

(2003) 02 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 11409 of 1998

Raj Kishore Chhapolia

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(1), 173(2), 173(3), 173(4)

Penal Code, 1860 (IPC) — Section 34, 498A

Citation : (2003) 02 OHC CK 0001

Hon'ble Judges : M. Papanna, J;A. K. Patnaik, J

Bench : Division Bench

Advocate : G.P. Mohanty, H.P. Mohanty, A.K. Mishra, P.K. Panda and G.S. Panda, for the Appellant; U. K. Samal, B.R. Barik, N.P. Ray, S. Jena and C.D. Sahoo, For OP 2 in Cr.M.C. No. 681/99 and for OP 8 in OJC No. 11409/98, Debashis Panda, Devi Prasad Dhal and A. Parida, For OP 2 in OJC. No. 7959/2000, For OP 1 in Cr.M.C. No. 3606/99 and OJC No. 7959/2000 and OPs. 1 to 6 in OJC No. 11409/98, for the Respondent

Final Decision : Dismissed

Judgement

A. K. Patnaik, J.—The relevant facts for disposal of these cases briefly stated are that the petitioner's daughter Sobha Singhal was the wife of Uma Shankar Singhal. On 19.9.1997, the petitioner lodged an FIR in the Plantsite P.S., Rourkela stating, inter alia, therein that on 16.9.1997 at 9 P.M. Shri Jagdish Prasad Singhal, uncle of Uma Shankar Singhal telephoned to him saying that Sobha was missing from the house at Rourkela at 4.30 P.M. and that they are searching for her. In the said FIR, the petitioner requested the Officer-in-charge of the Plantsite P.S., Rourkela to investigate the matter and to ascertain the whereabouts of his daughter Sobha. On the said FIR., Plantsite P.S. Case No. 317 of 1997 u/s 498A, IPC was registered and investigated. After investigation, a charge-sheet was filed against Uma Shankar Singhal and his cousin Laxmi Kumari Podar in G.R. Case No. 1483 of 1997 in the Court of the learned J.M.F.C.,

Panposh, Rourkela. On 22.12.1998, the learned J.M.F.C., Panposh, Rourkela, passed orders after hearing counsel for the prosecution and the defence that there was sufficient ground for presuming that the accused persons have committed the offence u/s 498A/34, IPC and framed charges against the two accused persons u/s 498A/34, IPC. Aggrieved by the said order dated 22.12.1998 of the learned J.M.F.C., Panposh, Rourkela in G.R. Case No. 1483 of 1997, the two accused persons Uma Shankar Singhal and Laxmi Kumari Podar filed Criminal Revision No. 1 of 1999 before the learned Additional Sessions Judge, Rourkela and by judgment dated 23.4.1999, the learned Additional Sessions Judge, Rourkela held that the Magistrate had not applied his mind to the facts of the case and the law applicable thereto and that the Magistrate should have discharged the accused persons u/s 239 of the Cr.P.C. as there was no ground for presuming that the accused persons had committed the offence for which they were charged. The Additional Sessions Judge quashed the order of framing charge against the two accused persons and discharged them from the alleged offence u/s 498A/34 I.P.C.

