



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 8<sup>TH</sup> DAY OF AUGUST, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

**CRIMINAL PETITION NO. 7813 OF 2024**

**R**

**BETWEEN:**

STATE BY MAHADEVAPURA POLICE STATION  
REPRESENTED BY  
STATE PUBLIC PROSECUTOR OFFICE  
HIGH COURT BUILDING  
BENGALURU – 560 001.

...PETITIONER

(BY SRI. JAGADEESHA B. N., ADDL. SPP A/W.,  
SRI. THEJESH P., HCGP)

**AND:**

SMT. PADMAVATHAMMA C.,  
@ PADMAVATHI  
W/O LATE SRINIVASA H. V.,  
AGED ABOUT 48 YEARS  
RESIDING AT NO. 2  
3<sup>RD</sup> CROSS, NEAR GANGAMMA TEMPLE  
MAHADEVAPURA, BENGALURU – 560 048.

...RESPONDENT

(BY SRI. MURTHY D.NAIK, SR. ADVOCATE FOR  
SRI. SANDEEP C.T., ADVOCATE)

THIS CRL.P IS FILED U/S.482 OF THE CR.P.C PRAYING  
TO SET ASIDE THE ORDER PASSED BY THE COURT OF LXX  
ADDL.CITY CIVIL AND SESSIONS JUDGE, SPL.JUDGE  
BENGALURU IN SPL.CASE NO.1897/2023 DATED 20.11.2023  
FOR THE OFFENCE P/U/S 302 R/W 34 OF IPC.

Digitally signed  
by NAGAVENI  
Location: HIGH  
COURT OF  
KARNATAKA



THIS PETITION, COMING ON FOR ORDERS, THIS DAY,  
ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR JUSTICE M.NAGAPRASANNA

**ORAL ORDER**

The State is knocking at the doors of this Court calling in question an order passed by the learned Special Judge in Spl.C.No.1897/2023, directing further investigation to be conducted by the Crime Investigation Department (for short 'the CID'), which was not the Investigating Agency which had earlier conducted investigation.

2. Heard Sri Jagadeesha B.N., learned Additional State Public Prosecutor along with Sri Thejesh P., learned High Court Government Pleader for the petitioner and Sri Murthy D. Naik, learned senior counsel for Sri Sandeep C.T., learned counsel for respondent.

3. Facts in brief, germane, are as follows:

A crime comes to be registered in Crime No.208/2023 for offences punishable under Sections 302 r/w. 34 of the IPC on



an incident that happens on the same day. The police file a charge sheet before the concerned Court after completion of investigation for the aforesaid offences. After filing of the charge sheet, CW.3 - mother of the deceased files an application under Section 156(3) of the Cr.P.C. seeking further investigation to be done in the case. While the application was sought only for further investigation, the concerned Court allows the application by directing investigation to be conducted by a different Investigating Agency. Aggrieved by the said order, the State is before this Court in the subject petition.

4. Sri Jagadeesha B.N., learned Additional State Public Prosecutor for the State would vehemently contend that the crime was registered for the offences under Sections 302 r/w. 34 of the IPC. The jurisdictional police submit a charge sheet after recording the statements of 45 witnesses for several offences. The mother of the deceased then files an application seeking further investigation after the final report so filed. The concerned Court ought to have allowed the application, the way it was sought but the concerned Court directs investigation at



the hands of different Investigating Agency. This is contrary to law, is his submission.

5. Sri Murthy D. Naik, learned senior counsel representing the *defacto* complainant would submit that the application so filed seeking further investigation was not at the hands of the different agency but at the hands of the very jurisdictional police, who had conducted the investigation. The application to that effect is also appended to the petition. He would submit that if a direction is issued for further investigation into the matter, it would suffice.

6. I have given my anxious consideration to the submissions made by the learned counsel for the respective parties and have perused the material on record.

