(2014) 06 KL CK 0158

In the High Court Of Kerala

Case No : OP(Crl.). No. 58 of 2014 (Q)

Lalitha APPELLANT

Vs

The Sub Inspector of Police RESPONDENT

Date of Decision : 02-06-2014

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 173(8)
Negotiable Instruments Act, 1881 (NI) — Section 138
Penal Code, 1860 (IPC) — Section 34, 405, 420, 467, 468

Citation : (2014) 06 KL CK 0158

Hon'ble Judges : K. Ramakrishnan, J

Bench : Single Bench

Advocate : T.N. Manoj, Advocate for the Appellant; S. Hyma, Public Prosecutor for R1 and R2, Sri Babu Karukapadath, Smt. M.A. Vaheeda Babu, Sri K.A. Noushad, Sri P.U. Vinod Kumar, Sri Kandampully Rahul, Sri Mithun Baby John and Sri J. Ramkumar, Advocates for R3, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

K. Ramakrishnan, J.—This is an application filed by the petitioner who is the accused in C.C. No. 1251/09 (Crime No. 887/2008 of Irinjalakuda Police Station) on the file of Judicial First Class Magistrate Court, Irinjalakuda for issuing direction to the investigating agency to expedite investigation under Article 227 of Constitution of India.

2. It is alleged in the petition that petitioner is the first accused in C.C. No. 1251/09 on the file of Judicial First Class Magistrate Court, Irinjalakuda. The case was originated on the basis of a Crime No. 877/08 of Irinjalakuda Police Station which was registered on the basis of the statement given by the de facto complainant who is the 3rd respondent herein against the petitioner and others alleging commission of the offences under Sections 405, 420, 467, 468, 471 read with Section 34 of Indian Penal Code. After investigation, Annexure P1 Final Report was filed and it was taken on file as C.C. No. 1251/09 on the file of the

Judicial First Class Magistrate Court, Irinjalakuda. The allegation made by the complainant (third respondent herein) in the case was that the first accused-petitioner herein who had filed a complaint against third respondent alleging offences u/s 138 of the Negotiable Instruments Act as C.C. 2580/08 has some how obtained the cheque leaf of the de facto complainant and forged the same and filed the complaint against her u/s 138 of the Negotiable Instruments Act. The accused appeared and they were released on bail. Thereafter, C.C. No. 1251/2009 was posted for evidence and summons were issued to Cws. 1 and 2. Since they did not appear, non-bailable warrant has been issued. The de facto complainant in the case did not appear and she was trying to protract that proceedings. Thereafter, the de facto complainant i.e., third respondent herein filed Crl.M.P. No. 10266/11 in that case for conducting further investigation u/s 173(8) of Code of Criminal Procedure and the learned magistrate allowed the application and further investigation was ordered as per Ext. P3 order dated 03.08.2012 directing the investigating officer to complete the investigation and file further final report on or before 20.09.2012. In spite of that, no further investigation was effectively conducted and they are not filing any report and the disposal of the case is being prolonged on account of that. Even the learned magistrate had expressed dissatisfaction in the manner in which the investigating officer conducting the further investigation. On account of the pendency of C.C. No. 1251/09, the disposal of C.C. No. 2580/08 filed by the petitioner is also being delayed. So, she want to expedite the trial in C.C. No. 1251/09 for which the investigating officer has to file the final report after conducting further investigation as ordered by the court. So, she has no other remedy except to approach this court seeking the following relief:

i) To issue appropriate order or direction to the Investigating officer, Irinjalakuda Police Station, to complete the further investigation in Crime No. 877/2008, and to file the final report on or before 12.04.2014 before the Magistrate court.

ii) Issue appropriate order directing the Judicial Magistrate of 1st Class Irinjalakuda to complete the trial of CC 1251/2009, with in the shortest span of time.

3. The investigating officer filed a statement stating that after ordering further investigation, they have obtained certified copies of the documents from the court in which the cheque was produced and a report has been filed for permission to send the cheque for Forensic expert opinion, and without getting that opinion, no effective final report after further investigation could be possible. The Counsel for the petitioner vehemently submitted that no such steps have been taken before the court below.

