Prabir Kumar Chatterjee Vs State of West Bengal and Others

Court: Calcutta High Court

Date of Decision: Sept. 26, 2007

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 156(3), 173, 173(2), 173(3), 173(4)
Official Secrets Act, 1923 â€" Section 3, 4
Penal Code, 1860 (IPC) â€" Section 120B, 384, 406, 420, 468

Citation: (2008) CriLJ 841

Hon'ble Judges: Partha Sakha Datta, J

Bench: Single Bench

Advocate: Sekhar Basu and Puspal Satpathy, for the Appellant;Swapan Banerjee, D. Pal and S.S. Roy, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Partha Sakha Datta, J.
This revisional application dated 20-8-2005 u/s 401 read with Section 482 of the Cr.P.C. has been filed by the

accused-petitioner in G.R. Case No. 245/2005 u/s 420/406/120B/ 384/504/506/468 of the IPC pending before learned ACJM at Serampore in

the district of Hooghly being aggrieved with the order dated 28-11-2005 passed by the said learned Magistrate directing the police for

''reinvestigation'' of the case pursuant to a Naraji Petition filed by the O.P. No. 2 who was the de facto complainant of the case.

2. The petition of complaint was filed against the accused by the O.P. No. 2 before the learned SDJM, Serampore alleging that the accused who is

the husband of the sister of the complainant taking advantage of the complainant being in possession of huge amount of money consequent upon his

receipt of retirement benefit to the tune of Rs. 3,50,000/- sometimes in 1994 induced the complainant to invest his money in business i.e.

Zibcons"". Because of the parties having a sweet relationship between them the complainant started investing a lot of amount part by part from time

to time totaling a sum of Rs. 3,50,000/- towards the business of a concern of the accused called Trunkey International and Bengal Peerless in

good faith. Further the complainant supplied 3/4 tons of stone chips and other materials to the said concern of the accused amounting to Rs. 4 lac

but the accused recovered a total amount of Rs. 7,50,000/-together with profits from the parties concerned but misappropriated the entire amount

without paying any farthing to the complainant. The complainant came to learn that the entire amount of Rs. 7,50,000/-together with the dividends

of Rs. 4 lac had been recovered by the accused and misappropriated in full by him, notwithstanding the assurance made to the complainant by the

accused of paying the complainant a profit of 20% per month. Further the accused made some forged documents on Non Judicial Stamps and got

some recording on those stamps which purported to be some statements made by his nominee subscribers to the effect that he had paid to the

complainant sums of money.

3. The learned SDJM sent the petition to the police for investigation by treating the petition u/s 156(3) as FIR and a police case being Uttar Para

Police Case No. 30 of 2005 dated -5-3-2005 u/s 420/406/120B/384/504/506/468 of the IPC was registered and the investigation was carried

on. After investigation the police submitted a final report praying for termination of the proceeding holding that during investigation it was revealed

that the complainant transacted business with two companies i.e. Trunkey International and Bengal Peerless but both the companies were under

closure, while the accused encashed the entire invested amount of the complainant in the business. According to the I.O. during investigation of the

case charge could not be established against the accused persons and after consultation with the I.C. Uttar Para P.S. in respect to the merit of the

case the I.O. was craving leave of the learned Magistrate for submission of final report praying for termination of the proceeding as mistake of fact.

4. The complainant-O.P. No. 2 filed a Naraji Petition before the learned Additional Chief Judicial Magistrate, Serampore which was heard by him

and the petition was disposed of with the observation that the case diary disclosed that the petitioner introduced the de facto complainant with two

companies i.e. Trunkey International and Bengal Peerless for transaction. De facto complainant invested Rs. 7 lac for the business transaction and

the case diary disclosed that the transactions were carried out with M/s. Trunkey International Ltd. and Bengal Peerless. Learned Magistrate

observed that the I.O. had scope to interrogate persons associated with the concerns or seize papers to ascertain the actual facts for the interest of

justice but the I.O. did not enlighten the learned Court on that score and considering the same he thought that the investigation was not done

properly and accordingly in his opinion it was a fit case to sent the case for ''reinvestigation''.

