

(1999) 04 DEL CK 0067

In the Delhi High Court

Case No : Criminal M (M) 3010/98 and Criminal M. 6055/98

Suneet Vaish

APPELLANT

Vs

State (NCT of Delhi)

RESPONDENT

Date of Decision : 06-04-1999

Acts Referred:

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

Citation : (2000) 4 AD 570

Hon'ble Judges : S.N. Kapoor, J

Bench : Single Bench

Advocate : Mr. P.K. Dey and Mr. Arvind Singh, for the Appellant; Mr. Shally Bhasin and Ms. Seema Gulati, for the Respondent

Judgement

S.N. Kapoor, J.—Heard the learned counsel for the parties. In this case, the exception has been taken by the petitioner against the following two directions given by the learned chief Metropolitan Magistrate:

"...Let SHO appear in court for handing over investigation to another competent officer. Meanwhile notice be also given to the complainant to appear on 6.8.98 at 2 p.m. Another direction given is to the following effect:

"Perused the file. Heard. The Ld. counsel for the applicant/complainant submits that the investigation should proceed from two angles namely financial angle and extra-marital angle. He further submits that there are three properties namely one at Maya Enclave, Second at Dwarka Co-op. Society and a DDA flat. Which were purchased in the name of the mother of the accused and the installments for which were being paid after the marriage by deductions from the salary/property loan of the husband of the deceased. There is also an indication in the statement of the complainant regarding the existence of extra marital relationship of the husband of the deceased. Let the I.O. make further investigation on these lines so as to find out whether in fact these reveal any double standard on the part of the husband of the deceased. Let the I.O. submit his progress report by 19.9.98.

2. It is reported that the challan is ready but could not be filed on account of the stay granted in this matter.

3. Learned counsel for the petitioner referred to *Randhir Singh Rana Vs. State (Delhi Administration)*, (1997) 65 DLT 207 and in that case, Supreme Court in Para 11 observed as under:

11. The aforesaid being the legal position as discernible from the various decisions of this Court and some of the High Court, we would agree, as presently advised with Mr. Vasdev that within the grey area to which we have referred the Magistrate of his own cannot order for further investigation. As in the present case the learned Magistrate had done so, we set aside his order and direct him to dispose of the case either by framing the charge or discharge the accused on the basis of materials already on record. This will be subject to the caveat that even if the order be of discharge, further investigation by the police on its own would be permission of wither fresh charge sheet".

3. It appears from this judgment that the Magistrate should not interfere ordinarily in the investigation. However, after filing of the charge-sheet or the final report, the Magistrate may examine the matter and may issue necessary directions also but not before the report is submitted by the concerned Investigating officer u/s 173 Cr pc.

4. The learned counsel for the petitioner also referred to para 22 of *State of West Bengal and Others Vs. Sampat Lal and Others*, . It reads as under: 22. "The next aspect to be considered is whether it is open to the Court to interfere with the investigation which is still proceeding. It has been conceded before us and rightly in our View, that investigation is a matter for the police under the scheme of the Code. Judicial opinion seems to be settled and we have several authorities of this Court where interference by the Court into police investigation has not been approved. This question arose before a Division Bench of three Judges in an appeal carried by the same State of West Bengal in the case of *State of West Bengal Vs. S.N. Basak, Kapoor, J.* quoted with approval the observation of the Judicial Committee in the case of *King-Emperor Vs. Khwaja Nazir Ahmad*, (1944) 71 IA, where then Privy Council observed:

The function of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right to the court to intervene in an appropriate case when moved u/s 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it, and not until then. It has sometimes been thought that Section 561-A (now Section 482) has given increased powers to the court which it did not possess before this is not so, the section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted, as their Lordships think, let it should

be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of that Act.

The Court added:

"With this interpretation, which has been put on the statutory duties and powers of the police and of the powers of the Court, we are in accord.

On a finding that the High Court had exceeded jurisdiction in interfering with the investigation the appeal of the State of West Bengal was allowed.

5. The aforesaid discussion leaves no room for any doubt and the Magistrate does not possess any inherent power, for the inherent powers of the Magistrate and the Sessions Court had not been expressly protected. Section 482 Crpc protects only inherent powers of the High Court specifically.

6. In view of the foregoing, it is apparent that the learned Metropolitan Magistrate has exceeded his jurisdiction. Consequently, the impugned orders giving specific directions to the IO are required to be set aside and the aforesaid impugned orders are set aside. The police is now at liberty to file chargesheet for the matter stands disposed of.

7. The petition stands disposed of accordingly.