2026 INSC 120

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.....OF 2026
(ARISING OUT OF SLP (CRIMINAL) NO. 350 OF 2024)

PRAMOD KUMAR & ORS. **....APPELLANT(S)**

VERSUS

STATE OF U.P. & ORS. **...RESPONDENT(S)**

J U D G M E N T

VIJAY BISHNOI, J.

Leave Granted.

2. This appeal has been preferred by the Appellants challenging the Judgment dated 20.11.2023 (hereinafter referred to as "**impugned judgment**") passed in **Criminal Misc. Writ Petition No. 4000 of 2022** by the High Court of Judicature at Allahabad, Lucknow

Bench (hereinafter referred to as "**the High Court**"). The writ petition filed by the Appellants was dismissed by the High Court, wherein it refused to quash the Orders dated 06.06.2019 and 26.04.2021 passed by the Respondent No. 1 and Respondent No. 4, respectively.

3. The sole question that arises for our consideration in the present appeal is whether after submitting a final report under Section 173(2) of the Criminal Procedure Code (for short **"CrPC"**) (also refer to Section 193(3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for short **"BNSS")**), the police/investigating agency can conduct further investigation under Section 173(8) of CrPC (also refer to Section 193(9) of BNSS) without obtaining the leave of the Magistrate/ Court concerned?

FACTUAL MATRIX

4. A fascicule of facts pertinent for the disposal of this appeal are that, on 19.11.2013, an FIR bearing Case Crime No. 70/2013 (hereinafter referred to as "**the FIR**") was registered against seven accused persons including the Appellants herein by the Respondent No. 6 (hereinafter referred to as "**the original**

complainant") for the offence punishable under Sections 376D, 352, 504, 506 respectively of the Indian Penal Code, 1860 (for short, "**IPC**") at Mahila Police Station, Sub-district Sadar, District Firozabad.

5. During the investigation, owing to multiple applications being moved by the original complainant alleging danger to his life and his family members' lives, the investigation was initially transferred from the Mahila Police Station to the Crime Branch, Firozabad, and subsequently to the Crime Branch, Mathura.

6. After completion of the investigation, the Investigating Officer submitted the Final Report No.17/14 dated 30.05.2014 (hereinafter referred to as "**the Closure Report**"), stating that no offence was made out against the accused persons (including the Appellants herein) in light of the contradictions between the statements of the original complainant under Section 161 and 164 CrPC. The relevant extract of the closure report is reproduced herein under:

> *"...On the basis of information of the informant, the aforesaid case was registered and investigation was undertaken. There is contradiction between the statements U/s. 161 and 164*

Cr.P.C. of the informant. There is enmity/litigation pending between the informant and the accused persons. The statements of the informant are not supported by other evidences. Hence, the offence is not confirmed. In absence of evidences, it is impossible to file challan against the accused persons before the Court. Hence, the case is closed by FR. Kindly approve it.…."

7. After receiving the Closure Report, the Court of First Additional Civil Judge, (J.D.)/Judicial Magistrate, Firozabad, issued several notices to the original complainant. However, despite service of notices, he did not appear before the court, nor did he file any protest petition. The Court of First Additional Civil Judge, (J.D.)/Judicial Magistrate, Firozabad, after considering the Closure Report, has accepted the same *vide* order dated 14.09.2015, noting that the material on record did not support the prosecution's case. The relevant extract of the Order is reproduced herein under:

"….The case file was presented today. Notice has been sent to the informant several times. Despite the notice has been duly served to the informant several times, he had not filed any objection/protest petition against the final report. It is clear from the case diary and police documents and evidences available in the file that the statements u/s 161 CrPC and statements u/s 164 CrPC of the informant and the person with whom the victim had gone to the bridge on a motorcycle to search for her brothers, it has been confirmed from her statements/affidavit, that neither the victim met that day nor she was taken to the bridge on a motorcycle and none of the statements of witnesses recorded by the IO have confirmed

