

(2018) 04 PAT CK 0109

In the Patna High Court

Case No : Criminal Miscellaneous No. 42451 Of 2017

Renu Kumari And Ors

APPELLANT

Vs

State Of Bihar And Anr

RESPONDENT

Date of Decision : 03-04-2018

Acts Referred:

Constitution Of India, 1950 — Article 32, 226
Code Of Criminal Procedure, 1973 — Section 154, 156(1), 173, 173(2), 173(3),
173(8), 362, 482
Indian Penal Code, 1860 — Section 34, 420, 467, 468, 471
Code Of Criminal Procedure, 1898 — Section 173

Citation : (2018) 3 PLJR 1

Hon'ble Judges : Ashwani Kumar Singh, J

Bench : Single Bench

**Advocate : Kaushal Kumar Jha, S. K. Choudhary, K. C. Jha, Amish Kumar,
Gulnar Begam**

Final Decision : Allowed

Judgement

1. In the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C."), the petitioners have prayed

for quashing of the order dated 30.06.2017 passed by the learned Chief Judicial Magistrate, Purnea in Sadar P. S. Case No. 265 of 2015 whereby he

has recalled the order taking cognizance and has allowed the petition dated 28.06.2017 filed by the investigating officer under Section 173(3) of the

Cr.P.C. for reinvestigation of the case.

2. Mr. Kaushal Kumar Jha, learned counsel for the petitioners submitted that the order impugned has been passed by the learned Chief Judicial

Magistrate, Purnea mechanically without application of judicial mind. He submitted that the law does not permit re-investigation, but without adhering

to the statutory provision learned Chief Judicial Magistrate allowed the prayer of the investigating officer and recalled his earlier order passed pursuant

to the receipt of the charge-sheet submitted by the police.

3. Mrs. Gulnar Begam, learned Additional Public Prosecutor for the State submitted that there is no illegality in the order impugned whereby the

learned Chief Judicial Magistrate has allowed the prayer of the investigating officer for re-investigation of the case. She submitted that after

completion of investigation and submission of police report, certain new facts transpired on which investigation was found necessary pursuant to which

the Inspector General of Police had directed the investigating officer to seek permission of the court for re-investigation, which has rightly been

allowed by the court.

4. I have heard learned counsel for the parties and perused the order impugned.

5. The facts of the case in brief are that an FIR was instituted on the basis of written report submitted by one Anil Kumar, Revenue Officer-cum-

Incharge Circle Officer, Purnea East to the Officer-in-charge, Sadar, Purnea under Sections 467, 468, 471 and 420 read with 34 of the Indian Penal

Code against four accused persons, namely, Anirudh Prasad Singh son of Kavilal Singh, Anirudh Prasad Singh son of late Pravin Kumar Singh, Vijay

Kumar Chaudhary son of Chotey Lal Chaudhary and Jagarnath Chaudhary. In course of investigation, the police came to know that Anirudh Prasad

Singh son of Kavilal Singh and Anirudh Prasad Singh son of late Pravin Kumar Singh is one and the same person. Since Jagarnath Chaudhary had

died during investigation, on completion of investigation, the police submitted charge-sheet against Anirudh Prasad Singh and Vijay Kumar Chaudhary

under Sections 467, 468, 471 and 420 read with 34 of the Indian Penal Code vide Charge-sheet No.181 of 2016 dated 31.07.2016. On perusal of the

police report submitted under Section 173(2) of the Cr. P.C. and the case diary, the learned Chief Judicial Magistrate vide order dated 25.05.2017 took

cognizance of the offences and issued summons against the two charge-sheeted accused persons fixing 17.08.2017 as the next date.

6. Subsequently, the Investigating Officer filed an application on 28.06.2017 in the court of Chief Judicial Magistrate, Purnea stating therein that the

Inspector General of Police, Darbhanga Range, Darbhanga had directed the Superintendent of Police, Purnea to re-investigate the case and in turn the

Superintendent of Police, Purnea directed the Investigating Officer to re-investigate the case after obtaining permission of the court. The said petition filed by the Investigating Officer was allowed by the learned Chief Judicial Magistrate vide order dated 30.06.2017 whereby while directing the police to re-investigate the case under Section 173(2) of the Cr. P.C. and also recalled the order taking cognizance of the offence.

7. Having considered the rival submissions and perused the record, I find that two important questions of law are involved in the present case. They

are:-

(i) Whether the Investigating Officer is empowered to re-investigate the case after submission of a report under Section 173(2) of the Cr. P.C.? and;

(ii) Whether the criminal court can review its order on merit and recall the same?

