A.F.R. Neutral Citation No. - 2024:AHC-LKO:54823

Reserved On 18.07.2024

Delivered On 09.08.2024

Court No. - 13

Case :- APPLICATION U/S 482 No. - 6104 of 2024

Applicant :- Vishal Tripathi
Opposite Party :- State Of U.P. Thru. Prin. Secy. Deptt. Of Home, Lko. And Others
Counsel for Applicant :- Dinesh Kumar Mishra,Ripu Daman Shahi,Upendra Kumar Singh
Counsel for Opposite Party :- G.A.,Rakesh Dwivedi

Hon'ble Saurabh Lavania,J.

1. Supplementary affidavit filed by the learned counsel for the applicant is taken on record.

2. Heard Sri Dinesh Kumar Mishra, learned counsel for the applicant, Sri S.P. Tiwari, learned counsel for the State and Sri Rakesh Dwivedi, learned counsel for the opposite party No. 2.

3. Present application has been filed by the applicant for quashing of impugned order dated 21.06.2024 passed by the Additional Sessions Judge/Special Judge POCSO Act, Ambedkar Nagar (in short "Trial Court") in S.S.T. No. 66 of 2024 (State vs. Vishal Tripathi and Others), whereby the Trial Court rejected the application seeking prayer to direct the Investigating Officer (I.O.) to conduct re-investigation/further investigation in the matter and the applicant has also sought the prayer to direct for re-investigation/further investigation.

4. Facts in brief are to the effect that the FIR No. 0228 of 2023 was lodged on 24.07.2023 at 13:15 Hours under Section 147, 323, 325, 427, 452 IPC by the informant-Pramod Tiwari against Devendra Tripathi, Vishal Tripahti, Rudra Tripathi, Aradhana Tripathi and Susheela. Column No. 3 of the FIR does not indicate date of the alleged incident.

5. According to FIR, at about 10:00 PM accused-applicant assaulted the informant, son of the informant, daughter of the informant.

6. In this incident, informant Pramod Tiwari, son of the informant namely Aditya Tiwari, wife of the informant namely Sonika Tiwari, daughter of the informant namely Manya Tiwari, sustained injuries.

7. The FIR lodged on 24.07.2023 in regard to the incident says that *"आज रात को 10:00 बजे प्रार्थी को लाठी, डण्डे व टगारी, बेलचक से प्रार्थी व प्रार्थी के लड़के आदित्य तिवारी के सिर में गहरी चोटें आयी है व प्रार्थी के पुत्री मान्या तिवारी के हाथ में मारने से हाथ टूट गया है।"*

8. After lodging of FIR, the injured/informant Pramod Tiwari was medically examined at C.H.C.-Jalalpur, District-Ambedkar Nagar on 24.07.2023 at 02:10 PM and Doctor opined that all the injuries are simple in nature and can be caused by hard and blunt object except Injury No.4. The injuries sustained by Sri Pramod Tiwari are as under:-

> *"1-Contusion of size 13cm x 05.5cm tnt on lateral aspect of Lt. arm 04cm above from Lt. elbow joint, color bluish red.*
>
> *2-Abrated contusion of size 04cm x 01.5cm tnt on 0.5cm below from injury no. 1, colour reddish.*

3-Abrated contusion of size 12cm x 05.5cm tnt on posterior aspect of Lt. forearm included with Lt. elbow joint, colour reddish.

4-Tenderness with swelling tnt on Rt. hand advice x-ray (wrist joint-AP & Lat.).

5-C O P on Lt. side front of chest.

6-C O P on Rt. side front of abdomen."

9. X-ray report dated 25.07.2023 of injured Pramod Tiwari indicates following injuries:-

"(i) Fracture lower end of (Rt.) radius bone & styled process of (Rt.) ulna bone is seen. No callus is seen."

10. Injured Sonika Tiwari (wife of Pramod Tiwari) was medically examined on 24.07.2023 at 03:19 PM at CHC-Jalapur, District-Ambedkar Nagar and Doctor opined that all injuries are simple in nature and can be caused by hard and blunt object. Injured Sonika Tiwari sustained following injuries:-

"1-Contusion of size 04.5cm x 03cm tnt on top of skull 13cm above from base of Lt. ear, colour reddish blue.

2-Contusion of size 03.5cm x 02cm tnt on Lt. side forehead 02.5cm above from Lt. eyebrow, colour reddish blue.

3- Abrasion of size 03.5cm x 0.1cm tnt. on Rt. side of face 02cm below from Rt. lower eyelid, colour reddish.

4-Contusion of size 10cm x 08cm tnt. on lateral aspect of arm 07cm above from Rt. elbow joint, colour reddish blue.

5-Contusion of size 02cm x 01.5cm tnt. on dorsal aspect of Rt. forearm 04cm below from Rt. elbow joint, colour reddish blue.

6-Contusion of size 10cm x 04.5cm tnt. on Lt. side back of chest 05cm below from lower border of spin of Lt. scapula, colour reddish blue.

7-Contusion of size 07cm x 04cm tnt on Rt. side back of chest, 04cm medial from lower end of scapula, colour reddish blue.

8-Contusion of size 17cm x 08cm tnt on Lt. buttock just below Lt. iliac crest of Lt. hip, colour reddish blue.

9-COP on Lt. thumb.

10-Abrasion of size 01cm x 0.5cm tnt on medial aspect of Lt. foot 06cm above from base of Lt. great toe, colour reddish."

11. Injured Aditya Tiwari was examined on 24.07.2023 at 02:53 PM at CHC, Jalalpur, District-Ambedkar Nagar and Doctor has opined that all injuries are simple in nature and can be caused by hard and blunt object except injury Nos.1, 3 & 4. Injured Aditya Tiwari sustained following injuries:-

"1-Lacerated wound of size 01.5cm x 0.3cm tnt on scalp deep tnt on Lt. parietal region of skull 06cm above from base of Lt. ear, serum tnt, advice x-ray.

2-Contusion of size 06cm x 02cm tnt on posterior aspect of lower end of Rt. arm 04cm above from Rt. elbow joint colour reddish blue.

3-Tenderness with swelling tnt. on Rt. elbow joint, advice x-ray.

4-Tenderness with swelling tnt on Rt. hand advice x-ray.

5- Contusion of size 11cm x 03cm tnt on Rt. side upper back of chest 03cm lateral from base of neck colour reddish blue.

6-Contusion of size 06cm x 02cm tnt on Rt. side back of abdomen 02.5cm above from Rt. ASIS of hip, colour reddish blue.

7-Abrasion of size 02.5cm x 01cm tnt medial aspect of Lt. melleolus of Lt. foot colour dark red.

8-COP on Rt. front of lower chest."

12. Injured Manya Tiwari was examined on 24.07.2023 at 02:32 PM at CHC, Jalalpur, District-Ambedkar Nagar and Doctor has opined that all injuries are simple in nature and can

be caused by any hard and blunt object except injury No.1. Injured Aditya Tiwari sustained following injuries:-

> *"1-Tenderness and swelling tnt. on Lt hand advice x-ray.*
>
> *2-Tenderness tnt. on Lt. lower back.*
>
> *3-COP on front of abdomen.*
>
> *4-Contusion of size 07cm x 01.5cm tnt on dorsal aspect of Lt. hand, colour reddish."*

13. X-ray report dated 25.07.2023 of injured Manya Tiwari indicates following injuries:-

> *"(i) Fracture 2nd, 3rd metacarpal bones of (Lt.) hand is seen. No callus is seen."*

14. Injured Sonika Tiwari before the Investigating Officer stated that incident took place on 23.07.2023 at about 10:30 PM. This witness also indicated name of the applicant and according to her statement on account of blow of hard and blunt object she sustained injuries and hand of Manya Tiwari was fractured and Aditya Tiwari also sustained injury. Statement of Sonika Tiwari is extracted hereinunder:-

> *"अवलोकन बयान **164** सीआरपीसी.....नाम **सोनिका तिवारी** उम्र **45** वर्ष पति प्रमोद निवासी मथुरा रसूलपुर दारानगर थाना जलालपुर अम्बेडकरनगर द्वारा सशपथ बयान किया कि --- दिनांक **23.07.23** को समय रात के **10.30** बजे की बात है मै घर में थी मेरे पड़ोसी देवेन्द्र तिवारी विशाल रुद्र आराधना सुशीला देवी दरवाजे पर मुझे गालिया दे रहे थे मैने बरामदे से गाली देने से मना किया तो देवेन्द्र घर में घुस आया। मुझे पकड़ लिया बदतमीजी करने लगा। बाकी लोग भी मेरे घर मे लाठी डन्डा लेकर घुस आये मेरा बेटा आदित्य बाहर आया बचाने तो उसे भी मारा पीटा ये लोग समझे कि मर गया। मेरी बेटी मान्या का हाथ विशाल ने तोड़ दिया। मेरे सिर पर भी चोट आयी थी। मेरे बेटे को सब्बल से मारा है। मेरे पति छत पर थे अवाज पर नीचे आये तो सभी लोगो ने उन्हे भी मारा पीटा उनका हाथ टुट गया। **100** नम्बर पर काल किया पुलिस आ गयी। पुलिस के आने से पहले मेरी कार को तोड़ दिया। चलने लायक नहीं छोड़ा। पुलिस ने कोई कार्यवाही नही की। देवेन्द्र मेरे दरवाजे के सामने बेठ जाता है। हमने कई बार मना किया इसी बात पर नाराज होकर हमे मारा पीटा।*

*देवेन्द्र अपराधी है गुण्डा किस्म का है जान से मारने की धमकी देता है और कुछ नही कहना है। ह० अंग्रेजी में अपठनीय **10.08.2023**"*

15. Before the Magistrate/competent court of jurisdiction the injured Manya Tiwari stated that incident took place on **24.07.2023** at **10:00** PM. This witness also levelled specific allegations against the applicant. The statement of Manya Tiwari is extracted hereinunder:-

*"अवलोकन बयान **164** सीआरपीसी.....नाम **मान्या तिवारी** पुत्री प्रमोद तिवारी निवासी मथुरा रसूलपुर दारानगर थाना जलालपुर अम्बेडकरनगर द्वारा सशपथ बयान किया कि **24.07.2023** को समय रात के **10** बजे की बात है घर में मम्मी पापा भाई और मैं थी मेरे पड़ोसी देवेन्द्र रोज हमारे घर के सामने बेठ जाते है और लोगों को बैठा लिया करते है उस पर हमे एतराज है क्योंकि मेरी माँ दिन में अकेली रहती है। घटना के दो दिन पहले मेरे पापा दिल्ली से आये थे देवेन्द्र को बैठाने से मना किया था उसी बात पर **24.07.2023** को घर में देवेन्द्र आ गये। गालिया देने लगे। गालिया देने से मना किया तो मम्मी को पकड़ लिया। घर वालों को बुला दिया। विशाल, रूद्र, आराधना व सुशीला देवी आ गयी। सभी लोगों ने मेरी माँ को मारा पीटा। मेरे पापा भाई और मुझे भी सभी लोगो ने लाठी डन्डे से मारा पीटा। हमारी कार तोड़ दी। मेरे बाल विशाल ने खीच दिये थे धक्का दिया था मैं तख्त पर गिरी थी। विशाल मेरे कपड़े फाड़ने लगा था मैने बचा लिया था मैने धक्का दिया था तभी विशाल ने मेरे हाथ में डन्डा मार दिया। पुलिस को मैने काल किया पुलिस आ गयी। मामला शांति कराया। हम अपने भाई को लेकर अस्पताल गये थे मैं कक्षा **9** में पढ़ती हूँ। मेरी जन्मतिथि **24.04.2008** है और कुछ नहीं कहना है। ह० अंग्रेजी में अपठनीय **10.08.2023**"*

16. Taking note of the statement of Manya Tiwari the I.O. added Section **354-B** read with Section **7/8** of POCSO Act and submitted the charge sheet.