the incident. Even perusal of the medical report does not confirm any kind of external or internal injury and the statements made by the victim are also not confirmed by the medical report. Thus, according to the medical report, no clear inference can be made that the victim was raped.
It is also clear from the perusal of the file that the informant had requested for the investigation of the said case, apart by the local police, shall be conducted by the Crime Branch, on which the case was investigated by the Crime Branch, Mathura. The investigation was carried out by several Investigating Officers of Crime Branch, Mathura and after the investigation, the mobile phones of the accused were matched through cell track by Mr. Narendra Singh, and the location of any of the accused persons was not found at the spot at the time of the incident, which has been recorded in the case diary by the IO and any of the witness had not confirmed the statement of the victim, on the basis of which the final report in the case No. 17/14 dated 30-5-14 has been submitted by the IO on 30.05.2014 which prima facie appears to be legal. Therefore, in compliance of Hon'ble High Court's circular no. 31/2012 Admin, G. II, Allahabad dated 11-12-2012 and Hon'ble High Court Allahabad's criminal miscellaneous petition no. 2520/2012 Pradeep Kumar Srivastava vs. State of UP and others u/s 482/378/507 Order passed in S.P. No. dated 27-7-2012 and circular letter no. of Honorable High Court Allahabad no. 10435 date 03.09.2014 and letter no. 420/2015 dated 17.01.2015, the final report no. 17/14 is accepted. It should be attached in the file....."

8. Subsequently, after a span of about 3 years, the original complainant filed a Criminal Revision Petition (later registered as Criminal Miscellaneous Case No. 440 of 2017) before the Court of District and Sessions Judge, Firozabad, for setting aside the aforesaid order dated 14.09.2015, wherein the Closure Report was accepted. The said case is presently pending before the Court of District and Sessions Judge, Firozabad.

9. Thereafter, one Dr Ashu Kumar filed a complaint before the National Human Rights Commission (hereinafter referred to as "**NHRC**") alleging several deficiencies in the investigation conducted by police officials. The Assistant Registrar (Law) of the NHRC after considering the said complaint, passed an Order dated 06.03.2019, citing several discrepancies in the investigation done by investigating authority and, consequently, directed the Director General of Police, Uttar Pradesh (hereinafter referred to as "**the DGP**") to conduct a fact finding enquiry into the conduct of officials of Police Station Ekka, Police Station Narkhi, by an officer not below the rank of the Superintendent of Police and submit a report regarding the same within a period of 6 weeks. The NHRC further directed the Chief Secretary to pay an amount of Rs. 2 lakhs to the prosecutrix and Rs. 1 lakh each to the original complainant as well as the father of the prosecutrix, and submit a compliance report within 6 weeks.

10. In compliance thereof, the Under Secretary, Government of Uttar Pradesh, forwarded a letter dated 06.06.2019 to the Director, CBCID, informing that in pursuance of the directions of the NHRC,

it has been decided that the matter should be investigated by CBCID and further directing him to complete the investigation within a period of 6 weeks and submit a final progress report.

11. In view of the aforesaid, the Under Secretary *vide* letter dated 12.02.2021, informed the NHRC that an investigation pursuant to the conduct of the officers involved in the present case is underway. Further, it was also informed that in order to reveal the truth of the accusations involved in the case, it is recommended that further investigation under Section 173(8) should be conducted in FIR No. 70/2013.

12. With the approval of the Director General of Police, CBCID, an Inspector of CBCID (hereinafter referred to as "**IO**") was nominated for carrying out further investigation of the present case under Section 173(8) of the CrPC and pursuantly, the newly appointed IO filed an application dated 22.04.2021 before the Court of First Additional Civil Judge (J.D.)/Judicial Magistrate, Firozabad, seeking permission to conduct further investigation in the instant case under Section 173(8) of the CrPC.

13. Thereafter, *vide* communication dated 26.04.2021, the Superintendent of Police, Agra informed the Additional Superintendent of Police/Divisional Officer, Crime Branch, A.A.D., Agra, of the nomination of the IO in the present case and also directed him to make available the special report relating to the further investigation (in 10 days), the draft of the plan (in 20 days) and the monthly progress report in the prescribed formats to the headquarters on time and complete the investigation as soon as possible and send the final progress to the headquarters.

14. In furtherance of the said investigation, the IO sent a notice to the accused persons (including the Appellants) for the collection of their samples to conduct a DNA test. Their blood samples were collected on 05.05.2022.

15. Consequently, the Appellants filed Criminal Misc. Writ Petition No. 4000 of 2022 before the High Court challenging the Order dated 06.06.2019 and 26.04.2021.

