

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.29999 of 2013

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, for the following relief:

“To issue appropriate writ, order or direction more particularly one in the form of Writ of Mandamus declaring that the investigation by the 3rd respondent in Crime No.232 of 2013 on the file of Gopalapuram Police Station, Secunderabad is not honest and in objective manner and it is illegal, unlawful against the principles and provisions of Law and natural justice and consequently to direct the 3rd respondent to handover the records in Cr.No.232 of 2013 from the office of Gopalapuram Police Station registered against B. Sudarshan Reddy, Inspector of Police Tukaramgate Police Station, (Respondent No.4) to Criminal Investigation Department, Hyderabad (Respondent No.5) and further direct Criminal Investigation Department, Hyderabad (Respondent No.5) to register the complaint of the complainant in S.R.No.2226 of 2013 on the file of X Additional Chief Metropolitan Magistrate Court, Secunderabad, investigate into the case and take appropriate action.”

2. Heard Sri D.V.Reddy, learned counsel for the petitioner, learned Government Pleader for Home for respondents 1, 2, 3 and 5 and

Sri A.Sarvotham Reddy, learned counsel for the respondent No.4 apart from perusing the material available before the Court.

3. Petitioner is the *de facto* complainant in C.C.No.1100/2011 (Cr.No.120/2011), on the file of the X Metropolitan Magistrate, Secunderabad, wherein one Mr.B.Sreedhar and four other individuals, namely, Smt.R.Rani, Sri N.R.Narender, Sri N.Ravinder and Smt.S.Dhalalaxmi are shown as accused, alleging that they committed offence of cheating by transferring the property without right or interest. Petitioner made allegation that the said persons colluded with one Mr.Dinesh Dattar, Joint Sub-Registrar-I, Red-Hills, Hyderabad. According to the petitioner, though he made allegations against the Sub-Registrar also, police did not show him as accused. Petitioner herein filed a petition under Section 173 (8) of the Code of Criminal Procedure for further investigation before the learned Magistrate and the learned Magistrate allowed the said petition ordering further investigation vide Cr.SR.No.6553/2012. Thereafter, the fourth respondent took up further investigation

under Section 156 (3) of the Code of Criminal Procedure and he submitted a report stating that there was no criminal conspiracy in the sale transaction.

4. In the above backdrop, alleging the said action as an offence punishable under Section 218 of I.P.C, petitioner lodged a private complaint against the fourth respondent before the Court of the X Additional Chief Metropolitan Magistrate, Secunderabad vide SR.2226/2013 to forward the same to CID/fifth respondent for investigation and appropriate action against the fourth respondent and as per the petitioner he enclosed 12 documents along with the said complaint on the ground that respondent No.4 may influence the local police. The learned Magistrate on 01.08.2013 forwarded the same to the second respondent/Deputy Commissioner of Police, North Zone, Secunderabad under Section 154 (3) Cr.P.C to make over the investigation to another police officer subordinate to him. The learned Magistrate observed that the complaint against the accused is not rarest of rare for forwarding to CID relying on the decision in the case of **SAKRI VASU v. STATE OF UTTAR PRADESH (2008-MADRAS-LJ-1-1393)**. The second respondent forwarded the same to the third respondent/Assistant Commissioner of Police, Gopalapuram Division, Secunderabad for investigation and appropriate action.

5. The third respondent/Assistant Commissioner, registered the same as Cr.No.232/2013 on 09.08.2013 on the file of Gopalapuram Police Station under Section 218 I.P.C against the fourth respondent/Inspector of Thukaram Gate Police Station.

6. The third respondent issued notice under Section 91 of Cr.P.C, asking the petitioner to produce certain documents and according to the petitioner the same are irrelevant. The third respondent filed M.P.No.1534/2013, on the file of the learned Magistrate praying for a month's time for investigation. Alleging inaction to protect the fourth respondent on the part of the third respondent and seeking a direction to the CID to register the crime and to investigate and to take action and apprehending injustice in the matter, the present writ petition came to be filed.

7. On 17.12.2014, writ petitioner filed WPMP.No.48841/2014 seeking a direction to the third respondent Assistant Commissioner of Police to hand over the records in Cr.No.232/2013 to Central Bureau of Investigation while stating that the third respondent against whom earlier the petitioner made allegations is now transferred to the CID. In the affidavit filed in support of the said application, it is stated that on

29.10.2014 the third respondent issued a notice, informing the filing of the report before the learned Magistrate as false under Section 156 (3) of Cr.P.C. Subsequently, on 30.10.2014, petitioner appeared before the Magistrate and according to the petitioner there was no representation on behalf of the third respondent. The learned Magistrate on 30.10.2014 in Cr.No.232/2013 (Gopalapuram Police Station) passed the following order:

“Complainant is present. Address a letter to the Deputy Commissioner of Police. Including that the I.O is not evincing any interest to filing the final report call on 15.01.2015.”

