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Supreme Court of India

Athul Rao vs State Of Karnataka on 18 August, 2017

Author: A Khanwilkar

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NOT REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1367 OF 2017
(Arising out of SLP (Crl.) No.987 of 2015)

Athul
...Appellant

Rao

:Versus:

State of Karnataka & Anr.

...Respondents

JUDGMENT

A.M. KHANWILKAR, J.

1. The appellant has been charge-sheeted for offences punishable under [Sections 417, 465, 468 and 471](#) of IPC. The case against the appellant is that on or around 11 th June, 2008, the wife of respondent no.2, one Padmapriya, went missing from her marital home in Udupi, Karnataka. That was reported to the local police by Smt. Saraswathi (Mother of respondent no. 2), as Signature Not Verified Digitally signed by a result of which a case was registered as Crime No.109/2008 on CHETAN KUMAR Date: 2017.08.18 17:38:33 IST Reason:

13th June 2008. The police finally traced Padmapriya to a flat in Dwarka, New Delhi on or around 14 th June, 2008. Thereafter, respondent no.2, along with some family members went to New Delhi and, with the police in tow, visited the said flat on 15 th June, 2008, with the intention of bringing Padmapriya back home. As the door of the flat was found to be locked, the same was broken open, whence Padmapriya's body was found hanging inside. After investigation, the police concluded that the appellant and Padmapriya had grown close and that the appellant had convinced Padmapriya to leave her husband, respondent no.2, and live with him. The appellant allegedly concealed that he had taken Padmapriya from her marital home and shifted her to New Delhi, where he had rented out the aforesaid flat at Dwarka in which Padmapriya was subsequently found hanging. The investigation also revealed that the appellant had procured several official documents, including the rent agreement for the aforesaid flat, based on fraudulent information and false representations that Padmapriya was his lawfully wedded wife. In that regard, a charge-sheet and supplementary charge-sheet came to be filed against the appellant before the Trial Court, on 20th August, 2008 and 16th July, 2009, respectively, for offence punishable under [Sections 417, 465, 468 and 471](#) of IPC. Pursuant thereto charges have been framed by the Trial Court against the appellant. However, no charge has been framed against the appellant for offence punishable under [Sections 497, 498 and 306](#) of IPC, in relation to the actual death of Padmapriya.

2. Pending the aforementioned criminal trial, respondent no.2 filed a private complaint before the Principal Civil Judge (Sr. Dvn.) & JMFC at Udupi with regard to the same incident, being PCR No. 21 of 2009, alleging that the appellant was liable to be tried for offence punishable under Sections 497, 498 and 306 of IPC. The Magistrate ordered an investigation by the local police under Section 156(3) of Cr.P.C. in respect of this complaint. Aggrieved, the appellant moved the High Court of Karnataka, which ultimately quashed the private complaint filed by respondent no.2 vide its judgment dated 21 st October, 2013, but granted liberty to respondent no.2 to apply to the Trial Court in the already instituted criminal case against the appellant in relation to the same incident (i.e. Crime No.109/2008), for further investigation and for framing charges under Sections 497, 498 and 306 of IPC. The High Court relied on the decision of this Court in T.T. Antony Vs. State of Kerala and others 1 which has expounded that, regardless of the sweeping power of investigation vested in the police, it does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs, whether before or after filing the final report under Section 173(2) of Cr.P.C. Such an exercise would be clearly beyond the purview of Sections 154 and 156 of Cr.P.C. nay, a case of abuse of the statutory power of the investigation in a given case. The Court went on to observe that in case of a fresh investigation based on the second or successive FIRs, not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in course of the same transaction and in respect of which pursuant to the first FIR, either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, such case may be fit for exercise of power under Section 482 of Cr.P.C. or under Article 226/227 of the Constitution. The High Court also relied on its earlier decision in the case of Sri Balaji Vs. State of Karnataka² (2001) 6 SCC 181 ILR 2008 Kar. 3697 which restated the same legal position. Following these decisions, the High Court was pleased to quash P.C.R No.21/2009 filed by respondent no. 2, with liberty to make the necessary application before the Trial Court in CC No.31/2008 for further investigation and also for framing charges under Sections 497, 498 and 306 of IPC. The High Court made it clear that said request ought to be considered by the Trial Court in accordance with law.

