

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

**DATED THIS THE 28<sup>TH</sup> DAY OF MAY, 2024**

**BEFORE**

**THE HON'BLE MR JUSTICE K.NATARAJAN**

**WRIT PETITION NO.17118 OF 2022**

**BETWEEN:**

- 1 . SRI. MURALIDHARA  
S/O SRI. K. C. CHELUVARAJU,  
AGED ABOUT 39 YEARS,  
R/AT NO.802, 76<sup>TH</sup> A CROSS,  
RAJAJINAGAR 6<sup>TH</sup> BLOCK,  
BENGALURU - 560 010.
  
- 2 . SRI. HARISH  
S/O LATE RAJANNA,  
AGED ABOUT 32 YEARS,  
R/AT NO.24, "D" BLOCK,  
NGO COLONY, RAJAJINAGAR,  
BENGALURU - 560 010.

...PETITIONERS

(BY SRI. MAHESH FOR MAHESH S AND CO., ADVOCATE)

**AND:**

- 1 . STATE OF KARNATAKA  
BY MAGADI ROAD POLICE STATION,  
REPRESENTED BY THE STATE PUBLIC PROSECUTOR  
HIGH COURT OF KARNATAKA,  
BANGALORE - 560 001.

2 . SRI. SHADAKSHARA MURTHY  
S/O SRI. CHANNABASAVIAIAH,  
AGED ABOUT 52 YEARS,  
R/AT NO.D-3,  
NGO COLONY, 6TH BLOCK,  
RAJAJINAGAR, BENGALURU - 560 010.

...RESPONDENTS

(BY SRI. VIJAYKUMAR MAJAJE, SPP-2, ALONG WITH  
SMT. ANITHA GIRISH, HCGP FOR R1;  
SRI. S.Y. KUMBAR, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C. PRAYING TO QUASH THE ORDER DATED.4.7.2022 PASSED BY THE LEARNED LXIX ADDITIONAL CITY CIVIL AND SESSIONS JUDGE (CCH-70) BANGALORE IN CRIMINAL REVISION PETITION NO.172/2020 VIDE ANNEXURE-L DIRECTING THE TRIAL COURT TO SUMMON THE INVESTIGATION OFFICER AND TAKE UP FURTHER INVESTIGATION AND FILE ADDITIONAL CHARGE SHEET AS PROVIDED UNDER SECTION 173(8) OF CR.P.C.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 01.04.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

|                                    |
|------------------------------------|
| RESERVED FOR ORDERS ON: 01.04.2024 |
| PRONOUNCED ON : 28.04.2024         |

### **ORDER**

This writ petition is filed by petitioners-accused Nos.1 and 2 under Articles 226 and 227 of Constitution of India read with Section 482 of Cr.P.C. for setting aside the order dated 04.07.2022 passed by LXIX Additional City Civil and Session Judge (CCH-70), Bengaluru in Criminal Revision Petition No.172/2020 and direct the Trial Court to summon the Investigation Officer to take up further investigation and file additional charge sheet as per Section 173(8) of Cr.P.C.

2. Heard the learned counsel for the petitioners and learned SPP-II along with learned High Court Government Pleader for the respondent No.1-State and learned counsel for respondent No.2.

3. The case of the prosecution is that on the complaint of respondent No.2, the police registered the FIR in Crime No.394/2013 by the Magadi Road Police, Bengaluru

for the offences punishable under Sections 506, 341, 34 504, 448, 324, 354 of IPC and after the investigation, they filed the charge sheet for the offences punishable under Section 341, 323, 504, 506 read with Section 34 of IPC. It is alleged by the complainant in his complaint that on 25.12.2013 at around 1.30 p.m. to 2.00 p.m, when he was at his home, he heard his wife screaming and when he went to see as to what has happened, he saw that accused No.1 was assaulting his wife with his leg and respondent No.2 intervened and tried to stop the accused No.1 from assaulting his wife and took his wife inside the house. The accused abused her in filthy language and dragged her stating that he is from some Rakshana Vedike and he has committed murder and he also stated that he has support of the Association and nobody questions him and he also abused the complainant and threatened with dire consequences to commit murder. The another person held the complainant at that time the accused No.1 assaulted his wife on her head and other parts of the body due to which she fell down, then he called the police, the police came and

shifted her to the K.C. General hospital. His wife is under treatment and she was unconscious. Hence, he has prayed for taking the action against the accused. He also contended that his wife is not in a position to give statement. The police after investigation filed the charge sheet. The trial was started, some of the witnesses have been examined. The complainant also filed application under Section 301 of Cr.P.C. for assisting the prosecution.

4. During the trial, the learned APP filed an application under Section 173(8) of Cr.P.C. for further investigation as the Investigating Officer not properly investigated the matter and he has not recorded the statement of wife of the complainant who was injured. There was medical records available for having taken treatment by the wife of complainant, the same was not considered by the Investigating Officer while filing the charge sheet, therefore, prayed for allowing the application and directing the police to further investigate the matter.

5. After hearing the arguments, the learned Magistrate dismissed the application dated 07.01.2020. Subsequently, the complainant filed revision petition before the Sessions Judge in Criminal Revision Petition No.172/2020 by challenging the order of rejection and the Sessions Judge after considering the arguments, allowed the revision petition by setting aside the order of the Magistrate and directed the Trial Court to summon the Investigating Officer and to take up further investigation as per the documents available in NIMHANS hospital and the Investigating Officer shall file additional charge sheet under Section 173(8) of Cr.P.C. vide order dated 04.07.2022 which is under challenge.

