

(2007) 03 AP CK 0013

In the Andhra Pradesh High Court

Case No : Criminal R.C. No. 339 of 2007

Koneru Vara Prasada Rao

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 22-03-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 173(3), 173(4), 173(5), 173(6)
Penal Code, 1860 (IPC) — Section 302
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 — Section 3(2)

Citation : (2007) 2 ALD(Cri) 131 : (2007) 2 ALT(Cri) 498 : (2007) 2 APLJ 109 : (2007) CriLJ 2898

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : Masthan Naidu Cherukuri, for the Appellant; A. Jagadesh Kannan, Public Prosecutor, for the Respondent

Judgement

G. Yethirajulu, J.—Both the cases are filed by the accused in C.F.R. No. 1452 of 2006 in S.C. No. 13/S/2005 on the file of the Special Judge for SC and ST Prevention of Atrocities Act, 1989 (for short "the Act").

2. As both the matters are under the same set of circumstances and filed against the same order, they are being disposed of by this common order.

3. After registration of the crime, the police investigated the matter and charge-sheet was filed by the Sub-Divisional Police Officer, Bapatla. The cognizance of the offences was taken and the case was committed to the Sessions Court for trial according to law. While the Sessions Case was pending, the Sub-Divisional Police Officer, filed a memo on behalf of the prosecution u/s 173(8) of Cr.P.C. requesting to permit further investigation and to submit a report.

4. In the charge-sheet, it was mentioned that A-1 is the husband of A-2. A-2 is the fostered daughter of LW-1. A-1 was the Manager of Margadarsi Chit Fund

Company L.W.-1 used to meet the education expenses of the daughter of A-1 and A-2 every year and also meet their family expenditure. But in the mean time, A-1 was addicted to all vices and he was removed from the Chit Fund Company. Since then, A-1 hatched up a plan to grab the property of LW-1. LW-1 did not give scope the A-1 to enter into his affairs. Since then, A-1 deputed his wife (A-2) to influence LW-1. LW-1 gave financial aid to the deceased to erect a house by his elder brother at their native place and it came to the notice of A-1 and A-2. A-1 and A-2 suspected that LW-1 will spare all her properties to the deceased, therefore, A-1 hatched a plan with his wife (A-2) to eliminate the deceased and in pursuance of that, A-1 and A-2 went to the house of the deceased. On the intervening night of 16/17-10-2003, while LW-1 was sleeping, A-2 caught hold of the hands of the deceased and A-1 stabbed him indiscriminately on the left side of the neck and other parts of the body, which resulted in his instantaneous death and the accused escaped. At about 1-30 a.m., LW-1 heard some meddling sound at her house and on observing nobody was found, but when the light was switched on, they noticed the deceased lying with bleeding injuries. LW-1 lodged a complaint to the police, which was registered as a case. With the help of the dog squad, A-1 and A-2 were identified as the culprits. During the course of investigation, one of the witnesses expressed suspicion over A-1 and A-2 and three others that they were responsible for the murder of the deceased. But their involvement is not elicited in the case. There were disputes between A-1 and LW-1 prior to the offence. Initially, the Inspector of Police took up the investigation, but after adding the offence u/s 3(2)(v) of the Act, the Sub-Divisional Police Officer took up the investigation and filed the charge-sheet for the offence u/s 302 of IPC and Sections 3(2)(v) of the Act.

5. During the pendency of the case, the Sub-Divisional Police Officer, Bapatla, filed a memo requesting the Court to permit further investigation and submit further report. In the said memo he mentioned that he received a memo on 16-4-2005 from the office of the District Police Officer, Guntur, informing that the file was transferred to the CID for further investigation by mentioning that a representation was made by the aggrieved party to get the truth. Being aggrieved by the same, the present petitions were filed.

6. The learned Counsel for the petitioners contended that though the police have got right for further investigation u/s 173(8) Cr.P.C., the further investigation cannot be done by a different agency, contrary to the principles of law. He further contended that the Investigating Agency did not get formal permission from the Court for further investigation after filing of the charge-sheet, therefore, they requested to stop the investigation commenced by the second respondent i.e., the Deputy Superintendent of Police, CID, Guntur. He further contended that the belated investigation by the second respondent will cause prejudice to the petitioners, as they were no way concerned with the original investigation.

