

State Of A.P vs A.S. Peter on 13 December, 2007

Author: S.B. Sinha

Bench: S.B. Sinha, Lokeshwar Singh Panta

CASE NO. :

Appeal (crl.) 1119 of 2004

PETITIONER:

State of A.P.

RESPONDENT:

A.S. Peter

DATE OF JUDGMENT: 13/12/2007

BENCH:

S.B. Sinha & Lokeshwar Singh Panta

JUDGMENT:

J U D G M E N T S.B. SINHA, J :

1. The State of Andhra Pradesh is before us aggrieved by and dissatisfied with a judgment and order dated 3.10.2002 passed by the High Court of Judicature of Andhra Pradesh in Criminal Petition No. 3955 of 2000 allowing a criminal revision application filed by the respondent herein.

2. Respondent (Accused No. 1) carries on business in Red Sanders hard wood and was having a godown at Renigunta in the District of Chittoor. A fire broke out in the said godown on 28/29.06.1996 resulting in destruction of red sanders hard wood, undressed wood as also nine cutting machines.

The said godown was insured. The concerned Forest Officer gave an information to the police station that the respondent had made a false declaration regarding the stock shown in the godown and inflated the same in order to make unlawful gain, whereupon a First Information Report was lodged. Investigation was carried out upon obtaining permission of the concerned Magistrate. A chargesheet was filed upon completion of the investigation in the Court of III Additional Munsif Magistrate, Tirupati for alleged commission of offence under Sections 199, 200 and 200 of the Indian Penal Code. Subsequently, however, as some allegations had been made against the manner in which the local police conducted the investigation, the Additional Director General of Police, CID entrusted the case for further investigation to the Inspector of Police, CID, Prakasam District on 5.11.1997.

Before carrying out the said investigation, the Inspector of Police, CID filed a memo in the said Court with the prayer that the matter be adjourned. Although it does not appear that any express permission was granted for carrying out further investigation, the prayer of adjournment was allowed in terms of the said Memo. Further investigation was carried out whereafter an additional chargesheet was filed against Accused Nos. 1 to 3 in the Court of IV Additional Munsif Magistrate, Chittoor for offences under Sections 199, 200, 204 and 120 of the Indian Penal Code. More accused persons were also added in the chargesheet in the category of accused. Indisputably, the case was transferred from the Tirupati Court to a Designated Court at Chittoor.

Appellant filed an application before the High Court of Andhra Pradesh for quashing of the criminal proceedings inter alia on the ground that prior permission of the Magistrate was not obtained for further investigation as also on the ground that the same was conducted entirely by a different investigating agency.

A learned Single Judge of the High Court by reason of the impugned order has allowed the said application.

3. Mrs. D. Bharathi Reddy, learned counsel appearing on behalf of the appellant in support of this appeal submitted that the High Court committed a manifest error in taking the view that the investigation in question was a fresh investigation or it was imperative on the part of the investigating officer to obtain express permission from the Magistrate concerned. Decisions of this Court in *Ram Lal Narang v. State (Delhi Administration)* [(1979) 2 SCC 322] and *K. Chandrasekhar v. State of Kerala and Others* [(1998) 5 SCC 223] whereupon the High Court relied upon, Mrs. Reddy, would contend, have no application to the facts of the present case.

4. Mr. Nagendra Rai, learned Senior counsel appearing on behalf of the respondent, on the other hand, submitted that in view of the fact that not only a re-investigation was conducted by a different investigating agency, even another case was instituted at a different place without obtaining the prior permission of the Magistrate concerned and, thus, the impugned judgment is unassailable in view of the decisions of this Court in *Ram Lal Narang (supra)* and *K. Chandrasekhar (supra)*.

5. Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the chargesheet is a statutory right of the police. A distinction also exists between further investigation and re-investigation. Whereas re-investigation without prior permission is necessarily forbidden, further investigation is not.

6. In *R.P. Kapur and Others v. Sardar Pratap Singh Kairon and Others* [1961 (2) SCR 143], this Court laid down the law in the following terms:

The Additional Inspector General of Police to whom Sethi's complaint was sent was, without doubt, a police officer superior in rank to an officer in charge of a police station. Sardar Hardayal Singh, Deputy Superintendent of Police, CID, Amritsar, was also an officer superior in rank to an officer in charge of a police station. Both these

officers could, therefore, exercise the powers, throughout the local area to which they were appointed, as might be exercised by an officer in charge of a police station within the limits of his police station It was further held:

If the police officer concerned thought that the case should be investigated by the C.I.D. even though for a reason which does not appeal to us it cannot be said that the procedure adopted was illegal