17. In the aforesaid background of the case accused-applicant preferred an application under Section **173(8)** Cr.P.C. praying therein for re-investigation/further investigation. The grounds seeking prayer for re-investigation/further investigation, as appears from the record, are based upon the date of

incident, time of incident, date of medical examination and date of lodging of FIR.

18. The Trial Court by the impugned order dated 21.06.2024 rejected the application of the accused-applicant and being aggrieved by the order dated 21.06.2024, present application has been filed. Relevant portion of the order dated 21.06.2024 reads as under:-

> *"पत्रावली के अवलोकन से स्पष्ट है कि विवेचक द्वारा प्रस्तुत मामले की सम्पूर्ण विवेचना सम्पादित करते हुए अभियुक्त विशाल त्रिपाठी के विरुद्ध पर्याप्त साक्ष्य पाते हुए दिनाक **08.02.2024** को आरोप-पत्र धारा-**147,323,325,452,427,354** ख, भा०दं०सं० व धारा-**7/8** पाक्सो एक्ट के अन्तर्गत प्रेषित किया गया है। जिंस पर न्यायालय द्वारा प्रसज्ञान लिया जा चुका है। **धारा-173 (8) दं०प्र०सं०** यह प्राविधान करती है कि-**" इस धारा की कोई बात किसी अपराध के बारे में उपधारा (2) के अधीन मजिस्ट्रेट को रिपोर्ट भेज दी जाने के पश्चात् आगे और अन्वेषण को प्रवरित करने वाली नहीं समझी जाएगी तथा जहाँ ऐसे अन्वेषण पर पुलिस थाने के भारसाधक अधिकारी को कोई अतिरिक्त मौखिक या दस्तावेजी साक्ष्य मिले वहाँ वह ऐसे साक्ष्य के सम्बन्ध में अतिरिक्त रिपोर्ट या रिपोर्ट मजिस्ट्रेट को विहित प्ररूप में भेजेगा, और उपधारा (2) से (6) तक के उपबन्ध ऐसी रिपोर्ट या रिपोर्टों के बारे में, जहां तक हो सके, ऐसे लागू होंगे, जैसे वे उपधारा (2) के अधीन भेजी गई रिपोर्ट के सम्बन्ध में लागू होते हैं।"***
>
> *प्रस्तुत मामले में विवेचक द्वारा अभियुक्त के विरुद्ध दौरान विवेचना पर्याप्त साक्ष्य पाते हुए आरोप-पत्र प्रेषित किया जा चुका है। प्रार्थनापत्र इस स्तर पर पोषणीय नहीं है। अतः मामले के तथ्यों एवं परिस्थितियों को दृष्टिगत रखते हुए अभियुक्त विशाल त्रिपाठी द्वारा प्रस्तुत प्रार्थनापत्र अन्तर्गत धारा-173 (8) दं०प्र०सं० पोषणीय न होने के कारण खारिज किये जाने योग्य है।*
>
> ***<u>आदेश</u>***
>
> *प्रार्थी / अभियुक्त विशाल त्रिपाठी द्वारा प्रस्तुत प्रार्थनापत्र अन्तर्गत धारा-**173(8)** दं०प्र०सं० खारिज किया जाता है। पत्रावली दिनांक-**09.07.2024** को पेश हो।"*

19. A perusal of above quoted portion of the impugned order dated 21.06.2024 indicates that the Trial Court rejected the application preferred under Section 173(8) Cr.P.C. being not maintainable after filing of charge sheet.

20. Impeaching the impugned order dated 21.06.2024, Sri D.K.Mishra, learned counsel for the applicant submitted that as per observation of the Hon'ble Apex Court, Magistrate is empowered to pass an order for re-investigation/further investigation in exercise of power under Section 173(8) Cr.P.C. even after submission of charge sheet and accordingly reasoning given by the Magistrate concerned while rejecting the application seeking re-investigation/further investigation under Section 173(8) Cr.P.C. vide order dated 21.06.2024 is unsustainable in the eye of law and accordingly interference of this Court is required in the matter.

21. Reliance has been placed by the learned counsel for the applicant on the judgment passed by the Hon'ble Apex Court in the case of ***Vinubhai Haribhai Malaviya and Others vs. State of Gujarat and Another; (2019) 17 SCC 1.*** Relevant para(s), referred, of the same are extracted hereinunder:-

> *"**25.** It is thus clear that the Magistrate's power under Section 156(3) CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police—which such Magistrate is to supervise—Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the "investigation" referred to in Section 156(1) CrPC would, as per the definition of "investigation" under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would*

undoubtedly include proceedings by way of further investigation under Section 173(8) CrPC.

26. *However, Shri Basant relied strongly on a three-Judge Bench judgment in Devarapalli Lakshminarayana Reddy v. V. Narayana Reddy [Devarapalli Lakshminarayana Reddy v.V. Narayana Reddy, (1976) 3 SCC 252 : 1976 SCC (Cri) 380] . This judgment, while deciding whether the first proviso to Section 202(1) CrPC was attracted on the facts of that case, held : (SCC p. 258, para 17)*

"17. Section 156(3) occurs in Chapter XII, under the caption:'Information to the Police and their powers to investigate'; while Section 202 is in Chapter XV which bears the heading:'Of complaints to Magistrates'. The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub-section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section an investigation 'for the purpose of deciding whether or not there is sufficient ground for proceeding'. Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate

> *in completing proceedings already instituted upon a complaint before him."*
>
> *This judgment was then followed in Tula Ram v. Kishore Singh [Tula Ram v. Kishore Singh, (1977) 4 SCC 459 : 1977 SCC (Cri) 621] at paras 11 and 15.*
>
> ***27.** Whereas it is true that Section 156(3) remains unchanged even after the 1973 Code has been brought into force, yet the 1973 Code has one very important addition, namely, Section 173(8), which did not exist under the 1898 Code. As we have noticed earlier in this judgment, Section 2(h) of the 1973 Criminal Procedure Code defines "investigation" in the same terms as the earlier definition contained in Section 2(l) of the 1898 Criminal Procedure Code with this difference — that "investigation" after the 1973 Code has come into force will now include all the proceedings under CrPC for collection of evidence conducted by a police officer. "All" would clearly include proceedings under Section 173(8) as well. Thus, when Section 156(3) states that a Magistrate empowered under Section 190 may order "such an investigation", such Magistrate may also order further investigation under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h)."*

22. At this stage, it would be appropriate to take note of some more para(s) of the judgment passed in the case of ***Vinubhai Haribhai Malaviya (Supra),*** as the same would indicate that what was the issue and why the Hon'ble Apex Court directed to lodge the FIR and investigate the issue therein. The same are as under:-

> *"This case arises out of a first information report (hereinafter referred to as "FIR") that was lodged on 22-12-2009. The FIR is by one Nitinbhai Mangubhai Patel, power-of-attorney holder of Ramanbhai Bhagubhai Patel and Shankarbhai Bhagubhai Patel, who are allegedly residing at "UK or USA". The gravamen of the complaint made in the FIR is that one Vinubhai Haribhai Malaviya is blackmailing these two gentlemen with respect to agricultural land which is just outside the city of Surat, Gujarat and which admeasures about 8296 sq m. The FIR alleges that*

Ramanbhai Patel and Shankarbhai Patel are absolute and independent owners of this land, having obtained it from one Bhikhabhai Khushalbhai and his wife Bhikiben Bhikhabhai in the year 1975. The FIR then narrates that because of a recent price hike of lands in the city of Surat, the heirs of Bhikhabhai and Bhikiben together with Vinubhai Haribhai Malaviya and Manubhai Kurjibhai Malaviya have hatched a conspiracy in collusion with each other, and published a public notice under the caption "Beware of Land-grabbers" in a local newspaper on 7-6-2008. Sometime thereafter, Vinubhai Haribhai Malaviya then contacted an intermediary, who in turn contacted Nitinbhai Patel (who lodged the FIR), whereby, according to Nitinbhai Patel, Vinubhai Malaviya demanded an amount of Rs 2.5 crores in order to "settle" disputes in respect of this land. It is alleged in the said FIR that apart from attempting to extort money from the said Nitinbhai Patel, the heirs of Bhikhabhai and Bhikiben together with Vinubhai Haribhai Malaviya and Manubhai Kurjibhai Malaviya have used a fake and bogus "Satakhat" and power of attorney in respect of the said land, and had tried to grab this land from its lawful owners Ramanbhai and Shankarbhai Patel.

2. *The background to the FIR is the fact that one Khushalbhai was the original tenant of agricultural land, bearing Revenue Survey No. 342, admeasuring 2 ac, 2 gunthas, situated at Puna (Mauje), Choriyasi (Tal), District Surat. Khushalbhai died, after which his son Bhikhabhai became tenant in his place. Bhikhabhai in turn died on 23-12-1984 and his wife Bhikiben died on 18-12-1999. A public notice dated 7-6-2008 was issued in Gujarat Mitra and Gujarat Darpan Dainik by the heirs of Bhikhabhai, stating that Ramanbhai and Shankarbhai Patel are landgrabbers, and are attempting to create third-party rights in the said property. This led to the legal heirs of Bhikhabhai, through their power-of-attorney holder, applying on 12-6-2008 to the Collector, Nanpura (Surat), to cancel revenue entries that were made way back in 1976.*

3. *Pursuant to the filing of the FIR, investigation was conducted by the police, which resulted in a charge-sheet dated 22-4-2010 being submitted to the Judicial Magistrate (First Class), Surat. On 23-4-2010, the said Magistrate took cognizance and issued summons to the accused regarding offences under Sections 420, 465, 467, 468, 471, 384 and 511 of the Penal Code, 1860 (hereinafter referred to as "IPC"). Pursuant to the summons, the accused appeared before the said*

Magistrate. On 10-6-2011, an application (Ext. 28) was filed by Accused 1 Vinubhai Haribhai Malaviya for further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") and another application (Ext. 29) for discharge. Likewise, on 14-6-2011, applications for further investigation (Ext. 31) and for discharge (Ext. 32) were filed by Accused 2 to 6. By an order dated 24-8-2011, the Magistrate dismissed the applications that were filed for further investigation (i.e. Exts. 28 and 31), stating that the facts sought to be placed by the applicants were in the nature of evidence of the defence that would be taken in the trial. Likewise, on 21-10-2011 the learned Magistrate also rejected the discharge applications that were made (i.e. Exts. 29 and 32).