8. Thereafter, the learned Magistrate on 01.12.2014 passed order in Sr.No.2225/2013 in CC.No.1100/201 and paragraphs 9, 15 and 16 of the said order read as under:

“9. I have heard the learned Advocate for the petitioner/Defacto Complainant in detail. I have also perused the contents of the Additional Final Report submitted by the Investigation Officer under Section 173 (8) of Cr.P.C. I have gone through the relevant observations made by the Hon'ble Supreme Court in the above said authorities. The above said relevant authorities are crystal clear that the Magistrate need not record the Sworn Statement of the petitioner/Defacto Complainant and he need not follow the procedure to under Section 200 and 202 of Cr.P.C. It is also very clear to note that the Officer is fully competent to take the cognizance of the offence under Section 190 (1) (b) of Cr.P.C., despite the adverse report submitted by the Medical Officer. Therefore, I find there is considerable force in the contention raised by the learned Advocate for the Petitioner/Defacto Complainant that this court need not record the Sworn Statement of Defacto Complainant and it is the bounden duty that it can go through the contents of the Final Report and the other material placed before him for coming to the conclusion that whether there is prima facie and the allegations re well founded for taking cognizance against the Respondnet/Dinesh Dattar for the offence under Section 120 (b) of IPC ad under Section 80 and 83 ofk the Registration Act. Therefore, this court has given up the idea of following the procedure under Section 200 Cr.P.C and Sec. 202 of Cr.P.C.

14. Due to the reasons stated supra, and in the light of foregoing discussion, and the material submitted along with the Additional Final Report and in the light of authorities stated supra submitted by the learned petitioner/defecto complainant that I am of the view the allegations levelled by the petitioner/defacto complaint against the Respondent/the then Sub-Registrar are well founded under Section 120-B of IPC and under Section 83 of the Registration Act, 1908.

15. Hence, the cognizance is taken against the Respondent/the then Sub-

Registrar Sri.Dinesh Dattar under Section 120-B IPC and under Section 83 of the Registration Act, 1908. The office is hereby directed to club the Additional Final Report with the first final report and issue the summons to the Respondent/Dinesh Dattar as Accused No.6 in CC.No.1100 of 2011 on the file of the X Additional Chief Metropolitan Magistrate Court, Secunderabad.”

9. Now by virtue of the WPMP.No.28486/2015, the petitioner is seeking a direction to the third respondent/Assistant Commissioner of Police, Gopalapuram Division, Secunderabad to hand over the records in Cr.No.232/2013 registered against the fourth respondent/Mr.B.Sudarshan Reddy, the Inspector of Police, Tukaram Gate Police Station, Secunderabad, to the Director, Anti-Corruption Bureau for investigation and for appropriate action. In the affidavit filed in support of the present WPMP.No.28486/2015, it is stated that the third respondent and his subordinates are not performing their duty in investigating in Cr.No.232/2013, on the file of Gopalapuram Police Station in honest and objective manner and there is no progress in the investigation of the crime and there is a collusion of investigating officer/respondent No.3 with respondent No.4.

10. It is further stated that the respondent No.3/Assistant Commissioner of Police, D.Vasanth Rao who did not perform his duty in investigating Cr.No.232/2013 in honest and objective manner to save respondent No.4 was transferred on 16.07.2014 to Criminal Investigation Department. It is further stated that even if Cr.No.232/2013 is now transferred to CID, as initially sought in the main writ petition, petitioner apprehends that he cannot get justice. It is further stated that on 02.02.2015, accused No.5 in CC.No.1100/2011 filed CrI.P.No.669/2015 before this Court, enclosing an unauthorised photo-stat copy of the final report in Cr.No.232/2013 alleged to have been signed by the Assistant Commissioner/respondent No.3 on 11.11.2014 and the same fell into the hands of Sri Dinesh Dattar without providing to the petitioner who is legally entitled. Showing the above reasons, the petitioner herein is now asking for entrustment of the matter to the ACB.

