

(2015) 07 AP CK 0081

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 6132 of 2015

V. Siva Kumar

APPELLANT

Vs

State of Telangana

RESPONDENT

Date of Decision : 24-07-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156, 156(1), 173, 173(2), 173(8)
Penal Code, 1860 (IPC) — Section 324, 34, 354, 354A, 354-A

Citation : (2015) 3 ALT(Cri) 330 : (2016) 1 Crimes 361

Hon'ble Judges : B. Siva Sankara Rao, J.

Bench : Single Bench

Advocate : K. Venumadhav, Advocate, for the Appellant

Final Decision : Allowed

Judgement

Dr. B. Siva Sankara Rao, J.—This Criminal Petition is filed by the Petitioner/facto complainant under Section 482 Cr.P.C. to set aside the order dated 04.02.2015 in Crl. M.P. No. 113 of 2015 in P.R.C. No. 24 of 2014 on the file of XI Additional Chief Metropolitan Magistrate, Secunderabad which was the outcome of Crime No. 24 of 2014 registered at the instance of the petitioner herein for the offences punishable under Sections 324 , 354 , 379 , 427 , 448 , 506 , 509 read with 34 I.P.C. Heard the learned counsel for the petitioner and the respondent-State represented by the Public Prosecutor and perused the material on record. The police after investigation filed final report showing 18 accused persons. The final report is besides the Sections for which crime registered supra included Section 354-A also besides 379 , 455 , 395 read with 34 I.P.C. The learned Magistrate taken cognizance for the offence punishable under Sections 448 , 324 , 354 , 354A , 506 , 509 , 427 , 379 , 455 and 395 read with 34 I.P.C. and issued summons to A-1 to A-16 and 19 as A-17 and A-18 are shown in abscondence in the final report and in the final report mentioned at column No. 12 that there is no material to charge the said absconding accused A-17 and A-18. It is the case committed to the Court of Session as P.R.C. No. 24 of 2014 under Section 209

Cr.P.C. against A-1 to A-16 and A-19. The learned Sessions Judge taken cognizance under Section 193 Cr.P.C. for the said offences supra and the case while coming for hearing before charges, the defacto-complainant filed the petition under Section 173(8) Cr.P.C. in CrI. P. No. 113 of 2015 alleging that all the culprits reflected in the video not arrayed as accused and some of the property not even recovered. The Inspector of Police, Ramgopalpet who registered the crime and investigated, filed counter opposing the petition by denying the allegations saying that there are no grounds to make further investigation as sought for. Pursuant to it, the learned Magistrate passed the order as follows:

"Even if assuming for a moment that certain documents were not filed by investigating officer prosecution is at liberty to file the same during the course of trial. Law does not prohibit either the prosecution or the accused to file additional documents in court during the course of trial. Non filing of any document cannot be a ground to order further investigation. Some property was also seized in this case and produced by police in Court."

2. It is impugning the same, the present application is filed by the defacto-complainant against the respondent-State representing by the Public Prosecutor, S.H.O., Ramgopalpet supra. The contentions in the application are that the learned Magistrate went wrong in his observations in para No. 7 saying Court has no power to direct investigating officer to array a particular person or to delete or to interfere with the investigation conducted by the investigating officer or to direct how an investigation is to be conducted and the proper remedy is only to file an application under Section 319 Cr.P.C. at the appropriate stage, if there is any material in not choosing to order further investigation to array other accused or to recover any property. It is also the submission that the learned Magistrate also went wrong in saying investigating officer is at liberty to file some of the documents not filed with charge sheet, during trial and thereby that is also not a ground of non-filing of some documents or nonseizure of further property to order investigation.

3. Heard at length and perused the material on record including the expression of Apex Court in Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, .

4. Now, the point for consideration is:

(i) whether there are any grounds to order further investigation and if so, the impugned order of the learned Magistrate is unsustainable with observation merely because some other remedy available to the defacto-complainant under Section 319 Cr.P.C. during trial or any availability of raising a protest by filing a protest application to proceed with under Section 200 Cr.P.C. read with Section 202 Cr.P.C. before the learned Magistrate and if so with what observations?

(ii) To what result?

