

(2007) 03 JH CK 0065
In the Jharkhand High Court

Ruplal Yadav and Basudeo Rai

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

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

Forest Act, 1927 — Section 33

Penal Code, 1860 (IPC) — Section 34, 379, 413, 414

Citation : (2007) 03 JH CK 0065

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—The petitioners have invoked inherent jurisdiction of this Court u/s 482 Cr.P.C. praying for quashing the order dated 25.4.2005 whereby learned court below has allowed the prayer of the Investigating Officer for reinvestigation of the case against the petitioners vide Bagodar P. S. Case No. 315 of 2004, corresponding to G.R. No. 2301 of 2004.

2. Facts of the case stated briefly is that on the basis of confidential information that substantial quantities of coal collected by way of illegal mining from the government colliery was being transported to another State, the police intercepted two trucks loaded with coal and arrested some persons including the drivers of the vehicles. A case for the offences under Sections 413, 414, 379/34 of the Indian Penal Code and Section 33 of the Indian Forest Act was registered at the police station. Later, on concluding the investigation the Investigating Officer submitted final form in favour of the accused including the petitioner who is the owner of one of the seized trucks. The final form was accepted by the court below. After lapse of considerable period, an application was filed by the police before the court below seeking permission to re-investigate the case on the directions of the superior police officer. By the order impugned, the learned court below granted permission to re-investigate.

3. Learned Counsel for the petitioners submits that in the aforesaid case, after concluding the investigation, the Investigating Officer had submitted final report in favour of the petitioners with a declaration that F.I.R. was based on mistake of fact and the same was accepted by the learned court below. Yet, after almost two years, the same Investigating Officer had filed a petition before the court below seeking permission to reopen the case for reinvestigation purportedly on the basis of a direction issued to him by the Senior Police Officer. Referring to the impugned order, learned Counsel submits that the same is bad in law inasmuch as though the provisions of Section 173(8) Cr.P.C. do enable the Investigating Officer to conduct further investigation even after submission of final form, but the same can be done only on permission given by the concerned court and by showing reasonable grounds for reopening the investigation. In the instant case the impugned order, according to the learned Counsel, does not reflect any such ground or grounds for allowing the investigation of the case to be reopened.

4. On query, learned Counsel for the petitioners had failed to submit a copy of petition filed by the Investigating Officer before the court below seeking permission to reinvestigate the case. He has however produced a copy of a memo issued to the Investigating Officer by D.I.G. Police, Hazaribagh, which contains a direction of the Senior Police Officer to the Investigating Officer for seeking permission from the court below for reinvestigation.

5. From perusal of the aforesaid document, it appears that the Senior Police Officer had assessed the investigation conducted by the Investigating Officer and had come to the conclusion that the Investigating Officer has not conducted the investigation in proper manner and for such reason, a show cause notice was issued to the Investigating Officer asking him to explain his conduct.

6. Learned Counsel for the State, on the other hand, submits that application as filed by the Investigating Officer praying for permission to reinvestigate the case, was on the basis of a direction issued to him by the Senior Police Officer and this fact is reflected in the order of the learned court below. It is further submitted that the Senior Police Officer had definite reason to find fault with the manner of investigation as conducted by the Investigating Officer and had therefore felt the need to conduct the investigation into the allegations in the F.I.R afresh. These according to the learned Counsel for the State, are the necessary grounds on which the prayer for reinvestigation was allowed by learned court below.

7. The issues raised in this application relates to the scope of the provisions of Section 173(8) Cr.P.C.

Section 173(8) Cr.P.C. reads as follows:

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).

8. Introduction of the above provision in Section 173 of the Code of Criminal Procedure is with definite legislative intent for the purpose of removing hindrance in the way of the investigating agency. The earlier concept was that once a final report has been submitted, the police cannot touch the case again and reopen the investigation. The addition of Sub-section (8) has clarified that sending the report under Sub-section (2) does not preclude further investigation and submitting supplementary report or reports. Such further investigation can be undertaken even if the earlier report under Sub-section (2) is accepted by the Magistrate. In the case of *Ram Lal Narang Vs. State (Delhi Administration)*, the Apex court has clarified that the police can carry out repeated investigation on discovery of fresh facts. The purpose of investigation is to collect evidence ascertaining the truth into the allegations in the F.I.R. relating to a cognizable offence. It needs no emphasis to state that the Investigating Officer is bound to discharge his duty diligently with sincerity and honesty and if the materials discovered on investigation are misunderstood by the police officer, on receipt of proper guidance from his superior, he can file an additional charge-sheet. Therefore even where an accused is discharged on final report u/s 173(2) Cr.P.C. he can be prosecuted on further report u/s 173(8) Cr.P.C. This section also applies to the situation where the investigation was not conducted in proper manner as it appears in the present case and the case therefore needs reinvestigation in proper perspective on the basis of the facts and circumstances of the instant case.

9. Where the earlier investigation on the basis of which report was submitted u/s 173(2) Cr.P.C is found faulty, re-investigation of the case undertaken after lapse of considerable time, cannot be invalid on the ground of delay.

10. It is manifest from a plain reading of the provisions under Sub-section (8) of Section 173 Cr.P.C. that for conducting re-investigation of the case, the police officer need not obtain prior permission from the court which had taken cognizance of the earlier reports submitted by the police u/s 173(2) Cr.P.C.

11. However, it may be argued that once the report u/s 173(2) Cr.P.C. is submitted and accepted by the Magistrate then it becomes a judicial order and therefore the police officer is not authorized to interfere with the judicial proceeding on the plea of re-investigation.

12. The Supreme Court while considering this aspect of the matter along with provision of Section 173(8) Cr.P.C. in the case of *Ram Lal Narang Vs. State (Delhi Administration)*, , has explained "that 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 police 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."'' The Apex court had further observed 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, 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. The Apex court has nevertheless not taken the view that in absence of any formal permission, the further investigation becomes vulnerable.

13. The Apex Court thus, while stating in clear terms that the police has right to conduct the investigation when fresh facts are discovered, has also laid down a rule of guidance that it would be desirable that the police officer should inform the court and seek formal permission to make further investigation. In the case of Gobardhan Das and Others Vs. State of Orissa, a Bench of Orissa High Court has also considered the issue and has observed that where the police desired to make a further investigation, the police should express its regard and respect for the Court by seeking its formal permission to make further investigation, inasmuch as, it would ordinarily be desirable that the police informs the court and seek further permission to make further investigation.

14. In the present case, the police has complied with the desirable practice by seeking formal permission before the court below informing the reasons for re-investigation of the case. The petitioner has tried to find fault with the impugned order of the learned court below on the ground that the same has been passed without application of judicial mind and without recording grounds of satisfaction for allowing such permission. This argument is not persuasive. Reading the impugned order it indicates that the learned court below had granted permission for re-investigation on considering the prayer of the police officer along with the ground that the prayer seeking permission was made as per directions of the Senior Police Officer and for reasons stated in the Memo No. 201/2.3.2003 of the Deputy Inspector General of Police, Hazaribagh. It is apparent that the learned court below had considered the prayer on the basis of the grounds advanced by the police officer and by application of judicial mind. The impugned order does not suffer from any illegality or infirmity.

15. For the reasons stated above, there appears no merit in this application. Accordingly, the same is dismissed at the stage of admission itself.