

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION NO.10671 OF 2013
AND
CRIMINAL REVISION CASE NO.1054 OF 2013

DATED 16th DECEMBER, 2015

Between:

Yoginder Garg and others ... Petitioners

and

Government of Andhra Pradesh, rep. by its
Principal Secretary, Home, Secretariat,
Hyderabad, and others ... Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 16th DECEMBER,
2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2. | Whether copies of the Judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. | Whether His Lordship wishes to see the fair copy of the Judgment? | Yes/No |

***THE HON'BLE SRI JUSTICE SANJAY KUMAR**

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AND

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Yoginder Garg and others ... Petitioners

Vs.

\$ Government of Andhra Pradesh, rep. by its
Principal Secretary, Home, Secretariat,
Hyderabad, and others ... Respondents

<Gist:

>Head Note:

! Counsel for Petitioners in
W.P.No.10671 of 2013 : Sri C. Raghu

! Counsel for Petitioners in
Crl.R.C.No.1054 of 2013 : Sri Thoom Srinivas

^Counsel for the Respondents
1 to 4 in W.P.No.10671 of 2013 : Government Pleader for Home

^Counsel for 5th Respondent
W.P.No.10671 of 2013 : Kum. C. Sindhu Kumari

^Counsel for 1st Respondent
in Crl.R.C.No.1054 of 2013 : Public Prosecutor (Telangana)

^Counsel for 2nd Respondent
in Crl.R.C.No.1054 of 2013 : Kum. C. Sindhu Kumari

? CASES REFERRED:

1. AIR 1979 SUPREME COURT 1791
2. (1985) 2 SUPREME COURT CASES 537
3. (1997) 7 SUPREME COURT CASES 614
4. 1999 CRIMINAL LAW JOURNAL 3661
5. AIR 2001 SUPREME COURT 2721 = (2001) 7 SUPREME COURT CASES 536
6. (2009) 6 SUPREME COURT CASES 346
7. (2009) 9 SUPREME COURT CASES 129
8. (2009) 11 SUPREME COURT CASES 299
9. (2013) 1 SUPREME COURT CASES 197
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11. (2008) 5 SUPREME COURT CASES 413
12. (2009) 6 SUPREME COURT CASES 332
13. (2011) 9 SUPREME COURT CASES 182
14. (2006) 4 SUPREME COURT CASES 359
15. (2015) 8 SUPREME COURT CASES 774

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION NO.10671 OF 2013

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-

COMMON ORDER

Contesting parties being common and issues being interlinked, the writ petition and criminal revision are amenable to final disposal by way of this common order.

Vijay Kumar Jain, fifth respondent in the writ petition/second respondent in the criminal revision, filed a complaint under Section 190 Cr.P.C. before the learned III Additional Chief Metropolitan Magistrate, Hyderabad (hereinafter, 'the Court below'), and the same was referred to the Banjara Hills Police Station, Hyderabad, under Section 156(3) Cr.P.C. Thereupon, Crime No.421 of 2012 was registered under Sections 406, 420, 477A and 506 IPC read with Section 120B IPC on the file of the said police station.

After investigating the crime, the police filed a final report on 20.06.2012 before the Court below, under Section 173(2) Cr.P.C, referring the complaint as of 'civil nature'. Aggrieved thereby, Vijay Kumar Jain filed a petition under Section 173(8) Cr.P.C. before the Court below to refer the case for further investigation to the Deputy

Commissioner of Police, Central Crime Station, Detective Department, Hyderabad. This petition was dismissed on 03.08.2012. Challenging this order, Vijay Kumar Jain filed Criminal Revision Petition No.253 of 2012 before the learned Metropolitan Sessions Judge, Hyderabad. The criminal revision was allowed on 08.11.2012 and the matter was remanded to the Court below to consider the protest petition afresh and to pass a speaking order in accordance with law. Thereupon, by order dated 28.12.2012, the Court below allowed the petition in S.R.No.5897/2012 in Crime No.421/2012 and directed the Station House Officer, Banjara Hills P.S., to conduct further investigation and submit a report. Aggrieved thereby, Accused Nos.1, 2 and 6 to 9 in Crime No.421 of 2012 on the file of Banjara Hills P.S. filed Criminal Revision Case No. 1054 of 2013.

