

AZIJA BEGUM

v.

STATE OF MAHARASHTRA & ANR.  
(Criminal Appeal No. 126 of 2012)

JANUARY 12, 2012

[ASOK KUMAR GANGULY AND T. S. THAKUR, JJ.]

*Code of Criminal Procedure, 1973:*

s.173 (8) - *Further investigation in a murder case - Held: When the Magistrate himself had expressed serious reservations about the investigation and had directed further investigation, it was expected of the High Court to look into the matter with greater care and caution - Additional Director of Police, State CID, directed to order a proper investigation in the matter by deputing a senior officer and furnish a report to trial court.*

*Constitution of India, 1950:*

Art. 14 - *Held: Every citizen has a right to get his or her complaint properly investigated - The issue is akin to ensuring equal access to justice.*

In a murder case, the wife of the deceased lodged an FIR implicating the two sons of the appellant. The case of the appellant was that, prior to that, she herself had lodged an FIR about missing of the deceased. She filed a petition u/s 173(8) CrPC before the Magistrate whereupon a further investigation was directed. The appellant approached the High Court stating that when the Magistrate prima facie was not satisfied with the investigation, further investigation should have been handed over to some other agency. The High Court disposed of the petition giving liberty to the complainant

A to bring some more witnesses which he felt necessary, to the investigator.

Allowing the appeal, the Court

B HELD: 1.1. Every citizen has a right to get his or her complaint properly investigated. This is a question of equal protection of laws and is covered by the guarantee under Article 14 of the Constitution. The issue is akin to ensuring an equal access to justice. [para 13] [199-F-G]

C 1.2. In the instant case, the order of the High Court is very cryptic. It has not looked into the material facts of the case. It was expected of the High Court to look into the matter with greater care and caution, as a very serious offence had taken place followed by an investigation in respect of which the Magistrate himself had expressed serious reservations but failed to give proper direction. [para 11] [199-C-D]

E 1.3. The Additional Director General of Police, State CID is directed to order a proper investigation in the matter by deputing a senior officer from his organization to undertake a thorough investigation and examine in detail the facts and circumstances of the case and then furnish a report to the trial court. [para 14] [200-B-C]

F CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 126 of 2012.

G From the Judgment and Order dated 12.01.2011 of the High Court of Bombay at Aurangabad in Criminal Writ Petition No. 356 of 2010.

Uday B. Dube for the Appellant.

Shankar Chillarge and Asha Gopalan Nair for the Respondents.

H

The Judgment of the Court was delivered by **A**

**GANGULY, J.** 1. Heard learned counsel for the parties.

2. Leave granted.

3. The subject matter of challenge in this appeal is a rather cryptic order of the High court by which the High Court, with respect, disposed of a petition under Article 227 of the Constitution without adverting to the questions involved. **B**

4. The material facts of the case which are necessary for us to consider for the purpose of disposal of the issues are that one Imran S/o Anwar Khan was found murdered under mysterious circumstances. His dead body was found on 22nd February, 2009 at the entrance of the Government hospital. Prior to that Imran was found missing and the appellant herein went to the police station to lodge her First Information Report over that but the police sent the appellant back after recording a mere 'missing report'. Even though at that point of time, the appellant was said to have informed the police that Imran was allegedly kidnapped by one Ijani Khan, but, the police recorded a 'missing' report only. **C**  
**D**  
**E**

5. After that as the appellant came to know that the dead body of Imran was lying near the entry of the Government hospital, she immediately went to the police station again and informed the police of this fact also. According to the appellant's version, the police, instead of recording her statement and registering an F.I.R. passed on the said information to one Ijani Khan. **F**

6. Two days thereafter, the wife of the deceased lodged an F.I.R. and on that basis, investigation was undertaken and two sons of the appellant, namely, Jaffar Khan and Sher Khan, were arrested. **G**

7. The appellant not being satisfied with the aforesaid state **H**

A of investigation, filed a petition before the learned Magistrate under Section 173(8) of Code of Criminal Procedure. The learned Magistrate, after considering the materials on record, passed a detailed order, the concluding part of which reads as under:

B "As the serious allegations have been made against  
C police authorities as well as the present accused, in my  
opinion, further investigation is required because once  
D police investigated the offence, then for the same offence  
separate crime as well as case number is not required.  
Therefore, in my opinion, further investigation is necessary.  
Hence I pass following order:

ORDER

D P1 Jinsi is hereby directed to make the further  
investigation in the present offence and submit the report  
within time.

E 8. The main grievances of the appellant are that even  
though the Magistrate was not satisfied with the way in which  
the investigation was proceeded and wanted further  
investigation to be conducted, but strangely handed over the  
investigation to the same police authorities about whose  
investigation the Magistrate was not satisfied.

F 9. The appellant's contention is that once the Magistrate  
was prima facie satisfied that the matter was not properly  
investigated and required further investigation, the investigation  
should have been handed over to some other investigating  
agency.

G 10. When the order of the Magistrate was challenged by  
the appellant before the High Court on the basis of a petition  
under Article 227 of the Constitution, the said petition came to  
be disposed of by the High Court by an unusually laconic order:

H

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“1. Heard. At the instance of the applicant, since he felt that statements of witnesses are not recorded, police officer has recorded statement of Shaikh Rafik Shaikh Daud, copy whereof is annexed to the report. If the complainant feels that few more witnesses are still left, he can bring such witnesses to the investigator and to ensure to facilitate recording of statement.

2. Purpose of the writ petition is achieved. Consequently nothing survives. Petition disposed of.”

11. We are of the considered opinion that the order of the High Court is very cryptic and the High Court has not looked into the material facts of the case. It was expected of the High Court to look into the matter with greater care and caution as a very serious offence had taken place followed by an investigation in respect of which the Magistrate himself had expressed serious reservations but failed to give proper direction.

12. Learned counsel for the appellant submits before us that the appellant wanted the investigation to be fairly conducted by an independent agency and urged before us for an order for the investigation to be conducted not by the same police authorities which had undertaken the investigation earlier but by any other independent investigating agency.

13. In the facts and circumstances of this case, we find that every citizen of this country has a right to get his or her complaint properly investigated. The legal framework of investigation provided under our laws cannot be made selectively available only to some persons and denied to others. This is a question of equal protection of laws and is covered by the guarantee under Article 14 of the Constitution. The issue is akin to ensuring an equal access to justice. A fair and proper investigation is always conducive to the ends of justice and for establishing rule of law and maintaining proper balance in law and order. These

A are very vital issues in a democratic set up which must be taken care of by the Courts.

B 14. Considering the aforesaid vital questions, we dispose of this appeal by directing the second respondent, the Additional Director General of Police, State CID, Pune Division, Pune, Maharashtra to order a proper investigation in the matter by deputing a senior officer from his organization to undertake a thorough investigation and examine in detail the facts and circumstances of the case and then furnish a report to the trial Court within a period of three months from the date of taking charge of the investigation. The investigation is to be taken up within two weeks from the date of service of this order on the second respondent. The matter shall thereafter proceed in accordance with law. We hope and expect an impartial investigation of the case will take place.

D 15. The appeal is accordingly allowed to the extent indicated above.

R.P.

Appeal allowed.