



2026:AHC:166252

HIGH COURT OF JUDICATURE AT ALLAHABAD

APPLICATION U/S 528 BNSS No. - 17955 of 2026

AFR

Reserved on : 11.05.2026

Delivered on : 10.08.2026

Anurag Dubey @ Dabban

.....Applicant(s)

Versus

State of U.P. and Another

.....Opposite
Party(s)

Counsel for Applicant(s) : Abhinav Dwivedi, Pranav Tiwary

Counsel for Opposite Party(s) : Anil Kumar Rai, G.A., Prabhakant Singh

Court No. - 72

HON'BLE VIVEK KUMAR SINGH, J.

1. Heard Sri Manish Tiwary, learned Senior Counsel assisted by Sri Abhinav Dwivedi, learned counsel for the applicant, Sri Anoop Trivedi, learned Senior Counsel / Additional Advocate General assisted by Sri Sanjay Kumar Singh, learned A.G.A. for the State and Sri Prabhakant Singh along with Sri Abhishek Singh, learned counsel appearing for the opposite party no. 2-informant.

2. Present application under Section 528 BNSS has been filed for quashing the impugned order dated 5.8.2025 passed by learned Chief Judicial Magistrate, Mainpuri as well as consequential proceedings in Case No. 218 of 2025 (Radhika Devi vs. Anupam Dubey) arising out of Case Crime No. 504 of 2005, under Sections 147, 148, 149, 307, 302 IPC and Section 7 of Criminal Law Amendment Act, Police Station Bewar, District Mainpuri.

3. The prosecution case, in brief, is to the effect that a first information report was lodged by the informant / opposite party no. 2 against the applicant and 5-6 others along with some unknown persons under Sections 147, 148, 149, 307, 302 IPC and Section 7 of Criminal Law Amendment Act, which was registered as Case Crime No. 504 of 2005 on 6.8.2005 at Police Station Bewar, District Mainpuri regarding an incident alleged to have taken place on 6.8.2005 at 07:20 PM. In nutshell,

it is alleged by the informant / opposite party no. 2 that enmity was going on between her father and the accused persons. On 6.8.2005, the accused persons, nominated in the first information report, committed murder of the informant's father and caused firearm injury to her mother, who died on her way to hospital. During the course of investigation, the informant / opposite party no. 2 filed an affidavit before the court of learned Chief Judicial Magistrate, Mainpuri on 21.9.2005 stating therein that the incident was not witnessed by her and that some unknown persons fired upon her parents, who succumbed to their injuries and that the applicant and others were wrongly implicated in the case. The statements of the informant and her sister were recorded before the Magistrate under Section 164 Cr.P.C., wherein they stated that the applicant had not committed murder of their parents. They did not know as to who had murdered their parents.

4. The Investigating Officer did not find any evidence against the applicant after thorough investigation, therefore, he filed final report no. 156 of 2006 in the aforesaid case on 5.2.2006, which was accepted by the learned court concerned on 4.4.2006.

5. After several years, the informant moved an application to S.S.P., Mainpuri seeking direction for further investigation in the aforesaid case. On the application moved by the informant / opposite party no. 2, the Superintendent of Police, Mainpuri directed the Station House Officer of Police Station Bewar, District Mainpuri to enquire into the matter and submit a report.

6. In pursuance of the direction given by the Superintendent of Police, Mainpuri, the Station House Officer submitted his report mentioning therein that the incident had occurred on 6.8.2005; that after investigation the final report was submitted and accepted by the court; and that the order-sheet had been destroyed on 27.7.2013 in accordance with rules.

7. Further investigation was also sought by the Station House Officer concerned in his report dated 20.3.2025. Thereafter, the Station House Officer concerned moved an application before the Chief Judicial Magistrate, Mainpuri seeking permission for further investigation. The Chief Judicial Magistrate, Mainpuri on the application dated 24.3.2025

passed an order dated 5.8.2025 observing that permission of the Magistrate for conducting further investigation is not required and disposed of the application with the said observation.

8. In pursuance of the order dated 5.8.2025, the Investigating Officer commenced further investigation in the matter on the order of the Superintendent of Police, Mainpuri dated 26.2.2026. Being aggrieved by the order dated 5.8.2025 passed by the Chief Judicial Magistrate, Mainpuri, the present application has been moved by the applicant with a prayer to quash the aforesaid impugned order.

