

Neutral Citation No. - 2023:AHC:233272

Judgement Reserved on 28.11.2023

Judgement Delivered on 11.12.2023

A.F.R

IN CHAMBER

Case :- APPLICATION U/S 482 No. - 1784 of 2013

Applicant :- Babu Lal Jaiswal And Others

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- S.N. Tripathi

Counsel for Opposite Party :- Govt. Advocate,C. Prasad

Hon'ble Anish Kumar Gupta,J.

1. Heard Sri Mohit Verma, advocate, holding brief of Sri S.N. Tripathi, learned counsel for the applicants, Sri D.A. Khan holding brief of Sri C. Prasad, learned counsel for opposite party no. 2 and Sri Pankaj Srivastava, learned AGA for the State.

2. The instant application has been filed under Section 482 Cr.P.C. seeking quashing of the charge sheet dated 17.07.2011 as well as entire proceeding in Case Crime No. 1402 of 2009, under Sections 352, 147, 504, 506, 452, 352, 427 I.P.C. and 3(1)X S.C./S.T. Act, Police Station- Cantt., District-Gorakhpur, pending in the Court of District and Sessions Judge, Court No. 17, Gorakhpur.

3. Learned counsel for the applicants submits that wife of applicant no. 1 and applicant no. 2 were the recorded owners of Khasara Plot No. 724 and they were constructing the boundary wall therein which was objected by the opposite party no. 2 who claims to be the owner of Khasara Plot No. 722 and 726.

4. As per the allegations in the FIR when the opposite party no. 2 objected to the said construction of boundary wall by the applicants herein, the applicants abused and assaulted opposite party no. 2 and others and abused to their caste. Therefore, the instant FIR was registered on 04.07.2009 at 09:30 am for an incident dated 03.06.2009.

5. Learned counsel for the applicants further submits that the opposite party no. 2 has no connection with the Khasara Plot No. 724 owned by the wives of the applicant no. 1 and applicant no. 2 and he has objected to the construction of boundary wall by the applicants without any authority. Therefore, the instant prosecution lodged by the opposite party no. 2 is nothing but a malicious prosecution due to a property dispute sought to be created by opposite party no. 2, for which the wives of the applicants no. 1 and 2 have already filed a civil suit No. 44 of 2009, which is already pending adjudication and an interim injunction has been passed in favour of the wives of the applicant nos. 1 and 2 with regard to Khasara Plot No. 724.

6. Learned counsel for the applicants further submits that after due investigation of the case, initially a final report was filed on 16.08.2009. Against which the protest petition was filed by the opposite party no. 2 herein and simultaneously, he challenged the investigation with the superior authorities who directed the further investigation in the matter. On such further investigation again on 11.12.2009 and 18.03.2010, the final reports were filed by the concerned Investigating Officers. Learned counsel for the applicants further submits that subsequently during the pendency of his protest petition, the opposite party no. 2 approached the Home Secretary, Lucknow on 25.08.2010, who was the distant relative of opposite party no. 2, who has directed the further investigation in the matter on which the supplementary charge-sheet dated 17.07.2011 was filed against the applicants herein.

7. Learned counsel for the applicants further submits that once the final reports are filed and in the instant case three final reports were already filed and the protest petition was already pending then the police authorities or the Home Secretary has no power to direct for further investigation in the matter without the permission of the concerned Magistrate.

8. In support of his submissions, learned counsel for the applicants has relied upon the judgment of Apex Court in ***Peethambaran vs. State of Kerala & Anr. 2023 SCC OnLine SC 553***. Learned counsel for the applicants further submits that while taking cognizance in the matter, the Magistrate is required to consider all the materials available before him and while taking cognizance in the matter, he has not considered the earlier final reports filed by the Investigating agency. Therefore the applicants herein prayed for quashing of the entire proceeding of the aforesaid case including the cognizance/summoning order issued against the applicants.

9. Learned counsel for the applicants further submits that against the final report dated 16.08.2009, since the protest petition was already filed and notices were issued to the opposite party no. 2 to hear on the final report and to make his submissions on the final report. Therefore, by way of further charge-sheet and cognizance order, the learned Magistrate could not have diluted his own order and taken cognizance in the matter against the applicant. In support of the aforesaid submissions, learned counsel for the applicants has relied upon the judgment dated 07.11.2023 passed by the Apex Court in the case of ***Ramakant Singh and Ors. vs. State of Jharkhand and Anr. in Criminal Appeal No. 3484 of 2022***.

