SUPREME COURT OF INDIA

Kishan Lal

Vs.

Dharmendra Bafna

Crl.A.No.1283 of 2009

(S.B. Sinha and Deepak Verma JJ.)

21.07.2009

JUDGMENT

S.B. SINHA, J.

1. Leave granted.

2. Jurisdiction of a Magistrate to direct reinvestigation of a case from time to time as laid down under sub-section (8) of Section 173 of the Code of Criminal Procedure, 1973 (for short, the Code) is the question involved in this appeal. It arises out of a judgment and order dated 13th March, 2008 passed by a learned single judge of the High Court of Judicature at Madras in Crl. R.C. No. 245 of 2008 allowing the criminal revision application filed by the respondent No.1 from an order dated 13th February, 2008 passed by the learned III Metropolitan Magistrate, George Town, Chennai.

3. Indisputably, on or about 30th December 2005, a complaint was lodged by the appellant against Accused Nos. 1 to 9, namely, Lakshmichand Bafna (Accused No.1), Dharmendra Bafna (Accused No.2), Mahendar Bafna (Accused No.3), Rakesh Bafna (Accused No.4), G.R. Surana (Accused No.5), Shantilal Surana (Accused No.6), Vijayaraj Surana (Accused No.7), Dinesh Chand Surana (Accused No.8) and Maran (Accused No.9) before the Commissioner of Police, Chennai City, Chennai inter alia alleging that they connived together from the beginning and cheated him a sum of Rs.4.65 crores by denying to return the money which was given to them for purchase of gold. It was alleged that the amount was entrusted on various dates from 06th October 2005 to 17th November 2005. Although they have admitted the liability to the extent of 4.95 crores, but did not return either any gold or money to the complainant.

4. On or about 12th January 2006, an application for grant of anticipatory bail before the High Court of Madras was filed by all the accused stating that the Accused Nos. 5 to 8 are brothers and are the directors of their family business known as M/s Surana Corporation Limited. It was admitted that the Accused No.2 is the sub-agent of Surana Corporation Limited who introduces investors.

5. A First Information Report (FIR) was lodged by the appellant against all the accused on or about 22nd January, 2006 in the Central Crime Branch Station.

Allegedly, on or about 27th January 2006, in the aforementioned bail application, the said accused filed statement of accounts of the appellant/de facto complainant mentioned in the Multi Commodity Exchange of India Limited (MCX) which is a Government approved On-Line Trading Exchange of Bullion, Energy, Metal and Oil, admitting that they had undertaken bullion trade with MCX by using the appellant's money. Apart from the said FIR, the parties have filed some Civil Suits also. Indisputably, however, Banwarlal Sharma (Accused No.10) was subsequently added. It is furthermore not in dispute that the investigation was transferred to CBCID, Chennai by the Director General of Police, Tamil Nadu.

On or about 8th October, 2007, a charge-sheet was filed before the learned III Metropolitan Magistrate, George Town, Chennai only against Accused Nos. 1 and 2 under Sections 406, 420 and 120B of the Indian Penal Code (IPC). The learned Magistrate took cognizance against the said accused.

On or about 29th October 2007, on the premise that the learned Magistrate had not taken cognizance against the other accused, the appellant filed an application under Section 482 of the Code before the High Court for setting aside the said order. The said application was disposed of by the learned single judge of the High Court in the following terms:

8. Therefore in the considered view of this order, the above criminal original petition can be disposed of with the following directions:- The petitioner is at liberty to file an appropriate petition before the III Metropolitan Magistrate,George Town, Chennai, incorporating his grievances and the alleged lapses on the part of the investigating agency and seek further investigation in the case. On such petition being filed, the learned Magistrate, shall consider the same in accordance with law and if the learned Magistrate is satisfied that a case has been made out by the petitioner for ordering further investigation under Section 173(8) of the Criminal Procedure Code, the learned Magistrate is entitled to invoke the powers under Sections 173(8) of the Criminal Procedure Code and direct the respondent to further investigate into the matter.

Pursuant to or in furtherance of the said observations, appellant filed an application for further investigation before the learned Magistrate and by an order dated 13th February 2008, a direction for further investigation was issued, observing:

While considering the averments made in this petition, this Court holds that several kinds of issues were not undisclosed and beyond from knots of doubts. If those doubts were not cleared through suitable investigation, no opportunity could be given to get it revealed the true picture. While considering the nature of the case, it is important to find out how the amount given by the petitioner utilized, when it was utilized and on which state the amount has been kept. But, as alleged on behalf of the petitioner, it is the duty of this Court to find out the truth by holding suitable investigation of

the matters which were unearthed. In the event of this court refusing to find out the true picture by ordering a reinvestigation, either party is likely to get hardships and losses. If the reinvestigation is ordered, a situation for handing out an opportunity for both the parties to bring out the hidden truths in this case and the facts in this case and this Court holds that it would pave a way for conducting a trial in the proper direction. As this court holds that certain cause of actions available in this case, and in view of the necessity to find out several facts in this case and in accordance of the orders of the High Court of Madras in CRL.O.P. 33354 of 2007, it is to meet the ends of justice, the case could be ordered for reinvestigation and thereby the petition presented by the Petitioner/complainant u/s 173(8) is allowed.