9. It is submitted by the learned Senior Counsel appearing for the applicant that the order passed by the learned Chief Judicial Magistrate, Mainpuri dated 5.8.2025 is an erroneous order and the same is not maintainable in the eye of law. The matter had already attained finality and the final report was accepted by the learned court concerned. After acceptance of the final report, the proceedings cannot be permitted to go on endlessly. The learned court concerned has erroneously observed that the permission of the court concerned is not required to conduct further investigation. Either the permission should have been granted or refused by the court concerned. The observation of the court concerned that permission of the Magistrate for conducting further investigation is not required, is patently illegal. Any action in consequence of an unwarranted order, passed by the learned Chief Judicial Magistrate, is absolutely illegal and cannot be legally sustained. The further investigation was initiated by the Investigating Officer in the teeth of the order passed by the court concerned.

10. It is further submitted by learned Senior Counsel that the impugned order has been passed after an inordinate delay of about 20 years from the date of the incident dated 6.8.2005. After acceptance of the final report, initiation of further investigation is wholly arbitrary, illegal and amounts to abuse of process of law. It is next submitted that the first informant herself had stated before the Magistrate that she did not witness the incident and the applicant was falsely implicated. After considering the entire material available on record, the Investigating Officer submitted a final report, which was accepted by the court concerned after hearing both the sides. Once the final report has been judiciously accepted, reopening

of the investigation after such a long time is impermissible. A malicious proceeding has been initiated against the applicant due to ulterior motives. The entire action has been undertaken without any fresh evidence, new material or discovery of facts, which is a mandatory requirement for invoking powers under Section 173(8) Cr.P.C. It is further submitted that reopening of a case after 20 years without discovery of any fresh material is nothing but re-investigation or de-novo investigation, which is not permissible in law. Such power vests only with the constitutional courts exercising extraordinary jurisdiction. The learned Magistrate completely failed to appreciate the settled legal position. It is next submitted that the principle of issue estoppel squarely applies in this case. It is next submitted that the applicant has been implicated in several cases due to political rivalry. Several first information reports and proceedings under Gangster Act were initiated against him and his family members in order to harass them. The learned Senior Counsel has relied upon the judgments of Hon'ble Apex Court in the cases **Pramod Kumar vs. State of U.P. 2026 INSC 120** and **Vinay Tyagi vs. Irshad Ali 2013 (5) SCC 762** and further argued that power to permit / direct further investigation vests with the Magistrate; the police cannot suo moto reopen the investigation.

11. Per contra, Sri Anoop Trivedi, learned Additional Advocate General / Senior Counsel appearing for the State and learned counsel appearing for the informant have opposed the prayer and submitted that there is no illegality in the impugned order passed by the learned Magistrate. The filing of closure report does not bar further investigation under Section 173(8) Cr.P.C., even if the closure report has been accepted by the court concerned. In the present matter, fresh material was brought on record, therefore, the police sought permission from the concerned court for further investigation and the learned Magistrate observed that the police are free to take necessary action in accordance with law. It is further submitted that it is the basic principle of law that a crime never dies and prosecution case cannot be thrown away solely on the ground of delay. Mere delay in approaching the court of law would not by itself afford a ground for dismissing the case. It is further submitted by learned Additional Advocate General that the law does not mandate taking prior permission from the Magistrate for further investigation. Further investigation may be conducted even after filing of the charge-sheet or the

closure report. The re-investigation without permission is forbidden and further investigation may be conducted by moving a formal application before the learned court concerned. It is further submitted by learned Additional Advocate General that the learned Magistrate diligently and thoroughly perused the entire record and passed a well reasoned and detailed order in the light of pronouncement of judgment of this Court as well as of Hon'ble Apex Court. There is no illegality or irregularity in the impugned order, which was passed by the learned Magistrate after exhaustively considering all the facts and circumstances of the case. The applicant - accused has no right to raise any objection in respect of further investigation conducted by the police.

12. I have considered the rival submissions of learned counsel for the parties and have perused the record.

13. The principle question of law that falls for the consideration of this Court in the present case is whether the Magistrate may pass an order for further investigation or may permit the Investigating Officer to investigate the matter further after acceptance of the final report.

14. In the present matter, the first information report was lodged by the informant, however, she filed her affidavit denying the incident and later on, when she was produced before the Magistrate, she stated that she did not witness the incident, therefore, final report was submitted and the same was accepted by the court concerned. However, when an application was moved by the informant after a long time for further investigation, the Investigating Officer sought permission from the court concerned to investigate the matter further, which was not declined by the learned Magistrate rather it was observed by him that permission of a Magistrate for further investigation is not required in view of Section 173(8) Cr.P.C. The Investigating Officer was left at liberty by the Magistrate to investigate the matter further.