6. Learned counsel for the petitioners has contended that the order of the Sessions Judge is not sustainable for directing the police to further investigate the matter for the purpose of producing the medical records. The said medical records can be summoned from the hospital by invoking the provision of Section 91 of Cr.P.C.

and the order of the Sessions Judge mentioned the offences which attract Sections 324 or 326 of IPC at paragraph No.8 is not sustainable. It is the prerogative of the Investigating Officer to consider the document and file the final report. The Court cannot insist to file the charge sheet for the offences punishable under Sections 324 or 326 of IPC and the application came to be filed after belated stage after 9 years of registering the FIR. The FIR was registered on 25.12.2013, the statement of witnesses were all recorded and filed the charge sheet on 07.01.2015 by elaborate investigation. It is further contended that the CW.1 nourishing the grudge against the petitioners and he has admitted in the statement under Section 161 of Cr.P.C. for implicating the complainant. The crucial witnesses turned into hostile and therefore, the case will be ended in acquittal and therefore, the application came to be filed for further investigation which cannot be allowed. The evidence of CWs.1 to 4 and 6 to 8 were recorded. The statement under Section 313 of Cr.P.C. also recorded and the matter was posted for judgment. This application came to be filed for

further investigation which cannot be allowed and hence, prayed for quashing the order of Sessions Judge in the revision.

7. *Per contra*, learned SPP-II has contended that the Investigating Officer not at all recorded the statement of the injured victim who was under treatment and she was unconscious when the complaint was filed. The wife of the complainant not at all given any statement, but the Investigating Officer filed the charge sheet without making any enquiry with the wife of the complainant. As per the C.D. of the police dated 07.03.2014, the Investigating Officer has stated that he tried to take the statement of the wife of the complainant, but he could not record the statement as she was taking treatment in the hospital and also stated that he will record her statement later. However, the case diary reveals that the statement was recorded on 14.06.2014, but the respondent has contended that there is no statement of Shylaja recorded by the Police on the alleged date, but, it was concocted by the police without



calling the witnesses to the police station and she was under treatment, there is no chance of she going to the police station and giving any statement under Section 161 of Cr.P.C. Therefore, it is contended that the Investigating Officer has not at all properly investigated the matter and he has not collected the medical records from various hospitals including NIMHANS hospital where the injured took the treatment, but, he has hurriedly filed the charge sheet. Therefore, the police have filed charge sheet only under Section 323 of IPC, but not inserted any other offences like Sections 324 or 326 of IPC. Hence, the application is filed by the complainant through the Public Prosecutor for further investigation.

8. The learned Magistrate has held that the documents can be summoned under Section 91 of Cr.P.C. and witness can be summoned under Section 311 of Cr.P.C., but it is only for recording the evidence, but the Court cannot frame appropriate charges against the accused without these documents. Therefore, the Sessions Judge has

rightly allowed the revision petition and permitted the police to further investigate the matter. In this regard, the learned counsel for the respondent has relied upon the judgment of the Hon'ble Supreme Court in the case of **Devendra Nath Singh vs. State of Bihar and Others** reported in **AIR 2022 SC 5344** and held at paragraph Nos.13, 16, 19 of the judgment which are as under:

*"13. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:*

*(a) The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.*

*(b) The powers of the Magistrate to ensure proper investigation in terms of Section 156CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8)CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is*

*within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.*

**(c)** *Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8)CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8)CrPC do not limit or affect such powers of the High Court to pass an order under Section 482CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.*

**(d)** *Even when the wide powers of the High Court in terms of Section 482CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.*

**(e)** *The powers under Section 482CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to*

*be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.*

**16.** *Thus, we are of the view that in the given set of facts and circumstances, though the High Court has rightly exercised its powers under Section 482CrPC for directing further investigation but, has not been justified in making such observations, comments, and remarks, which leave little scope for an independent investigation and which carry all the potential to cause prejudice to the appellant. The first question in this appeal is answered accordingly.*

**19.** *On the facts and in the circumstances of the present case, we are clearly of the view that no purpose would be served by adopting the course of Popular Muthiah [Popular Muthiah v. State, (2006) 7 SCC 296 : (2006) 3 SCC (Cri) 245] where this Court restored the matter for reconsideration of the High Court with an*

*opportunity of hearing to the appellant therein. Some of the prominent and peculiar circumstances of the present case are that the allegations and imputations have their genesis in the documentary evidence in the form of departmental instructions and the audit report; the fact that the appellant was holding the office of the District Manager at the relevant point of time is not in dispute; and hereinbefore, we have upheld the exercise of inherent powers by the High Court in directing further investigation qua the role of the appellant."*

9. In view of the principle laid down by the Hon'ble Supreme Court, here in this case, the Investigating Officer has not properly conducted the Investigation and therefore, it is necessary for the Investigating Officer to further investigate the matter by collecting the medical records, doctor who treated the injured and statement of the injured were all required to be recorded in proper manner. Therefore, the further investigation is required in this case.

10. Merely, it is stated by the Sessions Judge that the offence may attract Sections 324 or 326 of IPC and that itself is not a ground to set aside the order. It is only an observation. Therefore, the Investigating Officer

independently conduct the further investigation and file additional charge sheet under Section 173(8) of Cr.P.C. Therefore, by considering the above facts and circumstances of the case, the order of the Sessions Judge cannot be interfered with where the Sessions Judge has rightly directed the Magistrate to permit the Investigating Officer to conduct further investigation and the order is not required for any interference by this Court.

11. Accordingly, the petition is ***dismissed***.

**Sd/-  
JUDGE**

GBB  
CT:SK