4. *Meanwhile, on 26-7-2011, Criminal Miscellaneous Application No. 816 of 2011 was moved by Vinubhai Haribhai Malaviya and the other accused to register an FIR, or for the Magistrate to order investigation under Section 156(3) CrPC into the facts stated in their applications. This was rejected by the learned Magistrate by an order dated 9-9-2011.*

5. *Separate criminal revision applications were filed before the Sessions Court, Surat, being Revision Applications Nos. 376 and 346 of 2011, insofar as the dismissal by the learned Magistrate of further investigation and the order rejecting registration of the FIR were concerned. Both these revision applications were decided by the learned Second Additional Sessions Judge, Surat by a common order dated 10-1-2012. By this order, the learned Second Additional Sessions Judge went into details of facts that were alleged in the application under Section 173(8) and found that a case had been made out for further investigation. Accordingly, he held:*

"As per the abovereferred discussion, it can be seen that no effective investigation or discussions have been carried out in all these respect during the course of the investigation of the said offence and further, it is very noteworthy here that matters for which the prayers are made in these revision applications, all these matters are pertaining to the complaint of this case. Hence, it is very much necessary that for the purpose of carrying out a detailed and full investigation of this complaint, all these matters should also be investigated. But for the said purpose, it is not necessary that a separate complaint be

registered and thereafter its investigation be carried out. But by covering this investigation also in the complaint of the present matter, if it is found out in such investigation that any offence was committed, then appropriate criminal proceedings can be initiated against such person."

6. *Pursuant to this order, the investigation was handed over to Investigating Officer R.A. Munshi (hereinafter referred to as "IO Munshi") on 6-3-2012, who then submitted two further investigation reports—one within three days, dated 9-3-2012 and a second one dated 10-4-2012, in which the IO Munshi went into the facts mentioned in the Section 173(8) CrPC applications that were filed. On 13-6-2012, the original accused withdrew [Shantaben v. State of Gujarat, 2012 SCC OnLine Guj 6476] Special Criminal Application No. 727 of 2012 filed in the High Court, which was filed challenging the order by which the learned Revisional Court had confirmed the order rejecting the discharge applications, with liberty to move an appropriate application for discharge before the Magistrate. The High Court heard Criminal Revision Application No. 44 of 2012 together with Criminal Miscellaneous Application No. 1746 of 2012, and arrived [Nitinbhai Mangubhai Patel v. State of Gujarat, 2013 SCC OnLine Guj 8980] at the conclusion that, as a matter of law, the Magistrate does not possess any power to order further investigation after a charge-sheet is filed and cognizance is taken. The High Court further castigated IO Munshi, holding that the furnishing of interim investigation reports, not through a special Public Prosecutor and not to the Magistrate, but to the Additional Sessions Judge himself smacks of mala fides, as if IO Munshi wanted to oblige and/or favour the accused persons.*

7. *The High Court further found that the two interim investigation reports virtually acquitted the accused persons, and therefore, the High Court set aside the judgment of the learned Second Additional Sessions Judge dated 10-1-2012, and consequently, the two further interim investigation reports. So far as Criminal Revision Application No. 346 of 2011 (which was disposed of by the learned Second Additional Sessions Judge without considering merits, in light of its order in Criminal Revision Application No. 376 of 2011) was concerned, the High Court remanded the same for fresh consideration to the learned Second Additional Sessions Judge, who would then decide as to whether*

an FIR should be registered, insofar as the allegations contained in the applications for further investigation are concerned. Pursuant to the aforesaid remand, by judgment dated 23-4-2016, the learned Additional Sessions Judge has rejected the application under Section 156(3) CrPC on merits, against which Special Criminal Application No. 3085 of 2016 has been filed and is awaiting disposal. Several other proceedings that are pending between the parties have been pointed out to us, with which we have no immediate concern in this case.

8. *Shri Dushyant Dave, learned Senior Advocate, appearing on behalf of the appellants, has forcefully argued, placing reliance on a number of provisions of CrPC, and a number of our judgments, that the High Court was wholly incorrect as a matter of law, in holding that post-cognizance a Magistrate would have no power to order further investigation into an offence. He read out in great detail the FIR dated 22-12-2009, the contents of the charge-sheet dated 22-4-2010, and relied heavily on a communication made by the Commissioner of Revenue, Gujarat to the Collector, Surat dated 15-3-2011. According to him, the contents of this communication would show that there is no doubt that further investigation ought to have been carried out on the facts of this case, in that, a huge fraud had been perpetrated on his clients by land grabbing mafia, and it would be a travesty of justice if the learned Second Additional Sessions Judge's judgment dated 10-1-2012 was not upheld. According to him, the High Court judgment was greatly influenced by the fact that : (1) IO Munshi submitted further interim investigation reports very quickly, and (2) had submitted these reports to the Additional Sessions Judge instead of the Magistrate; resulting in the throwing out of the baby with the bathwater. He therefore urged us to uphold the order of the Second Additional Sessions Judge who ordered further investigation, as that would lead to the truth of the matter in this case.*

9. *On the other hand, Shri Basant and Shri Navare, learned Senior Advocates appearing on behalf of the respondents, supported the judgments of the trial court and the High Court, stating that there is no doubt that without filing a cross-FIR, what was sought to be adduced is evidence which may perhaps amount to a defence in the trial to be conducted, which would be impermissible. They emphasised that at no stage had*

an application been moved to quash the proceedings, and obviously, a belated application made more than a year after cognizance had been taken, to obtain by way of further investigation facts which were wholly divorced from the FIR would be wholly outside the Magistrate's power under Section 173(8) CrPC. They relied upon several judgments, and particularly recent judgments of this Court, in order to show that post-cognizance and particularly after summons is issued to the accused, and the accused appears pursuant to such summons, the Magistrate has no suo motu power, nor can he be moved by the accused, for further investigation at this stage of the proceedings.

10. *The question of law that therefore arises in this case is whether, after a charge-sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding.*

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43. *We now come to certain other judgments that were cited before us. King Emperor v. Khwaja Nazir Ahmad [King Emperor v. Khwaja Nazir Ahmad, 1944 SCC OnLine PC 29 : (1943-44) 71 IA 203 : AIR 1945 PC 18] , was strongly relied upon by Shri Basant for the proposition that unlike superior courts, Magistrates did not possess any inherent power under CrPC. Since we have grounded the power of the Magistrate to order further investigation until charges are framed under Section 156(3) read with Section 173(8) CrPC, no question as to a Magistrate exercising any inherent power under CrPC would arise in this case.*

44.*Union of India v. W.N. Chadha [Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] , is a judgment which states that the accused has no right to participate in the investigation till process is issued to him, provided there is strict compliance with the requirements of fair investigation. Likewise, the judgments in Nagawwa v. V.S. Konjalgi [Nagawwa v. V.S. Konjalgi, (1976) 3 SCC 736 : 1976 SCC (Cri) 507] , Prabha Mathur v. Pramod Aggarwal [Prabha Mathur v. Pramod Aggarwal, (2008) 9 SCC 469 : (2008) 3 SCC (Cri) 787] , Narender G. Goel v. State of Maharashtra [Narender G. Goel v. State of Maharashtra, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933] and Dinubhai Boghabhai*

Solanki v. State of Gujarat [Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] , which state that the accused has no right to be heard at the stage of investigation, has very little to do with the precise question before us. All these judgments are, therefore, distinguishable. Further, Babubhai v. State of Gujarat [Babubhai v. State of Gujarat, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] , is a judgment which distinguishes between further investigation and re-investigation, and holds that a superior court may, in order to prevent miscarriage of criminal justice if it considers necessary, direct investigation de novo, whereas a Magistrate's power is limited to ordering further investigation. Since the present case is not concerned with re-investigation, this judgment also cannot take us much further. Likewise,Romila Thapar v. Union of India [Romila Thapar v. Union of India, (2018) 10 SCC 753 : (2019) 1 SCC (Cri) 638] , held that an accused cannot ask to change an investigating agency, or to require that an investigation be done in a particular manner, including asking for a court-monitored investigation. This judgment also is far removed from the question that has been decided by us in the facts of this case.

45. *When we come to the facts of this case, it is clear that the FIR dated 22-12-2009 is concerned with two criminal acts, namely, the preparing of fake and bogus "Satakhat" and power of attorney in respect of the agricultural land in question, and the demanding of an amount of Rs 2.5 crores as an attempt to extort money by the accused persons. The facts that are alleged in the application for further investigation are facts which pertain to revenue entries having been made in favour of Ramanbhai Bhagubhai Patel and Shankarbhai Bhagubhai Patel, and how their claim over the same land is false and bogus. Shri Basant is, therefore, right in submitting that the facts alleged in the applications for further investigation are really in the nature of a cross-FIR which has never been registered. In fact, the communication of the Commissioner of Revenue, Gujarat dated 15-3-2011 to the Collector, Surat—so strongly relied upon by Shri Dushyant Dave—bears this out. In this communication, the learned Commissioner doubts that a particular order dated 14-4-1976 passed by a revenue authority ever existed, and that by making an application in the name of the long since deceased Bhikhabhai Khushalbhai in 2010, for getting a copy of Form No. 3*

would, prima facie, amount to a criminal offence. Further, the learned Commissioner goes on to state that Bhikiben (Bhikhabhai's widow), who had passed away in December 1999, could not possibly have made an application in the year 2000; which shows that her signature is also prima facie forged. Further, the said Ramanbhai and Shankarbhai Patel are at present 48 and 53 years old, and if they could be said to be in possession of the said agricultural land since 1934, they could be said to be in possession at a time when they were not yet born. Further, since these two gentlemen were abroad from the very beginning, it is stated that they could not possibly be farmers cultivating agricultural land. For these, and various other reasons, the Commissioner concluded:

"Thus, looking to all the aforesaid particulars, as per the submission made by the lady applicant, scam has been made in respect of her land by creating false bogus cases/resolutions/orders passed or by forging fake documents. Submission is made for initiating criminal proceedings against all those who are involved in such scam and whether there is substance in this matter or not? Thorough inquiry be made in that connection at your level. Till the real particulars in this matter are not becoming clear, it is appearing necessary to stop the NA permission/construction activities. Therefore, after making necessary proceedings in that regard, detailed report having basis of the proceedings done is to be immediately submitted to the undersigned and periodical information of the proceedings done in this matter also be given to the undersigned."