Accused No.2 filed revisional application thereagainst before the High Court. By reason of the impugned judgment, as noticed hereinbefore, the said revision application has been allowed.

6. Mr.K.T.S. Tulsi, learned Senior Counsel appearing on behalf of the appellant would contend:

(i) The High Court committed a serious error in opining that no direction for further investigation or reinvestigation can be directed after cognizance of an offence is taken. (ii) The application for a direction for further investigation having been filed only in terms of the order of the High Court dated 17th December 2007, another learned judge of the same High Court could not have taken a contrary view.

(iii) Direction for further investigation having been made by the learned Magistrate upon taking into consideration all aspects of the matter, the High Court committed a serious error in interfering therewith.

(iv) The High Court committed a serious error in passing the impugned judgment insofar as it failed to take into consideration that Accused No.6 being father of Accused No.2 and Accused Nos. 5, 7 and 8 being his brothers; were running and operating Surana Corporation Limited and having admittedly invested the said amount in MCX, they must be held to have conspired together for misappropriation of the aforementioned amount of Rs.4.65 crores entrusted by the appellant to the accused No.2, and consequent refusal on their part to return the amount on the ground that they have suffered a huge loss.

7. Mr. U.U. Lalit, the learned Senior Counsel appearing on behalf of the accused other than accused Nos. 2 and 6, on the other hand, urged: (i) Despite the fact that the learned Magistrate had the requisite jurisdiction to direct further investigation, such order could not have been passed in the instant case as all aspects of the matter had been taken into consideration by the Investigating Officers.

(ii) Further investigation, the learned counsel would urge, could be directed only in the event where investigation was not carried in respect of certain aspects of the matter or where during trial it came to the notice to the court that some facts which were relevant for arriving at the truth had not been gone into.

8. Mr. M.N. Rao, learned Senior Counsel appearing on behalf of the State would take us through the detailed counter affidavit filed on behalf of the State to contend that the investigation had been carried out in a fair and diligent manner touching all aspects of the matter.

9. It is now a well settled principle of law that when a final form is filed by any Investigating Officer in exercise of his power under sub-section (2) of Section 173 of the Code, the first informant has to be given notice. He may file a protest petition which in a given case may be treated to be a complaint petition, on the basis whereof after fulfilling the other statutory requirements cognizance may be taken. The learned Magistrate can also take cognizance on the basis of the materials placed on record by the investigating agency. It is also permissible for a learned Magistrate to direct further investigation.

The Investigating Officer when an FIR is lodged in respect of a cognizable offence, upon completion of the investigation would file a police report. The power of investigation is a statutory one and ordinarily and save and except some exceptional situations, no interference therewith by any court is permissible. Anr. [(2008) 8 SCC 300], this Court held:

6. The power of the court to interfere with an investigation is limited. The police authorities, in terms of Section 156 of the Code of Criminal Procedure, exercise a statutory power. The Code of Criminal procedure has conferred power on the statutory authorities to direct transfer of an investigation from one Police Station to another in the event it is found that they do not have any jurisdiction in the matter. The Court should not interfere in the matter at an initial stage in regard thereto. If it is found that the investigation has been conducted by an Investigating Officer who did not have any territorial jurisdiction in the matter, the same should be transferred by him to the police station having the requisite jurisdiction.

In Dharmeshbhai Vasudevbhai Ors. vs. State of Gujarat Ors. [2009 (7) SCALE 214], this Court held:

9. Interference in the exercise of the statutory power of investigation by the Police by the Magistrate far less direction for withdrawal of any investigation which is sought to be carried out is not envisaged under the Code of Criminal Procedure. The Magistrate's power in this regard is limited. Even otherwise, he does not have any inherent power. Ordinarily, he has no power to recall his order.

This aspect of the matter has been considered by this Court in Ors. [(1970) 1 SCC 653], wherein the law has been stated as under :

6. Without the use of the expression if he thinks fit, the second alternative could have been held to be independent of the first; but the use of this expression, in our opinion, makes it plain that the power conferred by the second clause of this section is only an alternative to the power given by the first clause and can, therefore, be exercised only in those cases in which the first clause is applicable.