POINT No. (i)

5. The law is fairly settled more particularly from the expression of the Apex Court in *Dharam Pal and Others Vs. State of Haryana and Another*, that the Magistrate taking cognizance under Section 190 Cr.P.C. from the final report filed by police need not be bound by the opinion or conclusion arrived by police or investigating officer in the final report under Section 173 Cr.P.C. Even the police came to an opinion of saying no case made out against some or any of the accused the Magistrate is entitled to go through the entire material on record and come to an independent conclusion under Section 190 Cr.P.C. and even can take cognizance of any of the offences if made out from the perusal of the material even by differing to the opinion of the investigating officer, against all or any of the accused persons and it is even same principle applicable of a case triable by Court of Session as the cognizance to be taken by the Magistrate under Section 190 Cr.P.C. is there even to commit a case under Section 209 Cr.P.C. only if appears of being tried by the Court of Session for its in turn taking cognizance under Section 193 Cr.P.C. It is to say, even in a case triable by Court of Session appearing to the Magistrate without even waiting to the recourse during trial under Section 319 Cr.P.C. and without even waiting to the recourse available to the defacto complainant under Section 200 Cr.P.C. to file a protest application to take as a private complaint proceeding by Magistrate, such power is available to the Magistrate under Section 190 Cr.P.C.

6. Now, the next point to be considered is whether the video supplied by the defacto-complainant to the investigating officer and collected by the investigating officer. The application filed before the lower Court under Section 173(8) Cr.P.C. supra in *Crl. M.P. No. 113 of 2015* para No. 2 lines 1 and 2 are clear that the petitioner provided the police with video recording of the incident in question. It is to say the video recording is available with the investigating officer. It is not even the counter of the investigating officer in opposing the petition saying video recording are corroborated the incident has not been depicting any other assailants and it is not even the case like for A-17 and A-18 against those persons un-named in the F.I.R. even covered by video clippings no offence can be taken cognizance or to array as accused in the final report. Once, such is the case as the investigation must be fair and honest not to leave the real assailants and not to implicate the innocent persons, the police are bound to show the persons available in the video footage by investigation against them also if there is material as part of investigation. It is apt to refer in this context the expression of Lord Denning in *R.V. Metropolitan Police Commissioner 1968* (1) All. E.R. 763 at page 769 that "I hold it, to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected and that honest citizens may go about their affairs in peace. He must decide whether or no suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save the law itself. The most important element in the rule of law is good governance. It is in a sense mean that public power and public wealth are used only for public good. Such is the

solemn duty of a police officer investigating a case". Undisputedly that is not done in this case.

7. No doubt the learned Public Prosecutor submits that the petitioner practically seeks a re-investigation instead of raising any protest petition as a remedy for even from the expression of the Apex Court in Vinay Tyagi supra particularly para No. 16. Undisputedly the petitioner is seeking permission of the Court and it is not the investigating officer that is seeking permission. Police under Section 173(8) Cr.P.C. are empowered even after filing final report to conduct further investigation in addition to the initial investigation and supplement with further charge sheet or final report. If any further material in addition to the original material that cannot be called a reinvestigation or denovo investigation or fresh investigation but only further investigation is what is laid down in Vinay Tyagi supra.

8. A perusal of the expression, particularly at para Nos. 13 to 21 are clear that for re-investigation or denovo investigation or fresh investigation orders of Court are necessary. Now, coming to further investigation and power of Court to pass orders concerned, it is also answered in the expression that besides the power of the police to investigate further under Section 173(8) Cr.P.C., the Court of Magistrate has a clear power to direct further investigation even after the police final report under Section 173(2) Cr.P.C. From combined reading of Section 173(8) Cr.P.C. read with Section 156 Cr.P.C. in particular Section 156(1) Cr.P.C., the learned Magistrate did not go through these aspects in so observing and the police also did not advert to this as to why further investigation is not necessary. There is no substance to accept the contention of the learned Public Prosecutor of which tantamounts to reinvestigation, as the petitioner no way seeks the existing investigation to be interfered but for saying those persons not arrayed that are covered by video footage the complicity of them also to be investigated further. It is practically a further investigation within the scope of Section 173(8) Cr.P.C. Having regard to the above, the order of the lower Court is unsustainable.

9. Accordingly the petition is allowed setting aside the order dated 04.02.2015 in CrI. M.P. No. 113 of 2015 passed by the learned XI Additional Chief Metropolitan Magistrate, Secunderabad with a direction that the petitioner to supply a fresh, the video footage since it is not even covered by earlier final report material and the police pursuant to which conduct further investigation in relation to those persons covered by the video coverage; besides that was already investigated against A-1 to A-19; and if there is any complicity of any others, the police shall file further final report in the form of charge sheet under Section 173 Cr.P.C. or else if no material file final report in the form of referred report. Miscellaneous petitions pending, if any, in this criminal petition shall stand closed.