

A SATISHKUMAR NYALCHAND SHAH

v.

STATE OF GUJARAT & ORS.

(Criminal Appeal No. 353 of 2020)

B MARCH 02, 2020

**[ASHOK BHUSHAN AND M. R. SHAH, JJ.]**

*Code of Criminal Procedure, 1973: s.173(8) – Further investigation – Application submitted by private respondent seeking further investigation under s.173(8) against a person who is yet not charge-sheeted – Magistrate dismissed the said application – Private respondent approached the High Court by way Special Criminal Application – Appellant one of the co-accused who was already charge-sheeted and against whom the trial was in progress and though in an application under s.173(8) no relief was sought against him, submitted an application to implead him as respondent in the said Special Criminal Application – Application dismissed by the High Court – On appeal, held: No error was committed by High Court in dismissing the application submitted by the appellant to implead him in the Special Criminal Application filed by the private respondent challenging the order passed by the Magistrate rejecting his application for further investigation under s.173(8) with respect to one another accused against whom no charge-sheet was filed till date – Therefore, when the proposed accused against whom the further investigation was sought was not required to be heard at this stage, there was no question of hearing the appellant-one of the co-accused against whom the charge-sheet is already filed and the trial against whom is in progress and no relief of further investigation was sought against him – Proceedings arising out of application under s.173(8) cannot be equated with the appeal or application against the order passed in criminal case as stated in r.51 of the Gujarat High Court Rules – Therefore, r.51 has no application at all.*

**Dismissing the appeal, the Court**

**HELD : It is not at all appreciable how the appellant against whom no relief is sought for further investigation has any locus**

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and/or any say in the application for further investigation under Section 173(8) CrPC. How he can be said to be a necessary and a proper party. It is required to be noted that, as such, even the proposed accused Shri Bhaumik shall not have any say at this stage in an application under Section 173(8) CrPC for further investigation. Therefore, when the proposed accused against whom the further investigation is sought is not required to be heard at this stage, there is no question of hearing the appellant-one of the co-accused against whom the charge-sheet is already filed and the trial against whom is in progress and no relief of further investigation is sought against him. The High Court was absolutely justified in rejecting the application submitted by the appellant to implead him as a party respondent in the Special Criminal Application. In the facts and circumstances of the case, Rule 51 of the Gujarat High Court Rules shall not have any application for further investigation under Section 173(8) CrPC. Proceedings arising out of an application under Section 173(8) CrPC cannot be equated with the appeal or application against the order passed in criminal case as stated in Rule 51. [Paras 7, 8][1113-A-B, F-H; 1114-A]

*Union of India v. W. N. Chadha* (1993) 4 Supp SCC 260 : [1992] 3 Suppl. SCR 594 ; *Dinubhai Baghabhai Solanki v. State of Gujarat* (2014) 4 SCC 626 : [2014] 3 SCR 932; *Narender G. Goel v. State of Maharashtra* (2009) 6 SCC 65 : [2009] 8 SCR 1004 ; *Sri Bhagwan Samardha v. State of A.P.* (1999) 5 SCC 740 : [1999] 3 SCR 870 – relied on.

*Athul Rao v. State of Karnataka* (2018) 14 SCC 298 ; *Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel* (2017) 4 SCC 177 : [2017] 4 SCR 105 – referred to

**Case Law Reference**

(2018) 14 SCC 298	referred to	Para 3.2	
[2017] 4 SCR 105	referred to	Para 3.3	G
[1992] 3 Suppl. SCR 594	relied on	Para 4.2	
[2014] 3 SCR 932	relied on	Para 7	
[2009] 8 SCR 1004	relied on	Para 7	
[1999] 3 SCR 870	relied on	Para 7	H

A CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 353 of 2020.

From the Judgment and Order dated 24.12.2018 of the High Court of Gujarat at Ahmedabad in Criminal Misc. Application No. 1 of 2018 in Special Criminal Application No. 8704 of 2018.

B Maninder Singh, Sr. Adv., D. N. Ray, Parthiv Shah, Lokesh Kumar Choudhary, Dillip Kumar Nayak, Ms. Disha Ray, Mrs. Sumita Ray, Advs. for the Appellant.