46. *Given the allegations in the communication of 15-3-2011, we are of the view that this is not a case which calls for any further investigation into the facts alleged in the FIR lodged on 22-12-2009. Yet, having regard to what is stated by the learned Commissioner in the said letter, we are of the view that the police be directed to register an FIR qua these facts, which needs to be investigated by a senior police officer nominated by the Commissioner of Police concerned.*

47. *We, therefore, set aside the impugned High Court judgment [Nitinbhai Mangubhai Patel v. State of Gujarat, 2013 SCC OnLine Guj 8980] insofar as it states that post-cognizance the Magistrate is denuded of power to order further investigation. However, given that the facts stated in the application for further investigation have no direct bearing on the*

> *investigation conducted pursuant to the FIR dated 22-12-2009, we uphold the impugned High Court judgment insofar as it has set aside the judgment of the Second Additional Sessions Judge dated 10-1-2012 which had ordered further investigation, and also the consequential order setting aside the two additional interim reports of the IO Munshi. So far as Criminal Revision Application No. 346 of 2011 is concerned, we set aside the impugned High Court judgment which remanded the matter to the Revisional Court. Consequently, the judgment of the learned Additional Sessions Judge dated 23-4-2016 upon remand is also set aside, rendering Special Criminal Application No. 3085 of 2016 infructuous.*
>
> ***48.*** *However, given the serious nature of the facts alleged in the communication of the Commissioner of Revenue dated 15-3-2011, we direct that the police register an FIR based on this letter within a period of one week from the date of this judgment. This FIR is to be enquired into by a senior police officer designated by the Commissioner of Police concerned, who is to furnish a police report pursuant to investigation within a period of three months from the date on which such officer is appointed to undertake such investigation. If such police report results in a prima facie case being made out, and if the Judicial Magistrate takes cognizance of such charge-sheet, charges will then be framed and trial held. In the meanwhile, the trial in FIR dated 22-12-2009, which has been stayed by this Court by an order dated 24-4-2019 [Vinubhai Haribhai Malaviya v. State of Gujarat, (2019) 17 SCC 43] , will not be commenced until the police report is submitted in the FIR to be lodged by the police pursuant to this judgment. The learned Magistrate may then decide, in the event that cognizance is taken of the police report in the FIR to be filed, as to whether a joint trial should take place, or whether separate trials be conducted one after the other pursuant to both the FIRs."*

23. Sri Mishra also stated that in fact no such incidents took place as alleged in the FIR and story of the prosecution is completely bogus and baseless which is apparent from the discrepancies regarding date and time of incident indicated by the informant and witnesses of fact particularly injured

witnesses and as such in the instant case re-investigation/further investigation is required.

24. Based upon the supplementary affidavit, filed today, alongwith which some documents, indicated hereinbelow, have been brought on record.

(i) Copy of report dated 21.10.2023 (To show that charge sheet has been filed on 24.09.2023 but I.O. is saying that the investigation is going on and thus, case set up by the prosecution is false.);

(ii) Copies of the affidavits of Rajitram and Indradev Tiwari (To show that the case of the prosecution is false);

(iii) Copy of Tehreer and Copy of FIR lodged on the basis of Tehreer, which bears 24.07.2023 (To show that the case of the prosecution is false);

(iv) Copy of application under Section 173(8) Cr.P.C. preferred by the applicant on 21.06.2024.

25. Sri Mishra submitted that a conjoint reading of all these documents and documents already referred, it is crystal clear that the case of the prosecution is completely false and as such re-investigation/further investigation is required in the matter. Prayer is to cause interference in the matter.

26. Sri S.P.Tiwari, learned AGA and Sri Rakesh Dwivedi, learned counsel for the opposite party No.2 opposed the present application.

27. Sri S.P.Tiwari, learned AGA submitted that all the questions, as indicated by the accused-applicant in the present

application as also by the learned counsel for the applicant, are questions of fact and can be considered by the Trial Court after recording of evidence with proper findings thereon.

28. He also stated that accused has no right to get an order for further investigation. In various pronouncements it has been observed in so many words that accused cannot be permitted to collect the evidence in his defense by seeking an order for further investigation of the case.

29. Considered the aforesaid submissions advanced by the learned counsel for the parties and perused the record.

30. From a conjoint reading of the documents, indicated above, the facts which are borne out, are as under:-

(i) The FIR was lodged on 24.07.2023.

(ii) The FIR does not indicate the date of incident.

(iii) As per FIR, the incident is of 10:00 PM.

(iv) According to affidavit dated 10.10.2023 of Rajitram (Annexure No.SA- 2) on 23.07.2023 at about 09:00 PM some altercation took place between Devendra Tripathi and Pramod Tripathi.

(v) As per affidavit dated 10.10.2023 of Indradev Tiwari (Annexure No. SA-2) on 23.07.2023 at about 09:00 PM some altercation took place between Devendra Tripathi and Pramod Tripathi.

(vi) It is to be noted that Pramod Tripathi is the informant and Devendra Tripathi is one of the accused.

Further, applicant (Vishal Tripathi S/o Devendra Tripathi) is also one of the accused.

(vii) The injured/informant Pramod Tiwari was medically examined at C.H.C.-Jalalpur, District-Ambedkar Nagar on 24.07.2023 at 02:10 PM and Doctor opined that all the injuries are simple in nature and can be caused by hard and blunt object except Injury No.4, which after X-ray on 25.07.2023 was opined as 'Fracture'.

(viii) Injured Sonika Tiwari was medically examined on 24.07.2023 at 03:19 PM at CHC-Jalapur, District-Ambedkar Nagar and Doctor opined that all injuries are simple in nature and can be caused by any hard and blunt object.

(ix) Injured Aditya Tiwari was examined on 24.07.2023 at 02:53 PM at CHC, Jalalpur, District-Ambedkar Nagar and Doctor has opined that all injuries are simple in nature and can be caused by any hard and blunt object except injury Nos. 1, 3 & 4.

(x) Injured Manya Tiwari was examined on 24.07.2023 at 02:32 PM at CHC, Jalalpur, District-Ambedkar Nagar and Doctor has opined that all injuries are simple in nature and can be caused by any hard and blunt object except injury No. 1, which after X-ray on 25.07.2023 was opined as 'Fracture'.

(xi) Injured Sonika Tiwari and Manya Tiwari in their statement(s) levelled specific allegations against the accused/applicant.

(xii) The trial Court vide order dated 21.06.2024, under challenge, rejected the application preferred by the accused

applicant/(Vishal Tripathi S/o Devendra Tripathi) under Section 173(8) Cr.P.C. being not maintainable.

31. From the facts aforesaid including the facts indicated on the basis of contents of affidavit(s) of Rajitram and Indradev Tiwari, it appears that some altercation took place between the parties in the night of 23.07.2023 i.e. between 09:00 PM and 10:00 PM on 23.07.2023 and thereafter the FIR was lodged on 24.07.2023 under Section 147, 323, 325, 427 & 452 IPC implicating Devendra Tripathi, Vishal Tripahti/(applicant) Rudra Tripathi, Aradhana Tripathi and Susheela and in the incident, injured namely Pramod Tiwari, Sonika Tiwari, Aditya Tiwari and Manya Tiwari sustained injuries, indicated in para(s) 8 to 13 of this judgment and thereafter based upon the statement(s) of Sonika Tiwari and Manya Tiwari, indicated in para(s) 14 and 15 of this judgment, Section 354-B IPC and Section 7/8 of POCSO Act were added and thereafter charge sheet was filed on 24.09.2023.

32. The applicant/(Vishal Tripathi), who is an accused and whose application dated 21.06.2024 under Section 173(8) Cr.P. C. with a prayer for re-investigation/further investigation has been rejected vide impugned order dated 21.06.2024, has approached this Court by means of present application for re-investigation/further investigation in the matter.

33. Accordingly, on the right of accused/applicant in regard to the prayer of re-investigation/further investigation, it would be apt refer relevant para(s) of the judgment passed by the Division Bench of this Court in the case of ***Preeti Singh v.***

State of U.P., 2023 SCC OnLine All 1410 which are extracted hereinunder:-

> *"**18.** In the present case, the question is as to whether the accused person has any right or hearing at the investigation stage or to question the manner in which evidence is being collected by claiming a direction for fair investigation**?***
>
> ***19.** The Hon'ble Apex Court in the case of Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260 has specifically held that under the scheme of Chapter XII of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer. Chapter XII provides for "Information to the police and powers to investigate".*
>
> ***20.** Relevant paragraphs of W.N. Chadha (supra) are quoted as under : -*
>
> *"90. Under the scheme of Chapter XII of the Cr.P.C. there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer.*
>
> *91. In State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 this Court to which both of us (Ratnavel Pandian and K. Jayachandra Reddy, JJ.) were parties after making reference to the decision of the Privy Council in Emperor v. Khwaja Nazir Ahmad and the decision of this Court in State of Bihar v. J.A.C. Saldanha has pointed out that*
>
> *"...the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation...."*
>
> *92. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a*

matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.

94. Under Section 235(2), in a trial before a Court of Sessions and under Section 248(2) in the trial of warrant cases, the accused as a matter of right, is to be given an opportunity of being heard. Unlike the above provisions which we have referred to above by way of illustration, the provisions relating to the investigation under Chapter XII do" not confer any right of prior notice and hearing to the accused and on the other hand they are silent in this respect.

95. It is relevant and significant to note that a police officer, in charge of a police station, or a police officer making an investigation can make and search or cause search to be made for the reasons to be recorded without any warrant from the Court or without giving the prior notice to any one or any opportunity of being heard. The basic objective of such a course is to preserve secrecy in the mode of investigation lest the valuable evidence to be unearthed will be either destroyed or lost. We think it unnecessary to make a detailed examination on this aspect except saying that an accused cannot claim any right of prior notice or opportunity of being heard inclusive of his arrest or search of his residence or seizure of any property in his possession connected with the crime unless otherwise provided under the law.

96. True, there are certain rights conferred on an accused to be enjoyed at certain stages under the CrPC - such as Section 50 whereunder the person arrested is to be informed of the grounds of his arrest and to his right of bail and under Section 57 dealing with person arrested not to be detained for more than 24 hours and under Section 167 dealing with the procedure if the investigation cannot be completed in 24 hours - which are all in conformity with the 'Right to Life' and 'Personal Liberty' enshrined in Article 21 of the Constitution and the valuable safeguards ingrained in Article 22 of the Constitution for the protection of an arrestee or detenu in certain cases. But so long as an the investigating agency proceeds with his action or investigation in strict compliance with the statutory provisions relating to arrest or investigation of a criminal case and according to the procedure established by law, no one can make any legitimate grievance to stifle or to impinge upon the proceedings of arrest or detention during investigation as the case may be, in accordance with the provisions of the Cr.P.C.

98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating to the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.

120. For all the aforesaid reasons we unhesitatingly set aside the order of the High Court quashing the letter rogatory dated 5/7th February, 1990 and the rectified letter rogatory dated 21/22nd August, 1990 issued in pursuance of the orders passed by the Special Judge. The respondent who is a named accused in the FIR has no locus standi at this stage to question the manner in which the evidence is to be collected. However, it is open for the respondent to challenge the admissibility and reliability of the evidence only at the stage of trial in case the investigation ends up in filing a final report under Section 173 of the Code indicating that an offence appears to have been committed."

