
(2009) 11 KL CK 0097
In the High Court Of Kerala
Case No : Criminal M.C. No. 3133 of 2009

Reji Jose

APPELLANT

Vs

Director General of Police

RESPONDENT

Date of Decision : 10-11-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 482

Citation : (2009) 4 KLT 921

Hon'ble Judges : M. Sasidharan Nambiar, J

Bench : Single Bench

Advocate : V. Sethunath, for the Appellant; K.J. Muhammed Ansar, Public Prosecutor, for the Respondent

Judgement

M. Sasidharan Nambiar, J.—Petitioner is the de facto complainant in S.C. No. 165/2009 on the file of Additional Sessions Court (Ad hoc-I), Kottayam, pending trial. This petition is filed u/s 482 of Code of Criminal Procedure to order further investigation u/s 173(8) of Code of Criminal Procedure by a superior officer not below the rank of a Deputy Superintendent of Police under the direct control of Superintendent of Police. Kottayam contending that there is lacuna in the investigation conducted and in such circumstances, in the interest of justice, a further investigation is to be ordered.

2. Learned Counsel appearing for the petitioner and learned Public Prosecutor were heard.

3. Learned Counsel appearing for the petitioner, relying on the decision of the Apex Court in Randhir Singh Rana v. The State being the Delhi Administration 1997 (1) KLT SN 56 (C. No. 73) SC : 1996 STPL (LE) 22611 SC argued that the power u/s 173(8) of Code of Criminal Procedure cannot be exercised by the Magistrate or the Sessions Judge after cognizance of the offence was taken and learned Sessions Judge cannot order further investigation and therefore, this Court has to consider whether a further investigation is warranted or not.

4. Relying on the decision of the Apex Court in SLP (Crl.) No. 888/2009, learned Counsel submitted that the High Court, being the sentinels of justice and has been vested with extraordinary powers of judicial review and supervision, to ensure that the rights of the citizens are duly protected so as to maintain a constant vigil against the inaction of the authorities in discharging their duties and obligations in the interest of the citizens for whom they exist and when it is clear that there was no proper investigation, a further investigation is to be ordered. Relying on the decision of the Apex Court in Kedar Narayan Parida v. State of Orissa JT 2009 (1) SC 314, it was argued that High Court, being the guardian of the life and liberty of the citizens and if there was any flavour of deliberate misuse of the authority vested in the Investigating Authority, High Court may certainly step in to correct such injustice or failure of justice and therefore, a further investigation is to be ordered.

5. As the matter is pending before the learned Sessions Judge, Kottayam, petitioner has a right to file an application for further investigation u/s 173(8) of Code of Criminal Procedure. As held by a Division Bench of this Court in Shaji Vs. State of Kerala, , if the complainant files a petition before that Court saying that real culprits were not included in the final report or there is lacuna in the investigation which will cause failure of justice and the Sessions Judge, after considering the matter, comes to a prima facie conclusion that proper investigation was not conducted, he is free to order further investigation to avoid failure of justice. It was further held that Section 173(8) of Code of Criminal Procedure puts no bar on the Magistrate to order further investigation and if the Magistrate comes to the conclusion that in the interest of justice a further investigation is necessary, he can trigger the police to exercise the power u/s 173(8), as police has the power to conduct further investigation u/s 173(8) even after taking cognizance of the offence. Magistrate has power to point out to the police to exercise their duties u/s 173(8) if on the facts of the case, it is revealed that further investigation is necessary, though such power has to be exercised sparingly and only if circumstances warrant, in the interest of justice.

6. Though learned Counsel appearing for the petitioner tried to distinguish the decision saying that it deals with only the powers of the Magistrate, I cannot agree with the submission. What is stated in Shaji's case (supra) though, with regard to the powers of the Magistrate, once cognizance of the offence has been taken and the case has been committed to the Sessions Court, it is not for the Magistrate to exercise the power u/s 173(8) of Code of Criminal Procedure, but, for the Judge, before whom the case is pending. Therefore, learned Sessions Judge, who is trying the case, has, definitely, the power u/s 173(8) of Code of Criminal Procedure to decide whether a further investigation is warranted or not. In such circumstances, petitioner is at liberty to approach the learned Sessions Judge for further investigation, raising all the contentions raised herein.

Petition is disposed granting liberty to the petitioner to approach the Sessions Judge and seek an order for further investigation.