

# SUPREME COURT OF INDIA

State of Orissa

Vs.

Mahima @ Mahimananda Mishra

(U. C. Banerjee and B. N. Agrawal JJ.)

16.09.2002

## ORDER

1. Leave granted.

2. The state is in appeal against an order of the Orissa High Court which, inter alia, records as below:

"I am, therefore, of the view that reopening the investigation by examining those witnesses who were examined or available to be examined at the time of earlier investigation and recording their statements almost five and half years after the final form was submitted do not appear to be bona fide and further investigation on the basis of statements of witnesses available to be examined during earlier investigation amounts to abuse of process of court and exercise of power not intended to be exercised under Section 173(8) of the Code. The scope of Section 173(8) of the Code cannot be stretched to that extent. Having observed that further investigation by the crime branch by way of examining these witnesses is not bona fide, I quash further investigation on that ground. However, it shall be open for the investigating agency to make further investigation in terms of Section 173(8) of the Code on the basis of such materials which were not available at that time of earlier investigation or not within the knowledge of the investigating agency."

3. Mr. Das, learned counsel appearing for the state, has been rather emphatic in his submission that the High Court hadn't had the requisite jurisdiction to interfere with an order directing further investigation, since the language of Section 173(8) of the Code of Criminal Procedure (hereinafter referred to as "The Code") is rather clear and categorical in that regard. Section 173(8) of the Code, for proper appreciation, however, is noticed hereinbelow:

"173 (8) nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (2) has been forwarded to the magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation

to such report or reports as they apply in relation to a report forwarded under Sub-section (2).”

4. A plain reading of the language itself suggests that the power of the police to conduct further investigation cannot possibly be restrictive in nature and it is of widest possible amplitude. It is in this context Mr. Das placed reliance on a decision of this Court in *Hemant Dhasmana v. Central Bureau of Investigation and Another*<sup>1</sup> wherein this Court in paragraph 16 observed:

"16. Although the said sub-section does not, in specific terms, mention about the powers of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by a court which has the jurisdiction to do so, it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation, the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back on that track. If they come to the same conclusion, it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the special judge's direction would be of advantage for the ends of justice. It is too premature for the High Court to predict that the investigating officer would not be able to collect any further material at all. That is an area which should have been left to the investigating officer to survey and recheck."

5. Mr. Ganguli, learned senior counsel appearing for the respondents, in his submissions, however, contended that while there cannot possibly be any dispute as regards the true effect of Section 173(8) of the Code, but the interpretation of Section 173(8) ought to be dependent upon the facts and circumstances of each case and in the instant matter by reason of the lapse of time, namely, five and a half years after the final form was submitted, question of there being any further investigation after taking recourse to Section 173(8) of the Code and there being any further investigation on the basis thereof, does not and cannot arise.

6. Mr. Ganguli relies upon the language of the High Court's order which records "further investigation" to be "not bona fide" and laid stress thereon and contended that having regard to the contextual facts, this Court cannot but lend concurrence to the observations of the High Court.

7. We are, however, unable to record our concurrence with the submissions of Mr. Ganguli as put forth by him.

8. The language of the statute is clear enough to indicate that it is not a restrictive one but it has a widest possible sanctity. The statute has provided the said provision for the sake of

concept of justice and in the event, the interest of justice so requires, this further power of investigation has been conferred on to the police under Section 173(8) of the Code.

9. On the wake of the aforesaid and having considered the submissions and observations of this Court as in Hemant's case (*supra*), we do feel it expedient to record that the learned single judge in exercise of the power under criminal revisional jurisdiction ought not to have interpreted Section 173(8) of the Code with a restriction. The last two lines of the paragraph noticed above viz. "which were not available at the time of earlier investigation or not within the knowledge of the investigating agency" cannot be said to be a proper expression of law in terms of Section 173(8) of the Code. The judgment impugned is erroneous on a reading of Section 173(8) of the Code and as such cannot be concurred with. The appeal is thus allowed. The order impugned is set aside. The investigating agency will be at liberty to investigate further as in the manner as it deems fit and proper in accordance with law. In the event the respondents herein require any further assistance in the matter of obtaining anticipatory bail, the respondents would be at liberty to approach the High Court for appropriate orders and the factum of setting aside of the order impugned, however, would not in any way, affect such a decision of the High Court.

<sup>1</sup>*2001 Cri LJ 4190*