In the meanwhile, Vijay Kumar Jain submitted representation dated 19.06.2012 to the Commissioner of Police, Hyderabad City, complaining that the Sub-Inspector of Banjara Hills P.S. failed to understand the case and had given him notice that he wanted to close the case, as he opined that it was of 'civil nature', and requested that the matter be entrusted to the Central Crime Station/Criminal Investigation Department, as a large sum of money was involved and he had faith and trust in the said department. Acting thereupon, the Commissioner of Police, Hyderabad, under his Memo dated 07.07.2012, instructed the Inspector of Police, Banjara Hills P.S., to transfer the case file in Crime No.421 of 2012 to the Deputy Commissioner of Police, Detective Department, Hyderabad, for further investigation. Thereupon, the case was renumbered as Crime No.221 of 2012 on the file of the Central Crime Station, Detective Department, Hyderabad, by the Inspector of Police, West Zone, Central Crime Station, Hyderabad. However, as S.R.No.5897 of 2012 had been allowed by the Court below in the meanwhile, whereby the Station House Officer, Banjara Hills P.S., was directed to conduct further investigation in Crime No.421 of 2012, but as the Central Crime Station, Hyderabad, was proceeding with investigation in renumbered Crime No.221 of 2012, by issuing Notices under

Sections 91 and 160 Cr.P.C., Accused Nos.1, 2 and 6 to 9 in Crime No.421 of 2012 also filed Writ Petition No.10671 of 2013 before this Court.

By order dated 10.04.2013 passed in WPMP No.13228 of 2013 in W.P.No.10671 of 2013, this Court took note of the Order dated 28.12.2012 passed by the Court below specifically entrusting the investigation to the Station House Officer, Banjara Hills P.S., and granted interim stay of all further proceedings pursuant to the Notices issued in Crime No.221 of 2012 on the file of the Central Crime Station, Detective Department, Hyderabad. Petitions were filed by the police authorities and Vijay Kumar Jain to vacate the interim order dated 10.04.2013. However, with the consent of the learned counsel for the parties, the cases are taken up for final disposal.

Heard Sri C.Raghu, learned counsel for the petitioners in both cases/Accused Nos.1, 2 and 6 to 9 in Crime No.421 of 2012, Sri S.Satyanarayana Prasad, learned senior counsel representing Smt.C.Sindhu Kumari, learned counsel for Vijay Kumar Jain, and the learned Public Prosecutor along with the learned Assistant Government Pleader for Home for the police authorities.

Sri C.Raghu, learned counsel, would contend that directing further investigation was not justified on facts and in law and so too, the entrustment of the case to another agency. Learned counsel placed reliance on case law to support his contentions. Sri S.Satyanarayana Prasad, learned senior counsel, would argue to the contrary and also produced case law to support his case.

It would be appropriate at the outset to examine the scope and import of relevant legal provisions in the light of precedential law.

Section 173 Cr.P.C. speaks of the procedure to be followed by a police officer investigating the crime and when filing a report before the competent criminal Court. Section 173(1) Cr.P.C. provides that the investigation should be completed without unnecessary delay and upon such completion, the officer-in-charge of the police station is required under Section 173(2) Cr.P.C. to forward the final report in the prescribed

form to the competent Court. Section 173(8) deals with further investigation of the crime and states as under:

‘173. Report of police officer on completion of investigation –

(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).’

It is a recognized and settled legal position that the police are empowered and have the right, nay, duty to further investigate a crime and do so as often as necessary, if fresh information comes to light (**RAM LAL NARANG V/s. STATE (DELHI ADMN.)**^[1]). The question however is whether the decision to initiate further investigation lies solely within the domain and discretion of the police.

In **BHAGWANT SINGH V/s. COMMISSIONER OF POLICE**^[2], a Bench of three Judges of the Supreme Court indicated otherwise when it held that when a report is filed under Section 173(2) Cr.P.C., the Magistrate may do one of three things – (1) he may accept the report and take cognizance of the report and issue process, or (2) he may disagree with the report and drop the proceedings, or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. In **UNION PUBLIC SERVICE COMMISSION V/s. S.PAPAIAH**^[3], the Supreme Court reiterated this position and affirmed that a Magistrate would have power under Section 173(8) Cr.P.C. to order further investigation.

In **SRI BHAGWAN SAMARDHA SREEPADA VALLABHA VENKATA VISHWANDADHA MAHARAJ V/s. STATE OF A.P.**^[4], the Supreme Court again affirmed that the power of the Court to direct further

investigation cannot be inhibited and that there was nothing in Section 173(8) Cr.P.C. to suggest that the Court was obligated to hear the accused before such direction was made.