2. Aggrieved by the said judgment dated 23.4.1999 of the learned Additional Sessions Judge, Rourkela, the petitioner has filed Criminal Misc. Case No. 3606 of 1999 u/s 482, Cr.P.C. with a prayer to quash the said judgment dated 23.4.1999 of the Additional Sessions Judge, Rourkela and for directing the trial Court to proceed with the case by framing charges afresh on the basis of materials available on record. The petitioner has filed Criminal Misc. Case No. 681 of 1999 u/s 439(2) read with Section 482, Cr.P.C. for cancellation of the bail granted to Uma Shankar Singhal. The petitioner has also filed a habeas corpus petition under Article 226 of the Constitution before this Court, OJC No. 11409 of 1998 praying for production of Sobha before the Court and for directing the investigating agency to find out Sobha who was missing since long. Uma Shankar Singhal in the meanwhile filed a petition for dissolution of his marriage with Sobha Singhal, C.P. No. 141 of 1999 before the Presiding Judge, Family Court Rourkela. The petitioner filed an application in the said C.P. No. 141 of 1999 stating, inter alia, that his daughter Sobha, who was given in marriage to Uma Shankar Singhal, had disappeared since 16.9.1997 and that he had filed habeas corpus petitions before the High Court and until the habeas corpus cases are disposed of by the High Court, no ex parte order be passed against Sobha. Apprehending that C.P. No. 141 of 1999 may be decided ex parte against Sobha, the petitioner has filed OJC No. 7959 of 2000 under Articles 226/227 of the Constitution with a prayer to direct the Presiding Judge, Family Court, Rourkela to allow the petitioner to contest the case in the absence of his daughter Sobha and to postpone hearing and disposal of the said C.P. No. 141 of 1999 by the Judge, Family Court, Rourkela till disposal of the cases before the High Court. Along with the said OJC No. 7959 of 2000 the petitioner also filed Misc. Case No. 8335 of 2000 for stay of the proceedings in the said C.P. No. 141 of 1999. On 16.10.2000, this Court issued notice to opposite party No. 2 Uma Shankar Singhal and also passed orders in the Misc. Case staying further proceedings in

C.P. No. 141 of 1999 pending before the Judge, Family Court, Rourkela until further order orders.

3. All the aforesaid cases were heard by us analogously on 11.12.2002 when it was brought to our notice that Misc. Case No. 10009 of 2001 has been filed by the opposite parties in O.J.C. No. 11409 of 1998 stating therein that on 25.10.2000 this Court has passed orders in the said OJC No. 11409 of 1998 directing the Director General of Police, Orissa to examine the matter relating to Rourkela Plantsite P.S. Case No. 317 dated 19.9.1997 and cause a further probe and submit a report by 5th January, 2001. Pursuant to the said directions of this Court, the Director General of Police, Orissa and the Additional Director General of Police, H.R.P.C., Orissa directed Shri P. M. Patnaik, Deputy Superintendent of Police, H.R.P.C., Orissa, to cause further probe into the matter who during the enquiry found the case to be a homicidal offence. On the basis of his report, the Additional Director General of Police, H.R.P.C., Orissa, directed Shri S. K. Jena, Inspector of Police, H.R.P.C., Cuttack to investigate into the case. Thereafter Shri S. K. Jena, Inspector filed an application before the learned S.D.J.M., Panposh, Rourkela for re-investigation of the case, as during enquiry some new facts came out to show that the case is one of homicide. But although the said application was filed before the learned S.D.J.M. on 14.6.2001, no specific orders have been passed by the learned S.D.J.M., Panposh, Rourkela on the ground that connected matters were pending before the High Court. In the said Misc. Case No. 10009 of 2001, the opposite parties have prayed for directing the learned S.D.J.M., Panposh, Rourkela to allow the investigating officer to re-investigate into the case in connection with Plantsite P.S. Case No. 317 dated 19.9.1997.

4. Mr. G. P. Mohanty learned counsel appearing for the petitioner, submitted that in the event this Court allows the prayer in the said Misc. Case No. 10009 of 2001 of the opposite parties and directs the learned S.D.J.M., Panposh, Rourkela to allow the investigating officer to re-investigate into the case (Plantsite P.S. Case No. 317 dated 19.9.1997), it will not be necessary for the Court to decide Criminal Misc. Case No. 3606 of 1999 against the order of the Additional Sessions Judge, Rourkela discharging the two accused persons. He submitted that Section 173(8) of the Cr.P.C., 1973 made it clear that the police always has the right to re-investigate in respect of an offence even after a report had been filed u/s 173(2) of the Cr.P.C. and if on such re-investigation, the police obtains fresh evidence, oral or documentary, he has to forward a further report to the Magistrate regarding such evidence and thereafter the Magistrate has to proceed afresh in accordance with Sub-section (2) to (6) of Section 173, Cr.P.C., 1973. Mr. Mohanty vehemently argued that even where the accused persons have been discharged, as in the present case, the police has the power under Sub-section (8) of Section 173 Cr.P.C. to re-investigate into the matter. In support of his aforesaid submission, he cited the decisions of the Supreme Court in Ram Lal Narang Vs. State (Delhi Administration), , and Hemant Dhasmane Vs. Central Bureau of Investigation and Another, . Mr. Mohanty, however, submitted that this Court has held in Mahima " Mahimananda Mishra and others Vs. State of Orissa

