A RAMA CHAUDHARY

v.

STATE OF BIHAR

(Criminal Appeal No. 619 of 2009)

APRIL 2, 2009

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[S.B. SINHA AND P. SATHASIVAM, JJ.]

Code of Criminal Procedure, 1973:

C *ss. 173 and 231 – Further investigation – Permissibility of – Held: Further investigation is permissible, however, reinvestigation is prohibited – Carrying on further investigation even after filing of charge-sheet is statutory right of police – It can submit supplementary charge-sheet on basis of fresh* D *materials at any stage – No prior permission from Magistrate is required for further investigation – On facts, order of trial court summoning the witnesses named in supplementary charge-sheet not illegal – Under s.231 prosecution entitled to produce any person as witness even though such person* E *is not named in the earlier charge-sheet.*

'Further investigation' – Meaning of – Held: Is continuation of the earlier investigation and not fresh investigation or reinvestigation to be started **ab initio** *wiping out earlier investigation altogether.*

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The question which arose for consideration in this appeal was whether the order of High Court that there was no illegality or irregularity in summoning the witnesses named in supplementary charge-sheet was G **justified.**

Dismissing the appeal, the Court

HELD:1.1. A mere reading of s.173 (8) Cr.P.C. makes it clear that irrespective of report under sub-section (2)

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forwarded to the Magistrate, if the officer in-charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. The provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. [Paras 8 and 9] [488-G-H; 489-A-B]

1.2. From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right to "further" investigation under sub-section (8) of Section 173 but not "fresh investigation" or "reinvestigation". The meaning of "further" is additional; more; or 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. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation. [Para 10] [489-C-E]

1.3. The prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of investigating agency for further investigation should not be tied down on the ground of mere delay. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving

A at the truth and do real and substantial as well as effective justice. [Para 11] [489-F-G]

1.4. The order of the trial court summoning the witnesses named in the supplementary charge-sheet cannot be faulted with. After enquiry and investigation charges were framed on 11.03.2004 and thereafter in the course of trial about 21 witnesses were examined. In the meantime, police submitted supplementary charge-sheet with certain new materials and on the basis of supplementary charge-sheet, the prosecution filed an application in a pending Sessions trial to the trial court for summoning the persons named in the charge-sheet for their examination as prosecution witnesses. On a careful perusal of the application, the trial court, allowed the same and summoned those witnesses named in the supplementary charge-sheet. The material collected in further investigation cannot be rejected only because it has been filed at the stage of trial. It is also clear from s. 231 of the Cr.P.C. that the prosecution is entitled to produce any person as witness even though such person is not named in the earlier charge-sheet. Magistrate took note of all these relevant aspects while summoning the witnesses based on supplementary charge-sheet. This was correctly appreciated by the High Court by rightly rejecting the revision. [Paras 12 and 13] [489-H; 490-A-G]

Hasanbhai Valibhai Qureshi vs. State of Gujarat and Ors (2004) 5 SCC 347 and *K. Chandrasekhar vs. State of Kerala and Ors.* (1998) 5 SCC 223, Referred to.

Case Law Reference:

(2004) 5 SCC 347	Referred to.	Para 11
(1998) 5 SCC 223	Referred to.	Para 13

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 619 of 2009. A

From the Judgment & Order dated 10.12.2008 of the High Court of Judicature at Patna in Criminal Revision No.437/2008.

U.U. Lalit, Rudrashwar Singh, Kaushik Poddar, Gopal Jha and Tapesh Kumar Singh for the Appellant. B

Vimla Singh (for Gopal Singh) for the Respondent.

The Judgment of the Court was delivered by C

P. SATHASIVAM, J. 1. Leave granted.

2. This appeal is directed against the order of the High Court of Judicature at Patna passed in Criminal Revision No. 437 of 2008 dated 10.12.2008 in and by which, after finding D that there is no illegality or irregularity in summoning the witnesses named in the supplementary charge-sheet, the High Court rejected the criminal revision filed by the appellant herein against the order dated 19.02.2008 passed in Sessions Trial No. 63 of 2004 whereby the learned Additional Sessions Judge E allowed the application of the prosecution to summon the witnesses named in the supplementary charge-sheet.

3. Brief facts of the case are as follows:

(a) On the basis of fardebayan of Smt. Champa Devi F – wife of Awadh Yadav in Siwan Mofussil Police Station case No. 8 of 2001 was registered against the appellant and others on 13.01.2001 under Section 364/34 of IPC.

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(b) On 08.08.2003, an offence under Section 27 of the Arms Act was also added. The police, after completion of investigation, submitted charge-sheet on 29.08.2003 against the appellant and other five accused under Section 364/34 IPC and Section 27 H

A of the Arms Act. In the said charge-sheet, the prosecution has conveyed that they are going to examine altogether 18 witnesses.

(c) On 11.03.2004, the learned Sessions Judge framed charges under Sections 120-B, 364/34, B 302/34 and 201/34 IPC read with Section 27 of the Arms Act. The prosecution had examined 21 witnesses.

(d) When the trial was at the stage of closure, on C 08.09.2007, another charge-sheet was submitted by the Police in the court of Chief Judicial Magistrate, Siwan, against the charge-sheeted accused persons adding names of eight new witnesses in the charge-sheet. In the said report/ D charge-sheet, Police did not mention name of any accused. The learned Chief Judicial Magistrate, Siwan, without proceeding under Section 190 Cr.P.C. forwarded the second charge-sheet to the court of Session/Special Court, Siwan, on E 10.09.2007.

