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## Chungkham Taratombi Leima Vs Dr. Akoijam Jhalajit Singh

### Miscellaneous Cases (Cril.Petn.) No. 6 Of 2017, 6 Of 2018

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**Court:** Manipur High Court

**Date of Decision:** April 26, 2019

**Acts Referred:**

Code Of Criminal Procedure, 1973 " Section 160, 173, 173(2)(i), 301, 302, 482#Indian Penal Code, 1860 " Section " Section 32, 34#Arms Act, 1959 " Section 27(3)

**Hon'ble Judges:** M.V. Muralidaran, J

**Bench:** Single Bench

**Advocate:** Shreeji Bhavsar, M. Rakesh, Jayant Sud, Honeykhana, S. Biswajit, W. Darakeshwa

**Final Decision:** Dismissed

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### Judgement

MV Muralidaran, J

[1] Heard Mr. Shreeji Bhavsar, and Mr. M. Rakesh, learned counsel for the applicants. Heard also Mr. Jayant Sud, learned Sr. Counsel assisted by

Mr. Honeykhana, learned counsel as well as Mr. S. Biswajit, learned counsel for the respondents/petitioners. Heard also Mr. W. Darakeshwar,

learned Sr. Panel Counsel, for the CBI.

[2] This petition has been filed by the petitioner seeking to implead her as respondent No. 2 in Criminal Petition No. 6 of 2017 preferred by the first

respondent.

[3] Criminal Petition No. 6 of 2017 has been filed by the first respondent herein seeking the following reliefs:

“ (i) Set aside the order of the learned Sessions Judge, Imphal West dated 14.2.2017.

(ii) Direct the respondent not to make further investigation in the present case in the light of fact and circumstances as mentioned in the petition.

(iii) Direct the respondent not to issue notice under Section 160 Cr.P.C. to the petitioner to appear before the CBI till the disposal of the petition.

(iv) Stay the arrest of the petitioner by the respondent till the disposal of the petition.”

[4] Pending Criminal Petition No.6 of 2017, the petitioner herein has filed the present petition viz., M.C. (Crl. Petn.) No.6 of 2018, seeking to implead

her in the main Criminal Petition stating that on 23.7.2009, the son of the petitioner viz., Chungkham Sanjit Meitei, was killed by the Manipur Police

Commando personnel in a fake encounter. On 1.8.2009, a English weekly magazine "Teelka" published an exclusive report about the killing of

the petitioner's son by the Manipur Police Commando personnel in a fake encounter. Thereafter, the petitioner lodged a written report with the

Officer-in-charge of City Police Station. However, the police refused to register the FIR without assigning any reason. Thereafter, on 17.8.2009, the

petitioner has filed a writ petition before the then Gauhati High Court, Imphal Bench against non-registration of FIR. By an order dated 25.8.2009,

Gauhati High Court, Imphal Bench passed an interim order directing the Officer-in-charge of the City Police Station to lodge an FIR based on the

written report submitted by the petitioner. Accordingly, the police has registered the case under FIR No.82(8)2009 City PS under Sections 32/34 IPC

and 27(3) of Arms Act for investigation.

[5] It is further stated that by an order dated 23.12.2009, the Gauhati High Court, Imphal Bench entrusted the investigation to the CBI to investigate

into the FIR. Pursuant to the order of the Court, the CBI investigated into the incident of killing of the petitioner's son and filed its charge sheet in

the court of the learned Chief Judicial Magistrate, Imphal West against 9 police personnel of Manipur. After getting committal from the learned Chief

Judicial Magistrate, the trial Court framed charges against 9 police personnel and at present more than 90 prosecution witnesses have been examined.

In the mean time, on 25.1.2016, accused No.3 viz, Thounaojam Herojit Singh, made an extra legal confession through print and electronic media

stating inter alia that he killed Chungkham Sanjit Meitei on 23.7.2009 as ordered by his superior Dr. Akoijam Jhalajit Singh, the first respondent herein

and the said confessional statement of accused No.3 was also published in one of the local dailies of Manipur. According to the petitioner, her son was

killed by accused No.3 as per the direction given by the first respondent. However, the first respondent preferred the Criminal petition seeking various

reliefs in order to avoid from criminal investigation against him in connection with the killing of petitioner's son. According to the petitioner, there

would be a serious inconvenience and it would hamper the task of further investigation into the matter if the first respondent is not made available to

the Investigating Officer for effective questioning including custodial interrogation. Thus, the custodial interrogation of the first respondent at the

earliest is highly required after rejecting the Criminal Petition preferred by him. The petitioner has a real and subsisting interest in the subject matter of

the present proceedings and, therefore, she has to be impleaded as respondent No.2 in the Criminal Petition preferred by the first respondent herein.

