
(2008) 08 PAT CK 0060
In the Patna High Court
Case No : Criminal WJC No. 423 of 2007

Shiv Kumar Bhagat @ Munna and Another	APPELLANT
Vs	
The State of Bihar and Others	RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(2), 173(8), 36
Explosive Substances Act, 1908 — Section 3, 4
Penal Code, 1860 (IPC) — Section 120B, 302, 307, 341

Citation : (2008) 08 PAT CK 0060

Hon'ble Judges : Samarendra Pratap Singh, J

Bench : Single Bench

Judgement

Samarendra Pratap Singh, J.—In the instant case the informant has filed I.A. No. 1724 of 2007 for being permitted to intervene as respondent in opposition of the prayer made in the writ application.

2. In view of the nature of reliefs sought for in the instant writ application and also taking into consideration that the case has been committed to the court of Sessions I find it necessary to hear the informant of the case, who has filed this intervenor application. As such I allow the interlocutory application and permit the intervenor respondent to appear as respondent, in opposition to the writ application.

3. In the instant writ application the petitioners have prayed for directing the respondents particularly respondent No. 2 and 3, namely, the Inspector General, Central Range, Patna and the Senior Superintendent of Police, Patna, to take a final decision on the question of further investigation of Gandhi Maidan P.S. Case No. 231 of 1997.

4. The prosecution case in brief is that one Binod Kumar gave a fard beyan on 5.11.1997 at 8 A.M. at Tara Nurshing Home giving rise to Gandhi Maidan P.S. Case No. 231 of 1997, under Sections 307, 302, 341 and 120B of the I.P.C. and 3 and 4 of Explosive Substance Act, alleging that accused persons, namely, Shiv

Kumar Bhagat and his brother after forming conspiracy, killed his father, Shaligram Singh, in league with others. This is the first charge sheet wherein the name of the petitioner did not figure as an accused and they were not sent up for trial. However, the names of the petitioners figured in the supplementary chargesheet No. 31/03 dated 28.2.2003.

5. Thereafter Dy. S.P. (Town), Patna conducted a preliminary enquiry and found that earlier investigation was not carried out properly and certain important facts still remained to be investigated. By letter No. 4255 dated 8.12.2004 Dy. S.P., Town, recommended to the City S.P., Patna for reinvestigation of the case u/s 173(8) of the Cr.P.C. The S.S.P., Patna vide his Memo No. 3858 dated 20.12.2004 sought opinion from the Incharge A.P.P. Civil Court, Patna in the light of the preliminary investigation conducted by the Dy. S.P. (Town), Patna.

6. The District Prosecution Officer vide his Memo No. 653 dated 27.1.2005 opined that in the facts and circumstances of the case, reinvestigation would be done. Thereafter S.S.P. Patna vide his Memo No. 390 dated 15.2.2005 enquired as to why further investigation in this case has not been conducted in the light of earlier order, as such he directed the I.O. to submit his report complying the earlier order as to the reinvestigation.

7. It appears that no formal request was made in the court in seisin of the case for reinvestigation and no such further investigation was made by the I.O. In that view of the matter the petitioner has filed the writ application with the prayer for directing respondents to take final decision on the question of further investigation of Gandhi Maidan P.S. Case No. 231/97.

8. The learned Counsel for the petitioners further submits that if police finds new materials which can throw necessary light in respect of accusations and involvement of others, it has full right to carry out further investigation. He submits that if investigation is not carried out properly or illegally or it is misdirected, it would be within the right of the Superior Officer to issue necessary direction in this regard. He further submits that the delay in trial cannot be a ground for curving reinvestigation if there is sufficient substance for conducting further investigation. In this respect the learned Counsel for the petitioner has relied upon the decisions reported in 2007 (1) PLJR 606 (Arun Kumar v. The State of Bihar) 2004 (3) PLJR 287 SC (Hasan Bhai Valli Bhai Qurershi v. the State of Gujrat) Neel Kamal Singh Vs. The State of Bihar, and Lalit Kumar Singh and Others Vs. The State of Bihar and Another .

9. The learned Counsel for the State submits that in course of investigation, supplementary charge sheet had been submitted against the petitioners as an accused as contained in supplementary chargesheet No. 31/03 dated 28.2.03 (Annexure-2). He further submits by referring to paragraph No. 16 of the counter affidavit that the S.S.P., Patna reviewed the matter again and had come to the conclusion that further investigation is not required in this case. He further submits that the direction vide Memo No. 390 dated 15.2.2005 contained in

Annexure-4 of S.S.P., Patna in respect of further investigation was not received in Gandhi Maidan P.S. Case No. 231/97.

10. The learned Counsel for the intervenor respondent states that the accused persons filed the instant case with a view to delay the proceeding in the court below. He submits that u/s 173(8) of Cr.P.C., it is the I.O. who would be the competent person to decide whether further investigation is necessary or not. He submits that in this case cognizance has been taken and the case has been committed to the court of Sessions and even charge has been framed against the accused persons. He submits that superior police officer has no authority to issue directions to the I.O. of the case to make further investigation.