15. The impugned order has been assailed by the learned Senior Counsel appearing for the applicant on the ground that after acceptance of final report, further investigation cannot be conducted.

16. Where the court comes to the conclusion that there was a serious

irregularity in the investigation that had taken place, the court may direct for further investigation under Section 173(8) Cr.P.C. The plain reading of Section 169 Cr.P.C. postulates that when the Investigating Officer finds no evidence against a person, who is in custody, he is under obligation to release such person. But if he finds that an offence was committed by an accused, he shall submit his report under Section 173 Cr.P.C.

17. Section 173 of the Cr.P.C. states about the steps to be taken by the Investigating Officer after the completion of the investigation. The Officer Incharge 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.

18. Section 173 of the Cr.P.C. reads thus:

"173. Report of police officer on completion of investigation.— (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1-A) 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-

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(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 Indian Penal Code (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 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)."

19. Section 173(8) of the Cr.P.C. 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 Cr.P.C. The same is a newly added provision in the Cr.P.C.

20. Wherever a final report forwarded by the Investigating Officer to a Magistrate under Section 173(2)(i) of the Cr.P.C. is placed before him, several situations may arise. 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 petition as a complaint, and proceed under Sections 200 and 202 of the CrPC., if the report is to the effect that no offence was committed by a particular accused and protest petition is filed by the aggrieved person.
- (5) may take cognizance under Section 190(1)(b) on the protest petition, if there are sufficient materials in the case diary against the accused.

21. In **Vinay Tyagi vs. Irshad Ali, 2013 (5) SCC 762**, it was held that

"further investigation" in terms of Section 173(8) of the Cr.P.C. 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 Cr.P.C. can be termed as a supplementary report. The relevant paragraphs of **Vinay Tyagi (supra)** are reproduced as under:-

"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.

Xxx xxx xxx

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. ..."

22. In this very judgment, Supreme 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. The Supreme 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...."

23. The proposition of the law laid down in the case of **Vinay Tyagi (supra)** has been further affirmed by the Three Judge Bench of Supreme Court in the case of **Vinubhai Haribhai Malaviya vs. State of Gujarat, 2019 (17) SCC 1.**

24. In **Vinubhai (supra)**, a three-Judge Bench of Hon'ble Supreme Court has endeavoured to lay at rest the controversy enveloping the evasive issue of further investigation directed by the Magistrate. Hon'ble Supreme Court, has laid down at para 42 that:

"42. 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."

25. Thus, in view of the law laid down by Hon'ble Supreme Court in the various decisions cited hereinabove, it is well settled that sub section (8) of Section 173 of the Cr.P.C. permits further investigation, and even de hors 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.

26. However, the question before this Court is whether sub-section (8) of Section 173 Cr.P.C. permits further investigation after acceptance of the final report by the Magistrate under sub-section (2) of Section 173 Cr.P.C.

27. The contention of learned Senior Counsel appearing for the applicant was that after acceptance of a final report, the proceedings would be terminated finally and it would bar the Investigating Officer from carrying out any further investigation in connection with the same offence.

28. This Court is not in agreement with the statement of learned Senior Counsel appearing for the applicant. In view of this Court, accepting the final report by a judicial order would not bar further investigation by the Investigating Agency in exercise of statutory powers under Chapter-XII of Cr.P.C.

29. In **State of Rajasthan v. Aruna Devi and others, 1995 (1) SCC 1**, a complaint was filed in the Court of Judicial Magistrate 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 Cr.P.C. 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. The Hon'ble Supreme Court in **Aruna Devi (supra)** 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*, AIR 1962 SC 876, 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.”

30. The Hon’ble Supreme Court in **K. Chandrasekhar vs. State of Kerala, 1998 (5) SCC 223**, 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 Cr.P.C., 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.

31. The Hon'ble Supreme Court held that, from a plain reading of Section 173 of the Cr.P.C., 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.

32. The Supreme Court in **K. Chandrashekar (supra)** 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.

33. The Hon'ble Supreme Court in **U.P.S.C. vs. S. Pappaiah, 1997 (7) SCC 614**, has observed that the Magistrate could exercise powers under Section 173(8) Cr.P.C., direct the investigating agency to further investigate the matter and collect further evidence. It was further held that though the order passed by the learned Magistrate accepting the final report under Section 173 Cr.P.C. 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) Cr.P.C.

34. In **N.P. Jharia v. State of M.P., 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 charge-sheet 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 Cr.P.C. the plea was clearly untenable.

