarat and Others, wherein the Hon''ble Supreme Court has been pleased to lay down that where the Court comes to conclusion that there was serious irregularity in the investigation that had taken place, the court may direct a further investigation u/s 173(8) of the Code of Criminal Procedure, even to an independent agency, but not for reinvestigation. Scheme of investigation,

particularly, Section 173(8) of the Code of Criminal Procedure provides for further investigation and not reinvestigation. Therefore, if the court comes to the conclusion that the investigation has been done in a manner with an object of helping a party, the court may direct for further investigation and ordinarily not for reinvestigation.

17. It has been further held that unless an extraordinary case of gross abuse of power is made out by those in charge of the investigation, the court should be quite loathe to interfere with the investigation, a field of activity reserved for the police and the executive. In exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, if considers necessary, may direct for investigation de novo wherein the case presents exceptional circumstances, and that non-interference of the court would ultimately result in failure of justice. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation. Thus, in case of a mala fide exercise of power by a police officer the court may interfere.

18. Here in the instant case as has been put on behalf of the C.B.I, it can be said that there may be some lapses on the part of the investigating officer but nothing was placed to show that there has been absolute inaction on the part of the investigating agency. It has also not been shown that the investigation was influenced by some interested person. Thus, I do not find any merit in this application and hence, it is dismissed.