
(2012) 11 MAD CK 0339
In the Madras High Court
Case No : Criminal R.C. No. 1283 of 2012

M. Mani

APPELLANT

Vs

Deputy Superintendent of Police

RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Constitution of India, 1950 — Article 32

Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 173, 173(2), 173(8), 319

Penal Code, 1860 (IPC) — Section 380, 395, 397, 457

Citation : (2013) 1 MLJ(Cri) 172

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : V.R. appaswamee, for the Appellant; C. Emalias, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

B. Rajendran, J.—This Revision is filed by the petitioner/de facto complainant aggrieved by the order dated 29.6.2012 passed in CrI. MP No. 3602 of 212 dismissing the petition filed by him u/s 173(8) Cr.P.C. According to the petitioner, he is working as an Assistant in Thiru. Kandambapathy Thiru Madam situated in Gingee and he is assisting the said Mutt for the past 20 years. On 10.12.2009, ten unknown persons trespassed into the Mutt with deadly weapons, assaulted the petitioner and the Madathipathi and also caused theft of 54 sovereigns of gold jewels, 7 grams of silver, two cell phones, 6 bangles and two platinum rings having a total value of Rs. 1,16,000/- and they have also taken the two wheeler bearing Registration No. TN 32 K 6386. In this context, the petitioner gave a complaint and based on the same, a case in Crime No. 147 of 2009 was registered by the Sathiyamangalam Police Station for the offences u/s 457, 380 and 395 @ 397 of IPC. After investigation, a final report was filed and it was taken on file in PRC No. 4 of 2012 on 2.3.2012. According to the petitioner, the investigation carried on by the investigation officer is not proper and therefore, he approached this Court by filing CrI. OP No. 21269 of 2010 seeking to transfer

the case to an independent investigation agency for investigation. This Court, by order dated 22.2.2011 directed the Inspector of Police, Valathi Police Station to complete the investigation within two months and also directed the Inspector General of Police, Villupuram Range, Villupuram to monitor the investigation. According to the petitioner, the direction issued by this Court has not been complied with and the investigation officer has not impleaded certain persons as accused in the case inspite of recovery of the theft items from them. Therefore, the petitioner has filed C.M.P. No. 3602 of 2012 before the Court below u/s 173(8) of Cr.P.C. seeking transfer of investigation to the special investigation agency namely C.B.C.I.D. for re-investigation and to file a final report.

2. The only point raised by the learned counsel for the petitioner was that the Court below dismissed the petition filed by the petitioner for re-investigation only on the ground that the special investigation agency like C.B.C.I.D. can be directed to conduct investigation only in cases of public importance and serious case and therefore, the direction sought for by the petitioner cannot be granted. In this context, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in *Kashmeri Devi Vs. Delhi Administration and Another*, to contend that the Court below has committed a manifest error in refusing to direct the special investigating agency to investigate the case.

3. The learned Government Advocate (Crl. Side) appearing for the respondent would contend that the investigation carried out by the investigating officer is just and proper and it is in accordance with law. The learned Government Advocate appearing for the respondent relied on the decision of the Honourable Supreme Court in *Reeta Nag Vs. State of West Bengal and Others*, to contend that once charge sheet is filed u/s 173 (2) of Cr.P.C. the Magistrate is not competent to order for re-investigation either suo motu or on the basis of an application by the de facto complainant. Such re-investigation can be ordered only on the request of the investigation officer based on further material collected during the course of investigation. This decision of the Honourable Supreme Court was also followed by this Court in the latest judgment in *A. Mohan and Others v. State rep. by the A. Mohan and Others Vs. State and Another*, wherein this Court has categorically held that the de facto complainant has no power to seek for further investigation. Similar view was taken by this Court in *C. Muthukrishnan Vs. District Collector, Tirunelveli District, Tirunelveli and Another*, wherein it is clearly stated that Section 173(8) Cr.P.C. does not contemplate nor empower a Magistrate to order further investigation on the request of the de facto complainant. Therefore, the learned Government Advocate would contend that the order passed by the Court below is proper and interference of this Court is not warranted.

4. I heard the learned counsel appearing for the petitioner as well as the learned Government Advocate (Crl.Side) appearing for the respondent. By consent, the main Revision is taken up for final hearing.

5. The short point for consideration is this Criminal Revision case is whether the

petitioner/de facto complainant can seek for further investigation u/s 173(8) Cr.P.C. The only grievance of the petitioner is the lower Court has not taken into consideration the need for further investigation and erroneously dismissed the application for re-investigation. The learned counsel for the petitioner also relied on the decisions in M/s. J.K. International Vs. State, Govt of NCT of Delhi and Others, and Dharmatma Singh Vs. Harminder Singh and Others, to contend that the Honourable Supreme Court has set aside the order quashing the criminal proceedings at the interlocutory stage and therefore re-investigation in this case, at the instance of the petitioner, is absolutely warranted.