In **HEMANT DHASMANA V/s. CENTRAL BUREAU OF INVESTIGATION**^[5], the Supreme Court observed that although Section 173(8) Cr.P.C. did not, in specific terms, mention about the power of the Court to order further investigation, the power of the police to conduct further investigation envisaged thereunder could be triggered into motion at the instance of the Court. The Supreme Court further explained that when such an order was passed by a Court, it would not be proper exercise of revisional powers to interfere therewith, because further investigation would only be to meet the ends of justice. The Supreme Court however added the caveat that it would not be within the province of the Magistrate, while exercising power under Section 173(8) Cr.P.C, to specify any particular officer to conduct such further investigation or even to suggest the rank of the officer who should conduct further investigation.

In **RAMA CHAUDHARY V/s. STATE OF BIHAR**^[6], the Supreme Court observed that under Section 173(8) 'further' investigation is permissible, but 'reinvestigation' or 'fresh investigation' is prohibited. The meaning of 'further' was stated to be 'additional, more or supplemental' and therefore 'further' investigation would be continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started *ab initio*, wiping out the earlier investigation altogether.

In **REETA NAG V/s. STATE OF WEST BENGAL**^[7], the question before a Bench of two Judges of the Supreme Court was whether, in exercise of power under Section 173(8) Cr.P.C, further investigation or re-investigation could be ordered. Upon an over-view of earlier case law, the Supreme Court observed, in paras 25 and 26, as under:

'25. What emerges from the abovementioned decisions of this Court is that once a charge-sheet is filed under Section 173(2) CrPC and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a protest petition, take

cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173(8). The Magistrate cannot suo motu direct a further investigation under Section 173(8) CrPC or direct a reinvestigation into a case on account of the bar of Section 167(2) of the Code.

26. In the instant case, the investigating authorities did not apply for further investigation and it was only upon the application filed by the de facto complainant under Section 173(8) was a direction given by the learned Magistrate to reinvestigate the matter. As we have already indicated above, such a course of action was beyond the jurisdictional competence of the Magistrate. Not only was the Magistrate wrong in directing a reinvestigation on the application made by the de facto complainant, but he also exceeded his jurisdiction in entertaining the said application filed by the de facto complainant.'

In the above decision, the Supreme Court therefore took the view that neither the Court nor the *de facto* complainant had the right to set in motion proceedings under Section 173(8) Cr.P.C. and that such power could be exercised only when investigating authorities applied for the same. Significantly, this view was contrary to that taken by the larger Bench in **BHAGWANT SINGH²** and the co-ordinate Benches in **S.PAPAIAH³** and **SRI BHAGWAN SAMARDHA SREEPADA VALLABHA VENKATA VISHWANDADHA MAHARAJ⁴**. Significantly, in **RAM NARESH PRASAD V/s. STATE OF JHARKHAND^[8]**, another co-ordinate Bench of the Supreme Court made it clear that it would be open to the Magistrate to direct further investigation under Section 173(8) Cr.P.C, by exercising supervisory powers over the police authorities.

Again, in **VIPUL SHITAL PRASAD AGARWAL V/s. STATE OF GUJARAT^[9]**, the Supreme Court observed that mere undertaking of further investigation either by the investigating officer on his own or upon the directions of a superior police officer or pursuant to a direction by the Magistrate concerned, to whom the report was forwarded, did not mean that the report submitted under Section 173(2) Cr.P.C. was abandoned or rejected, as it only meant that either the investigating agency or the Court

concerned was not completely satisfied with the material collected by the investigating agency and was of the opinion that, possibly, some more material was required to be collected in order to sustain the allegation of commission of the offence.

In **VINAY TYAGI V/s. IRSHAD ALI ALIAS DEEPAK**^[10], the Supreme Court observed that the language used in Section 173(8) Cr.P.C. unambiguously indicates the legislative intent that even after filing of a report before the Court of competent jurisdiction, the investigating officer can still conduct further investigation and forward to the Magistrate a further report or reports regarding the further evidence collected. This supplementary report has to be treated by the Court as one in continuation of the primary report.