7. The afore-narrated facts are not in dispute. The issue lies in a narrow compass. A crime comes to be registered in Crime No.208/2023 for the offences punishable under Sections 302 r/w. 34 of the IPC. The police conduct investigation and file a charge sheet invoking several offences they are, Sections



302, 201, 120B r/w. 34 of the IPC and Section 3(1)(s), 3(1)(r) and 3(2)(va) of the Scheduled Castes and the Scheduled extent and Tribes (Prevention of Atrocities) Act, 1989. After filing of the charge sheet, an application comes to be filed by CW.3 – mother of the deceased seeking further investigation. The prayer in the application reads as follows:

*"**WHEREFORE**, in view of the afore mentioned facts, circumstances the dependent humbly prays this Hon'ble Court may be pleased to:*

- (1) To Partly disagree with the Final report/ opinion of the Investigating Officer submitted to this court in the Final Report of the Investigating Officer filed on 21-08-2023 as it's the opinion of the I.O and,*
- (ii) Order further investigation as empowered under section 156(3) of CrPC-1973 to ensure fair and just investigation.***
- (iii) To pass any such order/orders as this Hon'ble Court may feel just and necessary, in the interest of Justice."*

*(Emphasis added)*

Upon the said application, the concerned Court passes the following order:

**ORDER**

*The Application filed by the applicant under Section 156(3) of Cr.P.C., is hereby allowed.*



***The office is directed to issue intimation to Commissioner of Police as per Sec.173(8) to direct the CID to take up further investigation as per the application made by the petitioner concerning the circumstances and make report within the statutory period.”***

*(Emphasis added)*

The application is allowed and an intimation is sent to the Commissioner of Police invoking Section 173(8) of the Cr.P.C. directing the CID to take up the investigation.

8. It is an admitted fact that the investigation was conducted by jurisdictional police *i.e.*, Mahadevapura Police. Directing further investigation by allowing the application for a report to be filed under Section 173(8) of the Cr.P.C. could not have been directed to a different investigating agency *i.e.*, CID. The power of the concerned Court is restricted only to order further investigation by the same investigating agency and not at the hands of the different investigating agency. Power of this Court under Section 482 of the Cr.P.C. cannot be exercised by the concerned Court. It is too well settled principle of law that a power to order investigation, reinvestigation or further



investigation is only with the hands of this Court. It becomes apposite to notice the judgment of the Apex Court in the case of **CHANDRA BABU V. STATE** reported in **(2015) 8 SCC 774**, wherein, it is held as follows:

" .... .... "

**20.** *We have reproduced the conclusion in extenso as we are disposed to think that the High Court has fallen into error in its appreciation of the order passed by the learned Chief Judicial Magistrate. It has to be construed in the light of the eventual direction. The order, in fact, as we perceive, presents that the learned Chief Judicial Magistrate was really inclined to direct further investigation but because he had chosen another agency, he has used the word "reinvestigation". Needless to say, the power of the Magistrate to direct for further investigation has to be cautiously used. In Vinay Tyagi [(2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] it has been held : (SCC p. 791, para 41)*

*"41. ... The power of the Magistrate to direct 'further investigation' is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code."*

**21.** *In the said case, the question arose, whether the Magistrate can direct for reinvestigation. The Court, while dealing with the said issue, has ruled that : (Vinay Tyagi case [(2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , SCC p. 791, para 43)*



"43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct 'further investigation', 'fresh' or 'de novo' and even 'reinvestigation'. 'Fresh', 'de novo' and 'reinvestigation' are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection."

And again : (SCC p. 794, para 51)

"51. ... Whether the Magistrate should direct 'further investigation' or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct 'further investigation' or 'reinvestigation' as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation."

**22. We respectfully concur with the said view. As we have already indicated, the learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another agency. Therefore, that part of the order deserves to be lanced and accordingly it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the Superintendent of Police concerned. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in**





***accordance with law.** We may hasten to add that we have not expressed any opinion relating to any of the factual aspects of the case."*

*(Emphasis supplied)*

In the light of the aforesaid admitted facts and the law as laid down by the Apex Court as afore-quoted, the order impugned is rendered unsustainable.

9. For the aforesaid reasons, the following:

#### **ORDER**

- a. The criminal petition is allowed.
- b. The order dated 20.11.2023, passed by the LXX Additional City Civil and Sessions Judge and Special Judge, Bengaluru, stands quashed.
- c. The application filed by the respondent seeking further investigation is allowed, by directing further investigation under Section 173(8) of the Cr.P.C. to be conducted by the jurisdictional police who had submitted their final report on 21.08.2023.
- d. Further investigation shall conclude within three months from the date of the receipt of a copy of the subject order.



- e. The concerned Court shall regulate its procedure once the report of further investigation is placed before it.

**Sd/-**  
**(M.NAGAPRASANNA)**  
**JUDGE**

NVJ  
List No.: 2 SI No.: 33  
CT:SS