8. Section 154 of the Cr. P.C. places a duty upon the Officer-in-charge of the police station to register an FIR upon receipt of an information about

cognizable offence. Once an FIR is instituted, the police have got power to investigate a case under Section 156(1) of the Cr. P.C. and, on completion

of investigation, they are required to submit a report before the court under Section 173(2) of the Cr. P.C. Even after filing of such report, if the police

come into possession of further information or material, the police have power to make further investigation in terms of Section 173(8) of the Cr. P.C.

and submit a supplementary report to the Magistrate notwithstanding the fact that the Magistrate has taken cognizance of the offence upon a police

report submitted earlier.

9. While acknowledging the power of the police authority to carry out investigation in terms of Section 173 of the Cr. P.C. in *Ram Lal Narang vs.*

State (Delhi Administration) [(1979) 2 SCC 322], the Supreme Court observed as under:-

“In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 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.”

10. In *K. Chandrasekhar, Mariam vs. The State of Kerala & Ors.* [(1998) 5 SCC

223], the Supreme Court observed as under:-

“The dictionary meaning of ‘further’ (when used as an adjective) is ‘additional; more; supplemental’. ‘Further’ investigation

therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier

investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on

completion of further investigation the investigating agency has to forward to the Magistrate a ‘further’ report or reports - and not fresh report or

reports” regarding the ‘further’ evidence obtained during such investigation. “

11. In *Mithabhai Pashabhai Patel and Ors. vs. State of Gujarat* [(2009) 6 SCC 332], the Supreme Court observed as under:-

“It is, however, beyond any cavil that ‘further investigation’ and ‘reinvestigation’ stand on different footing. It may be that in a given

situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a

‘State’ to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in

law, no superior court would ordinarily issued such a direction.”

12. Thus, it would be manifest that after filing of police report under Section 173(2) of the Cr. P.C. if the police come into possession of further

information or material, they may make further investigation with the leave of the court and where during further investigation they collect further

evidence oral or documentary. They are obliged to submit the same with one or more further reports. However, the police have no power to re-

investigate a case wiping out the earlier investigation altogether.

13. In that view of the matter, the permission given by the learned Chief Judicial Magistrate, Purnea, vide impugned order dated 30.06.2017 to re-

investigate the case is wholly without jurisdiction.

14. Coming back to the second issue, it is to be seen as to whether a criminal court can exercise the power to recall/review its order after passing.

15. Section 362 of the Cr. P.C. stipulates that save as otherwise provided by the Cr. P.C. or any other law, for the time being in force, no Court, when

it has signed its judgment or final order disposing of a case, shall alter or review

the same except to correct a clerical or arithmetical error. This

Section applies to judgment or final order. It is altering or reviewing any judgment or final order after it has been signed except for the purpose of correction of clerical or arithmetical error.

16. In *Sooraj Devi vs. Pyare Lal and Anr.* [(1981) 1 SCC 500], the Supreme Court observed as under:-

“It is true that the prohibition in Section 362 against the court altering or reviewing its judgment is subject to what is otherwise provided by this Court or by any other law for the time being in force. Those words, however, refer to those provisions only where the court has been expressly authorized by the Code or other law to alter or review its judgment. The inherent power of the court is not contemplated by the saving provision contained in section 362 and, therefore, the attempt to invoke that power can be of no avail.”

17. In *Sooraj Devi (supra)*, it has further held as under:-

“A clerical or arithmetical error is an error occasioned by an accidental slip or omission of the court. The inherent power of the court is not contemplated by the saving provision contained in section 362 and, therefore, the attempt to invoke that power can be of no avail.”

18. Thus, it can safely be said that the prohibition contained in Section 362 is absolute after the order is signed. The Code of Criminal Procedure does not authorize the criminal court to review its order after it is signed.

19. In view of specific prohibition contained in Section 362 of the Cr. P.C., the learned Chief Judicial Magistrate was not empowered to recall the order of cognizance passed pursuant to receipt of a police report under Section 173(2) of the Cr. P.C., as the same amounts to reviewing the final order passed on the point of cognizance.

20. Having reached to the finding on both the issues framed hereinabove, the order impugned passed by the learned Chief Judicial Magistrate cannot be sustained.

21. Accordingly, the impugned order dated 30.06.2017 passed by the learned Chief Judicial Magistrate, Purnea in Sadar P. S. Case No. 265 of 2015 is hereby quashed. The learned Chief Judicial Magistrate is directed to pass fresh order on the application filed by the police seeking re-investigation of

the case in accordance with law.

22. With the aforesaid observation and direction, the application is allowed.