
(2010) 03 PAT CK 0113
In the Patna High Court

Jhotil Paswan

APPELLANT

Vs

The State of Bihar and Dayanand Dwivedi

RESPONDENT

Date of Decision : 29-03-2010

Acts Referred:

Citation : (2011) 6 RCR(Criminal) 2430

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—Heard learned Counsel for the petitioner, the Oposite Party No. 2 and the A.P.P. appearing on behalf of the State.

2. This application has been filed against the order dated 17.01.2007 passed by the Sub Divisional Judicial Magistrate, Bagaha, West Champaran in Bagaha Police Station Case No. 66 of 2002 (Trial No. 1896 of 2006).

3. The facts are that two cases were instituted. The first was instituted as Bagaha Police Station Case No. 65 of 2002 by the petitioner and the second case was instituted as Bagaha Police Station Case No. 66 of 2002. Both the cases arise out of the same occurrence. Investigation was made and charge sheet in Bagaha Police Station Case No. 66 of 2002 was submitted on 31.08.2002. All of a sudden, by Memo No. 1277/C.R. dated 20.07.2005, the D.I.G., Champaran Range, Bettiah addressed a letter to the D.I.G. (Human Rights), Bihar, Patna stating therein that the Superintendent of Police, Bagaha should be given orders to re-investigate Bagaha Police Station Case No. 66 of 2002. It has also been stated that as far as Bagaha Police Station Case No. 65 of 2002 is concerned, it would be treated to be false case and no action should be taken u/s 182 & 211 of the Indian Penal Code. On the basis of the aforesaid letter dated 20.07.2005, the Superintendent of Police, Betgahn addressed a letter vide Memo No. 1776/C.R. on 26.08.2005 to the Officer-in-charge, Bagaha asking him to take permission of the Court to reinvestigate the case. Annexure-5 is the application filed on behalf of the Investigating Officer of the case in the Court of the Chief Judicial Magistrate, Bagaha which refers the memo Nos. 1277/C.R. dated 20.07.2005 and 1776.C.R. dated 26.08.2005 in which there is a prayer that the Court may

order for re-investigation of the case. By the impugned order, dated 17.01.2007, the Court has ordered to re-investigate the case.

4. Here, the question is whether the Sub Divisional Judicial Magistrate has power to order for re-investigation of any case? The answer is No!

5. Section 173 of the Code of Criminal Procedure deals with the manner in which investigation is done and the completion of the investigation. Sub-section (8) of Section 173 of the Code of Criminal Procedure reads as follows:

(8) Nothing in this section shall be 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-sections (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).

6. The issue whether the Trial Courts can order for re-investigation is well settled by now by a number of decisions of the Supreme Court as well as the High Courts. Some of them are worth mentioning. The case of Mithabhai Pashabhai Patel and Others Vs. State of Gujarat, deals with this question and at paragraphs 12, 13 & 14, it has been specifically stated that re-investigation can only be ordered under Articles 226 & 32 of the Constitution of India. What has been envisaged u/s 173(8) has been well defined by the Apex Court in the case of K. Chandrasekhar Vs. The State of Kerala and Others, as follows:

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.

7. Apart from the cases referred above, the other cases are Rama Chaudhary Vs. State of Bihar, and Ramachandran Vs. R. Udhayakumar and Others, .

8. The position, therefore, is that the order dated 17.01.2007 ordering for re-investigation is bad in law. The Courts below cannot order for re-investigation. The power of the Trial Court is limited in terms of Section 173(8) of the Code of Criminal Procedure. The consequence of re-investigation and further investigation differs. Re-investigation would mean that the earlier investigation would perhaps not be taken into consideration whereas further investigation is a supplement to earlier investigation and would have to be considered by the Court

during the various stages of the case. The Sub Divisional Judicial Magistrate or any other Court could not have ordered for re-investigation rather they could have only passed an order for further investigation. It has been said at the bar that the so called "re-investigation" has already been made and charge sheet has already been made and charge sheet submitted. The Court who will be examining the matter will only consider the investigation subsequently submitted done after 2002 if it amounts to "further investigation", a supplement to the earlier investigation and ignore it if it relates to completely re-investigation of the matter from ab initio from the beginning.

9. This application is thus allowed to the extent indicated above.

10. Let the lower Court's recorded be sent to the concerned Court forthwith.