16. The High Court, *vide* Order dated 23.06.2022, initially granted interim protection from arrest to the Appellants. However, in the

same Order, it directed that the investigation shall continue and that the Appellants shall cooperate with the investigation.

17. During the pendency of the Writ Petition, the Director, Forensic Science Laboratory, State of Uttar Pradesh, submitted the DNA Test Report dated 21.09.2022 stating that the accused persons, including the Appellants, were not the biological father of the fetus of the prosecutrix.

18. Later, the High Court *vide* the impugned judgment observed that the allegations of rape were made against several accused, and the prosecutrix also filed a protest petition against the final report submitted by the investigating officer. The DNA sample of the aborted fetus (resulting from the pregnancy from the alleged rape) was also preserved, and the Investigating Officer had written to the Court praying that a DNA test may be carried out to find out who was actually the accused amongst the several accused, who was involved in the commission of rape. The High Court, thus, held that it found no good grounds to entertain the petition and dismissed the same.

19. Aggrieved, the Appellants preferred the instant appeal before this Court. During the pendency of the appeal, this Court *vide* Order dated 16.01.2024, issued notice and stayed the operation and effect of the communications dated 06.06.2019 and 26.04.2021, and also the investigation in the present case. The relevant portion is reproduced herein under:

> *"...Applications seeking exemption from filing C/C of the impugned judgment and exemption from filing O.T. are allowed. Issue notice. In the meantime, operation and effect of the communications dated 06.6.2019 and 26.4.2021 directing investigation in Case Crime no.70/13 U/s. 376D, 352, 504, 506 IPC registered at PS Mahila Police Station, District Firozabad shall remain stayed..."*

20. Pursuant to the Order dated 16.01.2024, notices were issued to the Respondents and were served on all except Respondent No. 7. Respondent No. 6 did not appear before this Court even after notice was served to him on 30.01.2024. Further, notice could not be served upon Respondent No. 7 and therefore, a report from the Trial Court was called upon wherein it was mentioned that as the notice was unserved with remarks "no such person found". Consequently, this Court *vide* Order dated 28.08.2025 deleted the name of Respondent No. 7 at risk of the Appellants. The relevant portion of the Order dated 30.09.2024 is reproduced herein under:

> *"…Service is complete on respondent nos. 1 to 6 but none has entered appearance. As per report of concerned Trial Court, notice could not be served on respondent no.7 due to remarks "no such person found". However, ld. Counsel for the petitioner submits that an application for deletion of the name of respondent no.7 from the array of parties will be filed. Be filed within one week. If filed, process as per rules. However, if application is not filed, list again on 06.01.2025…"*

Accordingly, *vide* Order dated 28.08.2025, the name of Respondent No. 7 was deleted from the appeal. The extract of the said order is reproduced herein under:

> *"...Application for deleting the name of respondent no. 7 is allowed at the risk of the petitioners…"*

CONTENTION OF THE PARTIES

21. Mr. Divyesh Pratap Singh, the learned counsel for the Appellants submitted that the Superintendent of Police, Agra on recommendation of the State of Uttar Pradesh directed further investigation under Section 173(8) Cr.P.C. without obtaining prior permission from the competent Court, even though a closure report had already been accepted. The Learned counsel for the Appellant contended that once the final report is accepted, only the criminal Court has the power to order further investigation and such power cannot be exercised by the police or any executive

authority. Further, the so-called "further investigation" is in fact an impermissible *de-novo* or fresh investigation, as it was ordered after about seven years without any new or additional material and was initiated from the very first stage, including demands for DNA samples after several years, which amounts to filling up lacunae in the prosecution case.

22. The Learned Counsel for the Appellants further contended that the final report dated 30.05.2014 was filed after a thorough investigation and was accepted by the Court on 14.09.2015 after due notice to the original informant, who did not file any objection or a protest petition. It was also contended that the DNA report dated 21.09.2022 clearly concluded that the accused persons, including the Appellants, are not the biological fathers of the prosecutrix's aborted foetus, which debunks the very genesis of the case and directly contradicts the allegations of the alleged incident. The learned counsel placed reliance on the judgment passed by this Court in ***Vinay Tyagi v. Irshad Ali,*** reported in (2013) 5 SCC 762, wherein it was held that it is a part of procedure

of the investigating authority to seek leave of the Court before conducting "further investigation".