7. The learned Special Judge after considering the memo rejected the same

through the order dated 4-9-2006. In the said order, the learned Judge observed that as per Section 173(8) Cr.P.C., when the officer in charge of the Police Station obtains further evidence, he shall forward it to the Magistrate along with a report. In the present case, no such further report was forwarded except the representation of the de facto, complainant. The lower Court further observed that it is settled law that the investigating agency is not precluded from making further investigation in respect of an offence after forwarding the report u/s 173(2) of Cr.P.C., therefore, the Investigating Officer of CID, after obtaining further evidence shall forward a report to the Magistrate in this case.

8. After going through the order, I am made to understand that the permission to further investigate in the case is not accorded by the learned Special Judge by observing that the investigating agency is not precluded from making further investigation in respect of the offence and after obtaining further evidence forwarding the report to the Court.

9. In the light of the above circumstances, the point for consideration is:

Whether the permission of the Court is required to take up further investigation in the matter and whether the further investigation can be done by another Investigating Officer other than the officer who conducted the investigation previously?

10. Section 173(8) of Cr.P.C. reads as follows:

173(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 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).

11. As per the above Section, the power to make further investigation can be exercised by the police without permission of the Magistrate, but the Supreme Court in *Ram Lal Narang Vs. State (Delhi Administration)*, , held that after cognizance of the offence is taken by the Magistrate on the basis of the earlier report, it is desirable for the Court to make further investigation when fresh facts came to light.

12. In *K. Chandrasekhar Vs. The State of Kerala and Others*, , the Supreme Court considered the issue whether the further investigation by a different agency is permissible or not and the scope of Section 173(8) of Cr.P.C. in this regard.

In the case covered by the above decision, the State Government had consented for entrustment of the investigation to C.B.I., and the C.B.I., completed the investigation and filed the final report. Subsequently, the State Government

withdrew the consent and sought further investigation by the State Police. The Supreme Court held that the police has a right of further investigation under Sub-section (8) but no fresh investigation or reinvestigation is permissible after submission of police report u/s 173(2) of Cr.P.C. on completion of the investigation. The Government of Kerala was also conscious of this position that the consent was being withdrawn in public interest to order reinvestigation by a special team of State Police Officers. The dictionary meaning of "further" 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. If any further investigation is to be done it is by the CBI alone, which was authorized to do the investigation. The notification withdrawing the consent to enable the state police to further investigate into the case is patently invalid and unsustainable in law.

The Supreme Court further held as follows:

Even if we were to hold that the State Government had the requisite power and authority to issue the impugned notification, still the same would be liable to be quashed on the ground of mala fide exercise of power.

The Court further observed that on a careful perusal of the police report submitted by the C.B.I., on completion of the investigation, we find that it has made a detailed investigation from all possible angles before drawing the conclusion that the allegations of espionage did not stand proved and were found to be false. The State Government did not canvass any satisfactory ground justifying further investigation while seeking permission for the same.

Under the above circumstances, the Supreme Court held that after submitting the final report by the CBI, the withdrawal of the consent by the State Government for further investigation by the State police is not permissible.

13. In *Vijayakumar Vs. Kamarudhin and Others*, the Kerala High Court held that the further investigation can be conducted by the original agency, which investigated the case, and the State Government has no authority to direct further investigation by a different investigating agency.

14. In *Ravikrindi Ramaswamy v. State of A.P.* 2002 (2) ALD 354 (AP), this Court held that further investigation cannot be done without formal order by the concerned Magistrate and it can be done only by the original investigating agency and not by other investigating agency.

15. From the above authoritative pronouncements, it is very clear that permission of the Court is necessary to conduct further investigation in this case. Therefore, the order of the learned Special Judge rejecting the Application on the ground that no formal permission is required cannot stand, therefore, the order is liable to be set aside. The lower Court shall reopen the matter by restoring the same and examine whether it can grant permission or the Magistrate has to

grant permission to proceed with the further investigation, whether the CID is a different from regular police and whether CID cannot be permitted to do further investigation except the agency which conducted the original investigation and give a specific finding while passing order on the petition filed by the Deputy Superintendent of Police, Bapatla.

16. With the above observations, the Revision Case and the Criminal Petition are disposed of.