10. Per contra, learned counsel for opposite party no. 2 submits that the applicants are habitual land grabbers and the applicants do not have any hereditary rights or by way of sale on the plot No. 724 and by filing the suits

or the revenue proceedings, they are habitual of occupying the lands of the poor persons and such is the case with the Plot No. 724 as well and various other persons have already filed complaints against the applicants with regard to the land grabbing by the applicants herein.

11. With regard to the submissions regarding further investigation in the case, learned counsel for the opposite party no. 2 submits that as per Section 173(8) Cr.P.C., the Police has unfettered right of investigation and further investigation in the matter even if the cognizance is taken by the learned Magistrate, the powers of investigating agency is not restricted and they can still further investigate into the matter and whatever material available before them during the investigation that can be placed before the learned Magistrate after due investigation.

12. In support of his submissions, learned counsel for opposite party no. 2 has relied upon the judgments of the Apex Court in ***Rama Chaudhary vs. State of Bihar***, reported in (2009) 6 SCC 346, ***Hasanbhai Valibhai Qureshi Vs. State of Gujarat***, reported in (2004) 5 SCC 347 and another judgment dated 14.06.2023 of Coordinate Bench of this Court in ***Application u/S 482 No. 37458 of 2016 (Ajit Kumar Gupta vs. State of U.P.)*** and Another and contends that the investigating agency has unfettered power to further investigate into the matter and whatever material is collected during investigation can be placed before the learned Magistrate. In the instant case, there is no requirement of any prior permission from the Magistrate before taking up further investigation in the matter.

13. Learned AGA for the State has relied upon another judgment of the Division Bench of this Court in the case of ***Jitendra Singh @ Bablu And 12 Others vs. State of U.P. And 3 Others in Criminal Misc. Writ Petition No. 10247 of 2023*** and submits that there is no requirement of any formal

permission from the learned Magistrate before taking up further investigation.

14. To appreciate the arguments advanced across the Bar, it is necessary to briefly note the provisions of Sections 173 and 190 of the Code, which are quoted as under:

"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 of the Indian Penal Code (45 of 1860) shall be completed within two months] 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 376E of the Indian Penal Code.

(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 alongwith 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).

190. Cognizance of offences by Magistrates. (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try."

(emphasis supplied)

15. Section 173(1) of the Code provides that every investigation under this chapter shall be completed by the investigation agency without unnecessary delay. Section 173(2) of the Code, provides that as soon as the investigation is completed, the officer in-charge of the concerned police station is obliged to submit the police report to the Magistrate in a prescribed format. It further mandates the officer in-charge of the police station to inform the action taken by him to the informant of the said case. Section 173(3) of the Code, provides that wherever the superior officer of the police station has been appointed, the report shall be submitted through that officer and the pending orders of Magistrate, the such officer is competent to direct the officer in-charge of the police station to make further investigation in the matter. Sub-section (5) of Section 173 of the Code provides that the documents which should be forwarded to the Magistrate alongwith the report under Section 173(2) of the Code. Section 173(7) of the Code mandates that the copies of the report and the documents be provided to the accused. Sub-section (8) of Section 173 of the Code provides that nothing in this section shall preclude further investigation in respect of an offence after a report under sub-section (2) of Section 173 is forwarded to the Magistrate, and if on such further investigation, if the officer in-charge of the police station obtains further evidence, oral or documents, he shall forward the same to the Magistrate along with a further report regarding such evidence in the prescribed format. There is nothing in Sub-section (8) of Section 173 of the Code, which mandates that before taking up the further investigation in the matter, the officer in-charge or the investigation officer is obliged to seek any permission from the Magistrate. Rather, it recognises the right of the investigation agency to conduct the further investigation in the matter and collect further evidence and forward it to the learned Magistrate. Section 190 of the Code provides how the Magistrate shall take cognizance of any offences. He can take the cognizance of the matter on receiving a complaint of facts which constitute such offences or upon a police report of such acts or upon information received from any person other than the police officer

or upon his own knowledge that such offence shall be committed. Therefore, there is nothing in Section 190 or 173(8) of the Code, which limits the powers of the investigation agency with regard to further investigation in the matter.

