

(2009) 07 AHC CK 0019
In the Allahabad High Court
Case No : Criminal M. A. No. 14820 of 2009

Meenakshi

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 28-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 173(2), 173(58), 173(6), 311
Penal Code, 1860 (IPC) — Section 364, 411, 420

Citation : (2009) 3 ACR 3024

Hon'ble Judges : Arvind K. Tripathi, J

Bench : Single Bench

Advocate : Mohd. Naushad Siddiqui and Irshad Ahmad, for the Appellant;
A.G.A., for the Respondent

Judgement

Arvind K. Tripathi, J.—The present criminal miscellaneous application u/s 482, Cr. P.C. has been filed for quashing of the order dated 4.5.2009 passed by the trial court in S.T. No. 1146/08, P. S. Kotwali, district Moradabad under Sections 364, 420 and 411, I.P.C. directing the police for further investigation.

2. Heard learned Counsel for the applicant, learned A.G.A. and perused the record.

3. Learned Counsel for the applicant submitted that during trial eight prosecution witnesses were examined. Thereafter an application was moved on behalf of D.G.C. Criminals for further investigation in respect of the connection between the accused and the mobile used in the present case. He further contended that an application was purposely filed on behalf of the prosecution just to fill up the lacuna at such a belated stage. The official of the Mobile Company had already appeared with the relevant record and his statement was recorded, hence firstly no further investigation was required and secondly the learned Additional Sessions Judge, F.T. Court No. 3 Moradabad has no power to direct for further investigation u/s 173(8), Cr. P.C. The aforesaid power is with the police for

further investigation. Even after submission of the charge-sheet the power to direct for further investigation is only with the Magistrate u/s 156(3), Cr. P.C. Further u/s 173(8), Cr. P.C. there is no power with the learned Sessions Judge to direct for investigation, hence the impugned order directing for further investigation is liable to be quashed.

4. Learned A.G.A. has opposed the aforesaid prayer and submitted that in view of the provision of Section 173(8), Cr. P.C., the police has a right for further investigation after submission of the charge-sheet and during trial. He further contended that though no direction from the Court is required but since the trial is pending hence the permission of the Court was sought, the police has right of further investigation, to collect and place additional evidence before the Court concerned for just and proper disposal of the case.

5. From a perusal of the record it appears that officer of the concerned mobile company appeared as a witness who was examined. There was no application of the Investigating Officer or on behalf of the S.H.O. concerned for permission for further investigation. After officer from the Mobile Company was examined an application was moved to A.D.G.C. to direct for further investigation.

6. In the case of Mithabhai Pashabhai Patel and Others Vs. State of Gujarat, it was held by the Apex Court that the Supreme Court or the High Court can direct to get an offence investigated or further investigated under the provision of Section 156(3), Cr. P.C., the Magistrate concerned has power to issue direction for investigation. u/s 173(8), Cr. P.C., the police has a right of further investigation and to collect oral or documentary evidence. The report after further investigation has to be forwarded to the learned Magistrate in the form prescribed and the provision of Sub-sections (2), (6) of Section 173, Cr. P.C. shall apply in relation to such report forwarded under Sub-section (2) of the said section. Further investigation is in continuation of earlier investigation and not re-investigation. In case of Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Others, it was held by the Apex Court that the provision of Section 173(8), Cr. P.C. permits further investigation even if cognizance is taken by the Court. When the defective investigation comes to light, during the course of trial, it might be cured by further investigation. If circumstances so permit it would ordinarily be desirable with the police who inform the Court and seek formal permission to make further investigation with fresh fact which comes to the light instead of being silent over the matter keeping in view of only need for an early trial. The proper investigation is made relevant and necessary instead of expeditious disposal of the matter by the Court.

7. In case of Rama Chaudhary Vs. State of Bihar, it was held that Section 173(8), Cr. P.C. clearly envisages that on completion of the further investigation, the investigating agency has to forward to Magistrate a further report regarding further evidence obtained during such investigation. It was further held that law does not mandate taking prior permission from the Magistrate for further investigation. It is settled law that carrying out further investigation, even after

filing of the charge-sheet is a statutory right of the police. The material collected in further investigation cannot be rejected only because it has been filed at the stage of the trial. It was also held in para 22 of the aforesaid judgment that the prosecution is entitled to produce any person as witnesses even though such person is not named in the earlier charge-sheet.

8. In the present case no application was moved by the investigating agency for permission of further investigation or information to the Court that further oral or documentary evidence was available and further investigation was necessary. In the present case an application was moved by the A.D.G.C. If any further clarification is required regarding connection of the applicant with the mobile used in the present case then call details and for further evidence the officer concerned might be summoned with relevant record to examine them further in view of the provision of Section 311, Cr. P.C. The prosecution was free to move an application for recall of the any witnesses or for summoning any relevant document for proper disposal of the case. Trial court is empowered to recall witness or to summon relevant record.

9. In view of the above discussion the impugned order dated 4.5.2009 passed by Addl. Sessions Judge/F.T.C.-3, Moradabad in S.T. No. 1146/08 is modified to the extent that it will be open to the Investigating Agency/Police Officer concerned to further investigate in exercise of the right of further investigation u/s 173(8), Cr. P.C. if it is found necessary in view of the evidence placed by the official of the Mobile Company to collect evidence and to forward report to the Court concerned, with regard to the application for Mobile connection and use of the Mobile number etc. The further investigation will be carried out in supervision and monitoring of S.S.P. concerned as directed by the trial court. However, the trial shall continue. The trial court, if finds it necessary, may recall/summon witnesses and relevant records related with connectivity of accused and use of Mobile for just and proper disposal of the case.

10. However, during further investigation the accused applicant who is on bail shall continue on bail and no coercive steps shall be taken without permission and order of the Court concerned provided he co-operates with the investigation.

In view of the aforesaid discussion and observation the present application is finally disposed of.