(emphasis supplied)

21. *Perusal of the abovequoted paragraphs would clearly indicate that Chapter XII Cr.P.C. provides for information to the police and powers to investigate and this chapter consists of Section 154 to 176, which covers the area from lodging of first information report in a cognizable case, information as to non-cognizable cases and investigation of such cases, police officer's power to investigate and submission of police report as well.*

22. *As already noticed, Hon'ble Apex Court in paragraph 90 of W.N. Chadha (supra) clearly held that under the scheme of Chapter XII Cr.P.C. there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of investigation by a police officer. It has also been observed that the field of investigation of any cognizable offence is exclusively within the domain of investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation.*

23. *Hon'ble Apex Court in the case of State of Bihar v. J.A.C., (1980) 1 SCC 554 has also held that the accused has no right in regard to the manner and right of the fair investigation. The other exceptions, which are not relevant regarding complaint case etc., have also been noticed. Certain rights of the accused persons have also been noticed, which are all in conformity with the 'Right of Personal Life' and 'Personal Liberty' enshrined in Article 21 of the Constitution of India and valuable safeguards ingrained in Article 22 of the Constitution for the protection of an arrestee or detenu in certain cases. It has also been observed that if prior notice of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law relating to the investigation lifeless, absurd and self-defeating.*

24. *In W.N. Chadha (supra) the letter rogatory was under challenge before the High Court. While setting aside the order of the High Court letter rogatory dated 5/7the February, 1990 and the rectified letter rogatory dated 21st/22nd August, 1990 issued in pursuance of the orders passed by the Special Judge it was clearly held that the respondent, who is a named accused in*

> *the first information report has no locus standi at this stage to question the manner in which the evidence is to be collected, however, it was observed that it is open for the respondent to challenge the admissibility and reliability of the evidence only at the stage of trial in case the investigation ends up in filing a final report under Section 173 Cr.P.C. indicating that an offence appears to have been committed.*
>
> ***25.*** *In the case of C.B.I. v. Rajesh Gandhi, (1996) 11 SCC 253 Hon'ble Apex Court has held as under : -*
>
> *"There is no merit in the pleas raised by the first respondent either. The decision to investigate or the decision on the agency which should investigate, does not attract principles of natural justice. The accused cannot have a say in who should investigate the offences he is charged with. ...."*
>
> *(Emphasis supplied)*
>
> ***26.*** *Thus, it is very much clear that at the stage of investigation the accused has no right to be heard and she cannot come forward to claim fair investigation only on the ground that according to her the matter has wrongly been handed over to the Crime Branch and simply for the reason that initially the petitioner was informant and subsequently she had been arrayed as accused in the first information report in question. From perusal of record of petition we do not find any ground worth withdrawing the investigation from the Crime Branch and to transfer the same to some other agency in view of the law as discussed hereinabove."*

34. The judgments referred in the above quoted para(s) of the judgment passed in the case of ***Preeti Singh (Supra),*** on the issue of right of an accused at the stage of investigation have not been overruled in the judgment passed in the case of ***Vinubhai Haribhai Malaviya (Supra).***

35. On the right of an accused, the Hon'ble Apex Court (Majority Decision) in the case of ***Romila Thapar vs. Union of India, (2018) 10 SCC 75,*** observed as under:-

> ***19.*** *Mr Mehta submits that even though the Court may have jurisdiction to examine all aspects of the matter,*

considering the fact that the investigation is at a nascent stage and is being done by senior police officials under the supervision of their superior officers up to the level of Commissioner of Police, it is not a case for grant of reliefs as prayed. The accused persons must take recourse to the remedy prescribed by law instead of directly approaching this Court under Article 32 of the Constitution and can get complete justice from the jurisdictional court. He submits that in criminal matters, interference in the garb of public interest litigation at the instance of strangers has always been discouraged and rejected by this Court. Further, the present petition is nothing but abuse of the process and as the named accused Varavara Rao, Sudha Bharadwaj and Gautam Navalakha have filed their respective petitions before the jurisdictional High Courts, which proceedings are pending for adjudication, the same persons have now filed affidavits before this Court for transposing them as petitioners and allowing them to adopt the prayer of the writ petitioners. They ought to elect their remedy to be pursued and in particular, before the jurisdictional courts. Therefore, this petition must be discouraged.

20. *Mr Mehta submits that the modified relief claimed in the writ petition to release the accused persons is in the nature of habeas corpus which is not maintainable in respect of the arrest made during the ongoing investigation. He submits that no right can enure in favour of the accused to seek relief of investigation of the crime through an independent agency and for the same reason, even strangers to the offence under investigation or next friends of the accused, cannot be permitted to pursue such a relief in the guise of PIL. He submits that the foundation of the present writ petition is the perception of the writ petitioners (next friends) that the accused are innocent persons. He submits that that basis is tenuous. For, there are enough examples of persons having split personality. In a criminal case, the action is based on hard facts collected during the course of investigation and not on individual perception. He contends that the argument of the writ petitioners that liberty of the five named accused cannot be compromised on the basis of surmises and conjectures is wholly misplaced and can be repelled on the basis of the material gathered during the ongoing investigation indicating the complicity of each of them. He relies on Section 41 CrPC which enables the police to arrest any person*

against whom a "reasonable suspicion" exists that he has committed a cognizable offence. Therefore, the integrity of the investigating agency cannot be doubted as there is enough material against each of the accused. He further submits that the argument of the writ petitioners based on the circumstances pressed into service for a direction to change the investigating agency is completely against the cardinal criminal jurisprudence and such a relief is not available to persons already named as accused in a crime under investigation.

21. *Mr Harish Salve, learned Senior Counsel appearing for the complainant at whose instance FIR No. 4 of 2018 came to be registered at Vishram Bagh Police Station (Pune City), submits that there is no absolute right, much less a fundamental right, to market ideas which transcend the line of unlawful activity. The Court must enquire into the fact as to whether the investigation is regarding such unlawful activity or merely to stifle dissenting political voice. If it is the former, the investigation must be allowed to proceed unhindered. In any case, the affected persons, namely, the named accused must take recourse to remedy prescribed by law before the jurisdictional court as it is not a case of unlawful detention or action taken by an unauthorised investigating agency. According to him, the Court must lean in favour of appointing a SIT or an independent investigating agency or court-monitored investigation only when the grievance made is one about the investigation being derailed or being influenced by some authority. In the present case, the grievance is limited to improper arrest of individuals without any legal evidence to indicate their complicity in the commission of any crime or the one registered in the form of FIR No. 4 of 2018. The allegation of motivated investigation is without any basis. No assertion is made by the writ petitioners or the named accused that the investigation by Pune City Police is mala fide in law. If the allegation is about mala fide in fact, then the material facts to substantiate such allegation, including naming of the person at whose instance it is being so done, ought to have been revealed. That is conspicuously absent in this case. According to the learned counsel, the reliefs claimed in the writ petition do not warrant any indulgence of this Court.*

22. *After the high-pitched and at times emotional arguments concluded, each side presenting his case*

with equal vehemence, we as Judges have had to sit back and ponder over as to who is right or whether there is a third side to the case. The petitioners have raised the issue of credibility of Pune Police investigating the crime and for attempting to stifle the dissenting voice of the human rights activists. The other side with equal vehemence argued that the action taken by Pune Police was in discharge of their statutory duty and was completely objective and independent. It was based on hard facts unravelled during the investigation of the crime in question, pointing towards the sinister ploy to destabilise the State and was not because of difference in ideologies, as is claimed by the so-called human rights activists.

23. *After having given our anxious consideration to the rival submissions and upon perusing the pleadings and documents produced by both the sides, coupled with the fact that now four named accused have approached this Court and have asked for being transposed as writ petitioners, the following broad points may arise for our consideration:*

23.1. *(i) Should the investigating agency be changed at the behest of the named five accused?*

23.2. *(ii) If the answer to Point (i) is in the negative, can a prayer of the same nature be entertained at the behest of the next friend of the accused or in the garb of PIL?*

23.3. *(iii) If the answer to Questions (i) and/or (ii) above, is in the affirmative, have the petitioners made out a case for the relief of appointing Special Investigating Team or directing the court-monitored investigation by an independent investigating agency?*

23.4. *(iv) Can the accused person be released merely on the basis of the perception of his next friend (writ petitioners) that he is an innocent and law abiding person?*

24. *Turning to the first point, we are of the considered opinion that the issue is no more res integra. In Narmada Bai v. State of Gujarat [Narmada Bai v. State of Gujarat, (2011) 5 SCC 79 : (2011) 2 SCC (Cri) 526] , in para 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of investigating agency. Further, the accused persons cannot choose as to which investigating agency must investigate the*

offence committed by them. Para 64 of this decision reads thus : (SCC p. 100)

"64. … It is trite law that the accused persons do not have a say in the matter of appointment of an investigating agency. The accused persons cannot choose as to which investigating agency must investigate the alleged offence committed by them."

(emphasis supplied)

25. *Again in Sanjiv Rajendra Bhatt v. Union of India [Sanjiv Rajendra Bhatt v. Union of India, (2016) 1 SCC 1 : (2016) 1 SCC (Cri) 193 : (2016) 1 SCC (L&S) 1] , the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Para 68 of this judgment reads thus : (SCC p. 40)*

"68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in Union of India v. W.N. Chadha [Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] , Mayawati v. Union of India [Mayawati v. Union of India, (2012) 8 SCC 106 : (2012) 3 SCC (Cri) 801] , Dinubhai Boghabhai Solanki v. State of Gujarat [Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] , CBI v. Rajesh Gandhi [CBI v. Rajesh Gandhi, (1996) 11 SCC 253 : 1997 SCC (Cri) 88] , CCI v. SAIL [CCI v. SAIL, (2010) 10 SCC 744] and Janata Dal v. H.S. Chowdhary [Janata Dal v. H.S. Chowdhary, (1991) 3 SCC 756 : 1991 SCC (Cri) 933] ."

(emphasis supplied)

26. *Recently, a three-Judge Bench of this Court in E. Sivakumar v. Union of India [E. Sivakumar v. Union of India, (2018) 7 SCC 365 : (2018) 3 SCC (Cri) 49] , while dealing with the appeal preferred by the "accused" challenging the order [J. Anbazhagan v. Union of India, 2018 SCC OnLine Mad 1231 : (2018) 3 CTC 449] of the High Court directing investigation by CBI, in para 10 observed : (SCC pp. 370-71)*

"10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment [J.

Anbazhagan v. Union of India, 2018 SCC OnLine Mad 1231 : (2018) 3 CTC 449] . In para 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki v. State of Gujarat [Dinubhai Boghabhai Solanki v. State of Gujarat, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] , wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed on Narender G. Goel v. State of Maharashtra [Narender G. Goel v. State of Maharashtra, (2009) 6 SCC 65 : (2009) 2 SCC (Cri) 933] , in particular, para 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity."

