

Jharkhand High Court

Hitesh Varma vs State Of Jharkhand & Ors on 10 July, 2009

In the High Court of Jharkhand at Ranchi

W.P.(Cr.) No.304 of 2008

Hitesh Varma..... Petitioner

VERSUS

State of Jharkhand through
Secretary (Home) and others..... Respondents

CORAM: HON'BLE MR. JUSTICE R.R.PRASAD

For the Petitioner: M/s. Jai Prakash and Pandey Neeraj Rai
For the State : Mr.R.R.Mishra, G.P.II
For the Informant: Mr. Prabhash Kumar

Reserved on 28.5.2009

Pronounced on 10.7.2009

15. 10.7.09

. This writ application has been filed for quashing the order dated 16.9.2008 passed by Additional Judicial Commissioner-cum- FTC No.VII, Ranchi in Sessions Trial No.237 of 2005 whereby Additional Judicial Commissioner declined to call for a report of the Investigating Agency which, according to the petitioner, does contain vital evidences including the records relating to treatment of the deceased and consequently to direct learned court to ensure production of the said report for its consideration at the time of hearing on the point of discharge/framing of charge.

Before advertng to the submissions advanced on behalf of the parties, the facts giving rise this application need to be stated in brief.

When Sanjana Verma, wife of the petitioner was found dead, it was suspected by the informant to be a case of homicide and hence, lodged a case on the allegation that just after the marriage, the husband (petitioner), father-in-law as well as mother-in-law of the deceased had started putting forth demand of a car and money and in order to get the demand fulfilled, she was being subjected to cruelty and ultimately, she was done to death. Accordingly, Doranda (Argora) P.S. case no.329 of 2004 was instituted under sections 302 and 498A/34 of the Indian Penal Code. The police having investigated the case, submitted charge sheet under section 498A and 304A of the Indian Penal Code against the petitioner (husband of the deceased), while the investigation against the father-in-law and mother-in-law of the deceased was kept open. However, the police subsequently did not find complicity of those persons and hence, submitted final form. Thereafter the petitioner made a representation before the Additional Director General of Police, CID, Jharkhand for taking up the matter for fresh investigation as the investigation made by the district police is not only tainted with bias but is faulty also as so many materials showing innocence of the petitioner have not been brought forth resulting into injustice to the petitioner. Having satisfied, Additional Director General of Police, CID ordered for enquiry into the matter. On taking the matter for

enquiry, the enquiring officer, according to the petitioner, did find that the deceased had been admitted in Central Coalfields Limited, Central Hospital, Gandhinagar, Ranchi for acute bronchial asthma and non-sensitive pneumonia which fact was revealed from the Bed Head Ticket of the Central Coalfields Limited, Central Hospital, Gandhinagar, Ranchi as well as Apollo Hospital, Ranchi but those materials never form part of the case diary. The enquiring officer on collecting the aforesaid materials and other evidences did find the investigation made by the police to be biased and faulty. On submission of the report, Additional Director General of Police, CID, directed the Inspector of Police, CID to seek permission of the court for reinvestigation. However, when the prayer was made on behalf of the CID to allow him to take further investigation in the matter, the prayer was refused by Additional Judicial Commissioner-cum-FTC VII, Ranchi on the ground that no fresh materials either oral or documentary seem to have been collected and as such, prayer for reinvestigation was disallowed on 22.2.2007. When the said order was challenged before this Court in W.P.(Cr.) No.112 of 2007, the order passed by the Additional Judicial Commissioner was affirmed by holding that all the materials are available on record which have been sought to be reappreciated by the new investigating agency.

However, before that a representation seems to have made on behalf of the petitioner before the Director General of Police, Jharkhand as well as Superintendent of Police that injustice has been done to the petitioner at the behest of some high officials, as the petitioner is quite innocent and, therefore, request was made for further investigation. On the said representation, one D.P.Singh, Sub-Inspector of Police, Argora Police Station, Ranchi made further investigation and submitted a report dated 17.12.2006 (Annexure A to the counter affidavit) to the Senior Superintendent of Police. At the same time, enquiry in relation to the alleged offence was also made by the Sub-Inspector of Police, pursuant to direction given by Director General of Police, Jharkhand and on holding investigation/ enquiry, a report dated 10.3.2008 (Annexure C to the counter affidavit) was submitted.

It further appears that when investigation with respect to father-in-law and mother-in-law of the deceased got completed, a supplementary charge sheet was submitted which contained supplementary post mortem report but when it was found by the petitioner that it does not contain the records relating to the treatment of the deceased at Apollo Hospital and Central Coalfields Limited, Central Hospital, Gandhinagar, prayer was made on behalf of the petitioner to call for the same but the said prayer was refused by the Additional Judicial Commissioner, Ranchi. However, before that, the petitioner had moved an interlocutory application in W.P (Cr) No.112 of 2007 which had already been disposed of whereby prayer was made to direct the CID to transmit the record to the court but the said prayer was dismissed on the ground that after dismissal of the writ application, the court became functus officio. However, liberty was given to the petitioner for filing an appropriate application before the trial court. When the said prayer was made, learned Additional Judicial Commissioner declined to call for the same, vide order dated 16.9.2008 which has been sought to be quashed.

