

R.C.C. No. 111/2015
State V/s. Maheshwar & Oth.

ORDER BELOW EXH. 48.
(Dt- 12/04/2018)

1- Perused the application and say. Heard APP P U Palane and Adv.R.E.Bhurkapalle For the accused.

2- This is an application moved by Police Head Constable B.No. 1237 B.R. Tarpe of Ahmedpur police station for seeking permission to further investigate into the offence.

3- As per the application, the constable submitted that, accused No. 3 and 4 in the present case have pretended themselves as plaintiffs No. 3 and 4 in R.C.S. No. 09/2009 and thereby made their false signatures on behalf of plaintiff No. 3 and 4 for effecting a compromise deed to show that plaintiff no 3 and 4 have released their share in the suit property. For making further investigation in respect of their alleged false signatures, by obtaining copy of alleged document, the application is filed.

4- The accused resisted the application by filing their say at Exh. 50. As per the accused, the investigation is completed, charge-sheet is submitted, one witness is examined on behalf of the prosecution, and thereafter this application is filed which is not maintainable. The accused further contended that, the application is moved by Head Constable B.R. Tarpe, who is not a investigating officer in the case. Therefore, Mr. Tarpe have no right to submit this application. Therefore, on these objected grounds the accused requested to reject the application.

5- The Ld. A.P.P. argued that, for investigation purpose the investigating officer by his reminder letters dt. 25/03/2015 and 26/03/2015 requested to this court to handover the original document

pertaining to deed of alleged false signatures, filed in R.C.S. No. 09/2009 and 141/12. So also, there is a endorsement with red pen on charge-sheet that, original document pertaining to false signatures were not received in time. Hence, by reserving their right as to further investigation into the offence, the charge-sheet was filed. On these back ground the Ld. A.P.P. submitted that, the investigating officer has a right under Section 173(8) of the Code of Criminal Procedure to further investigate into the offence and to submit the supplementary charge-sheet.

6- In support of his argument he relied on a citation laid down in Amrutbhai Shambhubhai Patel V/s. Sumanbhai Kantibhai Patel reported in 2017 CRI.L.J. 1344, wherein The Hon'ble Apex Court held in para No. A that, “*further investigation at the post cognizance stage cannot be ordered by Magistrate*”. The citation reflex that, in the post cognizance cases Magistrate do not have right to order further investigation suomoto . For ordering further investigation an application in that behalf should be moved by the investigating agency/ officer. In the present case too as the application is moved by investigating agency, in view of the above ratio Ld A.P.P. requested for allowing this application.

7- The quoted citation shows that, on the application of investigating officer, in post cognizance cases the court can order further investigation, but, that to in detection of material and fresh evidence. No doubt the reminder letters of investigating officer reveals that, before submitting charge-sheet he has made an attempt for obtaining original document that is compromise deed filed in the civil suit, but the application in that regard filed on 25/03/2015 was rejected by the court as the investigating officer was remained absent when called till 3:55 pm on that day, an order in that regard is appearing on that application.

8- The charge-sheet in the case was filed on 29-07-2015.

Thereafter, witness was examined on 08/09/2016 and thereafter on 24/10/2017 this application is filed for asking the permission.

9- Detection of material and fresh facts having bearing on the case is the basic criteria while allowing the application of further investigation. No doubt through the application dt-25/03/2015 investigating officer put forth his attempt for securing the document however that attempt was failed due to his absence when his presence was required by the then court. Since thereafter, no attempts were made by investigating agency, there is no explanation as to what attempts were made by the investigating officer during that two years. There is no explanation for delay. After the lengthy period of two years since submission of charge-sheet and that too after examining the witness, the application is filed.