and others, , that the police will have to take a formal prior permission from the Magistrate concerned for re-opening of a case for further investigation u/s 173(8) Cr.P.C., 1973 after submission of a report u/s 173(2) of the Cr.P.C. where cognizance has been taken. Mr. Mohanty submitted that ends of justice require that this Court passes orders allowing the Investigating Officer re-investigate into the case as prayed in Misc. Case No. 10009 of 2001 u/s 173(8), Cr.P.C.

5. Mr. U. C. Samal, learned counsel appearing for Uma Shankar Singhal, on the other hand, submitted that the power to allow the police to investigate into the case afresh u/s 173 (8) of the Cr.P.C. is vested in the Magistrate and the proper course would be for the Magistrate to consider the said request, if any, of the police for further investigation into the case and, therefore, this Court should not pass any orders allowing the police to further investigate into the case. He cited the decision of the Supreme Court in Union Public Service Commission Vrs. S. Papalah and ors., AIR 1997 SC 386, for the proposition that the jurisdiction is that of the Magistrate whether or not to direct the police to further investigate into a case and collect further evidence.

6. Sub-section (8) of Section 173, Cr.P.C., 1973 is quoted herein below :

173 Report of Police Officer on completion of investigation :

(1) to (7)

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(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).

A plain reading of the aforesaid Sub-Section (8) of Section 173, Cr.P.C., 1973 shows that where 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-section (2) to (6) of Section 173, Cr.P.C., 1973 shall, as far as may be, apply to such report or reports as they apply to the reports forwarded under Sub-section (2) of Section 173, Cr.P.C., 1973. In the aforesaid Sub-section (8) of Section 173, Cr.P.C., 1973, there is no provision whatsoever vesting jurisdiction in the Magistrate to pass any order on an application of the police for making any further investigation for obtaining further evidence, oral or documentary, in

respect of the offence, after the report under Sub-section (2) has been forwarded to the Magistrate. Courts, however, have insisted on the prior permission of the Magistrate for such further investigation only with a view to ensure independence of the judiciary and purity of administration of criminal justice. In the language of the Supreme Court in *Ram Lal Narang Vrs. State (Delhi Admn.)* (supra) cited by Mr. Mohanty.

... The criticism that a further investigation by the police would trench upon the proceedings before the Court is really not of very great substance, since whatever the peace may do, the final discretion in regard to further action is with the magistrate. That the final word is with the magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light.

22. As observed by us earlier, there was no provision in the Code of Criminal Procedure, 1898 which expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted u/s 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.

In the aforesaid decision in the case of *Ram Lal Narang Vrs. State (Delhi Admn.)* (Supra), the Supreme Court made it clear that even the absence of a provision similar to Sub-section (8) of Section 173, Cr.P.C., 1973 in the old Code, Cr.P.C. 1898, the Courts had always recognized the power of the police to submit a fresh report to the Magistrate where fresh facts came into light which required further investigation in a case where the police had already submitted a report u/s 173(1) of the Cr.P.C. The Supreme Court clearly held that where the police desired to make further investigation, it could always move the Court and seek its formal permission to make further investigation.