23. The learned Additional Advocate General for the State of U.P., Mr Apoorva Agarwal, argued that there is no bar under Section 173(8) against conducting further investigation. It was argued that "further investigation" is merely a continuation of the earlier investigation, and 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 CrPC. The learned AAG also placed reliance upon the case of ***Dharam Pal v. State of Haryana*** *reported in (2016) 4 SCC 160*, wherein this Court held that the Police Officer has unrestricted power under Section 173(8) CrPC to conduct further investigation.

24. We have heard the parties and perused the material available on record.

ANALYSIS

25. The power of the investigation agency to order further investigation in any criminal case is derived from the aegis of Section 173(8)

CrPC (also refer to Section 193(9) BNSS), which is reproduced as follows:

> "*..(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-Section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding, such evidence in the form prescribed; and the provisions of Sub-Sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-Section (2).*

Thus, the powers of the investigation agency for further investigation are not in dispute herein. However, what catches attention here and which is also the crux of the controversy in the present case, is which authority can pass an order directing the investigation agency to undertake further investigation under Section 173(8).

26. The issue regarding the procedure to be followed for directing further investigation in a case has been dealt by this Court in the case of ***Vinay Tyagi*** *(supra)*, wherein this Court while dealing with the contours of Section 173(8) relating to further investigation, propounded that the police ought to follow the procedure of seeking permission from the Court to conduct "further

investigation" and file a supplementary chargesheet. The relevant paragraphs from the judgment are reproduced as under:

> ***".....40.*** *Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:*
> ***40.1.*** *The Magistrate has no power to direct "reinvestigation" or "fresh investigation" (de novo) in the case initiated on the basis of a police report.*
> ***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.*
> ***40.3.*** *The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three-Judge Bench and thus in conformity with the doctrine of precedent.*
> ***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. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case……" add 49 and 50*
>
> ***(Emphasis Supplied)***

In this very judgment, this Court, while noting that although there is no explicit mandate under Section 173(8) CrPC to seek the leave of the Court before conducting further investigation, nevertheless, over time, a practice has been developed to seek permission of the Court. Therefore, the practice of seeking the leave of the Court will have to be read into the provisions of Section 173(8), and it is essentially a prerequisite for directing further investigation. This Court therein held as follows:

> ***"...49.*** *Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct "further investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct "further investigation" and/or to file a "supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.*
>
> ***50.*** *Such a view can be supported from two different points of view: firstly, through the doctrine of precedent, as aforenoticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and*

such interpretation would be permissible with the aid of doctrine of contemporanea expositio. Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused.…"

*(**Emphasis Supplied**)*

The proposition of the law laid down in the case of ***Vinay Tyagi*** *(supra)* has been further affirmed by the Three Judge Bench of this Court in the case of ***Vinubhai Haribhai Malviya and Others versus State of Gujarat and Another,*** reported in (2019) 17 SCC 1.

27. This Court has dealt with a similar situation in the case of ***Peethambaran Versus State Of Kerala & Anr.***, reported in the (2024) 16 SCC 65, wherein the District Police Chief, i.e., Superintendent of Police, ordered further investigation. This Court therein, while quashing the order passed by the District Police Chief, held that the power to order further investigation rests either with the Magistrate concerned or a higher court, but not with an investigation agency. The relevant paragraphs from the judgment are reproduced as follows:

*"…..**19.** The Chief Police Officer of a district is the Superintendent of Police who is an officer of the Indian Police Service. Needless to state, an order from the District Police Chief is not the same as an order issued by the Magistrate*

> *concerned. Referring to Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , this Court in Devendra Nath Singh v. State of Bihar [Devendra Nath Singh v. State of Bihar, (2023) 1 SCC 48 : (2023) 1 SCC (Cri) 270] noted that there is no specific requirement to seek leave of the court for further investigation or to file a supplementary report but the investigating agencies, have not only understood it to be so but have also adopted the same as a legal requirement. The doctrine of contemporanea exposito aids such an interpretation of matters which have been long understood and implemented in a particular manner to be accepted into the interpretive process. In other words, the requirement of permission for further investigation or to file a supplementary report is accepted within law and is therefore required to be complied with.*
>
> ***20.** In the facts at hand, it is clear that such a permission was never taken, granted or ordered. Consequently, FR-II is without basis. In FR-I it has been stated that in the absence of any documents in respect of the financial transactions, the instant case may be treated as a false case. This, then would necessarily imply that after due investigation conducted by a duly authorised person, the conclusion is that the ingredients of the section mentioned in the FIR have not been met and no case is made out.*
>
> *XXXX*
>
> ***28.** In terms of second question, the above discussion makes clear that the District Police Chief, Kottayam could not have ordered further investigation, as that power rests either with the Magistrate concerned or with a higher court and not with an investigating agency….."*
>
> ***(Emphasis Supplied)***