4. On the basis of this, earlier a report has been called for from the concerned magistrate court regarding this aspect and the learned magistrate had sent a report dated 02.04.2014 which reads as follows:

In obedience to the reference cited above, I may be permitted to submit that

C.C. 1251/2009 was taken on file on 02.04.2009 for the offence punishable under Sections 405, 420, 467, 468, 471 r/w 34 IPC.

The facts and circumstances of the case in brief is that the 1st accused was the neighbour and care taker of the de facto complainant-Safia Moideen. 2nd accused is a close relative of the 1st accused and 3rd accused is the servant of the de facto complainant. Allegation is that these accused colluded each other and forged the signature of the de facto complainant in the cheque leaves in order to make monitory gain. It was further alleged that the 1st accused was entrusted with Rs. 3,09000/- for depositing in the account of the de facto complainant. That amount was misappropriated by the 1st accused. It was also averred that the 1st accused was entrusted with cheques bearing numbers 3473390, 3473391, 3473392, which were drawn in account number 12917 of the de facto complainant in the Union Bank of India. These cheques were filled up by the 1st accused in collusion with other accused and presented before bank. The de facto complainant came to know about the forgery on 02.09.2008 and she had preferred a petition before the Dy. S.P. Irinjalakuda. On the basis of the said complaint a crime was registered as crime number 877/08 alleging offences under sections 405, 420, 467, 468 471 r/w 34 of I.P.C.

On 16.06.2010, charge was framed for the aforesaid offences and read over to the accused. Summons was issued to CW1 to CW3. In spite of repeated issuance of so many coercive steps, presence of CW1 could not be procured till 15.9.2011. Mean while, on 8.8.2011, CW1-Safia Moideen filed a petition u/s 173(8) of Cr.P.C. seeking further investigation in the said crime. It was allowed by my learned predecessor and the SHO Irinjalakuda police station was directed to lay final report after due investigation u/s 173(8) Cr.P.C. on or before 20.09.2012. But till 6.12.2012, the SHO Irinjalakuda has not filed any report. Show cause notice was issued. On 18.11.2013, the SHO Irinjalakuda has filed a report stating that more time is necessary for filing a report since the investigation could not be concluded. On 18.11.2013 onwards, the SHO Irinjalakuda has filed reports stating that the further investigation could not be completed so far and hence seeks more time for filing a final report. In this juncture, on 27.12.2013 SHO Irinjalakuda has filed another report by stating that he had applied for certified copies of the documents and cheques before the Honourable Sub Court, Irinjalakuda. Now the case stands posted to 12.6.2014. Hence most respectfully I submit that evidence in this case could not be started yet and that no application has been filed by the Investigation agency to get the disputed cheques which had produced in C.C. No. 2580/2008 which is pending before this court.

5. Thereafter, when this was brought to the notice of the Government Pleader, Government Pleader on instructions, submitted that on 05.02.2013, a report has been filed. Accordingly, a further report was called for by this court from the magistrate court and the learned magistrate had sent a further report dated 28.05.2014 which reads as follows:

In obedience to the reference cited above, I may be permitted to submit that C.C. 1251/2009 was taken on file on 2.04.2009 for the offence punishable under sections 405, 420, 467, 468, 471 r/w 34 IPC.

The facts and circumstances of the case in brief is that the 1st accused was the neighbour and care taker of the de facto complainant-Safia Moideen. 2nd accused is a close relative of the 1st accused and 3rd accused is the servant of the de facto complainant. Allegation is that these accused colluded each other and forged the signature of the de facto complainant in the cheque leaves in order to make monitory gain. It was further alleged that the 1st accused was entrusted with Rs. 3,09000/- for depositing in the account of the de facto complainant. That amount was misappropriated by the 1st accused. It was also averred that the 1st accused was entrusted with cheques bearing numbers 3473390, 3473391, 3473392, which were drawn in account number 12917 of the de facto complainant in the Union Bank of India. These cheques were filled up by the 1st accused in collusion with other accused and presented before bank. The de facto complainant came to know about the forgery on 2.09.2008 and she had preferred a petition before the Dy. S.P. Irinjalakuda. On the basis of the said complaint a crime was registered as crime number 877/08 alleging offences under sections 405, 420, 467, 468, 471 r/w 34 of I.P.C.