Learned counsel for the petitioner to bolster his submissions and contentions relied on the decisions in the case of **VINAY TYAGI Vs. IRSHAD ALI ALIAS DEEPAK AND OTHERS, SRINIVAS GUNDLURI AND OTHERS v. SPECO ELECTRIC POWER CONSTRUCTION CORPORATION AND OTHERS, N.P.JHARIA v.**

STATE OF M.P, BVIRENDER PRASAD SINGH v. RAJESH BHARDWAJ AND OTHERS, GOVIND AND OTHERS v. STATE (Govt of NCT of Delhi), R.S.SODHI V. STATE OF U.P AND OTHERS, KASHMIRI DEVI v. DELHI ADMINISTRATION AND ANOTHER, KISHAN LAL v. DHARMENDRA BAFNA AND ANOTHER, RUBABBUDDIN SHEIKH v. STATE OF GUJARAT AND OTHERS, HEMANT DHASMANA v. CENTRAL BUREAU OF INVESTIGATION AND ANOTHER, THE GUN-ROCK ENCLAVE CO-OP. HOUSING SOCIETY LTD v. SMT. P. RANGANAYAKAMMA AND ANOTHER and ALEXANDAR PUSHPARAJ ALIAS ALEX v. INSPECTOR OF POLICE, CHENGALPATTU DISTRICT.

11. In the case of **VINAY TYAGI** (*supra* 1), the Hon'ble Apex Court at paragraphs 56, 60 and 62, held as follows:

“56. In the order dated 24th October, 2007, the High Court noticed that despite the fact that the CBI had taken considerable time for completing its investigation, it had still not done so. Noticing that the investigation was handed over to the CBI on 9th May, 2006 and despite extensions it had not submitted its report the Court granted to the CBI four weeks' time from the date of the order to submit its findings in respect of the allegations made by the accused in the complaint and directed the matter to come up on 28th November, 2007. The significant aspect which needs to be noticed is that the Court specifically noticed in this order that:

“The trial of the case is not proceeding, further hoping that CBI shall file supplementary report or supplementary material before the trial court and the accused gets an opportunity of case being formally investigated. However, the pace at which the investigation is done by the CBI shows that CBI may take years together for getting the records....”

This order clearly shows that the High Court contemplated submission of a supplementary report, which means report in continuation to the report already submitted under Section [173](#) of the Code by the Delhi Police.

60. Once a Report under Section [173](#) (2) of the Code has been filed, it can only be cancelled, proceeded further or case closed by the court of competent jurisdiction and that too in accordance with law. Neither the Police nor a specialised investigating agency has any right to cancel the said Report. Furthermore, in the present case, the High Court had passed no order or direction staying further investigation by the Delhi Police or proceedings before the court of competent jurisdiction. On the contrary, the court had noticed explicitly in its order that it was a case of supplementary or further investigation and filing of a 'supplementary report'. Once the Court has taken this view, there is no question of treating the first report as being withdrawn, cancelled or capable of being excluded from the records by the implication. In fact, except by a specific order of a higher court competent to make said orders, the previous as well as supplementary report shall form part of the record which the trial court is expected to consider for arriving at any appropriate conclusion, in accordance with law. It is also interesting to note

that the CBI itself understood the order of the court and conducted only 'further investigation' as is evident from the status report filed by the CBI before the High Court on 28th November, 2007.

62. Ergo, for the reasons recorded above, we modify the order of the High Court impugned in the present appeal to the above extent and direct the trial court to proceed with the case further in accordance with law. The appeals are partially allowed.”

12. In the case of **SRINIVAS GUNDLURI AND OTHERS** (*supra* 2), the Hon’ble Apex Court at paragraph 24, held as follows:

“24. Neither the chargesheet nor the final report has been defined in the Code. The chargesheet or final report whatever may be the nomenclature, it only means a report under Section [173](#) of the Code which has to be filed by the police officer on completion of his investigation. In view of our discussion, in the case on hand, we are satisfied that the Magistrate in passing the impugned order has not committed any illegality leading to manifest injustice warranting interference by the High Court in exercise of extraordinary jurisdiction conferred under Article [226](#) of the Constitution of India. We are also satisfied that learned single Judge as well as the Division Bench rightly refused to interfere with the limited order passed by the Magistrate. We also hold that challenge at this stage by the appellants is pre-mature and the High Court rightly rejected their request.”

13. In the case of **N.P.JHARIA** (*supra* 3), the Hon’ble Apex Court at paragraphs 13 and 14, held as under:

“13. Learned Counsel for the appellant submitted that the proceedings were initiated on the basis of complaint to the Lokayukt and therefore the proceedings under the Act could not have been taken. It is to be noted that a faint plea in this regard was raised before the trial court. It was urged that once the final report was submitted there is no scope for further investigation. It appears that after referring to the proceedings the trial court found that there was no substance in the plea. Before the High Court such plea was not raised. In the appeal also the main grounds relate to the defect in sanction and legality of the further investigation.

14. So far as the further investigation is concerned in the background of Section [173\(8\)](#) of the Code of Criminal Procedure, 1973 (in short the 'Code') the plea is clearly untenable.”

