

(2008) 12 JH CK 0036

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 60 of 2008

Satendra Singh

APPELLANT

Vs

The State of Jharkhand, The Director General and Inspector
General of Police, The Addl. Director General of Police, Crime
Investigation Department and Ranjeet Singh

RESPONDENT

Date of Decision : 08-12-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(2) , 173(3), 173(4), 173(5)

Evidence Act, 1872 — Section 157

Citation : (2009) CriLJ 2280

Hon'ble Judges : D.K. Sinha, J

Bench : Single Bench

Advocate : Jitendra S. Singh, for the Appellant; R.S. Majumdar Advocate for the Intervener/Respondent No. 4 and R.R. Mishra, G.P. II, for the Respondent

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner Satendra Singh has invoked the extraordinary jurisdiction of this Court under Article 227 of the Constitution of India requesting for issuance of an appropriate writ for setting aside the order impugned dated 18.2.2008 passed by the Chief Judicial Magistrate, Daltonganj in G.R. No. 739 of 2007 arising out of Rehala (Palamau) P.S. Case No. 30 of 2007 whereby the petition filed by the Sub-Inspector of Police, Crime Investigation Department, Jharkhand. Ranchi seeking permission to re-investigate the case of Rehala (Palamu) P.S. Case No. 30 of 2007 was rejected.

2. The prosecution story in short as stands narrated in the written report of Ranjeet Singh (Informant/Intervener/Respondent No. 4) was that on 27.5.2007 his uncle Dr. Sashidhar Singh (since deceased) had as usual proceeded from the house to his medicine shop followed by the informant after a short while. When his uncle arrived near the shop and compound of one Giridhar Singh, the informant witnessed that his uncle having been apprehended by as many as 8

named accused persons who suddenly appeared there started shouting to kill him and in the same sequence the accused Ajay Singh fired shot from his pistol causing injuries to Sashidhar Singh. On the alarm there being raised by the informant the assailants escaped though the occurrence was witnessed by Kundan Singh, Manoj Singh, Giridhar Singh and Karnal Singh as also by the nearby people, who assembled there. The victim was immediately brought to Garhwa Hospital where he succumbed during treatment. Disclosing the genesis, the informant narrated that the assailants on account of old enmity committed murder of his uncle by firing shot and that they had also killed his father and his another uncle in the past.

3. The learned Counsel for the petitioner pointed out that after the case was committed to the court of Sessions judge, the Director General and Inspector General of Police in exercise of the power conferred upon him Under Clause 410(II)(b)(II) read with Clause 425 of Bihar Police Manual, as adopted by the State of Jharkhand, directed Shri Rajeshwar Prasad, Inspector of police, Crime Investigation Department of the State by entrustment to reinvestigate the Rehala (Palamau) P.S. Case No. 30 of 2007 and pursuant to such direction Sri Rajeshwar Prasad Inspector of police filed a petition on 7.2.2008 before the Chief Judicial Magistrate Daltonganj seeking permission as aforesaid but the same was rejected on 18.2.2008 and according to the learned Counsel for the petitioner, the C.J.M. Daltonganj committed grave error of law by not considering the request and thereby refusing to allow the Inspector to reinvestigate the case.

4. The learned Counsel Mr. Jitendra S. Singh for the petitioner, assailing the impugned order submitted that Section 173(8) of the Code of Criminal Procedure 1973 enables a police officer to carry on further investigation even after submission of the chargesheet and that the court may stay commitment proceeding in that event till conclusion of further investigation to avoid any anomaly or inconsistency in the trial.

5. Section 173 of the Code of Criminal Procedure speaks about the submission of final form after investigation of a case Sub-clause (2) of Section 173 of Cr.P.C. envisages that as soon as the investigation is complete, the Investigating Officer shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating the facts mentioned in Sub-clause (a) to (f). Sub-section 8 of Section 173 of Cr.P.C. speaks:

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-section (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)

6. The learned Counsel then emphatically submitted that the Chief Judicial Magistrate, Daltonganj was not within his competence to reject the prayer of the Sub-Inspector of Police, CID for further investigation of Rehala (Palamau) P.S. Case No. 30 of 2007 who refused to accede to the statutory provision of the Code as envisaged under Sections 173(8) of Cr.P.C without assigning reasons.

7. Mr. R.S. Majumdar, the learned Counsel appearing on behalf of the informant/intervener/respondent No. 4 submitted that the FIR was drawn on the basis of the statements of the informant leveling accusation against the petitioner and others that they committed murder in prosecution of their common object. After institution of the FIR Vide Rehala (Palamau) P.S case No. 30 of 2007, its investigation was initiated by the local police who collected the materials and found allegation prima facie true, accordingly, after completion of investigation submitted charge sheet against all the accused persons before the court of CJM Daltonganj on 19.10.2007. The case of three accused including of the petitioner was committed giving rise to S.T. No. 36 of 2008, whereas other accused persons absconded. It was reflected in course of investigation that some of the accused in the instant case were also involved in the earlier murder of the father of the informant/respondent No. 4 and in that case also the police after investigation had submitted chargesheet, now they wanted to divert the course of trial and they being the influential persons wanted to get the matter re-investigated through the Crime Investigation Department only with the intention to hush up the matter as the investigation of the case was complete on all the points and consequently chargesheet has been submitted on 19.10.2007 by the local police. The informant/respondent No. 4 was surprised to know that Crime Investigation Department of the State of Jharkhand suo motu filed a petition before the CJM Daltonganj seeking permission to re-investigate the case and not for further investigation u/s 173(8) of the Cr.P.C. and the learned CJM by impugned order having considered the facts and circumstances of the case refused to permit the Crime Investigation Department for reinvestigation. The approach of the Crime Investigation Department in the manner seeking permission for re-investigation of the case was not justified as the direction of the Director General-cum-Inspector General of Police of the State of Jharkhand was neither speaking nor based upon the provisions of law rather it was his colourable exercise of power. The accused persons of the case had at no point of time ever raised any objection against the course of investigation of the case by the local police or any irregularity caused in such process and now after the commitment of the case, they have attempted to influence the course of administration of justice. The informant/respondent No. 4 had neither any grievance nor any complain against the Investigating Officer in relation to his acumen and sincerity who submitted charge sheet u/s 173(2) of Cr.P.C. after finding materials against the accused persons including the writ petitioner.

