IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.445 OF 2015

Tukaram Namdeo Chore,
Age-49 years, Occu:Agriculture & Business,
R/o-Dongargan, Tq-Shirur,
Dist-Pune.

...PETITIONER

VERSUS

1) The State of Maharashtra,
Through Secretary,
Home Department,
Mantralaya, Mumbai-32,

2) Superintendent of Police,
Ahmednagar,

3) Crime Investigation Department,
Maharashtra State Head Quarter,
Near Pune University, Pashan Road,
Pune-411 008.

...RESPONDENTS

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Mr.Amol K. Gawali Advocate for Petitioner.
Mr.M.M. Nerlikar, A.P.P. for Respondents.

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CORAM: S.S. SHINDE AND
A.I.S. CHEEMA, JJ.

DATE : 18TH JUNE, 2015

ORAL ORDER :

1. Heard. Perused the contents of the Petition and the prayers therein. The Petitioner by way of filing this Petition has prayed for directions to Respondent No.3 for re-investigation of the Crime No.I-273 of 2014.

2. We have heard learned counsel for the Petitioner and learned A.P.P. for the State. The Supreme Court in the case of **Sakiri Vasu vs. State of U.P. and others, reported in 2009 ALL S.C.R. Page 1890**, while considering the scope of Section 154 and 156 of the Code of Criminal Procedure and also the aspect of further investigation, in Para 16 to 18 held thus:

> "16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order re-opening of the investigation even

after the police submits the final report, vide **State of Bihar Vs. A.C. Saldanna, AIR 1980 SC 326** (para 19).

"17. In our opinion Section 156(3), Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3), Cr.P.C. though briefly worded, in our opinion, is very and it will include all such incidental powers as are necessary for ensuring a proper investigation.

"18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution."

3. Yet in another authoritative pronouncement in the case of **State of Punjab Vs.**

Central Bureau of Investigation and others, reported in AIR 2011 Supreme Court 2962, the Supreme Court in Para Nos. 13, 14 & 15 held that:

> "**13.** Sub-section (1) of Section 173 of the Cr.P.C. provides that every investigation by the police shall be completed without unnecessary delay and sub-section (2) of Section 173 provides that as soon as such investigation is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. Under sub-section (2) of Section 173, a police report (charge sheet or challan) is filed by the police after investigation is complete. Sub-section (8) of Section 173 states that nothing in the Section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. Thus, even where charge sheet or challan has been filed by the police under sub-section (2) of Section 173, the police can undertake further investigation but not fresh investigation or re-investigation in respect of an offence under sub-section (8) of Section 173 of the Cr.P.C.
>
> **14.** Section 482 of the Cr.P.C., however, states that nothing in the Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court to

make such orders as is necessary to give effect to any order under the Cr.P.C. or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Thus, the provisions of the Cr.P.C. do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Court or to prevent the abuse of any process of the Court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 of the Cr.P.C., therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of the Cr.P.C. for fresh investigation or re-investigation if the High Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice.

15. We find support for this conclusion in the following observations of this Court in Mithabhai Pashabhai Patel v. State of Gujarat (AIR 2009 S.C. (Supp) 1658: 2009 AIR SCW 3780) (supra) cited by Mr. Dhawan:

"13. It is, however, beyond any cavil that "further investigation" and "reinvestigation" stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being

forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in Ramachandran v. R. Udhayakumar [(2008) 5 SCC 413: (AIR 2008 SC 3102: 2008 AIR SCW 5469)] opined as under: (SCC p. 415, para 7)

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation."

A distinction, therefore, exists between a reinvestigation and further investigation."

"15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The Courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

It is clear from the aforesaid observations of this Court that the investigating agency or the Court subordinate to the High Court exercising powers under Cr.P.C. have to exercise the powers within the four corners of

> the Cr.P.C. and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 of the Cr.P.C. and such further investigation will not mean fresh investigation or re-investigation. But these limitations in sub-section (8) of Section 173 of the Cr.P.C. in a case where charge sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 of the Cr.P.C. for securing the ends of justice".

4. Thus, in the case of **State of Punjab**, cited supra, the Supreme Court has held that the investigating agency or the Court subordinate to the High Court exercising powers under Cr.P.C. have to exercise the powers within the four corners of the Cr.P.C. and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 of the Cr.P.C. and such further investigation will not mean fresh investigation or

re-investigation. In that view of the matter, in our opinion the concerned Court who is seized with the matter, can look into the material collected by the original complainant and on that basis, if said Court is convinced, pass orders as per law.

5. In that view of the matter, we grant liberty to the Petitioner to apply before the concerned Court within TWO WEEKS from today for redressal of grievance which he raised in this Petition. If such application is filed by the Petitioner, we direct the concerned Court to entertain the same on merits and take appropriate decision on it, expeditiously.

6. The Writ Petition stands disposed off on above terms.

[A.I.S.CHEEMA,J.] **[S.S. SHINDE, J.]**

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