



CRIMINAL

The Power To Direct Further Investigation Is Vested In The Magistrate Or Superior Court And Not The Investigation Agency

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Introduction

The Division Bench of the Hon'ble Supreme Court comprising of Justice Krishna Murari and Justice Sajay Karol in the matter of Peethambaran versus State of Kerala & Anr has held that power to direct further investigation is vested with the Magistrate or Higher Court and not the investigating agency.

Factual Summary

The Appellant was charged with Section 420 of the Indian Penal Code for cheating the complainant and 7 others, to the tune of Rs. 3,83,583/- , on promise of securing jobs for them or their wives.

An FIR was registered and eventually a Final Report dated 30.12.2015 came to be filed that stated that the complainant did not produce any documents relating to financial transactions, despite notice and concluded that "As there is no proper evidence in this regard, it shall be considered as a false case..."

Thereafter, further investigation was conducted as per the Order No. D243642/16/K passed by the District Police Chief, Kottayam and another Final Report (herein after referred to as FR-II) came to be filed by the Inspector of Police, Viakom.

The Appellant had approached the Hon'ble Kerala High Court for quashing the said Criminal case in exercise of its powers under Section 482 of the Criminal Procedure Code (CrPC). However, as the Hon'ble Kerala High Court dismissed the Petition, the Appellant filed the present Appeal by Special Leave Petition before the Hon'ble Supreme Court.

Contention Of The Parties

The Counsel for the Appellant argued that the further investigation conducted, was in violation of the procedure laid down in law. Further, it was also argued that no specific role was attributed to the Appellant and even the ingredients of Section 420 IPC were not made out.

The State on the contrary contended that further investigation was conducted as per the directions of the District Police Chief.

Findings Of Supreme Court

The Bench, in this case, deliberated on the following issues:

1. Whether under the recognized parameters of exercise of power under Section 482, in the facts of the present case, the non exercise of power is justified?
2. Whether the District Police Chief, Kottayam could have ordered the further investigation pursuant to which the second final report was filed?

The Bench referring to the Judgments in Vinubhai Haribhai Malaviya [1](supra) observed that Magistrate under Section 190 has powers to direct further investigation under Section 173 (8) of the Cr.P.C.

Further, referring to the judgment in Vinay Tyagi [2] (supra) the Bench observed that superior courts under Section 482 of the Code or also under Article 226 of the Constitution of India have the jurisdiction to direct further investigation, de novo investigation and even reinvestigation, however, the power is to be exercised very sparingly.

Furthermore, the Bench in view of the Hon'ble Supreme Court decision in Minu Kumari v. State of Bihar [3], observed that although the no specific section stipulates the power of the Court to direct further investigation, further investigation by the police can be conducted only by virtue of the Order of the Court.

Therefore, the first question was answered in negative.

In terms of second question, the Bench held, that power of further investigation rests either with the concerned magistrate or with a superior court and not with an investigating agency.

In the light of the aforesaid judgments, the Bench held, as the District Police Chief, cannot direct further Investigation, the FR – II was invalid.

Accordingly, the Appeal was allowed and the order passed by the Hon'ble Kerala High Court was set aside, quashing the Criminal Case.