5. The question that has arisen in the instant proceeding is whether the order of the learned Magistrate for ''reinvestigation'' of the case was legally

justifiable or not. According to Mr. Sekhar Basu, learned Senior Advocate appearing for the petitioner, provision of Section 173(8) of the Cr.P.C.

which deals with the power entrusted with the police to carry on further investigation does not enable the learned Magistrate to order for

''reinvestigation'' within the ambit of that Section which is clearly distinguishable from ''further investigation'', and according to Mr. Basu the

statement has not dealt with any situation whereby the learned Magistrate would be said to be justified to order for ''reinvestigation'' of the case.

He submits that ''reinvestigation'' which carries a meaning of de novo investigation afresh is clearly distinguishable from ''further investigation'', the

word used in Sub-section (8) of Section 173. It is submitted that that provision of Sub-section (8) of Section 173 clearly provides that it is the

police which is not precluded from making any further investigation in respect of an offence after a report under Sub-section (2) of Section 173 has

been forwarded to the Magistrate and whereupon 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 regarding such evidence and the provisions of Sub-sections (2) to (6) shall apply

in relation to such report or reports as they apply, in relation to a report forwarded under Sub-section (2) of Section 173 of the Cr.P.C. it Is only

after completion of investigation that the officer-in-charge of the police station shall forward to the Magistrate empowered to take cognizance of

the offence only police report, a report in the form prescribed by the State Government containing the essential ingredients thereof. It is submitted

by the learned Advocate for the petitioners that before the learned Magistrate there was no material to justify his making of an order for

''reinvestigation'' without specifying the provision of law which he was invoking. It has been submitted that when no material could be collected by

the I.O. the learned Magistrate without any justifiable cause ordered for ''reinvestigation''.

6. Mr. S.S. Roy learned Advocate for the State of West Bengal affirmed the order of the learned Magistrate with reference to certain decisions of

Supreme Court beginning with Abhinandan Jha and Others Vs. Dinesh Mishra, In this decision it has been held that the Magistrate has the

jurisdiction to disagree with a final report and can take cognizance of an offence u/s 190(1)(c) of the Cr.P.C. or may order ''further investigation''

u/s 156(3) of the Cr.P.C. It has been submitted by Mr. Roy that the moot question is whether the Magistrate can ask the I.O. to order for ''further

investigation'' and the word ''further investigation'' is sometimes read as synonymous with ''reinvestigation'' and the Court must not be bothered too

much seriously with the phraseology or the expression ''reinvestigation'' used by the learned Magistrate. Mr. Basu refers to the decision in K.

Chandrasekhar Vs. The State of Kerala and Others, to argue that Section 173 Cr.P.C. makes it clear that even after submission of a police report

under Sub-section (2) on completion of investigation the police has a right of "further investigation" because the dictionary meaning of "further" is

"additional" or "more" or "supplementary" and thus "further investigation" is the continuation of the earlier investigation and not a fresh

"investigation" or "reinvestigation" to be started ab initio wiping out the earlier investigation all together. It has been held therein that Section 173(2)

does not empower the police with fresh investigation or reinvestigation. Mr. Roy on the other hand refers to Gangadhar Janardan Mhatre Vs. State

of Maharashtra and Others, wherein their Lordships of the Supreme Court held that when a report forwarded by the police to the Magistrate u/s

173(2)(i) is placed before him several situations may arise and when the report concluded that an offence appears to have been committed the

Magistrate may either (1) accept the report and take cognizance of the offence and issue process or (2) may disagree with the report and drop the

proceeding or (3) may direct "further investigation" u/s 156(3) and require the police to make a further report and when the police is asked to

make further report u/s 156(3) of the Cr. P.C. The report may on the other hand state that no offence appeared to have been committed and in

such contingency the Magistrate has again option of adopting either of the three courses open (a) he may accept the report and drop the

proceeding (b) he may disagree with the report and take the view that there is sufficient ground for further proceeding, and take cognizance of the

offence and issue process or (c) he may direct further investigation to be made by the police u/s 156(3) of the Cr. P.C. and it has been held therein

that the position is now well settled that upon a receipt of a police report u/s 173(2), Cr. P.C. a Magistrate is entitled to take cognizance of an

offence u/s 190(1)(b) of the Cr. P.C. even if the police report is to the effect that no case is made out against the accused. Thus it appears that in

this case their Lordships of the Supreme Court held that the Magistrate has power to direct the police for "further investigation" u/s 156(3) of the

Cr. P.C. in Abhinandan Jha"s case (supra) it has similarly been held that there could be an order for "further investigation" u/s 156(3) of the Cr.