27. *This Court in Divine Retreat Centre v. State of Kerala [Divine Retreat Centre v. State of Kerala, (2008) 3 SCC 542 : (2008) 2 SCC (Cri) 9] , has enunciated that the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of its own choice to investigate into a crime on whatsoever basis. The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own investigating agency, to investigate the crime, in which they are interested. The Court then went on to clarify that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.*

28. *Be that as it may, it will be useful to advert to the exposition in State of W.B. v. Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] . In para 70 of the said decision, the Constitution Bench observed thus : (SCC p. 602)*

"70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 and 226 of the Constitution, while passing any order, the courts must bear in mind certain self-imposed limitations on the exercise of these constitutional powers. The very plenitude of the power under the said Articles requires great caution in its exercise. Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

29. *In the present case, except pointing out some circumstances to question the manner of arrest of the five named accused sans any legal evidence to link them with the crime under investigation, no specific material facts and particulars are found in the petition about mala fide exercise of power by the investigating officer. A vague and unsubstantiated assertion in that regard is not enough. Rather, averment in the petition as filed was to buttress the reliefs initially prayed for (mentioned in para 8 above) — regarding the manner in which arrest was made. Further, the plea of the petitioners of lack of evidence against the named accused (A-16 to A-20) has been seriously disputed by the investigating agency and have commended us to the material already gathered during the ongoing investigation which according to them indicates complicity of the said accused in the commission of crime. Upon perusal of the said material, we are of the considered opinion that it is not a case of arrest because of mere dissenting views expressed or difference in the political ideology of the named accused, but concerning their link with the members*

of the banned organisation and its activities. This is not the stage where the efficacy of the material or sufficiency thereof can be evaluated nor is it possible to enquire into whether the same is genuine or fabricated. We do not wish to dilate on this matter any further lest it would cause prejudice to the named accused and including the co-accused who are not before the Court. Admittedly, the named accused have already resorted to legal remedies before the jurisdictional court and the same are pending. If so, they can avail of such remedies as may be permissible in law before the jurisdictional courts at different stages during the investigation as well as the trial of the offence under investigation. During the investigation, when they would be produced before the court for obtaining remand by the police or by way of application for grant of bail, and if they are so advised, they can also opt for remedy of discharge at the appropriate stage or quashing of criminal case if there is no legal evidence, whatsoever, to indicate their complicity in the subject crime.

30. *In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the investigating agency or to do investigation in a particular manner including for court-monitored investigation. The first two modified reliefs claimed in the writ petition, if they were to be made by the accused themselves, the same would end up in being rejected. In the present case, the original writ petition was filed by the persons claiming to be the next friends of the accused concerned (A-16 to A-20). Amongst them, Sudha Bhardwaj (A-19), Varvara Rao (A-16), Arun Ferreira (A-18) and Vernon Gonsalves (A-17) have filed signed statements praying that the reliefs claimed in the subject writ petition be treated as their writ petition. That application deserves to be allowed as the accused themselves have chosen to approach this Court and also in the backdrop of the preliminary objection raised by the State that the writ petitioners were completely strangers to the offence under investigation and the writ petition at their instance was not maintainable. We would, therefore, assume that the writ petition is now pursued by the accused themselves and once they have become petitioners themselves, the question of next friend pursuing the remedy to espouse their cause cannot be countenanced. The next friend can continue to espouse the cause of the affected accused as long as the*

> *accused concerned is not in a position or incapacitated to take recourse to legal remedy and not otherwise."*

36. In view of above, this Court has no hesitation to say that an accused has no right at the stage of investigation. Thus, the application under Section 173(8) Cr.P.C. preferred by the accused, applicant herein, for re-investigation itself was not entertainable.

37. The subject matter in this case relates to re-investigation/further investigation, as prayed, in the instant application, and accordingly, it would be apt to refer expression "investigation" which is defined in Section 2(h) of Cr.P.C.:-

> *"investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf;"*

38. Regarding expression *"investigation",* it would be appropriate to refer para(s) 53 to 55 of the judgment passed in the case of ***Kailash Vijayvargiya v. Rajlakshmi Chaudhuri, 2023 SCC OnLine SC 569,*** which are extracted hereinunder:-

> *"**53.** The Code vide Chapter XII, ranging from Section 154 to Section 176, deals with information to the Police and their power to investigate. Section 154 deals with the information relating to the commission of a cognizable offence and fiats the procedure to be adopted when prima facie commission of a cognizable offence is made out. Section 156 authorises a police officer in-charge of a Police station to investigate any cognizable offence without the order of a Magistrate. Sub-section (3) of Section 156 provides for any Magistrate empowered under Section 190 to order an investigation as mentioned in Section 156(1). In cases where a cognizable offence is suspected to have been committed, the officer in-charge of the Police station,*

after sending a report to the Magistrate empowered to take cognizance of such offence, is entitled under Section 157 to investigate the facts and circumstances of the case and also to take steps for discovery and arrest of the offender. Clauses (a) and (b) of the proviso to sub-section (1) to Section 157 give discretion to the officer in-charge not to investigate a case, when information of such offence is given against any person by name and the case is not of serious nature; or when it appears to the officer in-charge of the Police station that there is no sufficient ground for entering the investigation. In each of the cases mentioned in clauses (a) and (b) to the proviso to sub-section (1) to Section 157, the officer in-charge of the Police station has to file a report giving reasons for not complying with the requirements of sub-section (1) and in a case covered by clause (b) to the proviso, also notify the informant that he will not investigate the case or cause it to be investigated. Section 159 gives power to a Magistrate, on receiving such report of the officer in-charge, to either direct an investigation or if he thinks fit, proceed to hold a preliminary inquiry himself or through a Magistrate subordinate to him, or otherwise dispose of the case in the manner provided by the Code.

54. *Sections 160 to 164 deal with the power of the Police to require attendance of witnesses, examination of witnesses, use of such statements in evidence, inducement for recording statement and recording of statements. Section 165 deals with the power of a Police officer to conduct search during investigation in the circumstances mentioned therein.*

55. *The power under the Code to investigate generally consists of following steps : (a) proceeding to the spot; (b) ascertainment of facts and circumstances of the case; (c) discovery and arrest of the suspected offender; (d) collection of evidence relating to commission of offence, which may consist of examination of various persons, including the person accused, and reduction of the statement into writing if the officer thinks fit; (e) the search of places of seizure of things considered necessary for investigation and to be produced for trial; and (f) formation of opinion as to whether on the material collected there is a case to place the accused before the Magistrate for trial and if so, taking the necessary steps by filing a chargesheet under Section 173."*

39. The Hon'ble Apex Court in the case of ***State vs. Hemendhra Reddy, 2023 SCC OnLine SC 515,*** observed as under:-

> *"**35.** Section 169 of the CrPC reads as under:*
>
> ***"169. Release of accused when evidence deficient.—***
>
> *If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial."*
>
> ***36.** The perusal of the aforesaid Section would reveal that the Investigating Officer is under an obligation to release such person, who is in custody on executing a bond with or without sureties, if evidence is not sufficient and/or there are no reasonable grounds of suspicion to forward such person to the Magistrate.*
>
> ***37.** The plain reading of Section 169 of the CrPC, therefore, postulates that when the Investigating Officer reports his action to the learned Magistrate, it will not be a report, however it will be a report of his action either by the Investigating Officer or by the Officer in-charge of the police station.*
>
> ***38.** Section 173 of the CrPC states about the steps to be taken by the Investigating Officer after the completion of the investigation. The Officer in-charge of the police station is required to forward the report under said Section to the Magistrate empowered to take cognizance of the offence in prescribed form.*
>
> ***39.** Section 173 of the CrPC reads thus:*
>
> ***"173. Report of police officer on completion of investigation.—***
>
> *(1) Every investigation under this Chapter shall be completed without unnecessary delay.*

(1A) The investigation in relation to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E from the date on which the information was recorded by the officer in charge of the police station.

(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating—

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Penal Code, 1860 (45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report—

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (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 subsections (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).”

(Emphasis supplied)

40. *Thus, Section 169 of the CrPC is silent in making report to the Magistrate, however the Investigating Officer is under an obligation to submit its report to*

the Magistrate under Section 173 of the CrPC. Thus, though Section 169 of the CrPC does not contemplate making a report, it contemplates of obtaining a bond with or without sureties from the accused to appear if and when so required before the Magistrate empowered to take cognizance of the offence on a police report and such report is contemplated under Section 173 of the CrPC. Clauses (d) and (f) of Section 173(2)(i) of the CrPC read as under:

"173(2)(i) xxx xxx

(d) whether any offence appears to have been committed and, if so, by whom;

xxx xxx xxx

(f) whether he has been released on his bond and, if so, whether with or without sureties".

41. *Section 173(8) of the CrPC deals with further investigation and supplementary report. In the Code of Criminal Procedure, 1898 (for short, 'the Old Code'), there was no identical provision to that of Section 173(8) of the CrPC. The same is a newly added provision in the CrPC. It was added on the recommendation of the Law Commission in its 41st Report that the right of the police to make further investigation should be statutorily affirmed.*

42. *In the Old Code, there was no provision prescribing the procedure to be followed by the police for fresh investigation, when fresh facts came to light, upon the submission of the police report and subsequent to taking cognizance by the Magistrate. There was, also, no express provision prohibiting further investigation by the police.*

43. *The said omission was sought to be supplied for the first time by a two-Judge Bench of the Madras High Court as early as in 1919 in Divakar Singh v. A. Ramamurthi Naidu reported in AIR 1919 Mad 751, where it was observed that:*

"Another contention is put forward that when a report of investigation has been sent in under Section 173 of the Cr PC, the police has no further powers of investigation, but this argument may be briefly met by the remark that the number of investigations into a crime is not limited by law and that when one has been completed another may be begun on further information received.".

44. *After recognition of the right of the police to make repeated investigations under the Old Code in Divakar's case, a three-Judge Bench of this Court in H.N. Rishbud v. State of Delhi reported in AIR 1955 SC 196, held that:—*

"It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for. Such a course is not altogether outside the contemplation of the scheme of the Code as appears from Section 202 under which a Magistrate taking cognizance on a complaint can order investigation by the police. Nor can it be said that the adoption of such a course is outside the scope of the inherent powers of the Special Judge, who for purposes of procedure at the trial is virtually in the position of a Magistrate trying a warrant case."

45. *Some High Courts were also of the view that with the submission of a chargesheet under Section 173, the power of the police to investigate into an offence comes to an end and the Magistrate's cognizance of the offence started. For instance, in State v. Mehar Singh reported in 1974 Cri LJ 970, a Full Bench of the High Court of Punjab and Haryana held that the police became functus officio once the Court took cognizance of an offence on the filing of a chargesheet by the police and thereafter, further investigation by the police was not permissible.*

46. *It was, however, observed that in light of the decision in H.N. Rishbud (supra), it would be open to the Magistrate to 'suspend cognizance' and direct the police to make further investigation into the case and submit a report.*

47. *The said inconsistency and incongruity in the judicial decisions was recognized by the Law Commission in its 41st Report (under Clause 14.23) and it was recommended that the right of the police to make further investigation should be statutorily affirmed. Accordingly, in the CrPC, Section 173(8), came to be introduced, which statutorily empowered the police to undertake further investigation after*

submission of the final report under Section 173(2) of the CrPC. Conspicuously, it still did not confer such powers on the Magistrate to direct further and/or fresh investigation after submission of the final report by the Police.

48. *Section 173(8) of the CrPC may be fragmented or dissected as under:*

(1) Further investigation can be done in respect of an offence wherein report under Section 173(2) has been forwarded to the Magistrate; and

(2) During further investigation, the officer-in-charge has power

(a) to obtain further evidence, oral or documentary,

(b) to forward to the Magistrate, a further report or reports regarding such evidence in the form prescribed,

(3) The provisions of sub sections (2) to (6) shall, as far as may be, apply in relation to such further report or reports.