35. In Kari Choudhary v. Mst. Sita Devi and Others, 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. Hon'ble Supreme 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."

36. As observed in **Hasanbhai Valibhai Qureshi v. State of Gujarat and Others 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. Relevant paragraphs of **Hasanbhai (supra)** are reproduced as under:-

"11. Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.

13. 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. We make it clear that we have not expressed any final opinion on the merits of the case."

37. The Hon'ble Supreme Court in the case of **Pramod Kumar (supra)** has held that power to direct further investigation rests solely at the discretion of the Magistrate. The police, if finds, further investigation necessary, should file an appropriate application before the Magistrate for seeking permission for further investigation. In such event, the Magistrate would apply his / her judicial mind and would pass an appropriate order. The relevant paragraph of **Pramod Kumar (supra)** is reproduced as under:-

"33. 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.”

38. Thus, a conspectus of the aforesaid decisions of Hon’ble Supreme 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 Cr.P.C. after the final report submitted under Section 173(2) of the Cr.P.C. has been accepted. It is also evident, that prior to carrying out a further investigation under Section 173(8) of the Cr.P.C., it is not necessary for the Magistrate to review or recall the order accepting the final report.

39. In view of the aforesaid judgment, this Court comes to the conclusion that if the investigation has been completed and the final report is laid before the Magistrate and is accepted by him, it is permissible for the investigating agency to carry out further investigation in the case. There is no bar to conduct further investigation under Section 173(8) Cr.P.C. after the final report is submitted by the Investigating Officer and accepted by the court concerned. Prior to carrying out further investigation under Section 173(8) Cr.P.C. it is not necessary that the order accepting the final report should be recalled or reviewed by the court concerned. There is nothing in Code of Criminal Procedure that the court is obliged to hear the accused while considering the application for further investigation under Section 173(8) Cr.P.C.

40. In the considered view of this Court, an Officer Incharge of a police station can conduct further investigation even after a report under Section 173(8) Cr.P.C. is submitted to the court. The power of further investigation, after filing of the final report in court and even after the Magistrate has taken cognizance, is available to the police in view of Section 173(8) Cr.P.C. However, it would be desirable that the police should inform the court and seek formal permission to make further investigation.

41. Although Section 173(8) Cr.P.C. 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. Therefore, acceptance of final report by the Magistrate does not debar him from making order for further investigation.

42. In other words, the Magistrate may pass order for further investigation after submission and acceptance of the final report. It would be open to the Magistrate not to accept the conclusion of the Investigating Officer and direct further investigation.

43. Considering all the provisions of Cr.P.C. as well as judgment of Hon'ble Supreme Court, in the considered view of this Court, the Magistrate can order for further investigation even after acceptance of the final report. The same view was also taken by the Hon'ble Supreme Court in **Aruna Devi (supra)**, wherein it was held that acceptance of final report by the Magistrate does not debar him from taking cognizance of the offence, if on further investigation, fresh materials come to light.

44. The victim moved an application before the police, stating therein that the applicant has a criminal antecedents of 27 cases, his brother Anupam Dubey is involved in as many as 67 cases. Her parents were killed by the applicant; his brother Anupam Dubey and their gang members. The informant and her siblings were minor at the time of the incident; they were detained by the accused persons and compelled to sign on several affidavits / papers. The informant, her siblings were present at the place of the incident but the police did not record their statements. They could not pursue the case due to the terror of the accused persons. It was prayed that further investigation be done and their statements be recorded. Therefore, in view of the said application, fresh material and evidence have been brought on record. Section 173(8) Cr.P.C. provides for further investigation and not of re-investigation. Therefore, if the court, comes to the conclusion that the investigation has been done in a manner with an object of helping a party, the court may direct for further investigation.

45. Now, this Court will deal with the issue as to whether or not the accused has any right of hearing at the investigation stage or to question the manner of investigation.

46. The Hon'ble Apex Court in the case of **Union of India and another vs. 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".

47. 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."

48. 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.

49. 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. Therefore, it is very much clear that at the stage of investigation the accused has no right to be heard. Thus, the present application challenging the further investigation is misconceived.

50. In view of the above discussion, the learned Magistrate did not commit any illegality in passing the impugned order dated 5.8.2025.

51. Present application u/s 528 BNSS is devoid of merits and is liable to be dismissed. It is, accordingly, dismissed.

52. However, it is expected by this Court that fair, judicious and transparent investigation would be conducted by the Investigating Officer.

53. No order as to costs.

(Vivek Kumar Singh,J.)

August 10, 2026
Lalit Shukla