14. In the case of **BVIRENDER PRASAD SINGH** (*supra* 4), the Hon’ble Apex Court at paragraphs 34 and 38, held as follows:

“34. Heavy reliance was placed on Rubabbuddin Sheikh v. State of Gujarat and Ors. 2010 (2) SCC 200. However, we do not find any factual similarity. That was a case where the extreme step was taken by this Court, particularly, in view of the fact that the police officers who were investigating officers, themselves came under the cloud because of the allegations against them. Such is not the position here. This is apart from the fact that factually we do not see any reason why the extreme step is required to be taken in this case even after the charge sheet has been filed.

35. This Court had taken that unusual course in Rubabbuddin Sheikh's case (cited supra), in the words of the Court:

in the facts and circumstances of the present case and to do complete justice in the matter and to instill confidence in the public mind.

Before this course was undertaken, the Court had found out factual discrepancies apparent on the face in the eight Action Taken Reports and the charge sheet. It was also noted that the crime was committed by the police personnel themselves while investigation conducted was not at all satisfactory. We do not find any such circumstance in the present case.

36. We may also refer to the observations made in another ruling reported as Mithabhai Pashabhai Patel and Anr. v. State of Gujarat: 2009 (6) SCC 332. In paragraph 13 of the said decision, this Court has observed:

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.

37. The Court further referred a decision in Ramachandran v. R. Udhayakumar : 2008 (5) SCC 413 and observed therein:

"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 re-investigation."

38. The plea raised by the accused herein was not for further investigation under Section [173\(8\)](#) but for re- investigation by some other agency. In the circumstances of this case, the accused had not justified his plea at all for re-investigation or fresh investigation by another agency. On its own, the High Court did not go into that exercise to decide as to whether the investigation was required to be done by any other agency. It required help of DGP level officer and his opinion to decide whether the earlier investigation was done properly or not. We are afraid that was not the task. To decide so was the task of the Court alone and no opinion could have been sought for, particularly, in the circumstances of this case. Nothing seems to have been established which would justify calling for such opinion. However, we are not going into that question as we have already stated earlier. Once the charge sheet was filed, ordinarily it could only be the power of the Court to decide upon its correctness or otherwise."

15. In the case of **GOVIND AND OTHERS** (*supra* 5), the High Court of Delhi, held as under:

"(A) Criminal P.C. (2 of 1974), S.482 – Inherent powers – High Court have extremely wide powers to pass any orders of give any direction which is imperative for advancing the cause of justice and in preventing an abuse of

the process of the Court or for otherwise securing the ends of justice.

(B) Constitution of India, Art. 226 – Powers of High Court – High Court under Art.226 is possessed of enormous power to do justice or to remove injustice – It cannot be abridged, abrogated or diluted or taken away by judicial pronouncement, or by legislative enactment or even by the amendment of the Constitution.”

16. In the case of **R.S.SODHI** (*supra* 6), the Hon’ble Apex Court at paragraph 38, held as follows:

“...We have perused the events that have taken place since the incidents but we are refraining from entering upon the details thereof lest it may prejudice any party but we think that since the accusations are directed against the local police personnel it would be desirable to entrust the investigation to an independent agency like the Central Bureau of Investigation so that all concerned including the relatives of the deceased may feel assured that an independent agency is looking into the matter and that would lend the final outcome of the investigation credibility. However, faithfully the local police may carry out the investigation, the same will lack credibility since the allegations are against them. It is only with that in mind that we having thought it both advisable and desirable as well as in the interest of justice, to entrust the investigation to the Central Bureau of Investigation forthwith and we do hope that it would complete the investigation at an early date so that those involved in the occurrences, one way or the other, may be brought to book...”

17. In the case of **KASHMIRI DEVI** (*supra* 7), the Hon’ble Apex Court at paragraph 6, held as under:

“6. We are in full agreement with the observations made by the learned Sessions Judge. As already noted during the pendency of the writ petition before the High Court and special leave petition before this Court the case was further converted from [304 IPC](#) to [323/34 IPC](#). Prima facie the police has acted in partisan manner to shield the real culprits and the investigation of the case has not been done in a proper and objective manner. We are therefore of the opinion that in the interest of justice it is necessary to get a fresh investigation made through an independent authority so that truth may be known.”

18. In the case of **KISHAN LAL** (*supra* 8), at paragraphs 12 to 16, the Hon’ble Apex Court held as under:

“12. The power of investigation is a statutory one and ordinarily and save and except some exceptional situations, no interference therewith by any court is permissible.