6. In this case, the learned Magistrate has taken cognizance of the offence and the investigation officer also filed the charge sheet. Even as per decision of the Honourable Supreme Court judgment in Randhir Singh Rana Vs. The State Being the Delhi Administration, it was held that "after taking cognizance of an offence on the basis of the police report and after appearance of the accused, a learned Judicial Magistrate cannot, on his own, order further investigation in the case, though such an order could be passed on the application of the Investigating Authorities". Subsequently, the Honourable Supreme Court in the decision in Reeta Nag v. State of West Bengal and Others (supra) has categorically held that the de facto complainant cannot seek for further investigation. The relevant paragraphs are extracted as follows:

25. What emerges from the above mentioned decisions of this Court is that once a charge-sheet is filed u/s 173(2) Cr.P.C. and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation u/s 173(8). The Magistrate cannot suo motu direct a further investigation u/s 173(8) Cr.P.C. or direct a re-investigation into a case on account of the bar of Section 167(2) of the code.

26. In the instant case, the investigating authorities did not apply for further investigation and it was only upon the application filed by the de facto complainant u/s 173(8) was a direction given by the learned Magistrate to reinvestigate the matter. As we have already indicated above, such a course of action was beyond the jurisdictional competence of the Magistrate. Not only was the Magistrate wrong in directing a reinvestigation on the application made by the de facto complainant, but he also exceeded his jurisdiction in entertaining the said application filed by the de facto complainant.

27. Since no application had been made by the investigating authorities for conducting further investigation as permitted u/s 173(8) Cr.P.C., the other course of action open to the Magistrate as indicated by the High Court was to take recourse to the provisions of Section 319 of the Code at the stage of trial. We, therefore, see no reason to interfere with the order of the High Court since it will always be available to the Magistrate to take recourse to the provisions of Section 319 if any material is disclosed during the examination of the witnesses during the trial.

7. The judgment of the Honourable Supreme Court in *Reeta Nag v. State of West Bengal and Others* (supra) has been followed by this Court in the decision in *A. Mohan and Others v. State*, rep. by the Sub-Inspector of Police, Colleroon Police Station, Tricky and Another (supra) and the relevant paragraphs are extracted hereunder:

10. In the decision referred to above, the Hon''ble Apex Court has held that an aggrieved party cannot seek further investigation invoking Article 32 of the Constitution. It has been further held that if any aggrieved party feels that in some areas of the charge-sheet, investigation is inadequate, the aggrieved party can file only an application u/s 173(8), Cr.P.C., seeking further investigation.

16. In the instant Revision, the question of law involved is whether the de facto complainant is entitled to seek further investigation u/s 173(8) of Cr.P.C. and the impugned order passed by the Court below directing the Deputy Superintendent of Police to conduct further investigation and directing the Sub-Inspector of Police, Colleroon Police Station, who had already investigated and filed the charge-sheet, to hand over the CD file to Deputy Superintendent of Police, on the petition filed u/s 173(8), Cr.P.C. is legally sustainable or not.

26. In this context, the Court has to consider whether the second respondent/ de facto complainant could be construed as an aggrieved party, as per the interpretation of the Apex Court. It is crystal clear that as contemplated under sub-section (1) of Section 173, Cr.P.C., investigation under Chapter XII shall be completed without unnecessary delay. The scope of sub-section (8) of the said Section gives power to the Judicial magistrate to order further investigation, after filing of the report by the police, if there is any further report or reports regarding such further evidence in the form prescribed, which needs further investigation.

However, the Hon''ble Supreme Court has categorically ruled in *Reeta Nag Vs. State of West Bengal and Others*, that the Judicial magistrate is not empowered to suo moto order further investigation u/s 173(8), Cr.P.C. Similarly, the provision is not applicable to the de facto complainant to seek further investigation. Under the said provision of law, the Magistrate is empowered to order further investigation only based on the subsequent report of the investigating Office, in other words, the officer-in-charge of the Police Station, collecting further evidence, either oral or document shall forward the same to the concerned Magistrate, by way of additional report and if the Magistrate is satisfied that further investigation is needed, based on such report, he can order for further investigation, to meet the ends of justice.

8. Similarly, in yet another judgment of this Court in *Muthukrishnan v. State of Tamilnadu* (supra) it has been categorically held that

Section 173(8) Cr.P.C. does not contemplate nor empower a learned Judicial Magistrate to order further investigation on the request of the de facto complainant. It was further held that nothing in the provisions u/s 173(8) Cr.P.C.

provides for filing of application by the de facto complainant for further investigation.

In view of the above legal position, I hold that the order dated 29.6.2012 passed in CrI. M.P. No. 3602 of 2012 in Crime No. 147 of 2009 passed by the learned Judicial Magistrate, Gingee, Villupuram District does not suffer from any legal infirmity and I do not find any reason to interfere with such reasoned order. Accordingly, the Criminal Revision Petition is dismissed.