Peethambaran vs The State Of Kerala on 3 May, 2023

Author: Sanjay Karol

Bench: B.R. Gavai, Vikram Nath, Sanjay Karol

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1381 OF 2023
(@ SLP (CRIMINAL) NO.545 OF 2020)

PEETHAMBARAN …APPELLANT

VERSUS

STATE OF KERALA & ANR. …RESPONDENTS

JUDGMENT

SANJAY KAROL, J.

Leave Granted.

1. Two questions arise for consideration□one, whether under the recognized parameters of exercise of power under Section 482, in the facts of the present case, the non□exercise of power is justified and two, whether the District Police Chief, Kottayam could have ordered the further investigation pursuant to which the second final report was filed?

2. The instant appeal by special leave petition has been filed against an order of the High Court of Kerala passed in Crl. MC No. 6314 of 2018 dated 6th of November, 2019 whereby a prayer to exercise powers under Section 482, Code of Criminal Procedure, 1973 was disallowed and proceedings under Criminal Case No. 1326/2017 was found unfit to be quashed.

3. The Appellant has been charged under Section 420 of the Indian Penal Code, 1860, for having cheated, alongside accused no.1, now deceased, the de□facto complainant, namely Sunesh and seven

other persons of a sum totaling three lakh eighty-three thousand five hundred and eighty-three rupees, in exchange for securing jobs for them or their wives at the Kottayam Rubber Board, as clerks.

4. An FIR was registered bearing number 1838 of 2015 under the above stated section on 24th October, 2015. The accused No.2 before us is the uncle of the de-facto complainant.

5. The Final Report (hereafter, FR-I) placed on record dated 30 th December, 2015 records that the complainant was asked to produce documents in this regard, but despite notice, the same were not produced, nor were any other documents, in regards to any financial transaction. It then states- "As there is no proper evidence in this regard, it shall be considered as a false case..."

6. Interestingly, another Final Report (hereafter, FR-II) forms part of the record. It states that witness number 10, namely S. Anilkumar, Inspector of Police, Viakom, conducted further investigation as per Order No. D2-43642/16/K passed by the District Police Chief, Kottayam.

7. It has been urged by way of this appeal that in effect, a re-investigation had been ordered, in violation of the procedure laid down in law. Further it has been argued that; the ingredients of Section 420, IPC have not been met- and therefore the High court has erred in not quashing the proceedings subject of the petition under Section 482; No specific role has been attributed to the appellant; That in all of the witness statements, the name mentioned is that of the de-facto complainant who gave the money to the deceased accused number 1 namely, Babu and was the instigator in other people giving the money to him. The Appellant seeks reliance on Vinay Tyagi v. Irshad Ali1; T.T 1 (2013) 5 SCC 762 Antony v. State of Kerala2; Vinubhai Haribhai Malviya and Ors v. State of Gujarat3; Randhir Singh Rana v. State (NCT of Delhi)4; G.V Rao v. L.H.V Prasad5; Hari Prasad Chamaria v. Bishun Kumar Surekha6.

8. Having taken note of the facts that have led to the present appeal by special leave petition and the chief arguments made, we now proceed to examine the law on the issues before us.

9. On the second question, that is whether District Police Chief, Kottayam's order was permissible in law or not, the relevant provisions of CrPC is Section 173 (8) which reads as under:

> "(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon 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 or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)." 2 (2001) 6 SCC 181 3 2019 SCC OnLine 1346 4 (1997) 1 SCC 361 5 (2000) 3 SCC 693 6 (1973) 2 SCC 823

10. The evolution of Section 173 CrPC has been noted by this Court in Vinubhai Haribhai Malaviya (supra). In Para 25, it is opined that investigation after the coming into force of the Cr.PC, 1973 will include all proceedings under Cr.PC for collection of evidence conducted by a police officer. "All" would undoubtedly then include Section 173 (8) as well. The power therefore, under Section 190, of a Magistrate ordering such investigation, would encompass further investigation under Section 173 (8).

11. It has been argued on behalf of appellants that, in effect, a reinvestigation has been conducted,

12. This Court in Vinay Tyagi (supra) gave detailed consideration to the powers under Section 173 and Section 482 of CrPC.

"43. At this stage, we may also state another well□settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

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45. The power to order/direct "reinvestigation" or "de novo" investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the court may, by declining to accept such a report, direct "further investigation", or even on the basis of the record of the case and the documents annexed thereto, summon the accused."

13. Per contra, the State would contend that only further investigation upon the order of the District Police Chief was conducted. In respect of further investigation, in Vinay Tyagi (supra) this Court has observed:

> 22. "Further investigation" is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as "further investigation". The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as "supplementary report". "Supplementary report" would be

> the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency.

This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a "reinvestigation", "fresh" or "de novo" investigation.

14. This distinction between further investigation and fresh investigation/reinvestigation/de novo investigation being that the former is a continuation of the previous investigation and is done on the basis of discovery of fresh material, whereas the latter can only be done when there is a definite order of the court to that effect which must states the reason as to why the previous investigation is incapable of being acted upon.

15. In Minu Kumari v. State of Bihar7, it was observed that upon submission of a report in terms of Section 173 (2) (i) the concerned Magistrate has three courses of action available before him:

> (i) Accept the report and proceed further
>
> (ii) Disagree with the report and drop the proceedings.
>
> (iii) Direct further investigation under Section 156 (3) which is the power of the police to investigate a cognizable offence, and require them to make a further report.

7 (2006) 4 SCC 359

16. In Hemant Dhasmana v. CBI8 it was observed that although the section is not specific in respect of the Court's power to order further investigation, the power of the police can be set into motion upon the order of such a court. It was further observed that this order should not be interfered with even in the exercise of the revisional jurisdiction of a higher court.

