

RAMACHANDRAN

v.

R. UDHAYAKUMAR & ORS.
(Criminal Appeal No. 871 of 2008)

MAY 13, 2008

(DR. ARIJIT PASAYAT AND P. SATHASIVAM, JJ.)

Code of Criminal Procedure, 1973; Ss. 173 and 482:

Re-investigation of criminal case – Accused in a murder case filing application u/s. 482 Cr. P.C. for transferring the case to the Central Bureau of Investigation for re-investigation – High Court directing to transfer the case to CB, CID for fresh investigation – Correctness of – Held: Incorrect – Directions of the High Court for re-investigation are clearly indefensible – Though, further investigation instead of fresh investigation could be done by CB, CID in terms of S.173 (8) of the Code – Directions issued.

The question arose for determination in this criminal appeal was as to whether the High Court was right in directing CB, CID to investigate the criminal case afresh in terms of provisions u/s.173 of the Code of Criminal Procedure, 1973.

Appellant contended that in an application under Section 482 Cr. P.C., the direction as given by the High Court could not have been given; and that there was no scope for fresh or re-investigation in view of the provisions under Section 173(8) of the Code.

Partly allowing the appeal, the Court

HELD: 1.1 From a plain reading of Section 173 Cr.P.C., 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

A fresh investigation or re-investigation. (Para – 6) [443-B]

1.2 In view of the position of law as laid down by this Court in the case of *K. Chandrasekhar vs. State of Kerala and Ors.*, the directions of the High Court for re-investigation or fresh investigation are clearly indefensible. Hence, instead of fresh investigation, further investigation can be conducted, if required, under Section 173 (8) of the Code. The same can be done by the CB (CID) as directed by the High Court. (Para – 7) [443-F]

C *K. Chandrasekhar vs. State of Kerala and Ors. (1998) 5 SCC 223* – relied on.

CRIMINALAPPELLATE JURISDICTION : Criminal Appeal No. 871 of 2008

D From the final Judgment and Order dated 18.12.2006 of the High Court of Madras, Bench at Madurai in CrI. O.P. (MD) No. 9175/2006

Siddarth Dave, Vijay Thakur and Senthil Jagadeesan for the Appellant.

E K. Ramamoorthy, V.G. Pragasam, S.J. Aristotle, Prabhu Ramasubramanian, A. Mariarputham, B.K. Prasad, P. Parmeswaran. B. Balaji, K. Mathu Ganesa Pandian and Satya Mitra Garg for the Respondents.

F The Judgment of the Court was delivered by

Dr. ARIJIT PASAYAT, J. 1. Leave granted.

G 2. Challenge in this appeal is to the order passed by a learned Single Judge of the Madras High Court on a petition filed by respondent no.1 under Section 482 of the Code of Criminal Procedure, 1973 (in short 'the Code'). The prayer was to direct the respondent no.2 the State of Tamil Nadu represented by its Secretary, Government of Home Department to withdraw the litigation in Crime no.39/2004 on the file of Inspector of Police, Palayanoor Police Station, Sivagangai District and to en-

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→ trust the same to the file of Central Bureau of Investigation (in short 'CBI'). They are respondent nos.5 and 6 in the present appeal. Respondent no.1 had filed the petition seeking for direction to re-investigate the case by the CBI in an alleged case of murder by respondent no.1. There were totally 59 witnesses in the case. The High Court disposed of the petition, inter alia, with the following directions:

"8. Under the above facts and circumstances of the case in the interest of justice, the case in Crime No.39/2004 on the file of the fourth respondent stands transferred to the Deputy Superintendent of Police, C.B.C.I.D., Madurai who shall entrust this case to a competent and efficient inspector of Police for the purpose of re-investigation in this case. The Inspector of Police who is nominated by the Deputy Superintendent of Police, C.B.C.I.D. Shall afresh investigate the matter and file the final report within a period of three months from the date of receipt of a copy of this order from this Court. The fourth respondent shall forthwith hand over the case records in crime No.39/2004 to the officer to the nominated by the Deputy Superintendent of Police, C.B.C.I.D., Madurai. The Petitioner stands ordered accordingly. Consequently, connected miscellaneous petition is closed."

3. Learned counsel for the appellant submitted that the background facts are as follows:

On 16.7.2004 crime case was registered against respondent no.1 and other accused persons for alleged commission of offence punishable under Sections 147, 148, 324, 302 and 307 of the Indian Penal Code, 1860 (in short 'IPC'). On 4.8.2004 Criminal O.P. no.444/2004 was filed by the appellant before the Madras High Court seeking transfer of investigation in the case to some other Investigating Officer. On 24.3.2005 charge sheet no.18/2005 was filed by the Inspector of Police against respondent no.1 and 8 other accused persons for commission of offence punishable under Sections 148, 302, 307 and 324

A read with Section 149 IPC. On 25.4.2005 on the basis of the
representation given by the father of respondent no.1, the Addi-
tional District Superintendent of Police, Sivagangai filed a re-
port in view of G.O. No.14/ADSP/Crime/Sivagangai/2005 and
concluded that further investigation under Section 173 (8) of
B the Code was necessary in the case to find out the real culprit.
Since, there was no progress even after filing of the charge sheet,
the appellant approached the High Court seeking for a direc-
tion to the Inspector of Police to execute the NBWs issued
against 7 of the original 9 accused including respondent no.1
C since the Inspector was colluding with the accused. The High
Court ordered SP., Sivagangai to arrest the absconding ac-
cused persons. On 27.3.2006 an application in terms of Sec-
tion 173 (8) of the Code being Criminal M.P. No.2227/2006
was filed by the Inspector of Police, Palayanoor Police Station,
D before the learned Judicial Magistrate, Manamadurai, seeking
permission to further investigate the case. The permission was
granted. On 3.4.2006 the Inspector investigating the case wrote
to the Deputy Director of Prosecution seeking his opinion as to
whether the case was required to be transferred to C.B.C.I.D.
E On 10.4.2006 legal opinion was given by the Deputy Public
Prosecutor stating that the case ought to be transferred to
CBCID wing. On 20.11.2006, Criminal O.P. No.9175 of 2006
was filed by respondent no.1 before the High Court seeking for
a direction for reinvestigation of the case by the CBI. On
F 18.12.2006 learned Single Judge directed the Inspector of
Police nominated by the Deputy Superintendent of Police,
CBCID to investigate the matter afresh and thereafter file the
final report. On 5.4.2007, Criminal M.P. No.1/2007 was filed in
the said Criminal O.P. by the Inspector of Police, Crime Branch,
CID, Sivagangai District, Madurai Wing before the High Court
G of Madras at Madurai seeking further six months time to com-
plete the investigation and file the final report. The impugned
order passed by the High Court is the order dated 18.12.2006.

4. It is the stand of the appellant that in an application un-
der Section 482 the direction as given could not have been given.

It is stated that there was no scope for fresh or re-investigation in view of what is provided in Section 173(8) of the Code. A

5. Learned counsel for respondent no.1 supported the order of the High Court.

6. 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 or re-investigation. This was highlighted by this Court in *K. Chandrasekhar v. State of Kerala and Ors.* (1998 (5) SCC 223). It was, inter alia, observed as follows: B
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“24. 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.” D
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7. In view of the position of law as indicated above, the directions of the High Court for re-investigation or fresh investigation are clearly indefensible. We, therefore, direct that instead of fresh investigation there can be further investigation if required under Section 173 (8) of the Code. The same can be done by the CB (CID) as directed by the High Court. F
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8. The appeal is allowed to the aforesaid extent.

S.K.S.

Appeal Partly allowed.