
(2005) 08 MP CK 0098

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 98 of 2005

Dr. (Smt.) Sulekha Mishra

APPELLANT

Vs

Purushottam Lal Sharma and Others

RESPONDENT

Date of Decision : 30-08-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, 173(8)

Citation : (2005) ILR (MP) 1105 : (2006) 1 MPHT 195 : (2005) 4 MPLJ 16

Hon'ble Judges : Ajit Singh, J

Bench : Single Bench

Advocate : Ramesh Kumar, for the Appellant; Vinay Pandey, for the Respondent No. 2 and J.K. Jain, Government Advocate for the Respondent Nos. 3, 4 and 5, for the Respondent

Final Decision : Allowed

Judgement

Ajit Singh, J.

This revision is directed against the order dated 13-12-2004 passed by the 6th Additional Sessions Judge, Jabalpur, in Sessions Trial No. 443/2004 whereby he has rejected the application of the petitioner filed u/s 173(8) of the Code of Criminal Procedure, 1973.

One Prabha Tiwari, an aged lady, was found murdered in her house in Jabalpur on 9-12-2003. The petitioner is her daughter. The First Information Report of the incident was lodged by her close relation Rajendra Solakia on the same day at Police Station Kotwali, District Jabalpur. The respondent Nos. 1 and 2 are being tried for the murder of Prabha Tiwari who lived alone.

The respondent Nos. 1 and 2 are husband and wife. They have two children namely Sunny and Iti. They belong to Raipur Town, which is now in the State of Chhattisgarh. Even so the respondent No. 1 married Bharti, daughter of deceased Prabha Tiwari, at Jabalpur concealing the fact of his subsisting marriage with respondent No. 2 and posing himself to be a widower. The

marriage is said to have been performed on 19-11-2003 in the Sai Baba Temple, Civil Lines, Jabalpur. Bharti, after marriage, went with respondent No. 1 to Raipur. There she met the respondent No. 2 and the two children Sunny and Iti. She was told that the respondent No. 2 was the wife of elder brother of respondent No. 1.

On 8-12-2003 the respondent No. 1 left Raipur with one Krishan Barai (witness who is not traceable) telling Bharti that they were going to Manendragarh, Chhattisgarh.

On 9-12-2003 at about 5:00 p.m. Bharti telephoned to Jabalpur for finding out the welfare of her mother. The information she received by her maternal uncle Rajendra Solakia was that someone has assaulted her mother and her condition was very bad. Bharti then immediately telephoned to respondent No. 1 on his mobile, which was received by Krishna Barai.

Until 14-12-2003 there was no clue as to who was responsible for the murder of Prabha Tiwari. During the course of interrogation the Investigating Officer, respondent No. 5, found respondent No. 1 frequently using his reliance Indian Mobile No. 0771-3112640. He then enquired from Bharti as to whether she had received any message from the respondent No. 1 on the date of incident from Manendragarh. On this question being put to Bharti by the respondent No. 5, the respondent No. 1 became annoyed and showed expressions of nervousness. The respondent No. 5 took into his custody the mobile phone of respondent No. 1 in front of the petitioner, Bharti and other relatives. On 17-12-2003 the respondent No. 1 surreptitiously absconded from Jabalpur. He could, however, be arrested by the police after three months on 3-4-2004.

Krishna Barai was called from Raipur for interrogation. His statement was recorded u/s 161 of the Code of Criminal Procedure, 1973 on 17-12-2003. According to him, he and Purushottam did not go to Manendragarh but came to Katni on the morning of 9-12-2003 by train. He further stated that the respondent No. 1 left him on the railway platform with his mobile and asked him to wait there and that he will return after few hours.

During the trial proceedings the petitioner filed an application u/s 173(8) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code") for further investigation of the entire incident, which has been rejected by the impugned order.

As Single Bench of this Court in the case of Dilip Singh Vs. State of M.P. and Others, , after considering number of decisions has held that the Sessions Judge has jurisdiction to order reinvestigation u/s 173(8) of the Code. Recently, in the case of Zahira Habibullah Sheikh and Anr. v. State of Gujarat and Ors. AIR 2004 SC 3114, the Supreme Court has held that every endeavour should be made by the Trial Court to see that the trial is fair and it will not be correct to say that it is only the accused who must be fairly dealt with. According to the Supreme Court that would be turning Nelson's eyes to the needs of the society at larger and the

victims or their family members and relatives. Each one has an inbuilt right to be dealt with fairly in a criminal trial. The Supreme Court has further held that the Presiding Judge must not be a spectator and a mere recording machine but should be becoming a participant in the trial evincing intelligence, active interest and elicit all relevant materials necessary for reaching the correct conclusion, to find out the truth and administer justice with fairness and impartiality both to the parties and to the community.

The Trial Court in rejecting the application has noticed various lacunae in the investigation done so far with regard to the incident. According to the Trial Court, no effort was made by the Investigating Officer to collect evidence about the fact that the respondent No. 2 was the first wife of respondent No. 1 and in spite of being already married, he married to Bharti; that on the date of incident the respondent No. 1 was seen at or near the place of incident in Jabalpur by examining persons residing nearby and that though the mobile belonging to respondent No. 1 was taken in custody by the respondent No. 5, no effort was made to trace out the calls made on that phone during the relevant period. There is also no investigation regarding motive to cause the death of Prabha Tiwari.

Because of the aforesaid lacunae in the investigation, it is clear that no effort has been made by the police to find out the truth of facts relevant to the case in hand. The case, in my considered opinion, requires further investigation. I, therefore, direct further investigation of the case by the senior competent officer to be appointed by the Superintendent of Police, Jabalpur (respondent No. 3). I also direct that the report of the further investigation shall be submitted before the Trial Court as early as possible but not later than six months from today. The Trial Court will be at liberty to frame additional charge or charges for example of cheating or any other offence which, prima facie, appear to have been committed as a result of the further investigation. The Trial Court shall not pass final decision in the case till the submission and consideration of the report of further investigation,

The impugned order is set aside and the revision is allowed.