7. In the Union Public Service Commission Vrs. S. Papaiah (supra) on which great reliance was placed by Mr. Samal, the U.P.S.C. had communicated to the Director of C.B.I. in its communication dated 23rd January, 1995 as many as six defects in the investigation carried out by the C.B.I. necessitating reinvestigation, but the C.B.I. did not bring that fact to the notice of the Metropolitan Magistrate while submitting the final report before the Magistrate and the Magistrate decided to accept the final report submitted by the C.B.I. and closed the file. Thereafter the U.P.S.C. brought the contents of its communication dated 23rd January, 1995 to the notice of the learned Metropolitan Magistrate in a misc. petition seeking re-investigation, but the learned Magistrate rejected the petition observing that rightly or wrongly the Court had passed an order and it had no power to review the earlier order. The Supreme Court held that the learned Magistrate fell into an error as he was not required to review his order but could have ordered further investigation into the case and it appears that the learned Metropolitan Magistrate overlooked the provisions of Section 173(8) which have been enacted to take care of such a situation also. Thus, this was not a case where the police was seeking the re-investigation for the purpose of obtaining further evidence and submitting a further report to the Magistrate. This is a case where the Supreme Court having found that there were defects in the investigation held that the Magistrate had overlooked Sub-section (8) of Section 173, Cr.P.C. and had failed to exercise jurisdiction by not directing the police to further investigate into the case.

8. In Hemant Dhasmana Vrs. Central Bureau of Investigation (supra) cited by Mr. Mohanty, the Supreme Court after quoting the provisions of Sub-section (8) of Section 173, Cr.P.C., 1973 observed :

16. Although the said Sub-section does not, in specific terms, mention about the powers of the Court to order further investigation the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the Court....

Thus, as per the aforesaid decision of the Supreme Court, although Sub-section (8) of Section 173, Cr.P.C., 1973 does not mention about the power of the Court to order further investigation, the power of the police to conduct further investigation under the said Sub-section (8) of Section 173, Cr.P.C., 1973 can be triggered into motion at the instance of the Court. In other words, the power under Sub-section (8) of Section 173, Cr.P.C., 1973 to re-investigate really belongs to the police and in appropriate cases the Magistrate or the appropriate Court can direct further investigation by the police under Sub-section (8) of Section 173, Cr.P.C., 1973.

9. Coming now to the facts of the present case, we find that on 25.10.2000 this Court passed the following orders in OJC No. 11409 of 1998 :

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Considering the facts and circumstances, we are inclined to pass the following order :

The Director General of Police, Orissa, Cuttack will examine the matter relating to Rourkela Plant Site P.S. Case No. 317 dated 19.9.1997 and cause further probe and submit his report by 5th of January, 2001.

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It has been stated in Misc. Case No. 10009 of 2001 that pursuant to the aforesaid order dated 25.10.2000, the Director General of Police, H.R.P.C., Orissa and the Additional Director General of Police, H.R.P.C., Orissa directed Shri P. M. Patnaik, Deputy Superintendent of Police, H.R.P.C. Orissa, Cuttack to cause probe into the matter, who, during enquiry, found the case to be a case of homicidal offence and directed Shri S. K. Jena. Inspector of Police, H.R.P.C., Orissa, Cuttack to investigate into the said case. It appears from the records of G.R. Case No. 1483 of 1997 which have been dispatched to this Court pursuant to our order dated 11.12.2002 that Shri Sarat Kumar Jena, Inspector of Police, H.R.P.C., Orissa, Cuttack sent a petition dated 13.6.2001 to the Court of the learned S.D.J.M., Panposh, Rourkela. The contents of the said petition dated 13.6.2001 are extracted herein below :

in the court of S.D.J.M., Panposh. Rourkela,

Ref : G. R. Case No. 1483/97 arising out of Plantsite P.S. Case No. 317 dtd. 19.9.97 u/s 498-A I.P.C.

Sub : Prayer for order for re-investigation of the case u/s 173(8), Cr.P.C.

Sir,

I am to submit that, the matter relates to Plantsite P.S. Case No. 137 dt. 19.9.97 u/s 498 (A) I.P.C. (G.R. No. 1483/97) which was registered on the report of Raj Kishore Chhapolia, the father of Sobha Singhal. In this case C.S. No. 151 dt. 8.6.98 u/s 498-A/34, IPC was submitted against accused persons Uma Shankar Singhal and Rani " Laxmi Kumari Podar.