7. It may also be further noticed that, even in sub-section (3) of Section 156, the only power given to the Magistrate, who can take cognizance of an offence under Section 190, is to order an investigation; there is no mention of any power to stop an investigation by the police. The scheme of these sections, thus, clearly is that the power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. The power of the police to investigate has been made independent of any control by the Magistrate.

Interpreting the aforementioned provisions vis-a-vis the lack of inherent power in the Magistrate in terms of Section 561-A of the Old Criminal procedure Code (equivalent to Section 482 of the new Code of Criminal procedure), it was held :

10. This interpretation, to some extent, supports the view that the scheme of the Criminal Procedure Code is that the power of the police to investigate a cognizable offence is not to be interfered with by the judiciary. Their Lordships of the Privy Council were, of course, concerned only with the powers of the High Court under Section 561-A CrPC, while we have to interpret Section 159 of the Code which defines the powers of a Magistrate which he can exercise on receiving a report from the police of the cognizable offence under Section 157 of the Code. In our opinion, Section 159 was really intended to give a limited power to the Magistrate to ensure that the police investigate all cognizable offences and do not refuse to do so by abusing the right granted for certain limited cases of not proceeding with the investigation of the offence. Yet again in Devarapalli Lakshminarayana Reddy Ors. v. V. Narayana Reddy Ors. [(1976) 3 SCC 252], this Court, upon comparison of the provision of the old Code and the new Code, held as under:

7. Section 156(3) occurs in Chapter XII, under the caption :

Information to the Police and their powers to investigate; while Section 202 is in Chapter XV which bears the heading: Of complaints to Magistrates. The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre- cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(l)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre- cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section an investigation for the purpose of deciding whether or not there is sufficient ground for proceeding. Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

We are, however, not oblivious of the fact that recently a Division Bench of this Court in Sakiri Vasu vs. State of Uttar Pradesh Ors. [(2008) 2 SCC 409] while dealing with the power of the court to direct the police officer to record an FIR in exercise of power under Section 156(3) of the Code observed that the Magistrate had also a duty to see that the investigation is carried out in a fair manner (correctness whereof is open to question).

10. An order of further investigation can be made at various stages including the stage of the trial,

that is, after taking cognizance of the offence. Although some decisions have been referred to us, we need not dilate thereupon as the matter has recently been considered by a Division Bench of this Court in Mithabhai Pashabhai Patel Ors. vs. State of Gujarat [2009 (7) SCALE 559] in the following terms:

16. This Court while passing the order in exercise of its jurisdiction under Article 32 of Constitution of India did not direct re- investigation. This court exercised its jurisdiction which was within the realm of the Code. Indisputably the investigating agency in terms of sub-section (8) of Section 173 of the Code can pray before the Court and may be granted permission to investigate into the matter further. There are, however, certain situations, where such a formal request may not be insisted upon.

17. It is, however, beyond any cavil that `further investigation' and `re-investigation' stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely under Articles 226 and 32 of the Constitution of India could direct a `State' to get an offence investigated and/or further investigated by a different agency. Direction of a re-investigation, however, being forbidden in law, no superior court would ordinarily issue such a direction.

Pasayat, J. in Ramachandran v. R. Udhayakumar, [(2008) 5 SCC 413], opined as under :-

7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation...

11. We have referred to the aforementioned decision only because Mr. Tulsi contends that in effect and substance the prayer of the appellant before the learned Magistrate was for reinvestigation but the learned Magistrate had directed further investigation by the Investigating Officer inadvertently. The Investigating Officer may exercise his statutory power of further investigation in several situations as, for example, when new facts come to its notice; when certain aspects of the matter had not been considered by it and it found that further investigation is necessary to be carried out from a different angle(s) keeping in view the fact that new or further materials came to its notice. Apart from the aforementioned grounds, the learned Magistrate or the Superior Courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice.

12. The question, however, is as to whether in a case of this nature a direction for further investigation would be necessary.

Mr. Dhayalan, Inspector of Police, Crime Branch CID, Metro Wing, Chennai in his counter affidavit inter alia brought to this Court's notice that the matter was investigated by (1) Tr. S. Saravana Brabu, Inspector of Police, Chennai CCB, (2) Tr. Salathraj, Assistant Commissioner of Police, CCB Chennai (3) Tr. S. Veiladurai, Assistant Commissioner of Police, Job Rocket and Video Piracy, Chennai City, (4) Tr. C. Edward, Inspector of Police, CCB, Chennai and (5) Tr. K.G. Rajakumar, Assistant Commissioner of Police, CCB, Egmore, Chennai apart from him. We have noticed hereinbefore that the investigation was transferred to CBCID by an order dated 29th March 2007 passed by the DGP, Tamil Nadu. The matter, thus, has been investigated by two specialized