10- The Ld. Advocate for accused Mr.Bhurkapalle strongly insisted that, if the investigating agency wish to further investigate the offence, the application should have been moved by the investigating officer. Mr.Tarape who submitted this application is not a investigating officer in the case. *The provision enumerated under Section 173(8) of the Code of Criminal Procedure provides that, “— if the officer in charge of police station obtains further evidence, oral or documentary, he shall forward to the Magistrate ----”.*

11- The basic provision of further investigation U/s 173(8) of Code of criminal procedure authorized an officer-in-charge of police station to submit the supplementary charge-sheet, if he obtains further evidence in that behalf. *The definition of officer in charge of police station enumerated under Section 2(o) of Code of Criminal Procedure provides that, “officer in charge of police station includes, when the officer in charge of police station is absent from the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such*

officer and is above the rank of constable or when the State Government so directs, any other police officer so present.”

12- This definition is itself clear as to who is designated as officer in-charge of police station . In the instant case the application is submitted by the Head Constable and the provision provides that, officer in-charge will be the person who is above the rank of constable. There is no letter attached with this application directing that, Head constable Mr. Tarpe was appointed to act as officer in-charge of police station by the State Government. This implies that, Mr. Tarpe was not the officer in-charge of police station when the application was submitted. Apart from that the instant application is not attested by any superior officer than the Head Constable, under such a circumstance, it is quite unclear under what authorization Mr. Tarape has moved this application.

13- The Hon'ble Apex Court in Chandrababu @ Moses V/s. State through the Inspector of Police and others reported in A.I.R. 2015 SC 3566 held that, *“There is no explanation as to what the attempts were made by the investigating officer during that two years. There is no explanation for delay, the appellant had filed a FIR with the Kulasckaram Police Station against the respondents-accused alleging unlawful assembly and assault resuming in multiple injuries. After the initial investigation, the same was transferred to the District Crime Branch Police, Kanyakumari which eventually filed a final report in favour of the respondents-accused, which was accepted by the learned Magistrate. Meanwhile, however the appellant/informant filed a protest petition before the Magistrate praying for a direction to the CBCID to reopen the case and file fresh report. As before any decision on the protest petition, the final report filed by the police had already been accepted, the appellant approached the High Court, which called for the report from the learned Magistrate finally interfered with the order accepting the*

final report and directed the Magistrate to side the same along with the protest petition. The Magistrate next held that there was justification for ordering reinvestigation of case and directed that the protest petition treated as a separate private complaint.”

“This order being challenged again before the High Court the matter was remanded to the learned Magistrate with a direction to consider the final report and the other materials on record and pass appropriate orders after hearing both the public prosecutor and the de facto complainant. This time, the learned Magistrate returned a finding that the investigation by the District Crime Branch was a biased one and that the final report was not acceptable and consequently forwarded the complaint for further investigation by the DBCID, which was a different investigating agency. The matter was taken to the High Court by one of the respondents/accused, whereupon it annulled the direction of the learned Magistrate for reinvestigation, holding that not only there were material discrepancies in the evidence brought on record, but also there was no exceptional circumstance for such a course to be adopted by the Magistrate. It was also of the view, having regard to the scheme of the Section 173(8) of the Code that the investigating officer only could request for further investigation.”

14- The ratio led down in above case is clear that, only the investigating officer has power to further investigate the case. In the instant case Mr. Tarpe is neither officer in-charge of police station nor investigating officer, therefore he has no right to submit this application. Apart from that, there is no explanation as to the delay of two years for filing this application.

15- No doubt fair trial imparts equal opportunity to both sides. However, while keeping in mind the principle of fair trial, rights of accused as to the speedy trial should also be considered. In spite of the

knowledge that, the document remained to be investigated pertaining to registered crime, the inaction of investigating officer for two years since the submission of charge-sheet shows their negligence to perform the duty. Apart from it, the application do not show the finding of fresh and material evidence. Indeed, in the case, the evidence which is to be produced was well within the knowledge of police earlier. However, they failed to use their powers within time. In the result, the application is not tenable. Thus, the following order is passed :-

ORDER

The application (Exh. 48) is rejected.

Place :- Ahmedpur.
Date :-12/04/2018

(A.mol B Jawale)
Judicial Magistrate, F.C.
Court No. 3, Ahmedpur.