[6] The first respondent has filed opposition affidavit stating that the petitioner has no legal right to be heard as party respondent in Criminal Petition

No.6 of 2017 and she is trying to take over the control of the prosecution side by indirectly entering into the array in the Criminal Petition. It is stated

that the present petition has been filed by the petitioner in order to obstruct the administration of justice and the same is not maintainable and prayed

for dismissal of the petition.

[7] The second respondent-CBI filed opposition affidavit contending that the CBI, SC-II Branch has filed petition for further investigation in the matter

and the trial Court, by order dated 14.02.2017 granted permission for further investigation. It is stated that since almost 105 witnesses were examined

in the present case, it is prerogative of the Court to take appropriate decision in the matter.

[8] Heard Mr. Shreeji Bhavsar, the learned counsel for the petitioner; Mr. Jayant Sud, learned Sr. counsel for the first respondent and Mr. S. Biswajit,

the learned counsel for the second respondent.

[9] The learned counsel for the petitioner submitted that in order to escape from the clutches of criminal investigation initiated against him in

connection with the killing of petitioner's son, the first respondent has filed Criminal Petition No.6 of 2017 and at present the first respondent is

enjoying the interim order passed by this Court and the trial Court has continued the trial and examined so far 99 prosecution witnesses and the

examination of the prosecution witnesses is going to be completed very soon during the pendency of the Criminal Petition filed by the first respondent.

According to the learned counsel, there would be a serious inconvenience and hampering of further investigation into the matter if the first respondent

is not made available to the Investigating Officer for effective questioning including custodial interrogation. Therefore, the presence of the petitioner is

necessary in order to enable the Court to effectually and completely adjudicate upon and settle all questions involved in the Criminal Petition. No

prejudice would be caused to the first respondent, if the petitioner is impleaded as party respondent in the Criminal Petition preferred by him.

[10] Per contra, the learned counsel for the first respondent submitted that by adding the petitioner herein as party respondent in the Criminal Petition,

great prejudice would be caused to the first respondent as the petitioner is trying to take over the prosecution by not following the due process of law

contrary to the criminal jurisprudence. He would submit that the petitioner has no locus standi to file the present petition.

[11] The learned counsel for the second respondent submitted that the Court may pass order as deemed fit and proper in the facts and circumstances

of the case.

[12] I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

[13] The grievance of the petitioner is that she has to be impleaded as second respondent in Criminal Petition No.6 of 2017 filed by the first

respondent as she is necessary party to the said proceedings and it is duty of the trial Court to hear the petitioner. In support, the learned counsel relied

upon the decision of the Hon'ble Supreme Court in J.K International v. State (Govt. of NCT of Delhi) and others, reported in (2001) 3 SCC 462.

[14] In J.K International, supra, the Hon'ble Supreme Court held as under:

“13. We may now proceed to point out the usefulness of the observations made by the three-judge bench in Bhagwant Singh vs. commissioner of

Police (supra) Bhagwati J. (as he then was) who spoke for the bench pointed out that the informant having taken the initiative in lodging the First

Information Report with a view to initiate investigation by the police for the purpose of ascertaining whether any offence has been committed (if so by

whom) is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer-in-charge of the police

station on such FIR should be communicated to him. The bench said this with reference to Section 173(2)(i) of the Code.

14. This Court further said in the decision that if the magistrate finds that there is no sufficient ground for proceeding further the informant would

certainly be prejudiced because the FIR was lodged by him. After advertent to different clauses of Section 173 of the Code learned judges laid down

the legal proposition in paragraph 5 of the said judgment. The law so laid down is that through there is no obligation on the Magistrate to issue notice to

the injured person or to a relative of the deceased in order to provide him an opportunity to be heard at the time of consideration of the final report of

the police (except when the final report is to the effect that no offence had been made out in the case) the informant who lodged the FIR is entitled to

a notice from the Magistrate. In other instances, the injured or any relative of the accused can appear before the Magistrate at the time of

consideration of the police report if such person otherwise comes to know that the Magistrate is going to consider the report. If such person appears

before the Magistrate it is the duty of the Magistrate to hear him. It is profitable to extract the relevant portion of that ratio:

“The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the magistrate at

the time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to

make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though the Magistrate is not bound

to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his

discretion, if he so thinks fit, give such notice to the injured person or to any particular relative or relatives of the deceased, but not giving of such

notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report.”

