
(2014) 04 BOM CK 0013

In the Bombay High Court

Case No : Criminal Writ Petition No. 903 of 2013

Ramakant

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 25-04-2014

Acts Referred:

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

Citation : (2014) 04 BOM CK 0013

Hon'ble Judges : A.I.S. Cheema, J

Bench : Single Bench

Advocate : S.I. Nandode, Advocate for the Appellant; V.D. Godbharle, A.P.P. and S.S. Choudhari, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

A.I.S. Cheema, J.—Rule. Rule made returnable forthwith and heard finally with the consent of the learned counsel for the parties.

2. The Petitioner claims to be original complainant who filed first information report, due to which Respondent Nos.3 and 4 are being prosecuted before the Court of Judicial Magistrate, First Class, Tuljapur in R.C.C. No.273 of 2007. Learned counsel for the Petitioner submitted that Petitioner had filed application Exhibit 27 for re-investigation and also filed application Exhibit 52 requesting for further investigation instead of re-investigation. Copy of the said application has been filed on record and marked "X" for identification.

3. Learned counsel for the Petitioner submitted that the Petitioner sought further investigation u/s 173(8) of the Code of Criminal Procedure, 1973 ("Cr.P.C." in brief), but the trial Court as well as the Revisional Court has rejected the same, on the ground that the Court did not have powers to direct further investigation. According to the counsel, the Courts have got powers u/s 173(8) of Cr.P.C.

4. Learned counsel for Respondent Nos.3 and 4 referred to the facts of the matter to say that the first information report was filed on 18th August, 2007

and charge-sheet filed on 4th October, 2007 and charge was framed on 25th November, 2008. The counsel submitted that two witnesses were examined and at such belated stage, the Petitioner moved for further investigation. According to the counsel, looking into the observations in the matter of Miteshkumar Rameshbhai Patel and Another Vs. State of Gujarat and Another, further investigation could not be directed by the Court.

5. In reply, learned counsel for the Petitioner has relied on the case of Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, where the Hon''ble Supreme Court has held that the Magistrate has powers to direct further investigation even after filing of police report.

6. The learned A.P.P. on behalf of the State submitted that in view of the Judgment of the Hon''ble Supreme Court in the case of Vinay Tyagi (cited supra), as in Courts below, matter has been dealt with on the basis that Magistrate did not have power to direct further investigation, the matter may be remitted back to the trial Court to consider on merits, whether or not directions of further investigation need to be given.

7. Having gone through the dispute between the parties and the orders of the trial Court as well as Revisional Court, the matter is remitted back to the trial Court. The trial Court may consider on merits, whether Application Exhibit 27 read with Application Exhibit 52, requesting for further investigation, needs to be granted or not, keeping in view the observations of the Apex Court in the matter of Vinay Tyagi (cited supra).

8. Rule is partly made absolute on the terms indicated above. Writ Petition stands disposed of accordingly.