16. In *Ram Lal Narang vs. State (Delhi Administration)* : (1979) 2 SCC 322, the Apex Court has noted all the previous judgements including those of different High Courts and has considered the diverse views taken by the different High Courts and has also noted the developments and inclusion of new provisions as Section 173(8) in the Criminal Procedure Code, 1973, on the basis of the 41st report of the Law Commission. The Law Commission, in its 41st report, has recognized the well settled position and recommended that the right of the police to make further investigation should be statutorily affirmed in following words:

"14.23. A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears, however, that Courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused."

(emphasis supplied)

17. On the basis of the aforesaid report of the Law Commission, in the Code (Cr.P.C. 1973), the aforesaid report was implemented and Section 173(8), was introduced, which provides as under:

"173(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, under sub-section (2) 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)."

18. In Paragraph '15', '20' and '21' of the aforesaid judgement in **Ram Lal Narang (supra)**, the Hon'ble Apex Court has observed as under:

"15. The police thus had the statutory right and duty to "register" every information relating to the commission of a cognizable offence. The police also had the statutory right and duty to investigate the facts and circumstances of the case where the commission of a cognizable offence was suspected and to submit the report of such investigation to the Magistrate having jurisdiction to take cognizance of the offence upon a police report. These statutory rights and duties of the police were not circumscribed by any power of superintendence or interference in the Magistrate; nor was any sanction required from a Magistrate to empower the Police to investigate into a cognizable offence. This position in law was well-established. In King Emperor v. Khwaja Nazir Ahmad [AIR 1945 PC 18 : 71 IA 203 : 46 Cri LJ 413] the Privy Council observed as follows:

"Just as it is essential that everyone 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. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then ... In the present case, the police have under Sections 154 and 156 of the Criminal Procedure Code, a statutory right to investigate a cognizable offence without requiring the sanction of the Court"

Ordinarily, the right and duty of the police would end with the submission of a report under Section 173(1) CrPC upon receipt of which it was up to the Magistrate to take or not to take cognizance of the offence. There was no provision in the 1898 Code prescribing the procedure to be followed by the police, where, after the submission of a report under Section 173(1) CrPC and after the

Magistrate had taken cognizance of the offence, fresh facts came to light which required further investigation. There was, of course, no express provision prohibiting the police from launching upon an investigation into the fresh facts coming to light after the submission of the report under Section 173(1) or after the Magistrate had taken cognizance of the offence. As we shall presently point out, it was generally thought by many High Courts, though doubted by a few, that the police were not barred from further investigation by the circumstance that a report under Section 173(1) had already been submitted and a Magistrate had already taken cognizance of the offence. The Law Commission in its 41st report recognized the position and recommended that the right of the police to make further investigation should be statutorily affirmed. The Law Commission said:

"14.23. A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears, however, that Courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused."

Accordingly, in the CrPC, 1973, a new provision, Section 173(8), was introduced and it says:

"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)."

20. Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already

accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

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."

(emphasis supplied)

19. From the aforesaid observations, the Apex Court has categorically recognized the right of the police to further investigate in the matter even

after submission of the charge-sheet and held that the right of police to further investigate is not exhausted after submissions of the charge-sheet and the police could exercise such right as and when it is necessary when fresh information came to the knowledge of the police/investigation agency.

20. From the reading of the aforesaid judgments as well as the new provisions of Section 173(8) of the Code, the position of law as per the Old Code was that though there were no fetters on the right of further investigation by the police but it was the normal practice that the police used to seek formal permission to make further investigation. However, in the present Code, the right of police to further investigate and further submit the supplementary charge sheet has been statutorily recognized. For such further investigation, even in the Criminal Procedure Code, 1973 there is no specific requirement to seek any permission from the learned Magistrate.