3. Accordingly, respondent no.2 moved an application before the Trial Court in C.C. No.31/2008 for further investigation into the offences under Sections 497, 498 and 306 of IPC. This application was however rejected by the Trial Court vide order dated 7th August, 2014. The Trial Court has observed that the charge-sheet filed by the police indicated that statements of 76 witnesses had been recorded during the investigation and four articles seized. The Trial Court also noted that the investigating officer had investigated the case from all angles in the context of the allegations in the complaint before filing the charge-sheet and supplementary charge-sheet. The Trial Court, therefore, held that there was no need for further investigation. The Trial Court also made it clear that if, before conclusion of the trial, there was any evidence which revealed the commission of an offence by the appellant, then appropriate charges could be framed against him.

4. Respondent no.2 challenged the aforesaid decision of the Trial Court by preferring a petition under Section 482 of Cr.P.C. before the High Court. The High Court vide impugned judgment dated 16th September, 2014, allowed the said petition. The High Court nevertheless posed a question to itself as to how the complaint for offence punishable under Sections 417, 465, 468 and 471 of IPC could be consistent with the allegations of offence punishable under Sections 306, 497 and 498 of IPC. The High Court, however, got swayed away by the singular fact that on the earlier occasion, while quashing the private complaint filed by respondent No.2, he was granted liberty to apply before the Trial Court in CC No.31/2008 for further investigation and also for framing of charges under Sections 497, 498 and 306 of IPC. The High Court in the impugned judgment took the view that rejecting the application of respondent no.2 for further investigation would run counter to the intent and object of the liberty granted by the High Court on the earlier occasion. This appears to be the sole consideration which weighed with the High Court to allow the petition filed by respondent no. 2 and to set aside the order passed by the Trial Court dated 7 th August, 2014, with the observation that it would be necessary for the Trial Court to direct further investigation in respect of allegations made by respondent no. 2 referable to offence punishable under Sections 306, 497 and 498 of IPC.

5. The appellant (accused) has questioned the justness of the view taken by the High Court in the impugned judgment. Mr. Aljo K. Joseph, learned counsel appearing for the appellant, contends that the High Court has glossed over the factual position noticed by the Trial Court for rejecting the application for further investigation preferred by respondent no.2. Firstly, the investigation in CC No.31/2008 was complete in all respects after recording statements of 76 witnesses and seizure of four articles. The investigating officer, before filing the charge-sheet and also the supplementary charge-sheet, has investigated the allegations made in the complaint filed by Smt. Saraswathi (mother of respondent no. 2) from all angles. Further, the Trial Court has already framed charges and has taken cognizance on the basis of the charge-sheets (i.e. first charge-sheet and supplementary charge-sheet) filed by the investigating officer, as a consequence of which the case has been set down for trial. It is contended that the High Court, while allowing the petition for quashing filed by the appellant, had noticed in paragraph 7 of its judgment dated 21st October, 2013, that the claim of respondent no. 2 in the private complaint was based on the confessional statement of the accused and two witnesses recorded by COD police during the course of the investigation in Crime No.109/2008, which has already come on record in CC No.31/2008. In this context, the Trial Court has noted that it will be open to respondent no. 2 to request the Court to frame additional charges for offence punishable under Sections 497, 498 and 309 of IPC at the appropriate stage. It is thus contended that the High Court exceeded its jurisdiction in interfering with the discretionary order passed by the Trial Court refusing the prayer for further investigation, which was just and proper in the fact situation of the present case. According to the appellant, in the facts of the present case, the question of directing further investigation was completely ruled out by the Trial Court on analysing the relevant material. Therefore, the High Court, in exercise of supervisory jurisdiction, without overturning the said satisfaction recorded by the Trial Court on the basis of tangible material before it, could not have interdicted that decision merely because it had granted liberty to respondent no.2 in the earlier proceeding to move an application before the Trial Court for such relief. In effect, the High Court has mechanically proceeded on the assumption that in the earlier round of proceeding (instituted by the appellant for quashing of the second complaint filed against him in respect of the same incident), the High Court has directed reinvestigation of the case. This cannot be countenanced.

6. Learned counsel appearing for the respondents, in particular respondent no.2, submits that the High Court was justified in issuing direction to the Trial Court to order further investigation, considering the intent of the liberty given in the judgment dated 21st October, 2013. He submits that the investigating officer has bypassed the allegations made by the complainant which constituted offence punishable under Sections 306, 497 and 498 of IPC. Having failed to file charge-sheet for the said offence and keeping in mind the liberty granted by the High Court on the earlier occasion, respondent no. 2 was justified in moving the Trial Court to issue direction to investigate the case from that angle and file further police report before the trial of the case proceeded any further. The respondents have therefore, supported the direction issued by the High Court in the impugned judgment.

