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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY.
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 877 OF 2015**

Dilip Gopinath Kharkar ... Petitioner

Versus

The State of Maharashtra and another ... Respondents

Mr. Niranjan S. Mundergji for the petitioner.
Mr. Devang Sanghavi for respondent no. 2.
Mr. A.R. Patil, A.P.P. for the State.

**CORAM : M.L. TAHALIYANI, J.
DATED : JUNE 08, 2015**

P.C.

This writ petition challenges the order passed by the learned Metropolitan magistrate, 10th Court, Andheri, Mumbai in Criminal Case No. 25/MISC/2009 directing further investigation in C.R. No. 414 of 2008 registered at D.N. Nagar Police Station. At the outset it may be mentioned here that the same court had earlier directed re-investigation at the time of rejecting the closure report. The said order was challenged before this court by the petitioner in Criminal Writ Petition No. 2629 of 2012. This court (Coram: Chandiwal,J.) allowed the said petition and set aside the order of the Magistrate directing re-investigation. Respondent no. 2 Mrs. Anjala Sharma moved this court for modification of the order. This court while

refusing to modify the order, has made following observations :

“6. This Court has already rejected the order passed on such application purportedly in terms of Section 173(8) of Cr.P.C. referred to above. This Court has not eclipsed other available avenues to original complainant Smt. Anjala Sharma before the learned Metropolitan Magistrate. Consequently, no modification in the order dated 26th November, 2012, recorded in Writ Petition No. 2629 of 2012 is warranted. Criminal Application is dismissed.”

2. On the basis of these observations, respondent no. 1 had again moved the learned trial Magistrate and requested for further investigation. Learned trial Magistrate directed further investigation of the case by making certain observations in his order. It was observed by the learned Magistrate that the Investigating Officer has not considered the evidence of some important witnesses who have stated about entrustment of the property which had allegedly been misappropriated by the petitioner and his relatives. The learned Magistrate therefore was of the view that the investigation was not properly conducted and that further investigation was needed. Since this court has specifically stated in its order that re-investigation was not permissible, learned Magistrate in fact appears to have granted same relief by using the phrase “further investigation”. It appears that the learned Magistrate had attempted to flout the order of this court.

3. Learned Magistrate should have realized that the powers of the Magistrate under section 156(3) for directing investigation and further

investigation are very limited. The concerned Magistrate cannot act as supervisory police officer and supervise the investigation at each and every stage. Once the police investigation is directed, it is for the police to investigate and form a particular opinion. Further more, the Magistrate is not supposed to substitute the opinion of the police officer by his own opinion. However, Magistrate is not prevented from taking cognizance of the offence despite the closure report if he finds that the case is made out for taking cognizance of the offence. Travelling beyond particular limit under section 156(3) may be beyond the scope of said Section. It may be noted that Section 156(3) is not made for supervision of investigation by the Magistrates. The supervision of investigation is entrusted to the senior officers whose powers are also defined in the Cr.P.C.. Directing further investigation may be one thing and supervising investigation and finding fault in the investigation is another thing. I have gone through the order of the Magistrate and it will be apt to reproduce the portion of the order of the Magistrate to demonstrate that the Magistrate has travelled beyond his jurisdiction while passing the impugned order :

“3. D.N. Nagar police have filed “B” summary report. I have gone through the entire report filed by the police. However, it can be seen that the Investigating officer has not considered the evidence of the witnesses who have stated that the gold and silver ornaments were handed over to the accused by the complainant. It can also be seen that the accused no. 1 and 4 have not been interrogated at any point of time during the course of investigation. In my view the investigation

therefore, was not at all complete in any respect. The investigating officer has avoided to take into consideration the statement of the witnesses of the complainant. I am of the view that the investigation requires to be completed by recording the statements of the witnesses and after interrogation of the accused no. 1 and 4."

4. It may be noted here that the Magistrate has also expressed his view as to whether particular accused was required to be interrogated or not. In my considered opinion, this aspect should be left to the police and that the Magistrate shall not interfere to such an extent. As already stated, it is for the Investigating officer to decide as to which of the accused was required for interrogation and to what extent. The undue interest in supervision of the investigation is not warranted. The scheme of Code of Criminal Procedure is very clear in this regard. It is repeatedly observed by the Hon'ble Supreme Court that the investigation is mainly within the domain of the Investigating Officer and the final opinion has to be formed by the Investigating Officer after completion of investigation. The role of the Magistrate after submission of the report under section 170 of the Code of Criminal Procedure has also been stated in large number of judgments of the Hon'ble Supreme Court. It is also stated repeatedly that the Magistrate is not prevented from taking cognizance of the offence despite the closure report or summary report by the police.

5. In the present case, the Magistrate should not have examined the investigation so minutely and should not have expressed his opinion as to how the investigation was conducted by the police officer. The Magistrate was also not permitted to issue direction to carry out investigation in a particular manner.

6. I am therefore, of the view that the order needs to be set aside. However, it is made clear that the Magistrate is not prevented from taking cognizance of any offence which according to him is prima facie made out from the report submitted before him. At the same time, as stated earlier by this court, respondent no. 1 is also not prevented from initiating action against the petitioner and his relatives independent of an application under section 156(3) of Cr.P.C..

7. The Petition is accordingly allowed. The order passed by the Magistrate is set aside.

(JUDGE)