

(2022) 12 GAU CK 0003

Gauhati High Court

Case No: Criminal Petition No. 169 Of 2019

Kandarpa Kumar
Baruah

APPELLANT

Vs

State Of Assam And
Anr.

RESPONDENT

Date of Decision: Dec. 1, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Indian Penal Code, 1860 - Section 109, 120B, 167, 193, 201, 218, 279, 304A, 406, 409, 420
- Code Of Criminal Procedure, 1973 - Section 173(2), 173(8), 438, 482

Hon'ble Judges: Malasri Nandi, J

Bench: Single Bench

Advocate: D K Das, P S Lahkar

Final Decision: Disposed Of

Judgement

1. Heard Mr. N.K. Kalita, learned counsel for the petitioner and also heard Mr. B.P. Sinha, learned counsel for the respondent No. 2 as well as Mr.

P.S. Lahkar, learned Additional Public Prosecutor for the State/respondent No.1.

2. The petitioner has filed an application under Section 482 Cr.P.C. with a prayer for quashing of the FIR/enquiry report dated 08.05.2015 submitted

before the Superintendent of Police, Baksa, Mushalpur, which was subsequently registered as Tamulpur P.S. case No. 96/2015 and subsequent Final

Report No. 44/2017 dated 30.04.2017 submitted before the Id. CJM, Nalbari in connection with Tamulpur P.S. case No. 96/2015 and protest petition

filed by the informant seeking re-investigation of the Tamulpur P.S. case No. 96/2015 by different investigating officer.

3. The brief facts of the case is that the petitioner is a police personnel working under Government of Assam and occupied different posts like

Officer-in-Charge of different police stations. On 27.12.2014, while the petitioner was posted as In-Charge at Doulburi Out Post under Tamulpur

police station, one Smti. Kabita Basumatrany lodged an FIR alleging inter alia that on 30.11.2014 at around 2.30 p.m. while her husband was coming

back towards his house from Daranga Mela, a high speed bike bearing registration No. AS-14-D-0528 coming from the opposite direction knocked

down her husband near Bogajuli turning point, as a result of which her husband sustained grievous injuries on his person and died on the spot.

4. On receipt of the complaint, the petitioner registered a case vide Kumarikata O.P. GDE No. 427 dated 27.12.2014 and forwarded the same to the

Tamulpur Police Station for registering a case under proper section of law. Later on, the case was registered as Tamulpur P.S. case No. 215/2014

under Sections 279/304(A) IPC. The petitioner was endorsed for investigation of the said case but subsequently, the Additional Superintendent of

Police, Baksa had taken away the case diary from him. Thereafter, the petitioner could learn that the respondent No.2 i.e. Additional Circle Inspector,

Tamulpur was endorsed for an inquiry regarding genuineness of the case. The respondent No. 2 conducted an inquiry and submitted a report before

the Superintendent of Police, Baksa with a finding that the present petitioner fabricated the actual fact of the case with criminal conspiracy and

concealed evidence in view of malafide misappropriation of public money. On the basis of the said report, a case was registered vide Tamulpur P.S.

case No. 96/2015 under Sections 201/120(B)/406/420/409 IPC, which was subsequently registered as G.R. case No. 282/2015 and the investigation

was started.

5. The petitioner apprehending his arrest in connection with Tamulpur P.S. case No. 96/2015, approached this Court by filing an application under

Section 438 Cr.P.C. seeking protection of anticipatory bail and the prayer of the petitioner was granted by this Court. The investigating officer after

thorough investigation submitted Final Report before the Id. CJM, Nalbari in connection with Tamulpur P.S. case no. 96/2015 with a prayer for exonerating the accused person from the case. Thereafter, the Id. CJM, Nalbari issued notice to the informant i.e. the respondent No. 2 herein this case asking him to submit objection, if any, regarding the acceptance of final report. The respondent No. 2 appeared before the Id. CJM, Nalbari and filed a protest petition with a prayer for re-investigation of Tamulpur P.S. case No. 96/2015 on the ground that he was not satisfied with the investigation. Thereafter, Id. CJM, Nalbari, vide his impugned order dated 13.06.2017 sent back Tamulpur P.S. case No. 96/2015 with a direction for re-investigation of the case by appointing different investigating officer.

6. Pursuant to the said order of the Id. CJM, Nalbari, new investigating officer was appointed and the newly endorsed investigating officer, as per direction of the departmental higher authority, submitted charge-sheet against the present petitioner under Sections 120B/109/211/167/193/218 IPC. Hence this petition for quashing of order dated 13.06.2017 passed by the Id. CJM, Nalbari for re-investigation of the case.

