

(2011) 10 PAT CK 0048

Patna High Court

Case No: Criminal Writ No.172 of 2002

Dinesh Vadiwala @ Dinesh
Badiwala @ Vadivala Dinesh
Sukha Bhai, Satyabrata Sen
Gupta, Ermakatuprambil Lazar
Sebastean and Rahuldeo

APPELLANT

Vs

The State of Bihar, Mr. Jagdish
Choudhary, Deputy
Superintendent of Police, Patna
Sadar, Patna, Mr. Chandraket
Singh, Sub-Inspector of Police,
Gandhi Maidan Police Station,
Patna-4 and Mr. Anupam
Pryadarshi

RESPONDENT

Date of Decision: Oct. 20, 2011

Final Decision: Dismissed

Judgement

Aditya Kumar Trivedi

1. Petitioners, Dinesh Vadiwala @ Dinesh Badiwala @ Vadivala Dinesh Sukha Bhai, Satyabrata Sen Gupta, Ermakatuprambil Lazar Sebastean, Rahuldeo have preferred instant writ with the following prayer:-

I. For the issuance of an appropriate writ/ order / direction to quash the order passed by Respondent No.2, Deputy Superintendent of Police, Patna as contained in letter No.170, dated 12.3.2001 (Annexure-5) directing further investigation of Gandhi Maidan P.S. Case No.8/2000 dated 06.01.2000.

II. For the issuance of an appropriate writ/ order/ direction restraining Respondent No.3 Chandraket Singh, Sub-Inspector of Police or any other Police Officer from making any further investigation of Gandhi Maidan Police Station Case No.8/2000 and from submitting any report or reports in the said case.

- III. For issuance of an order to stay further proceeding of G.R. No.83 of 2000 / Tr. No.1168 of 2000 arising out of Gandhi Maidan P.S. Case no.8/2000 pending in the court of Shri P.N. Sharma, learned Judicial Magistrate, Ist Class, Patna.
- IV. For issuance of an appropriate writ/order/direction restraining the respondents from arresting or from taking any coercive steps or processes from the learned Magistrate, like warrant of arrest etc. with regard to petitioner nos.1, 2 and 3 pursuant to the impugned further investigation of Gandhi Maidan P.S. Case No.8/2000.
- V. For any other relief or reliefs as your Lordship may deem fit and proper.
2. State had not filed counter affidavit though other respondents even after putting their appearance also failed to file counter affidavit.
3. By way of supplementary affidavit a new facts has been brought up over having the case compromised amongst the parties.
4. During hearing non-appeared on behalf of respondent no.4.
5. It has been submitted on behalf of petitioners that although the police has got right to further investigate a case wherein final report or charge sheet has been submitted but that can be only after having a new material as well as after seeking formal permission by the court concerned. It has been further submitted that for that purpose, the I.O. has to form its independent finding without being influenced from any corner. It has further been submitted that during such activity, the supervision note of Dy.S.P. which happens to be Annexure-5 was not at all legally recognizable and further, on the basis thereof, the I.O. could not have filed petition (Annexure-6) intimating the court over further investigation. In likewise manner it has been submitted that the I.O. was not at all competent to ask for the details vide Annexure-7 and so submitted that it is fit case wherein Annexure-5, Annexure-6, Annexure-7 is liable to be quashed.
6. At the other hand the State has raised objection over maintainability of the instant proceeding on the ground that the petitioners till today have not been made an accused in this case and so, submitted that the prayer happens to be premature and accordingly, is fit to be rejected.
7. After going through para-1 of the petition as stated above though the petitioners have prayed for restraining the opposite party from apprehending the petitioners but after going through the pleadings it is evident that nowhere petitioners have pleaded that they have been arrayed as an accused nor filed any Annexure to show that either permission has been accorded by the learned lower court nay having their status as an accused. From Annexure-7 it is evident that the I.O. had not shown them as an accused. The address, as demanded, may be for so many purposes and therefore one cannot infer that only for the purpose of arraying as an accused, the I.O. had directed to furnish address of the petitioners along with others.

8. The apprehension of petitioners is found to be mere an illusion in the background of non supported with any documentary evidence to show that actually permission was accorded by the learned Chief Judicial Magistrate in terms of Section 173(8) of the Cr.P.C. which happens to be sine-qua-non and for that I would like to refer 1999 (2) PLJR 83 (Supreme Court) the relevant para happens to be para-10

10. Power of the police to conduct further investigation, after laying final report, is recognized u/s 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence of the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in [Ram Lal Narang Vs. State \(Delhi Administration\)](#), The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.

Another decision happens to be [Ram Lal Narang Vs. State \(Delhi Administration\)](#), the relevant para happens to be para 21, para-22

21. Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualize a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a magistrate is to take in accordance with the provisions of the Code of Criminal Procedure in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceedings before the Court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the magistrate is sufficient

safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light.

22. As observed by us earlier, there was no provision in the Code of Criminal Procedure, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate, taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted u/s 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.

9. As the petitioners failed to substantiate their plea with the order of the learned Chief Judicial Magistrate on that very score, therefore, in the aforesaid background, Annexure-5, 6 and 7 has got no relevance and cannot be adjudicated upon for the present. As such the instant petition appears to be devoid of merit and is accordingly dismissed.