21. In *State of Bihar and Another vs. J.A.C. Saldanha and Others : (1980) 1 SCC 554*, the Constitution Bench of the Apex Court, dealing with the powers of the senior police officers of superintendence under the Police Act of State of Bihar and the powers under Section 173(8) of the Code, has held that there is no conflict between the powers under the Police Act as well as Section 173(8) of the Code, to carry on the further investigation without any permission of the learned Magistrate. Paragraphs '18' & '19' of the aforesaid judgment are as under:

"18. There is no warrant for invoking this principle because Section 5 of the Code provides that nothing in the Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. Section 3 of the Act does not prescribe any special procedure for investigation contrary to one prescribed in the Code. It merely provides for conferment of certain power which, when exercised, would project into the provisions of the Code which confers power on the officer in charge of a police station to carry on further investigation under Section 173(8) after submission of a report and that too without any permission of the Magistrate. There is no conflict between the two provisions. Power to direct investigation or further investigation is entirely different from the method and

procedure of investigation and the competence of the person to investigate. Section 3 of the Act as interpreted by us deals with the powers of the State Government to direct further investigation into the case. Undoubtedly, such direction will be given to a person competent to investigate the offence and as has been pointed out, the police officer in rank superior to the police officer in charge of the police station, to wit, Inspector General, Vigilance, has been directed to carry on further investigation. An officer superior in rank to an officer in charge of a police station could as well exercise the power of further investigation under Section 173(8) in view of the provision embodied in Section 36 of the Code. If that be so, such superior officer could as well undertake further investigation on his own and it is immaterial and irrelevant that he does it at the instance or on the direction of the State Government. Such a direction in no way corrodes his power to further investigate on his own.

19. The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). Therefore, the High Court was in error in holding that the State Government in exercise of the power of superintendence under Section 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section 156(2) that an investigation by an officer in charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on the ground that such investigating officer had no jurisdiction to carry on the investigation; otherwise that provision would have been a short answer to the contention raised on behalf of Respondent 1."

(emphasis supplied)

22. In *K.Chandrashekhara vs. State of Kerala : (1998) 5 SCC 223*, the Hon'ble Apex Court has recognized the right of further investigation by the Police under Section 173(8) of the Code. Relevant paragraph '24' is as under:

"24. From a plain reading of the above section 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". That the Government of Kerala was also conscious of this position is evident from the fact that though initially it stated in the Explanatory Note of their notification dated 27-6-1996 (quoted

earlier) that the consent was being withdrawn in public interest to order a "reinvestigation" of the case by a special team of State police officers, in the amendatory notification (quoted earlier) it made it clear that they wanted a "further investigation of the case" instead of "reinvestigation of the case". 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. Once it is accepted — and it has got to be accepted in view of the judgment in *Kazi Lhendup Dorji* [1994 Supp (2) SCC 116 : 1994 SCC (Cri) 873] — 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 sub-section (8) of Section 173, it necessarily means that withdrawal of consent in the instant case would not entitle the State Police, to further investigate into the case. 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. Resultantly, the notification issued withdrawing the consent to enable the State Police to further investigate into the case is patently invalid and unsustainable in law. In view of this finding of ours we need not go into the questions, whether Section 21 of the General Clauses Act applies to the consent given under Section 6 of the Act and whether consent given for investigating into Crime No. 246 of 1994 was redundant in view of the general consent earlier given by the State of Kerala."

(emphasis supplied)

23. In ***Rama Chaudhary (supra)***, the Apex Court has further confirmed the statutory right of the police to further investigate the matter even after filing of the charge-sheet in following words:

"15. Among the other sub-sections, we are very much concerned about sub-section (8) of Section 173 which reads as under:

"173. (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)."

A mere reading of the above provision makes it clear that irrespective of the report under sub-section (2) forwarded to the Magistrate, if the officer in charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. The abovesaid provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited.

16. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.

17. From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of the police report under sub-section (2) on completion of the investigation, the police has a right to "further" investigation under sub-section (8) of Section 173 but not "fresh investigation" or "reinvestigation". The meaning of "further" 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.

18. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report and not a fresh report regarding the "further" evidence obtained during such investigation.

