

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

Case No. CRMC No. 173/2015
IA No. 01/2015

Tariq Athar Beig

.... Appellant

Through: - *Mr. Mujeeb Andrabi, Advocate with*
Mr. G. A. Lone, Advocate

V/s

State of Jammu and Kashmir and Others.

.... Respondent(s)

Through: - *Mr. Waseem Gul, GA vice*
Mr. Mohsin Qadri, Sr. AAG

CORAM: HON'BLE MR. JUSTICE SANJAY PARIHAR, JUDGE
ORDER
26.12.2025

01. By the present petition, the order dated 20.09.2012 passed by the Court of Chief Judicial Magistrate, Handwara, whereby re-investigation in FIR No. 147/2010 of Police Station Handwara registered for offences under Sections 420, 471 and 478 RPC was directed, is called in question. The impugned order is assailed on the ground that the learned Magistrate acted without jurisdiction in directing re-investigation after having discharged the accused. It is contended that once the challan stood considered and the accused were discharged, there remained no occasion for the Court to direct re-investigation in the absence of any leave sought under Section 173(8) Cr. PC or any circumstances warranting recourse to Section 167(2) Cr.PC.

02. Briefly stated, the case arises out of acquisition of land for widening of Handwara–Luch Now gam Road. One Abdul Kabir Bhat laid claim to compensation in respect of certain land which, as per the revenue record, was recorded as Shamilat Deh Makbooza Ahli Islam and shown to be under his possession and that of others. It was alleged that the said Abdul Kabir Bhat presented cheque bearing No. 735314 dated 31.03.2010 amounting to ₹99,798/- before the Central Cooperative Bank, Baramulla, and succeeded in withdrawing an amount of about ₹75,000/- by forging the signatures of the then Assistant Commissioner, Handwara. It was further alleged that the said Abdul Kabir Bhat was not entitled to any compensation either for land or for structure.

03. It was also alleged that Mohammad Iqbal, who was working as Reader in the office of Assistant Commissioner, Revenue, Handwara, and the present petitioner Tariq Ahmad, who had been entrusted with the work of Nazarat in respect of relief cases, were instrumental in facilitating the issuance of the cheque. According to the prosecution, Mohammad Iqbal used to assist the petitioner in writing cheques, which thereafter were placed before the Assistant Commissioner, Revenue, for signatures. It was alleged that two cheques relating to compensation for structure in favour of Abdul Kabir Bhat were processed but were never signed by the Assistant Commissioner, Revenue, Handwara.

04. On 26.07.2010, the Assistant Commissioner, Revenue, Handwara, addressed a communication to the SHO, Police Station Handwara, requesting registration of an FIR against Mohammad Iqbal Mir and Tariq

Ahmad for issuance of a fraudulent cheque after forging signatures, bearing No. 735314 dated 31.03.2010, in favour of Abdul Kabir Bhat S/o Rustum R/o Maratgam, Handwara. On the basis of the said communication, FIR No. 147/2010 under Sections 420, 418 and 471 RPC came to be registered and investigation commenced. Upon completion of investigation, the Investigating Officer concluded that the alleged act of fraud had been committed by Abdul Kabir Bhat alone and that neither the petitioner nor Mohammad Iqbal was privy to the crime or involved in issuance or encashment of the cheque. Consequently, a challan was presented before the learned trial Magistrate on 10.02.2011. After hearing the prosecution as well as the defence, the learned Magistrate recorded serious doubts with regard to the prosecution case, particularly noting that the counterfoil of the cheque book was never seized during investigation, that the manner in which the Assistant Commissioner ascertained the details of the cheque was unexplained, and that the cheque was sent to the FSL by an officer who was neither the Investigating Officer nor the SHO, besides the fact that the reference made to the FSL pertained to offences not forming part of the present FIR.

05. On the basis of the aforesaid observations, the learned Magistrate held that the accused could not be proceeded against and accordingly discharged the accused. However, while doing so, the learned Magistrate returned the challan to the prosecuting agency and directed re-investigation, granting liberty to the police to file a fresh challan if the

accused were found to have committed an offence upon fresh investigation.

06. Aggrieved of the direction for re-investigation, the petitioner has approached this Court contending that the order is illegal and unsustainable in the eyes of law as it adversely affects his vested rights. It is submitted that once the learned Magistrate had applied his judicial mind and discharged the accused, the Court became functus officio and could not have directed re-investigation on its own motion. It is further contended that no leave was sought by the Investigating Officer under Section 173(8) Cr.PC and, therefore, the impugned order suffers from patent lack of jurisdiction.

07. On the other hand, learned counsel for the respondents argued that the petitioner, being Nazir and custodian of accounts, was directly involved in the matter and that the order directing re-investigation was passed in the interest of justice to reach the root of the case. However, when questioned as to whether any leave was sought by the Investigating Officer for further investigation or whether the charge-sheet had reserved liberty to examine the conduct of the revenue officials, learned counsel for the respondents failed to furnish any satisfactory explanation.

08. Learned counsel for the petitioner placed reliance upon the judgment reported as 2009 (13) SCR 276 to contend that once a charge-sheet has been filed and the Magistrate has discharged the accused, the Magistrate has no authority to suo motu direct further investigation or re-

investigation under Section 173(8) Cr.PC. It is urged that Section 167 Cr. PC does not permit continuation or revival of investigation after discharge unless specific statutory conditions are satisfied, which are conspicuously absent in the present case.

