

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR

SINGLE BENCH

MISCELLANEOUS CRIMINAL CASE No.27001/2018

Manvendra Singh alias Ramu
Vs.
State of Madhya Pradesh

Shri D.K. Katare and Shri R.K. Shrivastava, learned counsel for the petitioner.

Shri Avnish Singh, learned Public Prosecutor for the respondents/State.

Shri Pratip Visoriya and Shri Abhishek Singh, learned counsel for the complainant.

Present : **Hon. Mr. Justice Anand Pathak**

ORDER

{Passed on 16th day of November, 2018}

Present petition under Section 482 of the Code of Criminal Procedure, 1973 has been preferred by the petitioner for quashing the order dated 24-03-2018 passed by learned Additional Sessions Judge, Seondha District Datia in S.T.No.02/2018 whereby the application under Section 173(8) of Cr.P.C. preferred by the petitioner for further investigation in the matter has been rejected.

2- It is grievance of the petitioner as echoed in the present petition that a false case has been registered against him. On 24-09-2017 complainant Kuldeep lodged a written complaint in Police Station, Deepar District Datia against the present petitioner and other co-accused persons with the allegations that when the complainant along with his father (deceased Kailash) were going to their village, they were intercepted by the accused and other persons armed with gun and other weapons, opened fire and caused injuries by *Lathi* to them. His father succumbed to the injuries and died. Case was registered under Sections 147, 148, 149, 294, 307, 336 and 302 of IPC. During investigation, an

application by Sanjay Dixit was preferred on behalf of accused persons, namely, Sonu alias Janak Singh, Pan Singh, Parmal Singh and Narayan Singh before the Inspector General of Police for fair and impartial enquiry on which, Addl. Superintendent of Police, District Datia was given the task to enquire under Section 36 of Cr.P.C. Enquiry conducted and Addl. Superintendent of Police, Datia submitted his report before the Superintendent of Police, Datia. Enquiry report indicates the presence of accused Sonu alias Janak Singh at Gwalior, on the basis of tower location of his mobile number. Similarly, CCTV footage of Parmal Singh Gurjar, Narayan Singh and Pan Singh indicate that they were at some different place and not at the place of incident when incident allegedly occurred as per the investigating officer.

3- Petitioner is facing trial for the alleged offences referred above along with other co-accused persons. An application under Section 173(8) and 177 of Cr.P.C. was preferred at the instance of the petitioner, seeking further investigation in the case in hand because according to him the report prepared by the Addl. Superintendent of Police under Section 36 of Cr.P.C. has material bearing in the case and therefore, the investigating officer be directed to further investigate the matter and appropriate action be ensured under Section 29 of the Police Act against the investigating officer for dereliction of duty. According to him, enquiry by the Addl. Superintendent of Police, Datia is pending, therefore, ground exists for further investigation. Learned counsel for the petitioner relied upon the judgment rendered by the Hon'ble Apex Court in the matter of **Kishan Lal Vs. Dharmendra Bafna and another, (2009) 7 SCC 685**, in the matter of **Rajiv Thapar and others Vs. Madan Lal Kapoor, (2013) 3 SCC 330** and the judgment of Maharashtra High Court in the matter of **Azija Begum Vs. State of Maharashtra, 2012 (II) MPWN 29** and judgment of this Court in the matter of **Shriram Sharma Vs. State of M.P., 2012 (III) MPWN 34**.

4- On the other hand, learned Public Prosecutor for the respondent/State opposed the prayer made by the petitioner and submitted that charge-sheet has been filed and petitioner has to contest and face trial on the basis of charge-sheet. Thus, prayed for

dismissal of petition.

5- Learned counsel for the complainant also opposed the prayer made by the petitioner. While relying upon the judgment of Hon'ble Apex Court in the matter of **State of Orissa Vs. Debendra Nath Padhi, 2005 SCC (Cri) 415** it is submitted that petitioner cannot seek further investigation. Besides that, counsel for the complainant vehemently submitted that the legal sanctity of enquiry report prepared by the Addl. Superintendent of Police under Section 36 of Cr.P.C. is doubtful in law and relied the judgment rendered by this Court in the case of **Amit Chaturvedi and others Vs. State of M.P. and another, 2017 (2) MPLJ (Cri) 362**. He prayed for dismissal of petition.

6- Heard learned counsel for the parties and perused the documents appended with petition.

7- So far as the question regarding further investigation is concerned, the Hon'ble Apex Court in the case of **Amrubhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and others, (2017) 4 SCC 177** has given guidelines as under:

“49. On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.

50. The unamended and the amended sub-Section (8) of Section 173 of the Code if read in juxtaposition, would overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorized to conduct further investigation without limiting the stage of the proceedings

relatable thereto. This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings. The recommendation of the Law Commission in its 41st Report which manifesting heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.

51. In contradistinction, Sections 156, 190, 200, 202 and 204 of the Cr.P.C clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by the Cr.P.C to order further investigation even after the cognizance is taken, accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of the Cr.P.C. adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) of the Cr.P.C would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in Bhagwant Singh (supra), the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation

suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Section 311 and 319 Cr.P.C., whereunder any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court.”

8- Scope of further investigation has been dealt with by the Hon'ble Apex Court also in the matter of **Vinay Tyagi Vs. Irshad Ali and others, (2013) 5 SCC 762** and in the matter of **Chandra Babu Vs. State Through Inspector of Police and others, (2015) 8 SCC 774**).

9- From the above guidelines, it is clear that the accused has no right to seek further investigation in the matter. Even otherwise when the facts of the case are scrutinized then, it appear that the petitioner is relying upon the report prepared by the Addl. Superintendent of Police, Datia under Section 36 of Cr.P.C. which has no higher evidentiary value than the charge-sheet. It has to be tested on the anvil of the evidence adduced by the parties in the trial. Therefore, scope of Section 36 of Cr.P.C. has been discussed by the Coordinate Bench in the case of **Amit Chaturvedi and others (supra)**.

10- In the cumulative analysis the prayer of the petitioner/accused for further investigation cannot be acceded to. Trial Court rightly passed the impugned order by rejecting the application preferred by the petitioner under Section 173(8) of Cr.P.C.

Petition sans merits and is hereby dismissed.