

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD**

CRIMINAL PETITION Nos. 12344, 12345 and 12346 of 2023

Between:

1. Jain Sree Ram Reddy @ Ram Reddy S/o: Jain Hari Kishan Reddy, Age: 75 years, Occ: Retired VRO, R/o: H.No.6-67, Sri Ram Nagar Colony, Ibrahimpatnam, Ranga Reddy District.
2. G. Rajendhar Reddy S/o: Seetharam Reddy, Age: 60 years, Occ: Ex.Bhoodhan Board Chariman, R/o: H.No.3-58, Laxmi Andaal Nelayam, Kuntloor, Hayathnagar, Ranga Reddy District.

... Petitioners/accused Nos.5 and 7

And

1. The State of Telangana., rep by
its Public Prosecutor High Court
For the State of Telangana, at
Hyderabad.

... Respondent No.1/State

2. Mashamouni Ailesh S/o: Late Venkataiah
Age: 45 years, Occ: Agriculture, R/o: H.No.5-145,
Nadergul, Sarrornagar, Rachakonda, Telangana

...Respondent No.2

DATE OF ORDER PRONOUNCED: 15.12.2023

Submitted for approval.

THE HON'BLE SRI JUSTICE K.SURENDER

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

K.SURENDER, J

*** THE HON'BLE SRI JUSTICE K. SURENDER**

+ Criminal Petitions Nos. 12344, 12345 and 12346 of 2023

% Dated 15.12.2023

Jain Sree Ram Reddy @ Ram Reddy

G. Rajendhar Reddy

... Petitioner

And

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Nadergul, Sarrornagar, Rachakonda, Telangana.

...Respondent No.2

! Counsel for the Petitioner: Sri Laxmaiah Kanchani

^ Counsel for the Respondent: Additional Public Prosecutor
for State

>HEAD NOTE:

? Cases referred

Nil

THE HON'BLE SRI JUSTICE K.SURENDER**CRIMINAL PETITION Nos. 12344, 12345 and 12346 of 2023****COMMON ORDER:**

These Criminal Petitions are filed by the petitioners/Accused Nos.1 to 7 for setting aside the docket order dated 13.10.2023 passed in Crime No.539 of 2017, on the file of the learned XV Metropolitan Magistrate at Ibrahimpatnam, Rachakonda, directing further investigation in the case after it was earlier closed as 'civil in nature'.

2. Since the petitioners/accused Nos.1 to 7 are questioning the same orders, all the three petitions are heard together and disposed by way of this common order.

3. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the respondent No.1-State.

4. The crime was registered on 20.11.2017 against the petitioners for the offences punishable under Sections 420, 468 and 471 of the Indian Penal Code. However, final report

was filed on 30.06.2019 referring the case as 'Civil in nature'. Thereafter, an application under Section 173(8) of Cr.P.C was filed by the investigating officer on 26.09.2023 i.e., nearly after four (04) years stating that further investigation has to be conducted.

5. Accordingly, learned Magistrate had passed docket order, dated 13.10.2023 which reads as under:-

“Heard and perused the record. The learned Additional Public Prosecutor submitted that the police has obtained some evidence for which they want to conduct further investigation. As per Section 173(2) of the Cr.P.C has been accepted. Moreover, prior to carrying out a further investigation. It is not necessary to review or recall the order accepting the final report. Furthermore, the police has unfettered power of investigation and such investigation can continue even after the charge sheet has been filed under Section 173 of Cr.P.C. In consonance with the foregoing discussion, this Court considers that permission ought to be given to police for conducting further

investigation to unearth the truth. In the result, permission is accorded”.

6. Learned counsel appearing for the petitioners would submit that there is an inordinate delay of four (04) years in filing the petition and only to harass the petitioners and settle Civil disputes, the petition was filed by the Police. Further no notice was given to the petitioners.

7. Section 173(8) in the Code of Criminal Procedure, 1973 is as follows:

“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, 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)".

8. As seen from the docket order, the learned Magistrate stated that there is nothing in Section 173(8) of Cr.P.C which imposes a bar on further investigation. The Learned Magistrate, however, has failed to state as to what are the circumstances which led the investigating officer to further investigate into the matter. No reasons are given in the said order.

9. Further, after final report was filed by the police on 30.06.2019 there was neither a private complaint filed by the *de facto* complainant nor any protest petition.

10. The reason given by the police officer seeking further investigation is extracted:-

"It is to submit that recently complainant Sri Mashamoni Ailesh submitted the evidence against the accused persons, regarding the fraud committed by them which revealed the prima facie

case against the accused. As such it is just and necessary to conduct further investigation”.

11. In the application filed by the investigating officer under Section 178(3) of Cr.P.C, there is no mention as to what had come to light subsequently, which information or evidence was not there by the time when final report was filed. Courts cannot order further investigation under Section 173(8) of Cr.P.C, unless convincing reasons are given by the police as to why investigation could not be completed by the time of filing the final report. On mere asking for further investigation based on a vague assertion of evidence being available, Court cannot permit investigation. It is not the case that ‘evidence’ which was not available earlier was unearthed or provided by complainant. Apparently the police officer intends to re-investigate, which cannot be permitted.

12. Notice to accused is not contemplated under Section 173(8) of Cr.P.C before ordering further investigation, however such orders of further investigation cannot be passed without rationale.

13. In the said circumstances, the order passed by the learned Magistrate is devoid of any reasons to permit further investigation and also for the reason of the investigating officer not making out any basis to direct further investigation as required under Section 173(8) of Cr.P.C. The impugned order is liable to be set aside and it is accordingly set aside.

14. Criminal Petitions are allowed.

Miscellaneous applications pending, if any, in this criminal petition, shall stand closed.

K.SURENDER, J

Date: 15.12.2023
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