In Naresh Kavarchand Khatri v. [State of Gujarat and Anr. MANU/SC/7637/2008](#) : AIR2008SC2180, this Court held:

6. The power of the court to interfere with an investigation is limited. The police authorities, in terms of Section [156](#) of the Code of Criminal Procedure, exercise a statutory power. The Code of Criminal procedure has conferred power on the statutory authorities to direct transfer of an investigation from

one Police Station to another in the event it is found that they do not have any jurisdiction in the matter. The Court should not interfere in the matter at an initial stage in regard thereto. If it is found that the investigation has been conducted by an Investigating Officer who did not have any territorial jurisdiction in the matter, the same should be transferred by him to the police station having the requisite jurisdiction.

13. In *Dharmeshbhai Vasudevbbhai and Ors. v. State of Gujarat and Ors.* [MANU/SC/0749/2009](#) : 2009CriLJ2969 , this Court held:

9. Interference in the exercise of the statutory power of investigation by the Police by the Magistrate far less direction for withdrawal of any investigation which is sought to be carried out is not envisaged under the Code of Criminal Procedure. The Magistrate's power in this regard is limited. Even otherwise, he does not have any inherent power. Ordinarily, he has no power to recall his order.

This aspect of the matter has been considered by this Court in *S.N. Sharma v . Bipen Kumar Tiwari and Ors.* [MANU/SC/0182/1970](#) : 1970CriLJ764 , wherein the law has been stated as under:

6. Without the use of the expression "if he thinks fit", the second alternative could have been held to be independent of the first; but the use of this expression, in our opinion, makes it plain that the power conferred by the second clause of this section is only an alternative to the power given by the first clause and can, therefore, be exercised only in those cases in which the first clause is applicable.

7. It may also be further noticed that, even in Sub-section (3) of Section [156](#), the only power given to the Magistrate, who can take cognizance of an offence under Section [190](#), is to order an investigation; there is no mention of any power to stop an investigation by the police. The scheme of these sections, thus, clearly is that the power of the police to investigate any cognizable offence is uncontrolled by the Magistrate, and it is only in cases where the police decide not to investigate the case that the Magistrate can intervene and either direct an investigation, or, in the alternative, himself proceed or depute a Magistrate subordinate to him to proceed to enquire into the case. The power of the police to investigate has been made independent of any control by the Magistrate.

Interpreting the aforementioned provisions vis-a-vis the lack of inherent power in the Magistrate in terms of Section 561A of the Old Criminal procedure Code (equivalent to Section [482](#) of the new Code of Criminal procedure), it was held:

10. This interpretation, to some extent, supports the view that the scheme of the Criminal Procedure Code is that the power of the police to investigate a cognizable offence is not to be interfered with by the judiciary. Their Lordships of the Privy Council were, of course, concerned only with the powers of the High Court under Section 561A CrPC, while we have to interpret Section [159](#) of the Code which defines the powers of a Magistrate which he can exercise on receiving a report from the police of the cognizable offence under Section [157](#) of the Code. In our opinion, Section [159](#) was really intended to give a limited power to the Magistrate to ensure that the police investigate all cognizable offences and do not refuse to do so by abusing the right granted for certain limited cases of not proceeding with the investigation of the offence.

Yet again in *Devarapalli Lakshminarayana Reddy and Ors. v. V. Narayana Reddy and Ors.* [MANU/SC/0108/1976](#) : 1976CriLJ1361 , this Court, upon

comparison of the provision of the old Code and the new Code, held as under:

7. Section [156\(3\)](#) occurs in Chapter XII, under the caption : "Information to the Police and their powers to investigate"; while Section [202](#) is in Chapter XV which bears the heading: "Of complaints to Magistrates". The power to order police investigation under Section [156\(3\)](#) is different from the power to direct investigation conferred by Section [202\(1\)](#). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post-cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section [156\(3\)](#) can be invoked by the Magistrate before he takes cognizance of the offence under Section [190\(1\)\(a\)](#). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section [156\(3\)](#). It may be noted further that an order made under Sub-section (3) of Section [156](#), is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section [156\(1\)](#). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section [156](#) and ends with a report or charge-sheet under Section [173](#). On the other hand, Section [202](#) comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section [202](#) to direct, within the limits circumscribed by that section an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus the object of an investigation under Section [202](#) is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him.

14. We are, however, not oblivious of the fact that recently a Division Bench of this Court in [Sakiri Vasu v. State of Uttar Pradesh and Ors. MANU/SC/8179/2007](#) : AIR2008SC907 while dealing with the power of the court to direct the police officer to record an FIR in exercise of power under Section [156\(3\)](#) of the Code observed that the Magistrate had also a duty to see that the investigation is carried out in a fair manner (correctness whereof is open to question).