Learned counsel appearing for the petitioner submitted that upon revelation of certain new materials showing innocence of the petitioner when the prayer was made on behalf of the CID to allow him to reinvestigate the matter, the court below did not allow CID to reinvestigate the case

and subsequently when certain materials collected in course of reinvestigation were sought to be produced, the court below again rejected the prayer though they are very much essential for coming to jut decision of the case.

Learned counsel appearing for the petitioner submitted that though the prayer has been made to direct the learned court to call for the documents including the documents collected in course of enquiry by the CID but he will be confining his prayer relating to enquiry report dated 17.12.2006 (Annexure A to the counter affidavit) and the documents which form part of the report and also the report dated 10.3.2008 (Annexure C to the counter affidavit) submitted to the Deputy Inspector General of police as the materials collected in course of further investigation would be essential for the court to arrive at just decision but the court has refused the prayer and as such, there would be miscarriage of justice.

In this respect it was further submitted that the State in his counter affidavit has accepted about the submission of the aforesaid reports to higher police officials and has also accepted that those documents could not be submitted before the trial court. However, statement has been made in the counter affidavit that there would be no objection on the part of the respondent-State in submitting the reports dated 17.12.2006 and 10.3.2008 of the further investigations.

However, learned counsel appearing for the informant submitted that earlier when the petitioner had moved before this Court against the order under which prayer was refused to allow CID to take up the matter for reinvestigation, this court affirmed the order of the trial court by holding that no such material has surfaced which warrants any further investigation and as such, this application is also fit to be dismissed.

Having heard learned counsel appearing for the parties, it does appear that the district police after finding prima facie materials showing culpability of the petitioner submitted charge sheet against him under sections 304A and 498A of the Indian Penal Code. Thereupon when the petitioner and his parents craved for justice from the higher district police officials including CID, Additional Director General of Police, CID got the matter enquired into and on submission of the report, when it was found that the investigation made was tainted, an application was filed at the instance of the CID for seeking permission for reinvestigation but that was not allowed by the trial court, which order was affirmed by this Court by holding that there appears to be no fresh materials but that finding, according to learned counsel appearing for the petitioner, seems to have inadvertently been recorded as during investigation concerning other accused than the petitioner certain documents relating to treatment of the deceased which, according to the petitioner, would go to show about the innocence of the petitioner though collected but were not submitted along with supplementary charge sheet, though according to the reports (Annexures A and C to the counter affidavit) which were furnished to the parents of the petitioner under the provision of Right to Information Act, those documents had been collected by the Investigating Officer earlier and the photo copy of those records are part of the report but the Additional Judicial Commissioner refused to call for the report on the ground that the report of the CID or the district police after further investigation has neither been forwarded nor submitted to the Magistrate as stipulated under section 173(8) of the Code of Criminal Procedure and hence, those reports cannot be considered to be the report in terms of

Section 173(8) of the Code of Criminal Procedure. Learned Additional Judicial Commissioner does not seem to be correct in his approach as under the criminal dispensation system doing justice is the paramount consideration and that duty cannot be abdicated or diluted and diverted by any manipulative means and as such, it is the duty of the prosecutor as well as the court to ensure that full materials facts are brought on the record so that there might not be miscarriage of justice.

This proposition of law has been laid down by the Hon'ble Supreme Court in a case of Zahira Habibulla H. Sheikh vs. State of Gujrat [(2004) 4 SCC 158]. The Hon'ble Court further says that sub-section (8) of Section 173 of the Code permits further investigation and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognizance of any offence on the strength of a police report earlier submitted.

Under the circumstances, it was incumbent upon the Court to call for those reports dated 17.12.2006 (Annexure A to the counter affidavit) along with documents which form part of the reports as well as report dated 10.3.2008 (Annexure C to the counter affidavit) for its consideration while dealing with the matter relating to discharge/framing of charge as those materials appear to be relevant materials. Moreover, the Hon'ble Supreme Court while disposing of Cr. App. No.1273 of 2005 has been pleased to observe that sessions court may frame charge in this case having regard to all relevant materials produced before it.

Under this situation, the order dated 16.9.2008 passed by the Additional Judicial Commission-cum-FTC No.VII, Ranchi is hereby set aside and the Additional Judicial Commissioner is hereby directed to call for the aforesaid reports along with its Annexures from the Investigating Agency, so that the same be considered at the time of hearing on the point of discharge/ framing of charge.

Accordingly, this application is allowed.

(R.R.Prasad, J.) ND/