19. As observed in *Hasanbhai Valibhai Qureshi v. State of Gujarat* [(2004) 5 SCC 347: 2004 SCC (Cri) 1603] the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of the investigating agency for further investigation should not be tied down on the ground of mere delay. In other words

"[t]he 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." (SCC p. 351, para 13)

22. The law does not mandate taking prior permission from the Magistrate for further investigation. It is settled law that carrying out further investigation even after filing of the charge-sheet is a statutory right of the police (vide *K. Chandrasekhar v. State of Kerala* [(1998) 5 SCC 223 : 1998 SCC (Cri) 1291]). The material collected in further investigation cannot be rejected only because it has been filed at the stage of the trial. The facts and circumstances show that the trial court is fully justified to summon witnesses examined in the course of further investigation. It is also clear from Section 231 CrPC that the prosecution is entitled to produce any person as witness even though such person is not named in the earlier charge-sheet."

(emphasis supplied)

24. In *Vinay Tyagi vs Irshad Ali @ Deepak & Ors. : (2013) 5 SCC 762*, the Apex Court has categorically noted that 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 Apex Court, while recognizing the aforesaid position of law applying the doctrine of "contemporanea expositio" has observed that though there is no requirement of seeking prior leave of the learned Magistrate to conduct further investigation and to file supplementary report, however, as a matter of practice, which was understood and implemented for long time that normally the permission of the learned Magistrate was formally sought for further investigation, it should be ideally observed. The Apex Court further held that so far as the further investigation is concerned, no permission is required. However, for the purposes of fresh, de novo or re-investigation, the permission of the learned Magistrate is mandatory. It will be relevant to note paragraphs '40', '49', '50', '51', '52', '53' & '54' of the aforesaid judgment, which are 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.

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 aforementioned, 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.

51. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct "further investigation" on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to

the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct "further investigation" to clear its doubt and to order the investigating agency to further substantiate its charge-sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this Court in Sivanmoorthy v. State [(2010) 12 SCC 29 : (2011) 1 SCC (Cri) 295] .

52. *In light of the above discussion, we answer the questions formulated at the opening of this judgment as follows.*

53. *The court of competent jurisdiction is duty-bound to consider all reports, entire records and documents submitted therewith by the investigating agency as its report in terms of Section 173(2) of the Code. This rule is subject to only the following exceptions:*

(a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;

(b) Where an order is passed by the higher courts in exercise of its extraordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on "fresh investigation" or "reinvestigation" or any part of it be excluded, struck off the court record and be treated as non est.

54. *No investigating agency is empowered to conduct a "fresh", "de novo" or "reinvestigation" in relation to the offence for which it has already filed a report in terms of Section 173(2) of the Code. It is only upon the orders of the higher courts empowered to pass such orders that aforesaid investigation can be conducted, in which event the higher courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the court of the learned Magistrate."*

(emphasis supplied)

25. In *Anant Thanur Karmuse vs. State of Maharashtra : 2023 (5) SCC 802*, the Apex Court has observed the Constitutional Courts has power to order further investigation, re-investigation, de-novo investigation, even after the charge-sheet is filed, charges are framed in the concerned case.

Relevant paragraphs '32', '41' & '42' of the aforesaid judgment are quoted as under:-

"32. Therefore, the short question, which is posed for the consideration of this Court is:

"Whether in the facts and circumstances of the case, the High Court is justified in denying the relief of transfer of the investigation to CBI and refusing to order further investigation/reinvestigation/de novo investigation?"

41. Now, so far as the reliance placed upon the decision of this Court in Rama Chaudhary [Rama Chaudhary v. State of Bihar, (2009) 6 SCC 346 : (2009) 2 SCC (Cri) 1059] relied upon on behalf of the respondent-accused is concerned, it is required to be noted that in the said decision, this Court was considering the scope of Sections 173(8) CrPC and the right of the police to "further investigation". It is observed that the police has no right for "fresh investigation" or "reinvestigation". However, this Court had no occasion to consider the powers of the constitutional courts, which are dealt with and considered in Bharati Tamang [Bharati Tamang v. Union of India, (2013) 15 SCC 578 : (2014) 6 SCC (Cri) 566] and Dharam Pal [Dharam Pal v. State of Haryana, (2016) 4 SCC 160 : (2016) 2 SCC (Cri) 259] .