P.C. Of late there is a decision of the Hon"ble Supreme Court in Popular Muthiah Vs. State represented by Inspector of Police, wherein their

Lordships of the Supreme Court held at para 54 of the Judgment that the jurisdiction of the Magistrate in the matter of issuance of process or

taking of cognizance of offence depends upon the existence of conditions precedent thereto. The Magistrate has jurisdiction in the event a final

form is filed (i) to accept the final form (ii) in the event a protest petition is filed to treat the same as a complaint provided a prima facie case is

made out (iii) to take cognizance of the offence against a person (iv) to direct "reinvestigation" into the matter. Thus it appears the word

''reinvestigation'' has been used in this decision which has followed the decision in Abhinandan Jha v. Dinesh (supra). Thus it appears that in

Abhinandan Jha''s case (supra) the word ''further investigation'' has been used, while in Popular Muthiah''s case (supra) the word ''reinvestigation''

has been used and both can emanate from Magisterial order while using the word ''reinvestigation'' it is not too much of importance to deliberate

upon whether their Lordships of the Supreme Court in Popular Muthiah''s case (supra) while deciding the case on the basis of Abhinandan Jha''s

case (supra) intended to mean ''further investigation''. In K. Chandra Sekhar v. State of Kerala (supra) it has not been held that the Magistrate is

powerless to direct further investigation and in fact the question did not come up for consideration before the Hon''ble Supreme Court in that case,

for in that case the question was whether the notification issued withdrawing the consent to enable the State police to further investigate into the

case is valid or not. In that case, a case was registered by Kerala Police under Sections 3 and 4 of the Officials Secrets Act, 1923 and during

investigation certain other persons were arrested and a D.I.G. of Police conducting the investigation recommended the case for being

reinvestigated by the C.B.I. Pursuant to that recommendation the Government of Kerala by a notification dated 2-12-1994 accorded its consent

u/s 6 of Delhi Special Police Establishment Act. Now the C.B.I, submitted report in final form u/s 173(2) of the Cr. P.C. stating that the charges

were not proved. Then the Government of Kerala issued a notification withdrawing the consent earlier given to the C.B.I. to investigate the case

and the object of the said notification was to enable a ''reinvestigation'' of the case by a team of State Police Officers and by an amendatory

notification dated 8-7-1996 the words ''reinvestigation'' of the case were substituted by the words ''further investigation'' of the case. However, this

power of the Magistrate to direct ''further investigation'' has been affirmed in Abhinandan Jha (supra) and reinvestigation in Popular Muthiah

(supra). In the instant case the learned Magistrate assigned reasons as to why he was directing ''reinvestigation'' of the case. It has been submitted

by the learned State Advocate that although the word ''reinvestigation'' has been used which has been used in the decision of the Supreme Court in

Popular Muthiah (supra), to all intents and purposes it is actually a direction for ''further investigation''; and I do not think that the order of the

learned Magistrate is bad in law. The revisional application dwelt with some facts of the case which are not necessary to traverse here because the

facts of the prosecution case can be traversed only at the trial if at all any charge-sheet is submitted following ''reinvestigation'' or ''further

investigation''. Exercising the revisional jurisdiction, this Court is only required to see whether the learned Magistrate''s order directing ''further

investigation'' or ''reinvestigation'' is manifestly absurd or patently illegal or not and the learned Magistrate having assigned reasons I do not think

that the order complained of needs any interference.

7. Accordingly, I find no merit in the revisional application. I dismiss the revisional application and affirm the learned Magistrate''s order.

Urgent Xerox certified copies, if applied for, be given to the parties as expeditiously as possible.