8. A separate affidavit has been filed on the behalf of the State-Respondent Nos. 1, 2 and 3 wherein it was stated that on the application of Smt. Malti Devi, wife of Ramesh Singh that her husband was falsely implicated as an accused in

Rehala P.S. Case No. 30 of 2007 and for that she requested therein for reinvestigation of the case by the CID, a preliminary enquiry was conducted by the officer of the Crime Investigation Department and in that process it could be gathered that the nearby shopkeepers of the alleged place of occurrence had heard the sound of fire and also witnessed an unidentified person escaping on a bike but the assailant could not be apprehended. Disclosing the name of one of the witnesses Binod Prasad Gupta who was having a Sari Shop near the place of occurrence, disclosed during the preliminary enquiry that Dr. B.D. Singh (since deceased) was running towards his clinic with his hands on his abdomen alarming that it was Raja who fired shot upon him and the other two witnesses Sri. Shankar Sao and Firoz Khan had also corroborated the version of the witness Binod Prasad Gupta. In that manner it was submitted on behalf of the petitioner that the allegation against the accused Ajay Singh that he fired shot resulting into death of Dr. Shashidhar Singh was prima facie negated in the preliminary enquiry report of the Crime Investigation Department and under such situation, the Director General and Inspector General of Police thought it proper to direct for reinvestigation of the case so that the innocent must not be punished and that the real culprits be booked to the legal recourse.

9. Having considered the facts and circumstances of the case, arguments advanced on behalf of the parties I find that Section 173(8) of the Cr.P.C. 1973 envisages for further investigation and not reinvestigation. The Officer In charge of the police station or the Investigating Officer of the case may proceed with further investigation as per exigency to book the left out culprits on the materials collected. The purpose of Sub-section 8 is to enable Investigating Agency to gather further evidence which cannot be frustrated only because the police has already submitted final form u/s 173(2) of the Cr.P.C. The police may submit supplementary chargesheet as per provisions of Section 173(8) of the Code.

10. Reinvestigation of a case by the police officer is quite different from further investigation. Investigation includes all the proceedings under the Code of Criminal Procedure for the collection of evidence conducted by the police officer or any person (other than a Magistrate) who is authorized by a Magistrate in this behalf. The "word Investigation" used in Section 157 of the Evidence Act is not to be understood in the narrow sense in which the word used in the Code of Criminal Procedure. It must carry its ordinary dictionary meaning in the sense of ascertainment of facts, shifting of materials search of relevant data etc.

11. Investigation is defined in Section 2(h) as including all the proceedings under the Code for the collection of evidence conducted by police officer. There is vast gap between further investigation and reinvestigation of the case. "Further Investigation" begins u/s 173(8) when the investigation is complete and final form has been submitted u/s 173(2) of the Code of Criminal Procedure. On the other hand, "Reinvestigation" is a process of investigation denovo and the Code of Criminal Procedure 1973 is silent in relation to the process of reinvestigation.

12. The Apex Court in Ramachandran Vs. R. Udhayakumar and Others, in this

regard observed:

At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under Sub-section (2) of Section 173 of the Code, the police has right to further investigate under Sub-section (8), but not fresh investigation or reinvestigation. This was highlighted by this Court in K. Chandrasekhar v. State of Kerala. It was interalia observed as follows:

24. 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

In view of the position of law as indicated above, the directions of the High Court for reinvestigation or fresh investigation are clearly indefensible. We, therefore, direct that instead of fresh investigation there can be further investigation if required u/s 173(8) of the Code. The same can be done by CB CID as directed by the High Court.

13. The proposition of law as laid down herein above by the Supreme Court of India is speaking and by placing my reliance thereon as also under the facts and circumstances as discussed in the foregoing paragraphs, I allow the Rehala (Palamau) P.S. Case No. 30 of 2007 to be further investigated u/s 173(8) of the Cr.P.C. by the Crime Investigation Department for exploring the truth against remaining accused persons by taking all precautions which shall be supervised by an officer not below the rank of the Superintendent of police of the Crime Investigation Department of the State and the report as required u/s 173(8) of the Cr.P.C. shall be submitted within a reasonable period, preferably within three months. Needless to say that further investigation u/s 173(8) shall in no manner influence the report earlier submitted u/s 173(2) Cr.P.C.

14. In the facts and circumstance, this writ petition (Cr.) is allowed in the manner indicated above and the order impugned dated 18.2.2008 passed by the Chief Judicial Magistrate Daltonganj in Rehala P.S. Case No. 30 of 2007 is set aside.