15. An order of further investigation can be made at various stages including the stage of the trial, that is, after taking cognizance of the offence. Although some decisions have been referred to us, we need not dilate thereupon as the matter has recently been considered by a Division Bench of this Court in [Mithabhai Pashabhai Patel and Ors. v. State of Gujarat MANU/SC/0858/2009](#) : (2009)6SCC332 in the following terms:

"12. This Court while passing the order in exercise of its jurisdiction under Article [32](#) of Constitution of India did not direct re-investigation. This Court exercised its jurisdiction which was within the realm of the Code. Indisputably the investigating agency in terms of Sub-section (8) of Section [173](#) of the Code can pray before the Court and may be granted permission to investigate into the matter further. There are, however, certain situations, where such a formal request may not be insisted upon.

13. It is, however, beyond any cavil that 'further investigation' and 're-investigation' 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

re-investigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in *Ramachandran v. R. Udhayakumar* [MANU/SC/7684/2008](#) : 2008CriLJ4309 , opined as under:

“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.”

We have referred to the aforementioned decision only because Mr. Tulsi contends that in effect and substance the prayer of the appellant before the learned Magistrate was for reinvestigation but the learned Magistrate had directed further investigation by the Investigating Officer inadvertently.

16. The Investigating Officer may exercise his statutory power of further investigation in several situations as, for example, when new facts come to its notice; when certain aspects of the matter had not been considered by it and it found that further investigation is necessary to be carried out from a different angle(s) keeping in view the fact that new or further materials came to its notice. Apart from the aforementioned grounds, the learned Magistrate or the Superior Courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice. The question, however, is as to whether in a case of this nature a direction for further investigation would be necessary”

19. In the case of ***RUBABBUDDIN SHEIKH*** (*supra* 9), the Honourable Apex Court, at paragraphs 80 to 82, held as under:

“80. We have already discussed the decisions cited from the Bar on the question that after the charge sheet being filed whether the investigation could be handed over to the CBI Authorities or to any other independent agency from the State police authorities. We have already distinguished the decisions cited by the State that they related to the power of the court to monitor the investigation after the charge sheet was filed. The scope of this order, however, cannot deal with the power of this Court to monitor the investigation, but on the other hand in order to make sure that justice is not only done, but also is seen to be done and considering the involvement of the State police authorities and particularly the high officials of the State of Gujarat, we are compelled even at this stage to direct the CBI Authorities to investigate into the matter. Since the high police officials of the State of Gujarat are involved and some of them had already been in custody, we are also of the view that it would not be sufficient to instill confidence in the minds of the victims as well as of the public that still the State Police Authorities would be allowed to continue with the investigation when allegations and offences were mostly against them.

81. In the present circumstances and in view of the involvement of the police officials of the State in this crime, we cannot shut our eyes and direct the State Police authorities to continue with the investigation and the charge sheet and for a proper and fair investigation, we also feel that the CBI should be requested to take up the investigation and submit a report in this Court within six months from the date of handing over a copy of this judgment and the records relating to this crime to them.

82. Accordingly, in the facts and circumstances even at this stage the police authorities of the State are directed to hand over the records of the present

case to the CBI Authorities within a fortnight from this date and thereafter the CBI Authorities shall take up the investigation and complete the same within six months from the date of taking over the investigation from the State police authorities. The CBI Authorities shall investigate all aspects of the case relating to the killing of Sohrabuddin and his wife Kausarbi including the alleged possibility of a larger conspiracy. The report of the CBI Authorities shall be filed in this Court when this Court will pass further necessary orders in accordance with the said report, if necessary. We expect that the police authorities of Gujarat, Andhra Pradesh and Rajasthan shall co-operate with the CBI authorities in conducting the investigation properly and in an appropriate manner.”

20. In the case of **HEMANT DHASMANA** (*supra 10*), the Hon’ble Apex Court at paragraphs 20 and 21, held as under:

“20. When the Special Judge was opted to order for a further investigation the High Court should have stated to the CBI to comply with that direction, Nonetheless, we are in agreement with the observation of the learned Single Judge of the High Court that the Special Judge or the magistrate could not direct that a particular police officer or even an officer of a particular rank should conduct such further investigation. It is not within the province of the magistrate while exercising the power under Section [173\(8\)](#) to specify any particular officer to conduct such investigation, not even to suggest the rank of the officer who should conduct such investigation.