42. Applying the law laid down by this Court in Dharam Pal and to do the complete justice and in furtherance of fair investigation and fair trial, the constitutional courts may order further investigation/reinvestigation/de novo investigation even after the charge-sheet is filed and the charges are framed. If the submission on behalf of the accused and even as observed by the High Court that once the charge-sheet is filed and the charges are framed, there may not be any order for further investigation/reinvestigation/de novo investigation is accepted, in that case, the accused may see to it that the charges are framed to avoid any fair investigation/fair trial. It would lead to travesty of justice."

26. Clearly in the aforesaid case, the Apex Court was more concerned with the powers of the Higher Courts and not with the permission of the Magistrate before proceeding for further investigation in exercise of powers under Section 173(8) Cr.P.C.

27. In *Bohatie Devi (Dead) through LRs vs. State of U.P. : AIR ONLINE 2023 SC 362*, the Apex Court has recognized the right of the Investigating Officer to further investigate in respect of the offence, even after a report under sub-section (2) of Section 173 of the Code was forwarded to the

learned Magistrate and it was held that no prior approval of Magistrate is required before taking up the further investigation. In paragraph '7.1' of the aforesaid judgment the Apex Court has observed as under:

"7.1 There cannot be any dispute that even after the chargesheet is filed, it is the right of the investigating officer to further investigate in respect of offence even after a report under sub-section (2) of Section 173 of Cr.PC forwarded to a Magistrate and as observed and held by this Court the prior approval of the Magistrate is not required. However, as per the settled position of law, so far as the reinvestigation is concerned, the prior permission/approval of the Magistrate is required.

(emphasis supplied)

28. In ***Peethambaran (supra)*** relied on by learned counsel in the petitioners, decided on 03.05.2023, relying upon judgments in ***Vinay Tyagi (supra)***, which was based on doctrine of "contemporanea expositio", the Apex Court has observed the requirement of permission from learned Magistrate for further investigation and file supplementary report. Paragraph 20 of the aforesaid judgement is quoted as under:

"20. 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 concerned Magistrate. Referring to Vinay Tyagi (supra), this Court in Devendra Nath Singh v. State of Bihar noted that there is no specific requirement to seek leave of the court for further investigation or to file a supplementary report but investigation 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."

(emphasis supplied)

29. In ***State through Central Bureau of Investigation vs. Hemendra Reddy and Another : 2023 SCC OnLine SC 515***, the Apex Court has held as under:

"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."

(emphasis supplied)

30. In *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj*, 1999 (5) SCC 740, the Hon'ble Apex Court in paragraphs 10 and 11 has held as under:-

"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.))* (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 law does not require it, we would not burden the magistrate with such an obligation."

(emphasis supplied)

31. In the judgment of this Court dated 17.8.2023 passed in *Criminal Misc. Writ Petition No. 11257 of 2023 (Smt. Preety Verma vs. State of U.P. and*

others), identical questions were raised and rejecting the same the petition was dismissed.

32. Similarly, in **Ajit Kumar Gupta (supra)**, the Coordinate Bench of this Court has observed as under:

*"[15] The power of the Magistrate is not in dispute in the present case to order further investigation. The dispute is whether the Investigating Officer can conduct further investigation without orders of Magistrate or not. A perusal of Section 173 (8) shows that it provides for further investigation by the Investigating Officer after submission of report. It nowhere provides for prior permission of Magistrate to do so. The Apex Court in the case of **Rama Chaudhary (Supra)** has relied on the same. In the judgement of **Hasanbhai Valibhai Qureshi (Supra)** it has held that the power can be exercised by Investigating Officer to conduct further investigation without any order from the Magistrate. Even otherwise the Apex Court in the case of Vinay Tyagi (Supra) held that it has been a procedure of proprietary that the police has to seek permission of the Court to continue 'further investigation' and file supplementary charge-sheet, which has been approved by Apex Court in a number of judgments. The judgements of both the sets cited at the bar are of Benches of equal strength.*

[16] In view of the above consideration, the first question raised by learned counsel for the applicant is answered in negative and held that there was no fault on the part of the Investigating Officer to conduct further investigation and file supplementary charge-sheet against the applicant.

(emphasis supplied)

33. The Division Bench of this Court in its judgement in **Jitendra Singh @ Bablu (Supra)**, has held that there is no requirement of obtaining any formal permission from the Magistrate by the Investigation Agency and nor any particular procedure or format is prescribed for obtaining such permissions.