7. It is not correct to contend that the investigation was taken up by a different agency. The CID is a part of the investigating authorities of the State. A further investigation was directed by the Additional Director General of Police. Section 36 of the Code of Criminal Procedure, 1972 empowers a police officer, superior in rank to an officer in charge of a police station, to exercise the same powers throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

8. It was, therefore, permissible for the higher authority to carry out or direct further investigation in the matter.

9. This aspect of the matter is covered by a decision of this Court in *State of Bihar and Another v. J.A.C. Saldanha and Others* [(1980) 1 SCC 554], wherein it was held:

9. .This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). Therefore, the High Court was in error in holding that the State Government in exercise of the power of superintendence under Section 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section 156(2) that an investigation by an officer in charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on the ground that such investigating officer had no jurisdiction to carry on the investigation; otherwise that provision would have been a short answer to the contention raised on behalf of Respondent 1. [See also *Upkar Singh v. Ved Prakash*, (2004) 13 SCC 292]

10. In *Ram Lal Narang* (supra), this Court was concerned with a case where two conspiracies were alleged; one being part of a larger conspiracy. Two investigations were carried out. This Court, while opining that further investigation is permissible in law, held that the Magistrate has a discretion in the matter to direct further investigation, even if he had taken cognizance of the offence, stating:

The criticism that a further investigation by the police would trench upon the proceeding 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. While acknowledging the power of the police authorities to carry out further investigation in terms of Section 173 of the Code of Criminal Procedure, an observation was made therein to the following effect:

In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 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.

11. Even in regard to an independent investigation undertaken by the police authorities, it was observed:

2. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 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

12. It is not a case where investigation was carried out in relation to a separate conspiracy. As allegations had been made against the officer of a local police station in regard to the mode and manner in which investigation was carried out, a further investigation was directed. The court was informed thereabout. Although, no express permission was granted, but evidently, such a permission was granted by necessary implication as further proceeding was stayed by the learned Magistrate. It is also not a case where two chargesheets were filed before two different courts. The Court designated to deal with the matters wherein investigation had been carried out by the CID, is located at Chittoor. It is in the aforementioned situation, the Sessions Judge transferred the case pending in the Tirupati Court to the Designated Court at Chittoor. Cognizance of further offence had also been taken by the Chittoor Court.

13. Reliance placed by the High Court as also by Mr. Rai in K. Chandrasekhar (supra) is misplaced. Therein investigation had been carried out by the Central Bureau of Investigation with the consent of the State. However, the State withdrew the same. The question which arose for consideration

therein was as to whether it was permissible for the State to do so. The said issue was answered in the negative stating that the investigating officer must be directed to complete the investigation. It was in the aforementioned situation opined:

¶4. From a plain reading of the above section it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right of further investigation under sub-section (8) but not fresh investigation or reinvestigation . That the Government of Kerala was also conscious of this position is evident from the fact that though initially it stated in the Explanatory Note of their notification dated 27-6-1996 (quoted earlier) that the consent was being withdrawn in public interest to order a reinvestigation of the case by a special team of State police officers, in the amendatory notification (quoted earlier) it made it clear that they wanted a further investigation of the case instead of reinvestigation of the case . The dictionary meaning of further (when used as an adjective) is additional; more; supplemental .

Further investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a further report or reports and not fresh report or reports regarding the further evidence obtained during such investigation. Once it is accepted and it has got to be accepted in view of the judgment in Kazi Lhendup Dorji that an investigation undertaken by CBI pursuant to a consent granted under Section 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that further investigation is a continuation of such investigation which culminates in a further police report under sub-section (8) of Section 173, it necessarily means that withdrawal of consent in the instant case would not entitle the State Police, to further investigate into the case. To put it differently, if any further investigation is to be made it is the CBI alone which can do so, for it was entrusted to investigate into the case by the State Government. Resultantly, the notification issued withdrawing the consent to enable the State Police to further investigate into the case is patently invalid and unsustainable in law. In view of this finding of ours we need not go into the questions, whether Section 21 of the General Clauses Act applies to the consent given under Section 6 of the Act and whether consent given for investigating into Crime No. 246 of 1994 was redundant in view of the general consent earlier given by the State of Kerala. We do not see any application of the said ratio herein.

14. We, therefore, are of the opinion that the judgment of the High Court cannot be sustained.

15. Mr. Rai submitted that the High Court did not go into the other contentions raised by the respondent in quashing the application. We have examined the application filed by the respondent under Section 482 of the Code of Criminal Procedure and are satisfied that the respondent herein only raised the contention of validity of the chargesheet filed upon completion of the second investigation.

16. For the reasons aforementioned, the appeal is allowed.