21. In the result, we allow this appeal and set aside the judgment under challenge. However, while restoring the order of the Special judge we make it clear that the direction made by the Special Judge that further investigation shall be conducted by an officer of the DIG rank of the CBI, will stand deleted. We make it abundantly clear that we have not considered the merits of the allegations made against the respondent or the conclusions reached by the CBI in the report already laid before a Special Judge. Hence, further investigation as ordered by the Special Judge can be conducted untrammelled by any of the observation made by the Special Judge or by us.”

21. In the case of **THE GUN-ROCK ENCLAVE CO-OP. HOUSING SOCIETY LTD.** (*supra 11*), this Court at paragraphs 9 to 12, held as under:

“9. In the case of Hemanth Dhasmanna v. [Central Bureau of Investigation, MANU/SC/0459/2001](#) : 2001CriLJ4190 , the Supreme Court held that on receipt of a report under Section [173\(2\)](#) of the Code stating that no offence is committed by the accused, then the Court may accept and drop the proceedings or the Court may disagree with the report and take cognizance of the offence and, issue process if it takes the view that there is sufficient ground for proceeding further or the Court may direct further investigation to be made by the police, but, the Magistrate is not empowered to direct particular police officer or even an officer of the particular rank to conduct investigation. Under Section [173\(8\)](#) of the Code the Magistrate is empowered to order further investigation by the officer in charge of the concerned Police Station alone.

10. There is no dispute that the Court may disagree with the report and also take cognizance or direct further investigation to be made by the police. Therefore, I am of the opinion that the order of the Magistrate directing the CBCID, to conduct investigation in the matter goes beyond the scope of his power under Section [173\(8\)](#) of the Code.

11. In the instant case, the learned Magistrate rightly expressed his opinion stating that the Police did not understand the scope of Investigation and report was filed without examining the complainant.. The averments made in the report filed by the police strengthens the contention of the complainant. Therefore, I am of the opinion that the learned Magistrate himself could have taken cognizance of the offence and proceeded further instead of directing further investigation by CBCID. No useful purpose will be served by directing again to investigate the matter by the same Station House Officer. The learned Magistrate rightly expressed his opinion about the way in which the officer in charge of the Police Station investigated the matter and filed a report.

12. Having regard to the facts and circumstances of the case, the order passed by the XI Metropolitan Magistrate, Secunderabad dated 9-3-2005 in Cri. M.P. No. 869 of 2004 in Crime No. 173 of 2004 of Karkhana Police Station in directing the CBCID, to conduct investigation is set aside, and the learned Magistrate himself may take cognizance of the offence and proceed against the accused in accordance with law. The Criminal Appeal is allowed as indicated above.”

22. In the case of **ALEXANDAR PUSHPARAJ ALIAS ALEX**

(*supra* 12), the High Court of Madras, at paragraph 5, held as under:

“5 ...The investigation conducted by the first respondent leaves no doubt in my mind that the investigation is not only unsatisfactory but partial and is also clearly faulty and therefore the petitioner cannot be found fault with in making the allegation that the Inspector of Police, Thoraipakkam Police Station wanted to oblige the real accused, whoever they may be. Transfer of investigation from the local police though not always desirable, but where the investigation is not in proper lines and desultory and lackadaisical, in order to install confidence in the mind of the people, as has been held in *Kashmiri Devi v. Delhi Administration*, A.I.R. 1988 S.C. 1323 transfer of investigation of case is inevitable. In my opinion though this is a fit case to be referred to the Home Secretary, Government of Tamil Nadu, Ft. Saint George, Chennai-9, for taking proper disciplinary action against the police officers who conducted the investigation, I do not desire making such a reference, in order to give an opportunity to the police officers to mend their ways and they are cautioned to be extremely careful in future without giving room to such allegations, as made in this petition and to do their duties as per law. However, a copy of the judgment shall be sent to the Director General of Police to keep watch in the matter of investigation by the said Inspectors in future cases and if any lapse is found the Director General of Police shall take suitable disciplinary action. I have not indicated anything on the merits of the investigation done so far and this Court is inclined to order investigation to be held by an independent agency, name, the second respondent.

In the result, I direct the investigation in respect of the fire accident that took place on 15.06.2000, in Crime No.445 of 2000 on the file of the first respondent, be transferred to the second respondent, namely, the Inspector General of Police, Crime Branch, CID Chennai. The Inspector General of

Police, CBCID shall monitor the said investigation and he shall see to it an in-depth, impartial and through investigation is done on proper lines in accordance to law, de novo, without being guided by the investigation already done by the local police namely the first respondent. As the occurrence took place in June, 2000, it is directed that the second respondent shall complete the investigation, and file the final report within a period of four months from the date of receipt of a copy of this order, without fail.”