09. I have given thoughtful consideration to the submissions made at the Bar. Admittedly, though along with the present petitioner two more accused were named in the FIR, the charge-sheet was laid only against Abdul Kabir Bhat. It is not the case of the prosecution that at the time of filing of the charge-sheet any leave was obtained by the Investigating Officer in terms of Section 173(8) Cr. PC indicating that further investigation regarding the conduct of other accused was underway, nor was any liberty reserved for filing of a supplementary charge-sheet at a later stage.

10. The learned trial Magistrate, on the one hand, proceeded to discharge the accused and, in the same breath, directed re-investigation of the case. Both directions are inherently contradictory. An order of re-investigation presupposes that the investigation conducted by the police agency was either not in accordance with law or that the person charge-sheeted was not the real offender or that the evidence collected was insufficient, requiring collection of additional material to build a complete case. The Code of Criminal Procedure does not vest the Magistrate with the power to order re-investigation. This legal position stands clarified in the judgments reported as 2007 (1) JKJ 78, 2009 (1) JKJ 40 and 2013 (2) JKJ 162, wherein it has consistently been held that while a Magistrate has

the power to direct further investigation, such power can be exercised only at the behest of the prosecution. The source of such power can be traced to Section 156(3) read with Section 173(8) Cr.PC. However, there exists no statutory power enabling the Magistrate to direct re-investigation or de novo investigation, and any such order has been held to be not in consonance with law and detrimental to the administration of justice.

11. In this regard, reliance was rightly placed upon the judgment of the Hon'ble Supreme Court in *Reeta Nag v. State of West Bengal & Ors, (supra)* wherein the Court, in paragraphs 17, 18 and 19, held that after cognizance has been taken on a police report and the accused has appeared, the Magistrate cannot suo motu direct further investigation, though such a course may be permissible on an application filed by the investigating agency. It was further held that while filing of a charge-sheet does not bar the police from conducting further investigation under Section 173(8) Cr.PC, the Magistrate cannot direct re-investigation or fresh investigation on his own motion due to the bar contained in Section 167(2) CrPC.

12. It was also pointed out during the course of arguments that Abdul Kabir Bhat, who is stated to have withdrawn an amount of ₹75,000/-, was directed to refund the said amount as arrears of land revenue. Further, in the communication dated 30.08.2010 addressed to the SHO, Police Station Handwara, the complainant Assistant Commissioner, Revenue, Handwara, categorically stated that the petitioner Tariq Ahmad, Nazir, was not entrusted with the job of payment of compensation and that the

responsibility for drawing of the cheque lay with Mohammad Iqbal Mir. The said communication further recorded that Abdul Kabir Bhat had already been issued one cheque and that the second cheque had been withheld. It was also noticed that though cheque No. 735314 dated 31.03.2010 for an amount of ₹99,798/- was alleged to be forged, the expert report obtained from the FSL did not even pertain to the case in hand but related to some other matter altogether.

13. During the course of hearing, learned counsel for the petitioner also drew attention to the communication dated 30.08.2010 wherein, despite reiteration of allegations against three persons in the FIR, the complainant himself had absolved the present petitioner of any role in issuance of the cheque. In this background, the impugned order of the trial Court is required to be appreciated. Even though the Magistrate does possess the power to direct further investigation under the scheme of the Code, such power cannot be exercised in a case where the Court, after applying its judicial mind, has already concluded that no case is made out and has proceeded to discharge the accused.

14. The Supreme Court in AIR 2019 SC 5233 has held that having regard to the scheme of Sections 173(2), 173(8) and 156(3) CrPC, the Magistrate has no power to direct re-investigation or de novo investigation on the basis of a police report. However, the Magistrate does retain the power to direct further investigation in terms of Section 173(8) CrPC. The Code being procedural in nature must receive a construction

that advances the cause of justice and does not unnecessarily curtail the powers of the Court within the limits prescribed by law.

15. Applying the settled legal position to the facts of the present case, it is evident that once the learned Magistrate had discharged the accused on the ground that no prima facie case was made out, he could not have simultaneously directed re-investigation. If the Court was of the view that certain aspects of the case had not been properly investigated, the appropriate course would have been to direct further investigation prior to passing an order of discharge. Once a supplementary charge-sheet was filed, the Court would then have been in a position to adjudicate the matter effectively. Since cognizance is taken of the offence and not of the offender, there may arise situations where evidence points towards involvement of persons other than those charge-sheeted. In such circumstances, the law mandates further investigation and not re-investigation after discharge.

16. For the aforesaid reasons, the impugned order to the extent it discharges the accused is maintained. However, the direction for re-investigation is found to be contrary to law and is accordingly set aside. In view of Sections 173(8), 173(2) and 156(3) CrPC, it is deemed appropriate to permit the police agency to conduct further investigation, if so advised, and to proceed in accordance with law should fresh material come to light, whether inculpatory or exculpatory. It is clarified that the material presently on record, particularly the communication dated 30.08.2010 issued by the Assistant Commissioner, Revenue, does not

substantiate the involvement of the petitioner; however, the investigating agency shall be at liberty to act strictly in accordance with law if any new material emerges.

Accordingly, the petition filed under Section 561-A CrPC is disposed of in the above terms.

(Sanjay Parihar)
Judge

SRINAGAR
26.12.2025
“Mohammad Yasin Dar”

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No