49. *Sub section (1) of Section 173 of the CrPC provides that every investigation by the police shall be completed without unnecessary delay and sub section (2) of Section 173 of the CrPC provides that as soon as such investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government.*

50. *Under sub section (2) of the Section 173 of the CrPC, a police report (chargesheet or Challan) is filed by the police after investigation is complete.*

51. *Sub section (8) of Section 173 of the CrPC, states that nothing in the section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate.*

52. *Thus, even where chargesheet or Challan has been filed by the police under sub section (2) of Section 173 of the CrPC, the police can undertake further investigation in respect of an offence under sub section (8) of Section 173 of the CrPC. (Reference :*

Article titled "Different Aspects of Section 173(8) of the CrPC" by D. Nageswara Rao, Prl. JCJ, Manthani.)

What is the meaning of the term "Further Investigation"?

53. *In Rama Chaudhary v. State of Bihar reported in (2009) 6 SCC 346, this Court held that, "further investigation within the meaning of provision of Section 173(8) CrPC is additional; more; or supplemental. "Further investigation", therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether."*

What are the alternatives before a Magistrate when a "Final Report" is filed?

54. *Wherever a final report forwarded by the Investigating Officer to a Magistrate under Section 173(2)(i) of the CrPC is placed before him, several situations may arise. The report may conclude that an offence appears to have been committed by a particular person and persons, and in such a case the Magistrate may either:*

(1) accept the report and take cognizance of offence and issue process,

(2) may disagree with the report and drop the proceeding or may take cognizance on the basis of report/material submitted by the investigation officer,

(3) may direct further investigation under Section 156(3) and require police to make a report as per Section 173(8) of the CrPC.

(4) may treat the protest complaint as a complaint, and proceed under Sections 200 and 202 of the CrPC.

What is the prime consideration for "Further Investigation"?

55. *As observed in Hasanbhai Valibhai Qureshi v. State of Gujarat reported in (2004) 5 SCC 347, the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of investigating agency for further investigation should not be tied down on the ground of mere delay. In other words, the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if*

that would help the court in arriving at the truth and do real and substantial and effective justice.

Difference between "Further Investigation" and "Re-investigation"

56. *There is no doubt that "further investigation" and "re-investigation" stand altogether on a different footing. In Ramchandran v. R. Udhayakumar reported in (2008) 5 SCC 413, this Court has explained the fine distinction between the two relying on its earlier decision in K. Chandrasekhar v. State of Kerala reported in (1998) 5 SCC 223. We quote paras 7 and 8 as under:*

*"**7.** At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation. This was highlighted by this Court in K. Chandrasekhar v. State of Kerala [(1998) 5 SCC 223 : 1998 SCC (Cri) 1291]. It was, inter alia, observed as follows : (SCC p. 237, para 24)*

"24. The dictionary meaning of 'further' (when used as an adjective) is 'additional; more; supplemental'. 'Further' investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports—and not fresh report or reports—regarding the 'further' evidence obtained during such investigation."

8. *In view of the position of law as indicated above, the directions of the High Court for reinvestigation or fresh investigation are clearly indefensible. We, therefore, direct that instead of fresh investigation there can be further investigation if required under Section 173(8) of the Code. The same can be done by CB CID as directed by the High Court."*

Position of Law on the subject of "Further Investigation"

57. *In King-Emperor v. Khwaja Nazir Ahmad, (1943-44) 71 IA 203 the Privy Council delineated the powers of the police to investigate. It was held thus:*

"Just as it is essential that every one accused of a crime should have free access to a Court of justice, so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rules by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Courts to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of Habeas Corpus."

58. *In Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P. reported in (1999) 5 SCC 740, it was held in paras 10 and 11:*

*"**10.** Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322 : 1979 SCC (Cri) 479 : AIR 1979 SC 1791]. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.*

11. *In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in*

Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation."

59. *In Hemant Dhasmana v. Central Bureau of Investigation reported in (2001) 7 SCC 536, it was held:*

*"**15.** When the report is filed under the sub-section the Magistrate (in this case the Special Judge) has to deal with it by bestowing his judicial consideration. If the report is to the effect that the allegations in the original complaint were found true in the investigation, or that some other accused and/or some other offences were also detected, the court has to decide whether cognizance of the offences should be taken or not on the strength of that report. We do not think that it is necessary for us to vex our mind, in this case, regarding that aspect when the report points to the offences committed by some persons. But when the report is against the allegations contained in the complaint and concluded that no offence has been committed by any person, it is open to the court to accept the report after hearing the complainant at whose behest the investigation had commenced. If the court feels on a perusal of such a report that the alleged offences have in fact been committed by some persons the court has the power to ignore the contrary conclusions made by the investigating officer in the final report. Then it is open to the court to independently apply its mind to the facts emerging therefrom and it can even take cognizance of the offences which appear to it to have been committed, in exercise of its power under Section 190(1)(b) of the Code. The third option is the one adumbrated in Section 173(8) of the Code. …*

16. *Although the said sub-section does not, in specific terms, mention about the powers of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by a court which has the jurisdiction to do so, it would not be a proper exercise of revisional powers to interfere therewith*

because the further investigation would only be for the ends of justice. …"

60. *In Union Public Service Commission v. S. Papaiah reported in (1997) 7 SCC 614, it was held in Para 13:*

"The Magistrate could, thus in exercise of the powers under Section 173(8) CrPC direct the CBI to "further investigate" the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the "new" report to be submitted by the investigating officer would be governed by sub-sections (2) to (6) of Section 173 CrPC.".

61. *This Court in Hasanbhai (supra) held thus:*

*"**12.** Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognisance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.*

13. *In Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322 : 1979 SCC (Cri) 479 : AIR 1979 SC 1791] it was observed by this Court that further investigation is not altogether ruled out merely because cognisance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving*

at the truth and do real and substantial as well as effective justice."

62. *In Ram Lal Narang v. State (Delhi Administration) reported in (1979) 2 SCC 322, this Court held thus:*

"21. *As observed by us earlier, there was no provision in the CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation."*

63. *In State of Andhra Pradesh v. A.S. Peter reported in (2008) 2 SCC 383, this Court held thus:*

"9. *Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police. A distinction also exists between further investigation and reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not."*

64. *In Nirmal Singh Kahlon v. State of Punjab reported in (2009) 1 SCC 441, this Court held as follows:*

"68. *An order of further investigation in terms of Section 173(8) of the Code by the State in exercise of its jurisdiction under Section 36 thereof stands on a different footing. The power of the investigating officer to make further investigation in exercise of its statutory jurisdiction under Section 173(8) of the Code and at the instance of the State having regard to*

Section 36 thereof read with Section 3 of the Police Act, 1861 should be considered in different contexts. Section 173(8) of the Code is an enabling provision. Only when cognizance of an offence is taken, the learned Magistrate may have some say. But, the restriction imposed by judicial legislation is merely for the purpose of upholding the independence and impartiality of the judiciary. It is one thing to say that the court will have supervisory jurisdiction to ensure a fair investigation, as has been observed by a Bench of this Court in Sakiri Vasu v. State of U.P. [(2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440], correctness whereof is open to question, but it is another thing to say that the investigating officer will have no jurisdiction whatsoever to make any further investigation without the express permission of the Magistrate."

65. *In Vinay Tyagi (supra), it was held that "further investigation" in terms of Section 173(8) of the CrPC can be made in a situation where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the Court. The report on such further investigation under Section 173(8) of the CrPC can be termed as a supplementary report.*

66. *In Vinay Tyagi (supra), it was held that:*

"40.2. A Magistrate has the power to direct "further investigation" after filing of a police report in terms of Section 173(6) of the Code.

x x x x x x x x x

40.4. *Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).*

40.5. *The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice*

demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6. *It has been a procedure of propriety that the police has to seek permission of the court to continue "further investigation" and file supplementary charge-sheet. ..."*

67. *In Vinubhai (supra); a three-Judge Bench of this Court has endeavoured to lay at rest the controversy enveloping the evasive issue of further investigation directed by the Magistrate. This Court, speaking through Justice R.F. Nariman, has laid down at Para 38 that:*

"To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law." It was also clarified that, "The "investigation" spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun.".

68. *Thus, this Court, in conclusion, observed that, "when Section 156(3) states that a Magistrate empowered under Section 190 may order "such an investigation", such Magistrate may also order further*

investigation under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h)."

69. *Thus, in view of the law laid down by this Court in the various decisions cited hereinabove, it is well settled that sub section (8) of Section 173 of the CrPC permits further investigation, and even dehors any direction from the court, it is open to the police to conduct proper investigation, even after the court takes cognizance of any offence on the strength of a police report earlier submitted.*

70. *However, the question before this Court is whether sub section (8) of Section 173 of the CrPC permits further investigation after the Magistrate has accepted a final report (closure report) under sub section (2) of Section 173 of the CrPC. The contention raised on behalf of the accused persons is that acceptance of a closure report would terminate the proceedings finally so as to bar the investigating agency from carrying out any further investigation in connection with the offence.*

71. *The learned counsel appearing for the accused persons submitted that an order accepting the closure report under Section 190(1)(c) of the CrPC is a judicial order and not an administrative order. Relying on the decision of this Court in Kamlapati Trivedi v. State of West Bengal reported in (1980) 2 SCC 91, it was submitted that when a final report of the police is submitted to the Magistrate and the Magistrate passes an order (a) agreeing with the report of the police and filing proceedings; or (b) not agreeing with the police report and holding that the evidence is sufficient to justify the forwarding of the accused to the Magistrate and takes cognizance of the offence complained of, such order is a judicial order.*

72. *We are at one with the aforesaid submission canvassed on behalf of the accused persons. However, this is not going to make any difference. What is necessary to be examined is as to whether an order passed under Section 190(1) of the CrPC accepting a final report being a judicial order would bar further investigation by the police or the CBI as in the present case, in exercise of the statutory powers under chapter XII of the CrPC?*

73. *In State of Rajasthan v. Aruna Devi reported in (1995) 1 SCC 1, a complaint was filed in the Court*

of Munsif and Judicial Magistrate, First Class, Bilara, against the respondents under various sections of the IPC. The gravamen of the allegation was that the respondents had, in pursuance of a conspiracy, transferred some land on the strength of a special power of attorney bearing forged signature. The Magistrate, after perusal of the complaint, directed an investigation to be made as contemplated by Section 156(3) of the CrPC. A case was registered thereafter, by the police and a final report was submitted on 18.07.1981 stating that complaint was false. The report came to be accepted by the Magistrate on 23.09.1981. It, however, so happened that the Superintendent of Police had independently ordered further investigation on 24.09.1981 and a challan came to be filed by police against the respondents, inter alia, under Sections 420 and 467 of the IPC. The Magistrate took cognizance on 25.06.1984. A challenge was made to this act of the Magistrate before Sessions Judge, Jodhpur, who dismissed the revision. On further approach to the High Court, the revision was allowed and the order of cognizance was set aside. The State came in appeal under Article 136 of the Constitution.