agencies. The deponent of the counter affidavit categorically stated that he had made a thorough investigation and upon consideration of the materials gathered during investigation identified that there was no connection between the money of the de facto complainant and Accused Nos. 3 to 10 and hence the final form was filed in their favour. It was pointed out that the complainant had filed the aforementioned application under Section 173(8) of the Code principally on the premise that no investigation had been carried out in respect of three documents being (1) The additional grounds raised in the anticipatory bail application, (2) The plaint filed by Accused No.2 in the Civil Suit filed by him and (3) the letter written by Mahaveer Surana, the authorized signatory of Surana Corporation Ltd., to the Chief Minister's cell. It was furthermore pointed out:

(b) The second accused came forward with improbable stories for him to escape from prosecution. The version of the accused in his anticipatory bail application is without any material to support the same and was not believed. Similarly, the version of A2 in the suit filed by him was also not believed as it was not borne out by any documentary evidence. Similarly, the letter written by Mahaveer Surana to the Chief Minister's Cell is also a document intended to save A-1 and A-2 from the crime and hence not to be believed. The version of the de facto complainant, the petitioner herein and also of A-2 to establish the connection between the money paid by the de facto complainant to A-2 with A-3 to A-10 is not borne out by any documentary evidence. Hence, the case against A-3 to A-10 were dropped. All the three documents are that of the accused. The documents cannot be proved through accused. No accused can be compelled to be a witness against himself. The documents could be hit by under Article 20(3) of the Constitution of India.

The investigating officer was of the opinion that the amount of Rs.4.65 crores was given to Accused No.2 for both trading in gold and silver on the basis of orally agreed terms. Accused No. 2 was introduced by Accused No.1. Accused No.2 had given the said amount on 18th November 2005 to M/s Vinayaga Vyapar Limited on various dates on its own risks and on the basis whereof M/s Vinayaga Vyapar Ltd. entered transactions with M/s Surana Corporation Ltd. on 17th November 2005 and all payments had been made through cheques only. Upon giving the details, the Investigating Officer had come to the following conclusion:

These transactions were for speculative trading only. It is stated in the FIR filed by the petitioner that the transaction between the petitioner and the A-2 Dharmendra Bafna are independent transaction between themselves and no third party was involved. The petitioner did not make any agreement or contract with the A-2 Dharmendra Bafna for doing gold bullion forward trade business and failed to obtain the trade order, trade execution order and trade confirmation order from the A-2 Dharmendra Bafna and did not deal in cheque transactions. The petitioner has given Rs.4.65 crores by cash and entered upon a shady transaction with the A4 Dharmendra Bafna.

In regard to the statements made by the accused in their application for anticipatory bail with regard to account with M/s MEGHA GG, it has been contended that the same cannot be construed to be an admission on the part of the Accused Nos. 3 to 10 especially when the petition had not been signed by any of the accused and all the documentary evidence and material gathered during the investigation were to the contrary. The said Shri Dhayalan had also stated in great details as to why Accused Nos. 3 to 10 were dropped. He had also taken into consideration the dealings by and between the parties inter se as also the litigations filed by them against each other. It is neither necessary nor desirable to notice the statements made therein by us as we are concerned with a question of law.

13. It is correct that the revisional court should not interfere with the discretionary jurisdiction exercised by the learned Magistrate unless a jurisdictional error or an error of law is noticed. We have noticed hereinbefore the order passed by the learned Magistrate. His order that several kinds of issues were not disclosed and beyond from knots of doubts is vague in nature. It has not been pointed out that in what respect the investigation has not been carried out. What are hidden truths required to be unearthed had also not been pointed out. The learned Magistrate did not consider the fact that the investigation had been carried out by two different agencies and by responsible police officers. It has not been found that the Investigating Officer was in any way biased towards the complainant. Furthermore, if the contention of Mr. Tulsi is correct, the question as to whether Accused Nos. 3 to 10 were involved in the matter could be pointed out from the materials which had already been brought on record. Furthermore, whether the admissions made in the application for anticipatory bail were binding on them, the same being a matter of inference can also be urged. The other and further remedies as pointed out can be resorted to as also invocation of the provisions of Section 319 of the Code at the stage of trial is also permissible in law, if an appropriate case is made out therefor. We furthermore clarify that any observations made by the High Court or by us should not prejudice the either party and the learned Magistrate should consider the matter on its own merit and without in any way being influenced by the same, if any occasion arises in this behalf in future.

14. For the reasons aforementioned, we do not find any merit in this appeal. The appeal is dismissed accordingly.