(e) On 12.01.2008, the prosecution has filed an application in a pending Sessions Trial No. 63 of 2004 to summon the prosecution witnesses named in the second charge-sheet. The appellant has filed F a reply contending that the application filed by the prosecution is not maintainable and the same was filed with *mala fide* intention. By order dated 19.02.2008, the learned Sessions Judge, Special Court allowed the said application to summon the G witnesses by observing that the goal of criminal trial is to discover the truth and to achieve that goal the best possible evidence is to be brought on record. The learned trial Judge issued summons to the newly added witnesses and posted the case to H 23.02.2008. Being aggrieved by the said order, the

appellant filed Criminal Revision No. 437 of 2003 under Sections 397 and 401 of Cr.P.C. before the High Court. By the impugned judgment and order dated 10.12.2008, the High Court dismissed the said revision. Aggrieved by the same, the appellant filed the above appeal. A B

4. We heard Mr. U.U. Lalit, learned senior counsel for the appellant and Mrs. Vimla Sinha, learned counsel for the State of Bihar.

5. Mr. U.U. Lalit, learned senior counsel for the appellant, after taking us through relevant materials as well as Section 173(2) and (8) of the Code of Criminal Procedure, 1973 contended that "further investigation" referred to in sub-clause (8) does not mean "re-investigation" against the accused persons who are already facing trial in the case. He further pointed out that, in the present case, after submission of charge-sheet under Section 173(2) in the year 2003, the cognizance of the offence was taken by the Chief Judicial Magistrate and the case was remitted to the Court of Sessions. Trial was commenced and altogether 21 witnesses have been examined. At a belated stage, the prosecution has filed the present report for further investigation with a view to delay the disposal of the trial. According to him, further investigation as contemplated in Section 173(8) of the Cr.P.C. cannot be allowed to be made into the very same offence in relation to the same accused if the trial had already commenced. According to him, at this juncture, allowing the application of the prosecution for summoning eight new witnesses would prejudice the defence of the accused in the trial. C D E F

6. On the other hand, Mrs. Vimla Sinha, learned counsel for the State of Bihar, submitted that sub-section (8) of Section 173 Cr.P.C. recognizes right and confer statutory duty on the Investigating Agency to conduct further investigation and submit supplementary charge-sheet on the basis of fresh materials at any stage and no prior permission from the Magistrate is G H

A required for further investigation. She further submitted that Section 231 of Cr.P.C. gives unfettered right to the prosecution to produce any person as witness even though such person may not have been examined by the Police if examination of such person is necessary for unfolding the prosecution story.

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7. Sub-section (1) of Section 173 of Cr.P.C. makes it clear that every investigation shall be completed without unnecessary delay. Sub-section (2) mandates that as soon as the investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take C cognizance of the offence on a police report, a report in the form prescribed by the State Government mentioning the name of the parties, nature of information, name of the persons who appear to be acquainted with the circumstances of the case and further particulars such as the name of the offences that D have been committed, arrest of the accused and details about his release with or without sureties. Among other sub-sections, we are very much concerned about sub-section (8) which reads as under:-

E "(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, F oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

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8. A mere reading of the above provision makes it clear that irrespective of report under sub-section (2) forwarded to the Magistrate, if the officer in-charge of the police station obtains further evidence, it is incumbent on his part to forward H the same to the Magistrate with a further report with regard to

such evidence in the form prescribed. A

9. The above said provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited. The law does not mandate taking of prior permission from the Magistrate for further investigation. B Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.

10. From a plain reading of sub-section (2) and sub- C section (8) of Section 173, it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right to "further" investigation under sub-section (8) of Section 173 but not "fresh investigation" or "reinvestigation". The meaning of "Further" is D additional; more; or 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. Sub-section (8) of Section 173 clearly envisages that on completion of further E investigation, the investigating agency has to forward to the Magistrate a "further" report and not fresh report regarding the "further" evidence obtained during such investigation.

11. As observed in *Hasanbhai Valibhai Qureshi vs. State* F *of Gujarat and Others,* (2004) 5 SCC 347, the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of investigating agency for further investigation should not be tied down on the ground of mere delay. In other words, the mere fact that there may be further delay in concluding the trial should not stand in G the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice.

12. If we consider the above legal principles, the order H

A dated 19.02.2008 of the trial Court summoning the witnesses named in the supplementary charge-sheet cannot be faulted with. It is true that after enquiry and investigation charges were framed on 11.03.2004 and thereafter in the course of trial about 21 witnesses were examined. In the meantime, Police B submitted supplementary charge-sheet with certain new materials and on the basis of supplementary charge-sheet, the prosecution filed an application on 12.01.2008 in a pending Sessions Trial No. 63 of 2004 to the trial Court for summoning the persons named in the charge-sheet for their examination C as prosecution witnesses. On a careful perusal of the application, the trial Court, by order dated 19.02.2008, allowed the same and has summoned those witnesses named in the supplementary charge-sheet.

13. The law does not mandate taking prior permission D from the Magistrate for further investigation. It is settled law that carrying out further investigation even after filing of the charge-sheet is a statutory right of the Police. [vide *K. Chandrasekhar vs. State of Kerala and Others,* (1998) 5 SCC 223.] The material collected in further investigation cannot be rejected only E because it has been filed at the stage of trial. The facts and circumstances show that the trial Court is fully justified to summon witnesses examined in the course of further investigation. It is also clear from Section 231 of the Cr.P.C. that the prosecution is entitled to produce any person as F witness even though such person is not named in the earlier charge-sheet. All those relevant aspects have been taken note of by the learned Magistrate while summoning the witnesses based on supplementary charge-sheet. This was correctly appreciated by the High Court by rightly rejecting the revision. G We fully agree with the said conclusion.

14. In the light of the above discussion, we do not find any valid ground for interference, consequently, the appeal fails and the same is dismissed.

H N.J. Appeal dismissed