74. *This Court observed in paras 3 and 4 respectively as under:*

3. *A perusal of the impugned judgment of the High Court shows that it took the view that the Magistrate had no jurisdiction to take cognizance after the final report submitted by police had been once accepted. Shri Gupta, appearing for the appellant, contends that this view is erroneous in law inasmuch as Section 173(8) of the Code permits further investigation in respect of an offence after a report under sub-section (2) has been submitted. Sub-section (8) also visualises forwarding of another report to the Magistrate. Further investigation had thus legal sanction and if after such further investigation a report is submitted that an offence was committed, it would be open to the Magistrate to take cognizance of the same on his being satisfied in this regard.*

4. *Shri Francis for the respondents, however, contends that the order of the Magistrate taking cognizance pursuant to filing of further report amounted to entertaining second complaint which is not permissible in law. To substantiate the legal submission, we have been first referred to Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar [1962 Supp (2) SCR 297 : AIR 1962 SC*

876 : (1962) 1 Cri LJ 770], in which a three-Judge Bench of this Court dealt with this aspect. A perusal of the judgment of the majority shows that it took the view that dismissal of a complaint under Section 203 of the Code is no bar to the entertainment of a second complaint on the same facts; but the same could be done only in exceptional circumstances some of which have been illustrated in the judgment. Further observation in this regard is that a fresh complaint can be entertained, inter alia, when fresh evidence comes forward. In the present case, this is precisely what had happened, as on further investigation being made, fresh materials came to light which led to the filing of further report stating that a case had been made out.

***75.** The aforesaid decision of this Court has been rightly referred to and relied upon by the High Court in its first order dated 11.09.2014.*

***76.** This Court in K. Chandrasekhar (supra) was considering a case, where on the complaint of a Police Inspector, a case was registered by the Kerala Police against the appellants therein for the offences punishable under Sections 3 and 4 respectively of the Official Secrets Act, 1923 read with Section 34 IPC on the allegation that in collusion with some Indians and foreigners they had committed acts prejudicial to the safety and sovereignty of India. During the investigation, certain other persons (appellants in accompanying appeals) were arrested. Thereafter, a DIG of Police, who was the head of the team conducting the investigation, recommended the case for being investigated by the CBI. Pursuant to such recommendation, the Government of Kerala by a notification dated 02.12.1994 accorded its consent under Section 6 of the Delhi Special Police Establishment Act, 1946 (for short, 'the Act') for further investigation of the case by the CBI. Accordingly, the CBI took up the investigation. After completion of the investigation, on 16.04.1996, the CBI filed its report in the final form under Section 173(2) of the CrPC, stating that the charges were not proved and were false. Accepting the report, the Magistrate discharged the accused-appellants. Thereafter, on 27.6.1996, the Government of Kerala issued a notification withdrawing the consent earlier given to the CBI to investigate the said case. The object of the said notification was to enable a reinvestigation of the case by a team of State Police*

Officers. By a mandatory notification dated 08.07.1996, the words "reinvestigation of the case" were substituted by the words "further investigation of the case". The State Government notification dated 27.6.1996 (as amended) was upheld by the High Court. This Court held that, from a plain reading of Section 173 of the CrPC, it is evident that even after submission of police report under sub section (2) on completion of investigation, the police has a right of "further" investigation under sub section (8), but not "fresh investigation" or "reinvestigation". The dictionary meaning of "further" (when used as an adjective) is "additional; more; supplemental". "Further" investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. The Court drew inspiration from the fact that sub section (8) clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report or reports - and not fresh report or reports- regarding the "further" evidence obtained during such investigation. The Court held that once it is accepted that an investigation undertaken by CBI pursuant to a consent granted under Section 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that "further investigation" is a continuation of such investigation which culminates in a further police report under Section 173(8), it necessarily means that withdrawal of consent in the said case would not entitle the State Police to further investigate into the case. However, the Court further observed thus:"To put it differently, if any further investigation is to be made, it is the CBI alone which can do so, for it was entrusted to investigate into the case by the State Government." (Emphasis supplied). Thus, what was held by the Court was that after submission of report under Section 173(2) Cr. P.C. reinvestigation or fresh investigation is not permissible. However, it has been expressly observed that if any further investigation is to be made, it is the CBI alone which can do so. In other words, further investigation could be carried out, but that the same could be done by the CBI alone as it was entrusted to investigate into the case by the State Government and had carried out the investigation and submitted final report in connection therewith.

77. *In S. Papaiah (supra) on a complaint made by the UPSC, investigation had been carried out by the CBI and final report was submitted under Section 173 of the CrPC before the Metropolitan Magistrate, before whom the first information report had been lodged, seeking closure of the case. The CBI in spite of the request made to it by the UPSC did not inform about the filing of the final report seeking closure of the case to the UPSC. The report was returned by the learned Metropolitan Magistrate as notice had not been issued to the complainant by the CBI though the CBI had asserted that it had informed the UPSC regarding the filing of the closure report. The final report was resubmitted by the CBI to the Court of the Metropolitan Magistrate along with a copy of the notice sent by the CBI to the UPSC. It appears that the report was again returned by the Metropolitan Magistrate seeking proof of service of notice on the de facto complainant. While the proceedings of submission of the final report were pending, the UPSC addressed a letter to the Director of CBI pointing out that the investigation had not been carried out properly and that the filing of the closure report was not justified. While the UPSC was awaiting further communication from the CBI in that behalf, the CBI resubmitted the closure report and the learned Metropolitan Magistrate accepted the final report submitted by the CBI and closed the file without any opportunity being provided to the UPSC to have its say. Upon receipt of communication of the order of the court accepting the closure report, the UPSC filed a petition before the learned Metropolitan Magistrate submitting that the complaint had not been properly investigated and that it had no notice about the acceptance of the final report. The Court rejected the petition of the UPSC observing that it had accepted the final report filed by the CBI on 16.03.1995, since the UPSC had not filed its objections to the acceptance of the final report and as such, it could not complain. The Court also opined that since an order accepting final report was a judicial order and not an administrative order, therefore, it had no power to review such an order passed by it "rightly or wrongly" and that the UPSC could file a revision petition seeking appropriate orders against the acceptance of the final report from the revisional court. The revision petition filed by the UPSC was dismissed by the revisional court. In appeal before this Court, it was held thus:*

"13. The appellant brought the contents of communication dated 23.01.1995 to the notice of the learned Metropolitan Magistrate through its Miscellaneous Petition No. 2040 of 1995 seeking 'reinvestigation' but the learned Magistrate, rejected the petition vide order dated 4.11.1995, observing that 'rightly or wrongly that court had passed an order and it had no power to review the earlier order.' Here, again the learned Magistrate fell into an error. He was not required to 'review' his order. He could have ordered 'further investigation' into the case. It appears that the learned Metropolitan Magistrate overlooked the provisions of Section 173(8) which have been enacted to take care of such like situations also."

(Emphasis supplied)

78. *After referring to the provisions of Section 173(8) of the CrPC, the Court observed that the Magistrate could, thus, in exercise of the powers under Section 173(8) of the CrPC, direct the CBI to "further investigate" the case and collect further evidence keeping in view the objections raised by the UPSC to the investigation and the "new" report to be submitted by the Investigating Officer would be governed by sub-sections (2) to (6) of Section 173 of the CrPC. The Court held that the learned Magistrate failed to exercise the jurisdiction vested in him by law and his order dated 04.11.1995 cannot be sustained.*

79. *In the light of the aforesaid decision of the Supreme Court, it appears that though the order passed by the learned Magistrate accepting a final report under Section 173 is a judicial order, there is no requirement for recalling, reviewing or quashing the said order for carrying out further investigation under Section 173(8) of the CrPC. As held by this Court in the said decision, the provisions of Section 173(8) of the CrPC have been enacted to take care of such like situations also.*

80. *In N.P. Jharia v. State of M.P. reported in (2007) 7 SCC 358, proceedings had been initiated against the appellant therein in connection with possession of pecuniary resources disproportionate to his known sources of income. After investigation the Special Police Establishment (SPE) submitted a "final report" on 01.03.1990 informing the court that no offence was made out against the appellant. The final report was accepted by the Special Judge on 17.04.1990. But on 01.07.1992, the SPE submitted an application before*

the Special Judge, seeking permission for further investigation. The Special Judge permitted further investigation. Thereafter, the sanction for prosecution was obtained from the State Government on 01.03.1995. The chargesheet was filed in the court on 24.07.1995. On behalf of the appellant, it was urged that once the final report was submitted there is no scope for further investigation. The Court held that so far as further investigation was concerned in the background of Section 173(8) of the CrPC the plea was clearly untenable.

***81.** In Kari Choudhary v. Mst. Sita Devi reported in (2002) 1 SCC 714, FIR No. 135 was registered on the basis of a complaint lodged by Sita Devi and investigation was commenced thereafter. During investigation, the police found that the murder of the victim, Sugnia Devi was committed pursuant to a conspiracy hatched by her mother-in-law Sita Devi and her daughters-in-law besides the others. So, the police sent a report to the court on 30.11.1998 stating that the allegations in FIR No. 135 were false. The police continued with the investigation after informing the court that they had registered another FIR as FIR No. 208 of 1998. This Court, inter alia, held thus:*

"11. Learned counsel adopted an alternative contention that once the proceedings initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation would be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during the investigation that persons not named in FIR No. 135 are the real culprits. To quash the proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it.

12. Even otherwise, the investigating agency is not precluded from further investigation in respect of an

offence in spite of forwarding a report under sub-section (2) of section 173 of a previous occasion. This is clear from Section 173(8) of the Code."

(Emphasis supplied)

82. *Thus, a conspectus of the aforesaid decisions of this Court rendered in cases where final reports (closure reports) had already been submitted and accepted makes the position of law very clear that even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted. It is also evident, that prior to carrying out a further investigation under Section 173(8) of the CrPC, it is not necessary for the Magistrate to review or recall the order accepting the final report.*

83. *We may summarise our final conclusion as under:*

(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.

(ii) Prior to carrying out further investigation under Section 173(8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.

(iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.

(v) There is nothing in the CrPC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the CrPC."

40. Upon due consideration of the facts of the instant case, indicated above, as also the observations made by the Hon'ble Apex Court in various pronouncements, referred above, this Court finds that in the instant case, request/prayer for re-investigation/further investigation by an accused, who is applicant in the instant case, is not liable to be acceded. It is for the following reasons:-

(i) In Para 36 of this judgment the Court has already observed regarding right of an accused at the stage of investigation, according to which, the accused has no right.

(ii) It appears that the I.O., after due investigation which includes collection of evidence, examination of various persons and reduction of statements into writing and thereafter considering the contents of the same including FIR, medical report(s) of injured(s) namely Pramod Tiwari, Manya Tiwari, Sonika Tiwari and Aditya Tiwari as also the statements of witnesses of fact, prepared the charge sheet and thereafter submitted it before the Court concerned.

(iii) The discrepancies related to date(s) and time, as indicated by the learned counsel for the applicant, would be considered by the trial Court at the stage of trial and the same are not required for seeking re-investigation/further investigation so far as the present case is concerned. It is in view of the observation made in Para 24 of this judgment, wherein this Court after considering the facts including the facts based upon the various documents including the affidavit(s) of Sri Rajitram and Indradev Tiwari filed alongwith

the supplementary affidavit by the applicant, observed that some altercation between two sides took place in the night of 23.07.2023 between 09:00 PM and 10:00 PM.

41. For the reasons aforesaid, this Court finds no force in the present application. It is accordingly ***dismissed.***

Order Date :-09.08.2024
Vinay/-