

(2023) 10 JH CK 0044

In the Jharkhand High Court

Case No : Writ Petition (Criminal) No. 122 Of 2022

Shiv Kumar Kanojia

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 31-10-2023

Acts Referred:

Constitution Of India, 1950 — Article 21

Code Of Criminal Procedure, 1973 — Section 2(h), 156(1), 156(3), 173(2), 173(8)

Citation : (2023) 10 JH CK 0044

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Rohitashya Roy, T.K. Mahato, Anil Kumar, Chandana Kumari, Nitish Parth Sarthi, Manoj Kumar

Final Decision : Disposed Of

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Rohitashya Roy, learned counsel for the petitioner, Mr. Anil Kumar, learned A.S.G.I., appearing for the respondent-CBI and Mr. Manoj Kumar, learned counsel for the respondent-State.

2. This petition has been filed for direction upon the learned Additional Sessions Judge-I, Sahebganj to refrain from proceeding with Session Trial No.148/2021 arising out of G.R. Case No.359/2021 corresponding to Borio (J) P.S. Case No.127/2021, the investigation of which has already been handed over to the Central Bureau of Investigation (CBI) vide order dated 01.09.2021 passed by this Court in W.P. (Cr.) No. 139 of 2021.

3. I.A. No.66 of 2023 was filed for amendment in the prayer portion of the writ petition and the prayer was made for quashing of entire criminal proceeding in connection with Session Trial No.148/2021 arising out of G.R. Case No.359/2021 corresponding to Borio (J) P.S. Case No.127/2021, which was allowed vide order dated 17.08.2023. Thus, that prayer is also under challenge in this petition.

4. Mr. Rohitashya Roy, learned counsel for the petitioner submits that the case was initially investigated by the State police and charge-sheet was submitted against the petitioner and later on by the order of\ this Court, the case was investigated by the CBI wherein the CBI has submitted closure report in favour of the petitioner and in view of that, the entire criminal proceeding may kindly be quashed. He further submits that once the CBI inquiry is completed, which is in favour of the petitioner, to allow the case to continue will amount to abuse of process of law.

5. Mr. Anil Kumar, learned A.S.G.I., appearing for the respondent-CBI submits that once the charge-sheets are there, the learned Court is required to consider both the charge-sheets in trial.

6. In view of the above submissions of the learned counsel for the parties, the Court finds that it is an admitted position that the State police has chargesheeted the petitioner to face the trial, whereas, the CBI has filed closure report in favour of the petitioner. This aspect of the matter has been decided by the Hon'ble Supreme Court in the case of *Vinay Tyagi v. Irshad Ali @ Deepak and Others*, reported in [(2013) 5 SCC 76]. It is well settled that positive and negative reports submitted under Sub-sections (2) and (8) of Section 173 Cr.P.C. respectively must be read conjointly to determine if there is prima facie ground for believing that the accused has committed the offence or not. The decision passed in the case of *Vinay Tyagi (supra)* was considered by the Hon'ble Supreme Court in the case of *Vinubhai Haribhai Malaviya v. State of Gujarat*, reported in [(2019) 17 SCC 1] and at paragraph 42 of the said judgment, the Hon'ble Supreme Court has held as under:

"42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, *Sakiri [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440]* , *Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365]* , *Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557]* , and *Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86]* ; *Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86]* having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory

jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpatory or exculpatory certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi* [*Hasanbhai Valibhai Qureshi v. State of Gujarat*, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603] . Therefore, to the extent that the judgments in *Amrutbhai Shambhubhai Patel* [*Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel*, (2017) 4 SCC 177 : (2017) 2 SCC (Cri) 331] , *Athul Rao* [*Athul Rao v. State of Karnataka*, (2018) 14 SCC 298 : (2019) 1 SCC (Cri) 594] and *Bikash Ranjan Rout* [*Bikash Ranjan Rout v. State (NCT of Delhi)*, (2019) 5 SCC 542 : (2019) 2 SCC (Cri) 613] have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Admn.)* [*Randhir Singh Rana v. State (Delhi Admn.)*, (1997) 1 SCC 361] and *Reeta Nag v. State of W.B.* [*Reeta Nag v. State of W.B.*, (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] also stand overruled.”

7. In view of clear position of law as discussed above, particularly, the judgment passed in the cases of *Vinay Tyagi* (supra) and *Vinubhai Haribhai Malaviya* (supra), the learned Sessions Judge is required to take into account both the charge-sheets under Section 173(2) as well Section 173(8) Cr.P.C. If it is brought to the knowledge of the learned Sessions Judge, he shall pass appropriate order to take on record the said charge-sheet submitted by the CBI.

8. In view of the above position of law, this petition is being disposed of with liberty to the petitioner to bring these facts before the learned Sessions Judge and the learned Sessions Judge will proceed in view of the law laid down by the Hon'ble Supreme Court in two of the cases as discussed hereinabove.

9. Accordingly, this petition is disposed of.

10. Interim order, if any granted by this Court, is vacated.