On 16.6.2010, charge was framed for the aforesaid offences and read over to the accused. Summons was issued to CW1 to CW3. In spite of repeated issuance of so many coercive steps, presence of CW1 could not be procured till 15.9.2011. Mean while, on 8.8.2011, CW1 -Safia Moideen filed a petition u/s 173(8) of Cr.P.C. seeking further investigation in the said crime. It was allowed by my learned predecessor and the SHO Irinjalakuda police station was directed to lay final report after due investigation u/s 173(8) Cr.P.C. on or before 20.09.2012. But till 6.12.2012, the SHO Irinjalakuda has not filed any report. Show cause notice was issued. On 18.11.2013, the SHO Irinjalakuda has filed a report stating that more time is necessary for filing a report since the investigation could not be concluded. On 18.11.2013 onwards, the SHO Irinjalakuda has filed reports stating that the further investigation could not be completed so far and hence seeks more time for filing a final report. In this juncture, on 27.12.2013 SHO Irinjalakuda has filed another report by stating that he had applied for certified copies of the documents and cheques before the Honourable Sub Court Irinjalakuda. Now the case stands posted to 12.06.2014. Meanwhile, the SHO Irinjalakuda police station submitted an application on 21.05.2014 for sending the handwriting in cheque number 3473390 (Account no. 12917) with the handwriting of 1st and 2nd accused in C.C. 2580/2008 to the Regional Forensic Science Laboratory, Thrissur.

6. Heard the Counsel for the petitioner and the learned Public Prosecutor and the Counsel appearing for the third respondent.

7. The Counsel for the petitioner submitted that on account of the pendency of C.C. No. 1251/09, the disposal of the case filed by her as C.C. 2508/08 is being

delayed. He has no objection in expediting the further investigation even by sending the cheque for expert opinion, but, he wants only that the process should be expedited and he wanted this court to direct the investigating agency to complete the investigation within a particular time.

8. The Counsel for the third respondent also submitted that she is the de facto complainant in C.C. No. 1251/09 and she also wants the further investigation has to be expedited as it is at her request that the further investigation was ordered as per Ext. P3 order. But if, a shorter time is given, it will not be a proper investigation and they will file a further report without conducting proper investigation. If this court wants to fix a time, sufficient time may be granted to them to finish the investigation.

9. Learned the learned Government Pleader submitted that effective steps were taken to conduct further investigation as ordered and there is no fault on their part.

10. On the basis of the above submissions, this court is convinced that there is some latches on the part of the investigating officer in not taking steps for expediting the further investigation as directed by the court below and the court below was also not satisfied with the lethargic attitude on the part of the investigating agency in conducting the further investigation and time taken for filing the final report after completing the further investigation. It is also seen from the report that though instructions were given to the Government Pleader that steps have already been taken for getting the cheque sent for expert opinion as early as 05.02.2014, it is seen from the second report of the learned magistrate that such an application was filed only on 21.05.2014. Then, this court has expressed displeasure on the attitude of the investigating agency in not conducting the investigation properly and showing lethargic attitude on their part in conducting the investigation. Such an attitude of the investigating agency should not be encouraged as well. They are expected to conduct the investigation or further investigation in an effective manner to the satisfaction of the parties concerned in order the repose confidence in the system itself. Merely because re investigation was ordered, they should not feel that the earlier investigation conducted is not proper. But, it only shows that the court feels that further materials are required for adjudicating the matter in an effective manner and that prompted the court to order further investigation. That order also must be honoured by the investigating agency.

11. So, considering the circumstances, this court feels that the petition can be disposed of directing the investigating officer concerned to expedite the further investigation and submit further report as expeditiously as possible at any rate within 6 months from today. The learned magistrate is also directed to pass appropriate orders in the petition filed by the investigating officer on 21.05.2014 seeking permission to send the disputed cheque for expert opinion, so that, after getting the report, they may be able to proceed with the investigation and file final report as expeditiously as possible.

With the above direction and observation, the petition is disposed of.