
(1994) 03 KL CK 0017
In the High Court Of Kerala
Case No : Criminal R.P. 188 of 1994

Superintendent of Police

APPELLANT

Vs

Firozhuddin Basheeruddin and Others

RESPONDENT

Date of Decision : 30-03-1994

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173, 173(8)

Citation : (1994) 03 KL CK 0017

Hon'ble Judges : B.M. Thulasidas, J

Bench : Single Bench

Advocate : K. Kunhirama Menon and K.J. Antony, for the Appellant; T.V. Prabhakaran, P.V. Rajagopalan, S.U. Nazar and A.M. Viswanath, for the Respondent

Final Decision : Allowed

Judgement

B.M. Thulasidas J.

1. The order on CrI. M.P. No. 1810 of 1993 in S.C. No. 66 of 1992 of the Fourth Additional Sessions Judge, Ernakulam is under challenge in this revision. In the course of the trial the prosecution furnished a list of additional witnesses and sought their examination, which was opposed by the accused, of whom A-3 and A-7 also filed objection stating that it was not warranted by law, that further investigation was conducted without permission of the Court, that the additional materials stated to have been obtained could not be pressed into service and that therefore the Court may desist from summoning the witnesses cited. The objection was upheld by the impugned order.

2. I heard Counsel for the Petitioner and the accused.

3. It was held in Ram Lal Narang Vs. State (Delhi Administration), , on which both sides heavily relied, that the police have-

the statutory right and duty to investigate the facts and circumstances of the

case where the commission of a cognisable offence was suspected and to submit the report of such Investigation to the Magistrate having jurisdiction to take cognisance of the offence upon a police report. These statutory rights and duties of the police were not circumscribed by any power of superintendence or interference in the Magistrate; nor was any sanction required from a Magistrate to empower the Police to investigate into a cognisable offence.

Indeed, the right of the police to make repeated investigations had been recognised and as held in *Divakar Singh v. Ramamurthy Naidu* AIR 1919 Mad. 751, the number of investigations into a crime is not limited by law and that when one has been completed another may be begun on further information received. Notwithstanding the filing of the final charge-sheet a police officer could still investigate and lay further charge-sheets if he got information and that there was no finality either to the investigation or to the laying of charge-sheets (see *In Re: Palaniswami Goundan*, . A Division Bench of this Court had held in *State of Kerala v. State Prosecutor* 1972 KLT 901, that-

the Police had the right to reopen the investigation even after the submission of a charge-sheet u/s 173 Code of Criminal Procedure and there was no bar for further investigation or for filing of supplementary report.

Even after cognisance of the case had been taken further investigation was held possible: see *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, . If fresh facts and circumstances have come to the notice of the investigating agency it has a duty to investigate and submit a report to the Court, which has to decide upon the future course of action in its discretion and in accordance with the provisions of the Code of Criminal Procedure. As held in *Ram Lal Narang Vs. State (Delhi Administration)*, , -

the criticism that a further investigation by the Police would trench upon the proceeding 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. We should not, however, be understood to say that the police should ignore the tendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognisance had been taken by the Court of any offence. We think 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 and in the interests of the comity of the various agencies and institutions entrusted with different stage of such administration, 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.

Before the committal Court a report u/s 173(8) Code of Criminal Procedure was submitted on 29th July 1992 by the investigating officer, stating-

it is now found that collecting some details might to useful for the prosecution

according to a reliable source. This is to inform the Court that a further investigation is being made to collect these details.

It appears notice was given on this to the accused and objection was allowed to be filed. I am unable to find under what provision of law the Court permitted the accused to have a say in the matter. The report was about the further investigation that was sought to be conducted and that was purely a matter between the Court and the investigating agency, in which, in my view, the accused have no right to interfere or to be heard. Be that as it may, the committal Court did not pass any order on the report. It neither did in terms permit nor interdict further investigation. But then further investigation was conducted. Some more witnesses were questioned and their statements recorded, copies of which were given to the accused. But then the trial Court declined to summon the additional witnesses, on the ground that their statements were recorded during the further investigation which was conducted without the sanction of the Court. I am unable to sustain this observation, which is unwarranted by the terms of the report and presidential authority. It cannot be said that further investigation was conducted without the actual or presumed knowledge of the Court or against its express interdict. In my view, the interpretation that the Court below has placed upon the report is untenable. No doubt, in the report permission in terms had not been sought; but the Court had been informed that further investigation was being made to collect certain details. It would not be correct to say that further investigation had already begun even before the report was submitted before the Chief Judicial Magistrate, who should have passed an order without delay, particularly when permission had been granted to the accused to file objections. But such failure as had happened in this case was not tantamount to denial of permission for further investigation, which alone probably could have justified non- summoning the witnesses questioned during the further investigation, to give evidence. In my view, the investigating agency acted in conformity with the legal provisions. The further investigation must be held to have had the sanction of law and procedure and therefore ought not to have been ignored.

4. I set aside the order and direct the Court below to summon the witnesses, whose examination had been sought by the prosecution.