Cognizance was taken by J.M.F.C., Panposh against both the accused persons on 22.12.98. The Cognizance was challenged by the accused persons in the Hon''ble Court of Addl. Sessions Judge, Rourkela. The Hon''ble Court passed order in quashing the cognizance vide order dt. 23.4.99 in criminal revision No. 1 of 1999 and discharged both the accused persons.

The Complt. Raj Kishore Chhapolia filed a petition in the Hon''ble High Court of Orissa vide OJC No 11409/98 and the Hon''ble Court in their order dt. 23.9.98

and 25.10.2000 directed the D.G. of Police, Orissa to cause further probe into Plantsite P.S. Case No. 317 dt. 19.7.97. Accordingly the matter was further probed by Sri P.M. Pattnaik. O.P.S., D.S.P., HRPC(O), Cuttack. The enquiry report submitted by him indicated some vital clues disclosed by witnesses Ganga Bai, Santosh Kumar Agarwal and others from which it appears to be a case of homicide. Accordingly the Addl. D.G. of Police, H.R.P.C. (O), Cuttack directed me to proceed with the further investigation of the case vide his office order No. 180 dt. 12.6.2001.

Prayer

In view of the facts stated above I pray Hon"ble Court to pass orders allowing me to re-investigate into the case u/s 173(8), Cr.P.C.

Yours Faithfully,

Dt. 13.6.2001

Sd/- (Sarat Kumar Jena) Inspector of Police, H.R.P.C., Orissa, Cuttack.

From the contents of the said petition extracted above, it is clear that pursuant to the orders passed by this Court on 25.10.2000 in OJC No. 11409 of 1998, a probe was made by Shri P.M. Patnaik, D.S.P., H.R.P.C. and an enquiry report has been submitted and some vital clues have been disclosed by witnesses Ganga Bai, Santosh Kumar Agarwal and others from which it appears to be a case of homicide. In the aforesaid petition, a prayer has been made before the learned S.D.J.M., Panposh, Rourkela, to allow the Inspector of Police, H.R.P.C. (O), Cuttack to re-investigate into the case u/s 173(8) of the Cr.P.C. Thus, a formal permission has been sought by the Inspector of Police, H.R.P.C. (O) from the Court of the learned S.D.J.M., Panposh, Rourkela for re-investigation into the matter but the order-sheet of the court of the learned S.D.J.M. indicates that the aforesaid application for permission is still pending before the learned S.D.J.M., Panposh, Rourkela. Considering all these facts, such permission should be granted in the interest of purity of administration of criminal justice.

10. We, therefore, allow Misc. Case No. 10009 of 2001 and direct that the S.D.J.M., Panposh, Rourkela will grant permission to the Inspector of Police, H.R.P.C. (O), Cuttack, to re-investigate into Plantsite P.S. Case No. 317 dated 19.9.1997. With the aforesaid direction O.J.C. No. 11409 of 1998 and Criminal Misc. Case No. 3606 of 1999 also stand disposed of. The L.C.R. will be forthwith returned to the Court of the learned S.D.J.M., Panposh, Rourkela and within 15 days from the date of receipt of the said L.C.R., the learned Magistrate will grant such permission to the police for further investigation and within six months from the date of grant of such permission, re-investigation will be completed by the police and the report be submitted to the Magistrate. We also dispose of O.J.C. No. 7959 of 2000 with a direction that until such re-investigation is over within the aforesaid period of six months, the proceedings for dissolution of marriage initiated by Shri Uma Shankar Singhal in C.P. No 141 of 1999 before the Judge,

Family Court, Rourkela, would continue to remain stayed. Considering the fact that Uma Shankar Singhal now stands discharged by the order passed by the Additional Sessions Judge and fresh materials in the re-investigation are yet to be collected by the police, we are not inclined to cancel the bail granted to Uma Shankar Singhal and we accordingly dismiss Criminal Misc. Case No. 681 of 1999.