34. Therefore, it is settled principles of law that the police has a right to further investigate the matter even after the submissions of the charge sheet/report before the learned Magistrate and even after the Magistrate had taken cognizance of the report/charge sheet. In exercise of power u/s 173 (8) of the Code, it has been statutorily recognized that there is no statutory requirement that before initiating further investigation, investigation agency must take permission of the concerned Magistrate.

Further, investigation is very distinct from the re-investigation/de novo investigation or fresh investigation. Further investigation is the continuance of the investigation, which has already been done and on discovery of new facts or the facts which were left out during the investigation. Whereas in the case of the fresh, De-novo or reinvestigation, the investigation already done is required to be wiped out and investigation is required to begun from its inception. Further investigation can be carried out even without any permission from the concerned Magistrate. However, fresh, de-novo or reinvestigation cannot be done without the specific orders by the competent Court.

35. In the present case after due investigation of the case initially a final report was filed on 16.8.2009 and against the same the opposite party no. 2 has filed the protest petition and has also challenged the same before the superior authorities of police. The superior police authority directed for further investigation in the matter and on further investigation again on 11.12.2009 and 18.3.2010 final reports were submitted by the concerned investigating officer. However, subsequently during the pendency of the protest petition, the opposite party no. 2 approached the Home Secretary, Lucknow on 25.8.2010 and a direction was issued for further investigation in the matter and on further investigation a charge sheet has been submitted by the police on 17.7.2011 against the applicants herein.

36. In view of the law, discussed herein above, it is apparent that the power of the police regarding further investigation are unfettered and there is no statutory requirement of taking prior permission of the Magistrate concerned. The prime consideration for further investigation is to arrive at the truth and do real and substantial justice. It is also to be noted here that as per settled law as discussed herein above, further investigation is in continuation of the initial investigation and is different from re-investigation,

fresh or de-novo investigation which can only be ordered by higher constitutional courts. In the considered opinion of the court the law does not mandate taking of prior permission from the Magistrate for further investigation and carrying out a further investigation is a statutory right of the police.

37. Another argument which has been raised by the learned counsel for the petitioner is, once, the learned Magistrate has entertained the protest petition against the Final Report dated 16.08.2009 and had issued notices, thereafter, the Magistrate is precluded from taking cognizance after submission of further charge-sheet submitted by the Investigation Agency after carrying out further investigation. In support thereof, judgement in **Ramakant Singh (supra)**, has been relied upon. In the aforesaid judgement, the Apex Court has observed as under:

"We have perused the order dated 9th April, 2009. The order was passed on the charge-sheet dated 31st March, 2009 filed by the CID. The order takes cognizance only as against Gupteshwar Singh. Surprisingly, a protest petition against the said order was entertained by the learned Chief Judicial Magistrate and he proceeded to pass the impugned order on 3rd November, 2009 taking cognizance against the present appellants. Such a course was not permissible as it was not open for the learned Chief Judicial Magistrate to entertain a protest petition against his earlier order of taking cognizance. The order dated 3rd November, 2009, amounts to modification of the earlier order dated 9th April, 2009, which was not permissible as there is no power conferred on the learned Judicial Magistrate to modify earlier order of taking cognizance."

(emphasis supplied)

38. In the considered view of this Court, the judgement in **Ramakant Singh (Supra)** is distinguishable on facts of the present case, the said judgement will not apply. In the said judgement earlier a charge-sheet was filed on which cognizance was taken by the Magistrate against one person and the protest petition was filed and entertained against the order taking cognizance, which was not permissible. However, in the instant case no cognizance was ever taken in the earlier FRs. and protest petition was entertained which was legally permissible course of action. Therefore, if a

supplementary charge-sheet is filed during the pendency of the protest, the Magistrate was empowered to take cognizance thereof.

39. For the reasons aforestated and in view of law laid down, as discussed above, the court is of the opinion that there is no illegality in the further investigation carried out by the police in the aforesaid case and filing of the charge sheet dated 17.07.2011 against the applicants herein and the cognizance taken thereon by the Magistrate. The instant application lacks merit and is accordingly ***dismissed.***

Order Date :- 11.12.2023

Shubham Arya