7. The order dated 13.06.2017 passed by the Id. CJM, Nalbari reads as follows-

“Informant Jadu Ram Malakar appeared and prayed for re-investigation on the ground that he is not satisfied with the investigation. (vide 2242/17).

Petition is allowed. Send back Tamulpur PS case 96/15 to be re-investigated by a different I.O.”

8. It has been submitted by the learned counsel for the petitioner that the Id. CJM, Nalbari committed gross errors while passing the impugned order dated 13.06.2017 directing for re-investigation of the Tamulpur P.S. case No. 96/2015 by appointing a different investigating officer which is not permissible as per provision of law under Section 173(8) Cr.P.C.

9. The learned counsel for the petitioner further referred a case law in support of his submission 2011 AIR(SC)2962, wherein it was held that Sub-section (8) of Section 173 Cr.P.C. states that nothing in the Section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. Thus, even where charge sheet or challan has been filed by the police

under subsection (2) of Section 173, the police can undertake further investigation but not fresh investigation or re-investigation in respect of an offence under sub-section (8) of Section 173 of the Cr.P.C.

10. The learned Additional Public Prosecutor has also supported the submission of the learned counsel for the petitioner by stating that the Magistrate has no such power to direct re-investigation of a case. However, further investigation is permissible under the law.

11. Under Section 173 (8) Cr.P.C., Police possesses power to proceed for further investigation, but there is no provision empowering police for re-investigation. Word "re-investigation" has to be understood in the context of fresh investigation, new investigation and not in continuation with investigation already made.

12. In *Ram Lal Narang vs. State (Delhi Administration)* (1979) 2 SCC 322, Court considered the scope and purport of Section 173 Cr.P.C. and said that on the Magistrate taking cognizance on police report, right of Police to further investigate is not exhausted and it could exercise such right even if, as often as necessary, when fresh information comes to light. Further, it also observed that it is desirable that Police ordinarily should inform Court and seek its formal permission to make further investigation, if fresh facts come to light so as to maintain independence of judiciary, in the interests of purity of administration of criminal justice and in interests of comity of various agencies and institutions entrusted with different stages of such administration.

13. In *Randhir Singh Rana vs. State (Delhi Administration)* (1997) 1 SCC 361, Court observed that power of further investigation is available to Police after submission of charge-sheet by virtue of Section 173(8) Cr.P.C.

14. In *Dinesh Dalmia vs. CBI* (2007) 8 SCC 770, again Court held that Investigating Officer has power to make a prayer for conducting further investigation in terms of Section 173(8) Cr.P.C. and this power is not taken away only because a charge-sheet has been filed under Section 173(2) and cognizance has been taken by Magistrate.

15. In *Rama Chaudhary vs. State of Bihar*, 2009(6) SCC 346 Court examined power of Magistrate under sub Section (2) and (8) of Section 173

Cr.P.C. and observed that-

From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of police report under sub-section

(2) on completion of investigation, the police has a right to ""further"" investigation under sub-section (8) of Section 173 but not ""fresh investigation"" or

reinvestigation"". The meaning of ""Further"" is additional; more; or supplemental. ""Further"" investigation, therefore, is the continuation of the earlier

investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether.

16. In Vinay Tyagi vs. Irshad Ali @ Deepak and Ors. (2013) 5 SCC 762 Court recognizaed power of further investigation of Police suo motu with

reference to Section 173 (8) Cr.P.C. and held that Investigating Agency was competent to file a report supplementary to its primary report and that

the former was to be treated by Court in continuation of the latter.

17. The decision in Vinay Tyagi vs. Irshad Ali (supra) has been reiterated and followed in Dharam Pal vs. State of Haryana, 2014(2) SCC (Cri) 159

observing that superior Courts have jurisdiction under Section 482 Cr.P.C. or under Article 226 of Constitution of India to direct further investigation,

afresh or denovo, and even re-investigation. Fresh, de novo or reinvestigation are synonym expressions and result whereof in law, would be same.

Superior Courts are even vested with power of investigation transferred from one agency to another, provided ends of justice so demands. This power

has to be exercised by Superior Courts very sparingly and with great circumspection. Court reiterated the following observation with regard to the

power of Magistrate:

Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de

novo depending on the facts of a given case. It would be specific order of the Court that would determine the nature of investigation.

18. The exposition of law laid down in above authorities is well established that the Magistrate has only power to direct further investigation of the

case under Section 173(8) Cr.P.C. but re-investigation is not permissible under the law.

19. In view of above, the prayer of the petitioner is allowed.

20. The impugned order dated 13.06.2017 passed by the Id. CJM, Nalbari and subsequent proceeding in connection with Tamulpur P.S. case No.

96/2015 is hereby quashed.

21. With the above direction, the criminal petition stands disposed of accordingly.