15. In the above view of the matter learned single judge has done wrong to the appellant when he closed the door of the High Court before him by

saying that the High Court is going to consider whether the criminal proceedings initiated at his behest should be quashed completely and that the

complainant would not be heard at all even if he wants to be heard.

16. We, therefore, allow this appeal and set aside the impugned order. The petition filed by the respondents for quashing the criminal proceedings can

now be disposed of by the High Court after affording a reasonable opportunity to this appellant also to be heard in the matter.Ã¢â¬â¸

[15] In the case on hand, the first respondent has not approached the High Court for quashing the criminal proceedings initiated by the prosecution. On

the other hand, he has filed Criminal Petition No.6 of 2017 under Section 482 of Cr.P.C. seeking direction from this Court to set aside the order of the

learned Sessions Judge, Imphal West dated 14.02.2017 and to stay the arrest of the first respondent by the second respondent till the disposal of the

petition. Therefore, the citation mentioned supra produced by the counsel for the petitioner is not applicable in the case on hand.

[16] It is seen from the opposition affidavit of the second respondent that before the Sessions Court, Imphal West, so far 105 prosecution witnesses

have been examined and in the light of the additional information received to the effect that the accused Thounaojam Herojit Singh, Head Constable

has claimed to have killed the deceased Chungkham Sanjit on the orders of the First Respondent and additional facts disclosed by the petitioner herein,

it was decided by the CBI to conduct further investigation in the case. Accordingly, an application for further investigation in the case by CBI, SC-II

Branch was filed before the trial Court and permission was granted for further investigation by the order dated 14.02.2017.

[17] Admittedly, the petitioner has no locus standi to file the present Miscellaneous Petition. As per the Criminal Procedure Code, the right of the

petitioner as a complainant in the trial is to file an application before the concerned Sessions Court under Section 301 and 302 of Cr.P.C. to participate

during the prosecution of the case through a legal counsel of her choice. As stated supra, admittedly, before the trial Court, 105 prosecution witnesses

have been examined and the trial is likely to be completed and at this stage, if the petition of the petitioner is entertained, it would amount to obstruction

to the administration of justice.

[18] It appears that earlier the petitioner has approached the Court with a prayer for further investigation in S.T.No.7 of 2010/57 of 2015 and the same

were disposed of by the Court. As against the order passed therein, the petitioner has not preferred any appeal and the issue attained finality as far as

the petitionerÃ¢â¬â¸s case is concerned. It also appears that neither the second respondent, nor the petitioner established any new evidence or

corroborated material particulars after the commencement of the trial for any further investigation.

[19] Since the trail of the case is in the advance stage and 105 prosecution witnesses out of 254 have already been examined by the trial Court, in my

considered view, there is no necessity to implead the petitioner as respondent No.2 in Criminal Petition No.6 of 2017, as her impleadment will not

prolong the trial proceedings. This Court has not gone into the merits and de-merits of the petition preferred by the first respondent in Criminal Petition

No.6 of 2017 in the present petition. This Court has considered only the issue whether the petitioner is to be impleaded as second respondent and

impleadment of the petitioner is really required in Criminal Petition No.6 of 2017. In the given facts and circumstances of the case, this Court found

that there is no necessity to implead the petitioner as respondent No.2 in Criminal Petition No.6 of 2017. As rightly argued by the learned counsel for

the CBI, no prejudice is likely to be caused to any party by the ongoing trial as the grievance of the petitioner for further investigation has already been

addressed. The petitioner has no real and subsisting interest in the subject matter of Criminal Petition No.6 of 2017 as the issue to be adjudicated in the

said petition is between the first respondent and the second respondent and in that proceedings, the petitioner is not a necessary party to be heard and

impleaded.

[20] In view of the above discussion, I am of the view that the present Miscellaneous Petition is devoid of merits as the petitioner has no locus standi

to seek impleadment in Criminal petition No.6 of 2017. Accordingly, MC (Crl. Petn.) No.6 of 2018 is dismissed.