7. The seminal question that arises for our consideration is whether the High Court was justified in allowing the prayer of respondent no.2 for further investigation under Section 173(8) of Cr.P.C., in the fact situation of the present case?

8. The question as to whether, after framing of charges and taking cognizance, it is open to the Magistrate to direct further investigation either suo motu or on an application filed by the complainant/informant is no more res integra. In a recent decision of this Court (to which one of us, Justice Dipak Misra was party) in the case of Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and others³, after analysing earlier decisions on the point, it has been held that neither the Magistrate suo motu nor on an application filed by the complainant/informant can direct further investigation. Further investigation in a given case may be ordered only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand. It will be apposite to advert to the dictum in Paragraphs 48 to 51 of the said decision which (2017) 4 SCC 177 read thus:-

“48. As adverted to hereinabove, whereas Section 311 of the Code empowers a Court at any stage of any inquiry, trial or other proceeding, to summon any person as a witness, or examine any person in

attendance, though not summoned as a witness, or recall and re-examine any person already examined, if construed to be essential to be just decision of the case, Section 319 authorizes a Court to proceed against any person, who though not made an accused appears, in course of the inquiry or trial, to have committed the same and can be tried together. These two provisions of the Code explicitly accoutre a Court to summon a material witness or examine a person present at any stage of any inquiry, trial or other proceeding, if it considers it to be essential to the just decision of the case and even proceed against any person, though not an accused in such enquiry or trial, if it appears from the evidence available that he had committed an offence and that he can be tried together with the other accused persons.

49. On an overall survey of the pronouncements of this Court on the scope and purport of [Section 173\(8\)](#) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.

50. The unamended and the amended sub-Section (8) of [Section 173](#) of the Code if read in juxtaposition, would overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorized to conduct further investigation without limiting the stage of the proceedings relatable thereto. This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings. The recommendation of the Law Commission in its 41st Report which manifesting heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.

51. In contradistinction, [Sections 156, 190, 200, 202 and 204](#) of the Cr.P.C. clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under [Section 156\(3\)](#) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under [Section 202](#), while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under [Section 173\(8\)](#) of the Code. If the power of the Magistrate, in such a scheme envisaged by the Cr.P.C. to order further investigation even after the cognizance is taken, accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of the Cr.P.C.

adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, [Section 173\(8\)](#) of the Cr.P.C. would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in Bhagwant Singh (supra), the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions

of Sections 311 and 319 Cr.P.C., whereunder any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court.” (emphasis supplied)

9. The respondent No. 2 is not the complainant. The complaint in question was instituted by the mother of respondent no. 2. She was not the applicant. In any case, at the instance of respondent no. 2, it was not open to the Court to direct further investigation as the Trial Court had already framed charges and taken cognizance of the case against the appellant who appeared before it in the said proceedings. The prayer for further investigation was not at the instance of the investigating agency nor on the ground of detection of material evidence.

10. Be that as it may, assuming that the application filed by respondent no.2 was maintainable, from the chronology of events, it is indisputable that Crime No.109/2008 was registered by the local police on the basis of the complaint made by Smt. Saraswathi (mother of respondent no.2) on 13th June, 2008. After investigation of the said complaint, charge-sheet was filed on 20th August, 2008 for offence punishable under Sections 417, 465, 468 and 471 of IPC. The investigating officer then filed a supplementary charge-sheet on 16th July, 2009. The Trial Court has already framed charges and taken cognizance as a consequence of which the case is set down for trial, being CC No. 31/2008. Respondent no. 2, however, filed a private complaint in respect of the same incident only on 1st August, 2009, bearing PCR No. 21/2009. That complaint was finally quashed by the High Court vide judgment dated 21st October, 2013, whilst noting that the complaint by respondent no. 2 was based on the confessional statement of the accused and statements of two witnesses recorded by the COD police during investigation of Crime No. 109/2008, which material was already part of charge-sheets filed by the investigating officer in CC No. 31/2008. The High Court, however, granted liberty to respondent no. 2 to make application before the Trial Court in the following terms:-

“ORDER i. xxx xxx xxx ii xxx xxx xxx to make necessary application before the trial court in C.C. No. 31/2008 for further investigation and also to frame charges under Section 497, 498 and 306 IPC. In such an event, the jurisdictional Magistrate to consider the same in accordance with law.”