11. He further states that a direction from S.S.P., Patna or superior authority to the I.O. in respect of further investigation is administrative in nature. He further submits that Section 173(8) of Cr.P.C. confers jurisdiction on I.O. only to take decision regarding making further investigation. He further submits that a writ cannot be issued to the I.O. for making further investigation in the light of the letter of S. S.P., Patna dated 15.2.2005.

The Police Manual, assigns distinct role to police officials based on hierarchy and position in which they are placed. The superior police officials have also been assigned supervisory role.

12. It would be naive to assume that if investigation is carried out in a casual manner, or if the investigation is totally misdirected, the superior officers would find themselves helpless and cannot make any direction or give guidelines. The Superior Officers are competent to issue necessary guidelines/directions to their subordinate if they found that the investigation is not being conducted properly or if it is being conducted illegally in connivance with either of the parties. The aforesaid jurisdiction in no uncertain terms, finds reference of expressions in Rule 49 of Police Manual. The duties of Superintendents are not confined to office work, inspection and general supervision, but they are expected to take a share in the actual investigation of important crime. They shall take the investigation out of the hands of their subordinates only in exceptional circumstances, but they shall by frequent local enquiry and careful scrutiny of case records, both at the time of investigation and subsequently, satisfy themselves that the proceedings are honest and prompt and that no important line of enquiry shirked or overlooked and people are treated equally. I am in agreement with the submissions of learned Counsel appearing for intervenor respondent that such directions and guidelines are essentially administrative in nature. However the subordinate officers are obliged to follow such directions of the Superior Officer made in accordance with law. Thus I hold that the Superior Officers who are also Officer Incharge u/s 36 of the Cr.P.C. can issue directions in respect of investigation including further investigation if new facts come to their notice or if investigation is not carried out properly or fairly or if the same is defective or manifested with bias.

14. This Court takes up the next issue whether possible delay in conclusion of trial will be sufficient ground for precluding further investigation is no longer res integra.

15. The Apex Court in case of Hasan Bhai Valli Bhai Qureshi v. the State of Gujarat has held that delay in conclusion of trial, could not come in the way of further investigation if that would help court in arriving at the truth and do real, substantive and effective justice. The Hon"ble Apex Court observed that further investigation can be taken up, even after cognizance, if fresh facts come into notice of the police officer. Apex Court further observed that on receipt of such further information, the I.O. of the case, after taking formal permission of the court would forward his report to it. Thereafter the learned Magistrate will proceed in the case as per guidelines laid down in the case of Ram Lal Narang v. State (Delhi Administration) reported in 1979 S.C. 1791.

16. In view of the aforesaid decision of the Hon"ble Apex Court, this Court is of the view that delay in trial cannot be a ground for precluding further investigation if it is so required u/s 173(8) of the Cr.P.C.

It would appear from the ratio decided in the aforesaid case of Hasan Bhai (supra) as well as case of Ram Lal Narang and those rendered in the case of Arun Kumar v. the State of Bihar reported in 2007 (1) PLJR 606 and Lalit Kumar Singh and Others Vs. The State of Bihar and Another , that further investigation is permissible u/s 173(8) of Cr.P.C. in following conditions, which are only illustrative and not exhaustive (a) if afresh materials and information come to the notice of police officer (b) if it appears that investigation is wrongly conducted and material was improperly collected (c) if involvement of new accused or other offences comes into being (d) or if there is necessity and sufficient and valid grounds exist for the same for unearthing the truth (e) if investigation is defective and manifested with bias.

17. This Court is of the view that once cognizance of offence has been taken, the police must obtain formal permission from the Magistrate court in seisin of the case before starting further investigation. This permission becomes mandatory once stage of commencement of charge is reached. The reasons for permission are two fold once final form is submitted after conclusion of investigation u/s 173(2) of Cr.P.C., the matter comes in charge of the court. Secondly there has to be some check on police officer so that further investigation u/s 173(8) Cr.P.C. may not become a no ending process, to harass innocent persons.

18. Now coming back to the facts of this case, this Court would not like to dwell upon the merit of issue whether the S.S.P., Patna had sufficient materials before him for directing further investigation way back on 15.2.2005, as contained in Annexure-4. It is equally surprising that if petitioner was in any way aggrieved by non compliance of direction of S.S.P., Patna, then as to why he did not raise his grievance before the higher police officials. It appears from the counter affidavit of the respondents, that S.S.P., Patna reviewed the matter again and

found that further investigation is not required in the case, any more. The reviewed order has not been brought on record.

19. Having considered the facts and circumstances of the case it is expected that the S.S.P., Patna as well as I.G., Central Range, Patna will take a decision, whether any further investigation is required in this case or not within four weeks of receipt of a copy of this order. However this Court observes that pendency of decision will not come in way of trial which would continue as before and with aforesaid observations this writ application is disposed of in light of observations made above.