28. In light of the legal position as settled by this Court through the above judgments, it is safe to say that the power to direct further investigation in a case rests solely at the discretion of the Magistrate/Court concerned. In the event, the police/ investigation agency is of the opinion that further investigation is

necessary in any particular case to cull out complete facts and truth in the case, it is binding upon them to file an appropriate application before the Magistrate/Court, without directing an order for further investigation by themselves. Once such an application is filed by the investigation agency, the Magistrate/Court would apply its judicial mind, in light of the facts and circumstances of the particular case and the reasons demonstrated by the investigating agency, in order to exercise its discretion for exercise of its power to decide whether or not further investigation is to be ordered under the purview of Section 173(8) CrPC.

29. In the present case, the Under Secretary of the State of Uttar Pradesh, *vide* its letter dated 06.06.2019, directed that the investigation in the matter would be conducted by the CBCID. The Under Secretary also recommended that further investigation under Section 173(8) CrPC be conducted through its letter addressed to the NHRC dated 12.02.2021. Consequently, the Investigating Officer of the CBCID wrote a letter dated 22.04.2021 to the Judicial Magistrate, Firozabad, requesting to grant

permission to conduct further investigation u/S. 173(8) CrPC and provide a copy of the case diary. However, the Court did not pass any order to the extent of requisitioning the Investigating Officer to conduct further investigation.

30. Further, *vide* letter dated 26.04.2021, the Superintendent of Police informed the Additional Superintendent of Police/Divisional Officer, Crime Branch, A.A.D., Agra, about the nomination of the IO in the present case and directed him to complete the investigation expeditiously, submit monthly progress reports, and forward the final report upon completion of the investigation.

31. Thus, it is amply clear that the Superintendent of Police acted in complete defiance of the procedure laid down under the law while passing orders directing further investigation without seeking leave of the Court. It is an unbecoming conduct from the officer of such a rank to exercise unfettered powers, in excess of its jurisdiction, thereby undermining the authority vested in the Court of law.

32. The learned AAG relied upon the judgment of this Court in ***Dharam Pal*** (*supra*) to suggest that the investigating authority has unrestricted powers to conduct further investigation and is only required to inform the Court about the same. However, we find the reliance placed by learned AAG to be misplaced as the facts of the said case are completely in contrast with the present one. In ***Dharam Pal*** (*supra*), this Court was dealing with a situation wherein the complainant sought transfer of the investigation to the CBI, alleging several lapses in the investigation. The High Court declined such a transfer, noting that the trial had already commenced and several witnesses had been examined. This Court, therein, while setting aside the judgment of the High Court, transferred the investigation (*de novo*) to the CBI and held that while the constitutional courts can direct fresh/de novo/reinvestigation. Additionally, in ***Dharam Pal*** (*supra*), this Court, while referring to ***Vinay Tyagi*** (*supra*), has held that the Magistrate is empowered to direct "further investigation" as per its discretion and based upon the facts and circumstances of the case.

33. In view of the above discussion, the impugned judgment dated 20.11.2023 passed by the High Court is set aside. In addition to that, the Orders dated 06.06.2019 and 26.04.2021 passed by the Respondent No. 1 and Respondent No. 4, respectively, directing further investigation, are also quashed and set aside.

34. We further make it clear that the opinions expressed herein should cause no prejudice to the criminal revision preferred by the original complainant or any other proceeding related to FIR No. 70/2013. The Trial Court shall decide the Criminal Miscellaneous Case No. 440 of 2017 and any other proceeding, if any, on its own merits.

35. Accordingly, the appeal is allowed. Pending applications, if any, shall stand disposed of.

.....J.
(RAJESH BINDAL)

..... J.
(VIJAY BISHNOI)

NEW DELHI,
Dated: ---- JANUARY, 2026