11. Taking a clue from the liberty given by the High Court in the petition for quashing instituted by the appellant (accused), respondent no. 2 approached the Trial Court in CC No.31/2008 by way of application under Section 173(8) of Cr.P.C. for further investigation of the case. The Trial Court considered all the relevant aspects of the matter including the fact that charge-sheets filed by the investigating officer are founded on statements of 76 witnesses and four articles. The same were already on record. Further, the allegations in the complaint were investigated from all angles and charges were already framed against the appellant (accused). The Trial Court has taken cognizance and the case has been set down for trial. In this backdrop, the Trial Court opined that there was no need for further investigation and in any case if the evidence on record disclosed commission of offence under Sections 497, 498 and 306 of IPC, additional charges in that behalf could be framed against the appellant at any stage of trial.

12. It is this well considered decision of the Trial Court, made subject matter of challenge before the High Court in the petition filed by respondent no.2. On a bare perusal of the impugned judgment of the High Court, we find that the High Court, on the one hand, noted its reservation as to how a complaint for the offence punishable under Sections 417, 465, 468 and 471 of IPC would be consistent with the allegations for the offence punishable under Sections 306, 497, 498 of IPC, yet, it proceeded to direct further investigation on the sole consideration that in the earlier round of proceeding instituted by the appellant for quashing of the private complaint filed against him by respondent no. 2 in respect of the same incident, liberty was given to respondent no. 2 to approach the Trial Court for issuing direction to the investigating officer for further investigation under Section 173(8). The High Court was of the view that rejection of the application preferred by respondent no. 2 for further investigation, therefore, would run counter to

the liberty so granted and, on that consideration, directed the Trial Court to issue direction to the investigating officer for further investigation in respect of allegation made by the respondent no. 2 in his complaint.

13. Notably, the second complaint filed by respondent no. 2 was quashed by the High Court vide judgment dated 21st October, 2013, relying on the decision in T. T. Antony (supra). Be that as it may, what is significant to note is that the High Court has not overturned the satisfaction recorded by the Trial Court that the two charge-sheets filed by the investigating agency in connection with the same incident were founded on statements of 76 witnesses and seizure of four articles. The statements of the accused and two witnesses so recorded were already on record in CC. No.31/2008. Further, charge-sheets have been filed after thorough investigation of the allegations made by the complainant from all angles and charges have also been framed. The case has been set down for trial. Considering all these, it was not just and proper to direct further investigation. This opinion reached by the Trial Court was not in conflict with the liberty given by the High Court to respondent no. 2 in the earlier round of proceeding instituted by the appellant. That liberty was hedged with the observation that the Trial Court was expected to consider the application in accordance with law. It was, therefore, inapposite for the High Court to conclude that in view of the liberty given to respondent no. 2 on the earlier occasion, it was necessary to issue direction for further investigation.

14. Suffice it to observe that merely because liberty was given to respondent no.2 by the High Court in the judgment dated 21 st October, 2013, it would not follow that the Trial Court was obliged to issue directions for further investigation at the instance of respondent no. 2 and sans recording satisfaction that further investigation was necessary in the fact situation of the case. On the other hand, the Trial Court has given tangible reasons why further investigation was not necessary, which have not been analysed by the High Court at all, much less overturned.

15. Considering all aspects of the matter, therefore, we are of the view that the High Court committed manifest error in interfering with the discretionary order passed by the Trial Court in the fact situation of the present case. In other words, the Trial Court had rightly rejected the prayer of respondent no. 2 for further investigation, for the reasons noted in its order dated 7 th August, 2014.

16. Accordingly, this appeal succeeds. The impugned judgment dated 16th September, 2014, in Criminal Petition No. 5491/2014, of the High Court of Karnataka at Bangalore is quashed and set aside and instead, the judgment of the Trial Court dated 7 th August, 2014 is restored. As the criminal case is pending since 2008, we direct the Trial Court to conclude the trial expeditiously, preferably within six months from receipt of the copy of this judgment.

.....J.

(Dipak Misra)J.

(A.M. Khanwilkar) New Delhi, Dated: August 18, 2017.