17. The above two cases make it amply clear that a magistrate has the power to order further investigation and the cases referred to earlier make clear that fresh investigation/reinvestigation/de novo investigation fall into the purview of the jurisdiction of a higher court.

18. In the present case, as is clear from FR II that S. Anilkumar, Inspector of Police, Vaikom conducted further investigation as per Order No.D2□43642/16/K, passed by a police officer and not by any duly empowered judicial officer.

19. The Chief Police Officer of a district is the Superintendent of Police who is an officer of the Indian Police Service. Needless to state, an order from the District Police Chief is not the same as 8

(2001) 7 SCC 536 an order issued by the concerned Magistrate. Referring to Vinay Tyagi (supra), this Court in Devendra Nath Singh v. State of Bihar and Ors.9 noted that there is no specific requirement to seek leave of the court for further investigation or to file a supplementary report but investigation agencies, have not only understood it to be so but have also adopted the same as a legal requirement. The doctrine of contemporanea exposito aids such an interpretation of matters which have been long understood and implemented in a particular manner to be accepted into the interpretive process. In other words, the requirement of permission for further investigation or to file a supplementary report is accepted within law and is therefore required to be complied with.

20. In the facts at hand, it is clear that such a permission was never taken, granted or ordered. Consequently, FR□I is without basis. In FR□ it has been stated that in the absence of any documents in respect of the financial transactions, the instant case may be treated as a false case. This, then would necessarily imply that after due investigation conducted by a duly authorized person, 9 (2023) 1 SCC 48 the conclusion is that the ingredients of the section mentioned in the FIR have not been met and no case is made out.

21. In Paramjit Batra v. State of Uttarakhand10 (two□Judge bench) it was observed that the High Court must use its powers under Section 482 only sparingly and to facilitate the ends of justice. It was also observed that the court must see must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.

22. In State of Haryana v. Bhajan Lal11 (two□Judge bench) seven instances were laid out wherein the exercise of either the power of Article 226 of the Constitution of India or the Inherent Powers under Section 482, Cr.PC would be justifiably exercised. They are□"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

10 (2013) 13 SCC 673 11 1992 Supp (1) 335 (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code. (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non□cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code. (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance

of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party. (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

23. These categories of cases have been quoted with approval by a bench of three judges in Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra12. The principles in respect of the exercise of power under Section 482 CrPC have been summarised as under:

> 12 2021 SCC OnLine 315 A. The Police has a statutory right as well as a duty under the Code of Criminal Procedure to investigate cognizable offences;

B. Courts are not to stymie any investigation into a cognizable offence;

C. When the perusal of the FIR however, does not disclose any offense of any nature whatsoever, the court is not to permit the investigation to proceed. D. The powers under this section are to be used 'sparingly' and with due circumspection. While doing so, the Court ought to consider whether the allegations in the FIR disclose the commission of the cognizable offence or not, without going into the merits of the case.

E. In exercise of this power, it is not for the court to go into questions of legitimacy or reliability of the allegations made in the FIR/Complaint;

F. Quashing of a complaint should not acquire the stature of the rule, and should be a rarity, and nor should, in exercise of such power, an investigation be unnecessarily cut short;

G. The Police and the Courts are two distinct organs of the State with perspicuous spheres of activities, with complementary functions, and so, unwarranted interference by the latter into the former's work is loathe, save in the interest of securing justice and preventing miscarriage thereof;

H. It must be noted that procedure is well establish to deal with an FIR upon which, post investigation, no merit is found, then the officer can file the suitable application to that effect which will be considered by the learned Magistrate seized of the matter;

24. The offence alleged in the FIR is Section 420 IPC which is a serious form of cheating include inducement in terms of delivery of property and/or valuable securities. The ingredients that must be met in order to constitute an offence under the section have been noted by this Court in Vijay Kumar Ghai and Ors. v. State of West Bengal and Ors.13 by a bench of two judges (consisting one of us, Krishna Murari, J.):

> "35.To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

(i) The representation made by the person was false.

(ii) The accused had prior knowledge that the representation he made was false.

(iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.

(iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

36. As observed and held by this Court in R.K. Vijayasarathy v. Sudha Seetharam [R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454] , the ingredients to constitute an offence under Section 420 are as follows:

(i) a person must commit the offence of cheating under Section 415; and

(ii) the person cheated must be dishonestly induced to:

(a) deliver property to any person; or

(b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420IPC."

25. Significantly, no material has been placed on record to show that the representation made by accused No.1 Babu (now deceased), the present appellant or the de facto complainant, was false or 13 (2022) 7 SCC 124 that they had prior knowledge of such representation being false and made only with the intention to deceive. There are only statements to the effect that despite reminders by the seven persons no jobs were secured for them or their wives. The only ingredient out of the four required, being in the present case is that in the ordinary course, none of the persons would have given the accused any money, and therefore were induced to deliver property which otherwise they would have not. No proof of any financial transaction is on record, much less concerning the present appellant.

26. With only one ingredient being fulfilled and mere statements made to show dishonest intention or falsity of statement, the threshold of Section 420 is not breached, constituting the offence.

27. Therefore, the first question is answered in the negative.

28. In terms of second question, the above discussion makes clear that the District Police Chief, Kottayam could not have ordered further investigation, as that power rests either with the concerned magistrate or with a higher court and not with an investigating agency.

29. Given the above, the order dated 6th of November, 2019 in Crl. MC No. 6314 of 2018 passed by the High Court of Kerala is set aside and Criminal Case No.132 of 2017 is quashed. The appeal is allowed in the above terms and the pending application(s), if any, stand disposed of.

.....J. (KRISHNA MURARI) .....J. (SAJAY KAROL) Dated: 3rd May, 2023 Place: New Delhi