

KAUK030002712020



ORDER ON APPLICATION FILED BY ACCUSED

U/S 173(8) OF CR.P.C.

This application is filed by the accused U/S 173(8) of Cr.P.C. Seeking permission of this Court to direct Chittakula Police to reinvestigate the matter.

2. It is contended in the application that Chittakula Police have investigated this matter and have filed chargesheet against the accused for the offences punishable U/S 471, 465 and 420 of IPC. Charges have been framed against the accused and the present stage of the case in for evidences and certain prosecution witnesses have already been examined. The allegations made by prosecution are not accepted by the accused. It is alleged against the accused that the accused has forged the signature of the original owner of the Property and sold the same to himself. But the Police officials have not obtained the thumb impression of vendors and filed incomplete

chargesheet. On these grounds, he sought to allow the application.

3. The application is resisted by the learned APP by filing objections inter-alia contending that now evidence of prosecution is completed till CW-1. This is a belated application. It is further contended that accused has forged the signature of one Smt. Durga Bai Digambar who died on 16/09/1984, on a sale deed and registered for himself before the sub-register office. On these grounds, Police officials have filed chargesheet against the accused for the offences punishable U/S 417, 465 and 420 of IPC. This application is filed only to delay the proceedings and hence, Prayed to dismiss the application.

4. Heard learned APP and counsel for accused on the application.

5. The points that arise for my consideration are:-

1) Whether accused has made out sufficient grounds for allowing the application?

2) What order?

6. My findings to the above points are as under:-

Point No.1 : In the **Negative**.

Point No.2 : As per final order for the followings.

REASONS

7. **Point No.1:-** It is the specific contention of the accused that Chittakula Police without conducting complete investigation have filed false and incomplete chargesheet against the accused and contends that Chittakula Police may be directed to reinvestigate the case.

8. At this juncture, it is pertinent to note the difference between 'further investigation' and 'reinvestigation'. It was held by Supreme Court in '**Ramachandran v/s R.Udhayakumar**

reported in (2008) 5 SCC 413, that “At this juncture it would be necessary to take note of section 173 of the code. From a Plain reading of the above section it is evident that even after completion of investigation under sub-section(2) of Section 173 of the code, the police has right to further investigate under sub-section (8), but not fresh investigation and reinvestigation. A distinction, therefore, exists between a reinvestigation and further investigation.

9. Similarly in another case **Mithabhai Pashabhai Patil v/s State of Gujarat reported in (2009) 6 SCC 332**, the Hon’ble Supreme Court considered the scope and ambit of ‘further investigation’ occurring in Section 173(8) of Cr.P.C. It was accordingly held that further investigation was a continuation of the earlier investigation and not a ‘fresh investigation’ and ‘reinvestigation of ‘de-novo investigation’ to be started ab-initio wiping out the earlier investigation altogether’.

10. Be that as it may, APP has contended that it is a belated application. But, even after

the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been held in '**Ram Lal Narang v. State (Delhi Admn.) reported in (1979) 2 SCC 322.** The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.

11. The application filed by the accused praying to direct the Chittakula Police to reinvestigate the matter does not exist. As stated earlier, Section 173(8) of Cr.P.C. deals with further investigation and not with reinvestigation. This court has taken cognizance of the offence against the accused on the basis of the chargesheet filed by Chittakula Police. The only grievance of the accused is that there is no proper investigation conducted. If such is the case, accused can take advantage of the same. Accused has got ample opportunity to deny the allegations and can step into witness box and can have his say on the same. The application to move under Section 173(8) is only conferred

with the prosecution and not with the accused. Even though courts have power to direct the police to further investigate the matter and submit additional chargesheet, based on the chargesheet submitted by the Chittakula Police, there are already sufficient materials against the accused to proceed with the case without directing the police to conduct further investigation. Therefore, for all the above reasons, I am of the opinion that present application deserves to be rejected and hence, I answer **Point No.1 In Negative.**

12. **Point No.2:** For the above said reason, I proceed to pass the followings:

ORDER

The application filed by accused U/S Section 173(8) of Cr.P.C. is here by rejected.

No order as to cost.

Addl.Civil Judge & JMFC-II,
Karwar.