23. The learned Government Pleader on the contrary has strongly and emphatically opposed the request of the petitioner and contended that the present case is not a case for entrustment to any other agency and the conduct of the petitioner also does not entitle him for any relief from this Court. In support of his submissions and contentions the learned Government Pleader relied on the judgment of the Hon’ble Apex Court relied upon by the learned counsel for the petitioner in the case of **VINAY TYAGI** (*supra* 1) and the Judgment of the Hon’ble Apex Court in **CHANDRA BABU @ MOSES v. STATE THROUGH INSPECTOR OF POLICE & OTHERS** (**CRIMINAL APPEAL No.866 of 2015**)(*Arising out SLP (Crl.) No.5702 of 2012*).

24. Coming to the Judgments cited by the learned Government Pleader, in the case of **VINAY TYAGI** (*supra* 1), the Hon’ble Apex Court, at paragraphs 43 to 45, held as follows:

“43. At this stage, we may also state another well-settled canon of criminal jurisprudence that the superior courts have the jurisdiction under Section [482](#) of the Code or even Article [226](#) of the Constitution of India to direct 'further investigation', 'fresh' or 'de novo' and even 'reinvestigation'. 'Fresh', 'de novo', and 'reinvestigation' are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

44. We have deliberated at some length on the issue that the powers of the High Court under Section [482](#) of the Code do not control or limit, directly or impliedly, the width of the power of Magistrate under Section [228](#) of the Code. Wherever a charge sheet has been submitted to the Court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in the case of *Disha v. State of Gujarat and Ors.* [MANU/SC/0841/2011](#) : (2011) 13 SCC 337. *Vineet Narain and Ors. v. Union of India and Anr.* [MANU/SC/0827/1998](#) : (1998) 1 SCC 226, *Union of India and Ors. v. Sushil Kumar Modi and*

Ors. [MANU/SC/0086/1997](#) : 1996 (6) SCC 500 and Rubabbuddin Sheikh v. State of Gujarat and Ors. [MANU/SC/0024/2010](#) : (2010) 2 SCC 200.

45. The power to order/direct 'reinvestigation' or 'de novo' investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the Court may, by declining to accept such a report, direct 'further investigation', or even on the basis of the record of the case and the documents annexed thereto, summon the accused."

25. In the case of **CHANDRA BABU @ MOSES v. STATE THROUGH INSPECTOR OF POLICE & OTHERS**, the Hon'ble Apex Court at paragraph 20, held as under:

"20. In the said case, the question arose, whether the Magistrate can direct for reinvestigation. The Court, while dealing with the said issue, has ruled that:-

"At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under [Section 482](#) of the Code or even [Article 226](#) of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo" and "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection." And again:-

"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."

26. It is evident from the material available on record that the police also filed final report on 20.10.2014 in FIR 232/2013 vide Sr.No.3932/2014 and the petitioner herein also filed a protest application on 03.09.2015. There is absolutely no dispute with regard to the law laid down in the judgments cited by the learned counsel for the petitioner. It is a settled and well established proposition of law that the

jurisdiction of this Court under Section 482 of Cr.P.C and Article 226 of the Constitution of India is required to be exercised very sparingly and in rarest of rare cases and with great amount of care, caution and circumspection while ordering entrustment of the investigation to some other agency and the circumstances should also warrant the same. The circumstances of the case, as narrated *supra*, in the considered and definite opinion of this Court would not warrant indulgence of this Court in the absence of specific *mala fides* and mere presumptions and assumptions cannot form the basis nor can be a ground for transferring as the same would undoubtedly and adversely affect the morale of the investigating agencies. Eventually, the petitioner herein wants the matter to be entrusted to the Ant-Corruption Bureau. Admittedly the protest application filed by the petitioner herein is pending consideration before the learned Magistrate. The Anti-Corruption Bureau is a special establishment dealing with the matters pertaining to illegal gratifications and corruption.

27. Petitioner herein also has not brought to the notice of this Court any provision of law under which the matter can be entrusted to the ACB. The jurisdiction of the Special Police Establishment under the Prevention of Corruption Act, 1988 is limited only to certain contingencies and as such the present matter cannot be entrusted to ACB. It is also significant to note at this juncture that Sri Vasantha Kumar is no longer the third respondent.

28. The facts and circumstances of the case, drives this Court towards an irresistible conclusion that the petitioner herein has failed in making out the case, warranting indulgence of this Court under Article 226 of the Constitution of India.

29. For the aforesaid reasons, the writ petition is accordingly dismissed. As a sequel, pending miscellaneous petitions, if any, shall stand disposed of. No costs.

A.V.SESHA SAI, J

Date:12.11.2015

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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.29999 of 2013

Dated: 12th November, 2015

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