Aniruddha P. Mayee, A. Rajarajan, Advs. for the Respondents.

C The Judgment of the Court was delivered by

**M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 24.12.2018 passed by the High Court of Gujarat at Ahmedabad in Criminal Miscellaneous Application No. 1 of 2018 in Special Criminal Application No. 8704 of 2018, by which the High Court has dismissed the said application preferred by the appellant herein permitting him to be joined as respondent No. 4 in the said Special Criminal Application No. 8704 of 2018, which was filed by the private respondent herein seeking further investigation against other persons (other than the appellant who is one of the accused and is already charge-sheeted), the appellant has preferred the present appeal.

2. The facts leading to the present appeal in nutshell are as under:

F That in an earthquake on 26.01.2001, number of buildings collapsed, including the building named Shikhar Apartment situated at Village Vejalpur, Ahmedabad. That due to the collapse of the said Shikhar apartment, 98 persons died. That the private respondent herein-the victim lodged the FIR, being CR No. I-58 of 2001 with the Satellite Police Station against the appellant and others for the offences punishable under Sections 304, 418, 420 and 114 of IPC and Section 3(2)(c)&(d), Section 7(1)(i)(ii)2 and Section 42 of the Gujarat Ownership of Flats and for contravention of GDCR, Building Bye-laws. That the Police Inspector, Satellite Police Station filed the charge-sheet against the appellant and others on 02.05.2001 for the aforesaid offences. It appears that after a number of rounds of litigations, the appellant and some of the other accused came to be charge-sheeted. However, three accused persons, namely, Yagnesh Vyas, Sanjay Shah and Ronak Shah were not charge-

sheeted. The matter was carried up to this Court by way of Criminal Appeal No. 1426 of 2017. It appears that during the hearing of the aforesaid appeal by this Court, there was progress in the investigation and the charge-sheet was filed against the accused Yagnesh Vyas and Sanjay Shah who were also arrested. Therefore, while disposing of the aforesaid Criminal Appeal No. 1426 of 2017 vide order dated 16.07.2018, this Court observed that if the private respondent herein-the Victim has any objection against dropping of one another accused, he may file objection and can file a protest petition in the Trial Court. This Court also observed that the private respondent herein-the Victim can also carry out proceedings in an appropriate Court against one Shri M. N. Bhaumik for not prosecuting him. That, thereafter the private respondent herein-the Victim filed an application before the learned Chief Judicial Magistrate, Ahmedabad (Rural) under Sections 173(8) and 156(3) CrPC for further investigation against Shri Bhaumik. That by order dated 29.08.2018, learned Chief Judicial Magistrate, Ahmedabad (Rural) dismissed the said application on merits as well as on the ground that after the charge-sheet is filed, the Magistrate has no jurisdiction to order for further investigation under Section 173(8) CrPC.

2.1 Feeling aggrieved and dissatisfied with the order passed by the learned Chief Judicial Magistrate dated 29.08.2018 passed in an application below Ex.275(C) in Criminal Case No. 853 of 2001, the private respondent herein has preferred the Special Criminal Application No. 8704 of 2018 before the High Court of Gujarat. In the said Special Criminal Application, the appellant herein, one of the accused who is already charge-sheeted, submitted an application permitting him to be joined as party respondent No. 4 in the said Special Criminal Application. By the impugned Judgment and Order, Judge of the High Court has dismissed the said application. Hence, the present appeal.

3. Shri Maninder Singh, learned Senior Advocate has appeared on behalf of the appellant; the private respondent herein has appeared as a party-in-person and Mr. Aniruddha P. Mayee, learned Advocate has appeared on behalf of the respondent-State of Gujarat.

3.1 Shri Maninder Singh, learned Senior Advocate appearing on behalf of the appellant has vehemently submitted that in the facts and circumstances of the case the High Court has committed grave error in refusing to implead the appellant-co-accused as a party in the writ petition filed by the victim.