The Supreme Court then dealt with the question as to whether the empowered Magistrate has the jurisdiction to direct 'further investigation' or 'fresh investigation'. Referring to the law declared by the Supreme Court consistently, it was reiterated that the Magistrate would have no jurisdiction to direct 'fresh' or '*de novo*' investigation. Dealing with the specific issue of the Magistrate having jurisdiction under Section 173(8) Cr.P.C. to direct further investigation, the Supreme Court observed that the Courts had taken somewhat divergent but not diametrically opposite views in that regard. Reference was made to the earlier decisions in

RAMACHANDRAN V/s. R.UDHAYAKUMAR^[11], **MITHABHAI PASHABHAI PATEL V/s. STATE OF GUJARAT**^[12] and **STATE OF PUNJAB V/s. CBI**^[13], where a distinction was drawn by the Supreme Court between fresh investigation/re-investigation and 'further investigation'. Reference was also made to **MINU KUMARI V/s. STATE OF BIHAR**^[14], wherein the earlier view in **BHAGWANT SINGH**² was reiterated. The Supreme Court then referred to **HEMANT DHASMANA**⁵ wherein it was observed that the power of the police to conduct further investigation could be triggered into motion at the instance of the Court.

The Supreme Court ultimately concluded that the Magistrate

before whom a report under Section 173(2)Cr.P.C was filed would be empowered in law to direct 'further investigation' and require the police to submit a further or supplementary report. It was pointed out that the contrary view taken by the Supreme Court in **REETA NAG**⁷ and other such judgments did not take into consideration the view expressed in **BHAGWANT SINGH**² which could not be termed as an *obiter* and it was observed that the said view would have to be examined in the light of the principle of *stare decisis*. Upon the above analysis, the Supreme Court stated its conclusions as under:

'40. Having analysed the provisions of the Code and the various judgments as afore indicated, 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* 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.'

More recently, in **CHANDRA BABU ALIAS MOSES V/s. STATE THROUGH INSPECTOR OF POLICE**^[15], the power available to the Magistrate upon filing of a final report again fell for consideration. Reference was made to **BHAGWANT SINGH**² and **VINAY TYAGI**¹⁰ and the Supreme Court recorded its concurrence therewith and observed that the Magistrate concerned would have the power of directing further investigation but could not have directed as to which investigating agency should undertake the same.

It is in the backdrop of the aforestated precedential law that the present case would have to be examined.

The contention of Sri C.Raghu, learned counsel, is that Vijay Kumar Jain, the complainant, could not have maintained a petition under Section 173(8) Cr.P.C. before the Court below, relying on **REETA NAG**⁷. This argument however pales into insignificance in the light of the later decisions of the Supreme Court.

Further, in the opinion of this Court, a narrow and pedantic view curtailing the power of the Magistrate to direct further investigation, even if he/she is of the opinion that the same is necessary to further the ends of justice, would be retrograde and counter-productive. It would indeed be anomalous to say that the police have such power but despite having supervisory authority over the police under Section 156(3) Cr.P.C, the Magistrate has no such discretion to direct further investigation in a fitting case! Taking it a step further, once the Magistrate is vested with such power, there is no embargo envisaged in law that prevents the *de facto* complainant from invoking that power by filing an appropriate petition. Trite to state, the *suo motu* power vesting in a Court or authority can always be set in motion upon a complaint or petition by an affected party. This contention is accordingly rejected.

Perusal of the order dated 28.12.2012 passed by the Court below

demonstrates that arguments advanced by the learned counsel for Vijay Kumar Jain, the complainant, were to the effect that the final report did not reflect any kind of investigation and that it had been filed in a hotchpotch manner without collecting documentary evidence to substantiate the conclusion that the issue was of a civil nature. Thereupon, the Court below observed that the case involved the alleged misappropriation of huge funds running into Crores of Rupees through fraudulent transactions, diversion of funds, destruction of account books and the record of the company and so on by the accused. The Court below also took note of the grievance ventilated by the complainant that he had never been the Managing Director during the relevant period and that the police did not approach any of the banks or companies seeking their record to examine the evidence produced by him to prove cheating by the accused. The Court below observed that in the wake of these submissions and upon perusal of the contents of the final report, the case had wider ramifications and in order to understand the complexity and intricacies of the matter, it would be necessary for the investigating agency to collect material such as the bank record, company record, copy of the Memorandum of Understanding, financial statements, IT returns, RoC records, financial transaction records from the financial institutions, copy of the civil suit proceedings pending before the Ghaziabad Court, etc. The Court below further opined that without collecting the material which was indispensable to the case and without recording the statement of the complainant, the police had filed the final report and that no material had been placed on record with the final report to justify the conclusion drawn by the police that it was a case of a civil nature. The Court below also observed that the police may have to seek the assistance of various agencies who were experts in the given field to collect material in this complicated and complex case. Reference was also made to the observations in **S.PAPAIAH³**, which were a replication of what had been stated in **BHAGWANT SINGH²**. It was on these premises that the Court below found that it was a fit case for further

investigation and accordingly entrusted it to the same investigating agency which had conducted the earlier investigation.

Sri C.Raghu, learned counsel, contended that it was not correct on the part of the Court below to state that the complainant's statement had not been recorded. Reference in this regard was made to the final report filed on 20.06.2012, wherein it was stated that the complainant was examined and his statement was recorded.

As this factual aspect of the matter was disputed, the learned Public Prosecutor was requested to verify the record. Thereupon, the learned Public Prosecutor produced the case record and confirmed that Vijay Kumar Jain, the complainant, was examined by B.Ramesh, Sub-Inspector of Police, Banjara Hills Police Station, on 29.05.2012 under Section 161 Cr.P.C. and, as mandated by Section 162 Cr.P.C., the said statement was not signed by the complainant. The case diary in this regard was also placed before this Court. It is therefore borne out by the record that the complainant was, in fact, examined under Section 161 Cr.P.C.

However, as regards the other aspects noted by the Court below, though Sri C.Raghu, learned counsel, would contend that all the relevant documents had been looked into by the investigating officer, he is unable to bear out the said contention with details of the documents actually examined by such officer before he filed the final report. There is no indication of any of the documents specifically mentioned by the Court below having been actually verified. Further, as pointed out by the Supreme Court, once the Magistrate opined that the case was a fit one for further investigation, unless such a conclusion is shown to be wholly without basis, it is not for the revisional Court to exercise jurisdiction under Section 397 Cr.P.C. and set at naught the direction to undertake further investigation. Needless to state, such investigation is intended to further the ends of justice.

In that view of the matter, this Court does not find any reason to interfere with the order passed by the Court below directing further

investigation. Mere use of the word 'reinvestigation' in the body of the order does not detract from the final direction which only required the investigating agency to undertake 'further investigation' and not 'reinvestigation'. Such a hyper-technical error would not weigh with this Court when the intention of the Court below was otherwise spelt out in clear terms. The order under revision therefore does not warrant interference.

Insofar as the writ petition is concerned, Sri S.Satyanarayana Prasad, learned senior counsel, stated that the grievance of Vijay Kumar Jain, the complainant, at the point of time when he sought transfer of the case to the Central Crime Station, was that the investigating officer, who then held office, was not able to appreciate the depth of the case and react accordingly, but as the said officer is no longer in office there would be no necessity to seek transfer of the case to the Central Crime Station at this stage. He would therefore state that the investigating agency which had earlier filed the final report could undertake further investigation as directed by the Court below.

In the light of this concession made by the learned senior counsel and given the fact that the order passed by the Commissioner of Police, Hyderabad City, was contrary to the direction passed by the Court below and was also at variance with the legal position, the same cannot be sustained. The Central Crime Station, Hyderabad, would therefore have no power to undertake such further investigation as it is neither open to the police authorities nor the Magistrate concerned to direct such further investigation through a particular agency. The Notices issued by the said agency are therefore set aside.

The writ petition is accordingly allowed and the criminal revision is dismissed. The interim order dated 10.04.2013 passed in WPMP No.13228 of 2013 in W.P.No.10671 of 2013 shall stand vacated in the light of this final order. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

16th DECEMBER, 2015

**L/R copy to be marked -Yes
B/o PGS**

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- [\[1\]](#) AIR 1979 SUPREME COURT 1791
 - [\[2\]](#) (1985) 2 SUPREME COURT CASES 537
 - [\[3\]](#) (1997) 7 SUPREME COURT CASES 614
 - [\[4\]](#) 1999 CRIMINAL LAW JOURNAL 3661
 - [\[5\]](#) AIR 2001 SUPREME COURT 2721 = (2001) 7 SUPREME COURT CASES 536
 - [\[6\]](#) (2009) 6 SUPREME COURT CASES 346
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