A           3.2 It is further submitted by Shri Maninder Singh, learned Senior Advocate appearing on behalf of the appellant that the High Court has not properly appreciated and considered the fact that, as held by this Court in the case of *Athul Rao v. State of Karnataka* (2018) 14 SCC 298 at the behest of a person who is not complainant seeking direction of further investigation is not maintainable.

B           3.3 It is further submitted by the learned Senior Advocate appearing on behalf of the appellant that even as already held by this Court in the case of *Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel* (2017) 4 SCC 177, the complainant does not have any right to file an application under Section 173(8) CrPC once the charge-sheet is framed.

C           It is submitted that in the present case the charge-sheet is already filed and the evidence of the complainant has been recorded and therefore the learned Chief Judicial Magistrate was justified in rejecting the application for further investigation under Section 173(8) CrPC preferred by the private respondent herein. It is submitted that if the opportunity

D           would have been given to the appellant by permitting the appellant to be impleaded as a party respondent in the Special Criminal Application, the appellant could have pointed out the aforesaid aspects and submit the case on merits.

E           3.4 It is submitted that, even otherwise, looking to the allegations in the writ petition before the High Court, as the private respondent herein has made allegations against the investigating agency that the investigation is not carried out by the investigating officer properly, the appellant being accused is a necessary and proper party and in his absence, effective adjudication of the subject-matter of the dispute may not take place.

F           3.5 Number of other submissions have been made by the learned Senior Advocate appearing on behalf of the appellant on merits of the application submitted by the private respondent herein for further investigation under Section 173(8) CrPC. However, for the reasons stated hereinbelow, and as the main Special Criminal Application against the

G           order passed by the learned Chief Judicial Magistrate rejecting an application submitted by the private respondent herein for further investigation under Section 173(8) CrPC is pending consideration by the High Court, we do not propose to go into the merits of the application submitted by the private respondent herein for further investigation under

H           Section 173(8) CrPC.

3.6 Shri Maninder Singh, learned Senior Advocate appearing on behalf of the appellant has also heavily relied upon Rule 51 of the Gujarat High Court Rules, 1993 in support of his submissions that as per Rule 51 all parties to the proceedings from which the appeal or application arises shall be made the parties to the appeal or application. It is submitted that therefore also and as the appellant herein was a party to the Criminal Case No. 853 of 2001 in fact the private respondent herein ought to have impleaded the appellant in the special criminal application.

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4. The present appeal is vehemently opposed by the private respondent herein as well Shri Mayee, learned Advocate appearing for the State of Gujarat.

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4.1 It is vehemently submitted that in an application under Section 173(8) CrPC for further investigation with respect to one another accused namely Shri Bhaumik, the appellant has no locus as the appellant as such is already charge-sheeted and the trial against him is going on. It is submitted that in the Special Criminal Application the private respondent herein has challenged the order passed by the learned Chief Judicial Magistrate rejecting the application under Section 173(8) CrPC which was basically made with respect to one another accused Shri Bhaumik as he was not charge-sheeted, the appellant herein cannot be said to be a necessary and/or proper party, It is submitted that even the appellant also cannot be said to be a affected party even if the Special Criminal Application is allowed and the application for further investigation under Section 173(8) CrPC against Shri Bhaumik is allowed.

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4.2 It is further submitted that being a proposed accused even Shri Bhaumik has no locus and/or say at this stage for further investigation under Section 173(8) CrPC.

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In support of the above, reliance is placed upon the decision of this Court in *Dinubhai Baghabhai Solanki v. State of Gujarat* (2014) 4 SCC 626; *Narender G. Goel v. State of Maharashtra* (2009) 6 SCC 65 and *Union of India v. W. N. Chadha* 1993 Supp (4) SCC 260. It is submitted that therefore when the proposed accused has no locus and/or say at this stage, the appellant, who as such is already charge-sheeted, and the trial against him is proceeded further, and against him no relief is sought while submitting the application under Section 173(8) CrPC shall not have any locus or say. It is submitted that therefore the High Court has rightly refused to implead the appellant as a party respondent in the petition filed by the private respondent herein.

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A           5. Shri Mayee, learned Advocate appearing on behalf of the State  
of Gujarat has also opposed the present appeal as well as the application  
submitted by the appellant herein before the High Court and vehemently  
submitted that the appellant being one of the co-accused who is already  
charge-sheeted and against whom the trial has proceeded further has  
B no locus and/or say in the petition filed by the private respondent herein  
as, even otherwise, the appellant cannot be said to even the affected  
party as while submitting the application under Section 173(8) CrPC no  
relief is sought against the appellant and the relief is sought for one  
another co-accused namely Shri Bhaumik, who is yet not charge-sheeted.

C           6. Heard learned counsel appearing for the respective parties at  
length.

6.1 At the outset, it is required to be noted that the present  
proceedings arise out of the application submitted by the private  
respondent herein seeking further investigation under Section 173(8) CrPC  
against one Mr. Bhaumik who is yet not charge-sheeted. Learned Chief  
D Judicial Magistrate dismissed the said application against which the private  
respondent herein has approached the High Court by way Special  
Criminal Application. In the said petition, the appellant herein- one of the  
co-accused who is already charge-sheeted and against whom the trial is  
in progress and though in an application under Section 173(8) CrPC no  
E relief is sought against him, submitted an application to implead him as  
respondent in the said Special Criminal Application and the said application  
has been dismissed by the High Court by the impugned Judgment and  
Order. Therefore, the short question which is posed for consideration of  
this Court is whether in the facts and circumstances of the case, the  
appellant-one of the co-accused against whom the charge-sheet is already  
F filed and against whom the trial is in progress, is required to be heard  
and/or has any locus in the proceedings under Section 173(8) CrPC –  
further investigation qua one another accused namely Shri Bhaumik  
against whom no charge-sheet has been filed till date?

7. Having heard learned counsel appearing on behalf of the  
G respective parties and the private respondent herein, we are of the opinion  
that as such no error has been committed by the High Court dismissing  
the application submitted by the appellant herein to implead him in the  
Special Criminal Application filed by the private respondent herein  
challenging the order passed by the learned Chief Judicial Magistrate  
H rejecting his application for further investigation under Section 173(8)

CrPC with respect to one another accused namely Shri Bhaumik against whom no charge-sheet has been filed till date. Therefore, it is not at all appreciable how the appellant against whom no relief is sought for further investigation has any locus and/or any say in the application for further investigation under Section 173(8) CrPC. How he can be said to be a necessary and a proper party. It is required to be noted that, as such, even the proposed accused Shri Bhaumik shall not have any say at this stage in an application under Section 173(8) CrPC for further investigation, as observed by this Court in the case of *W.N. Chadha* (supra); *Narender G. Goel* (supra) and *Dinubhai Baghabhai Solanki* (supra). In the case of *Dinubhai Baghabhai Solanki* (supra) after considering one another decision of this Court in the case of *Sri Bhagwan Samardha v. State of A.P.* (1999) 5 SCC 740, it is observed and held that there is nothing in Section 173(8) CrPC to suggest that the court is obliged to hear the accused before any direction for further investigation is made. In *Sri Bhagwan Samardha* (supra), this Court in paragraph 11 held as under:

“11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation.”

Therefore, when the proposed accused against whom the further investigation is sought, namely Shri Bhaumik is not required to be heard at this stage, there is no question of hearing the appellant-one of the co-accused against whom the charge-sheet is already filed and the trial against whom is in progress and no relief of further investigation is sought against him. Therefore, the High Court is absolutely justified in rejecting the application submitted by the appellant to implead him as a party respondent in the Special Criminal Application.

8. Now, so far as the reliance placed upon Rule 51 of the Gujarat High Court Rules by the learned Senior Advocate appearing on behalf of the appellant is concerned, we are of the opinion that in the facts and circumstances of the case, Rule 51 shall not have any application for further investigation under Section 173(8) CrPC. Proceedings arising



A out of an application under Section 173(8) CrPC cannot be equated with the appeal or application against the order passed in criminal case as stated in Rule 51. Therefore Rule 51 of the Gujarat High Court Rules has no application at all.

9. In view of the above and for the reasons stated hereinabove,  
B there is no substance in the present appeal and the same deserves to be dismissed and is accordingly dismissed.

Devika Gujral

Appeal dismissed.