

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.585 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHUBANI

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1. Dharmesh Kumar Singh Son of Tapeswar Singh Resident of Mohalla- Kunwar Singh Colony, P.O.- Hajipur, P.S. Sadar Hajipur, District- Vaishali at Hajipur
.... Petitioner

Versus

1. The State of Bihar Through The Director General of Police, Bihar, Patna.
2. The Additional Inspector General of Police (Economic Offences), Bihar, Patna.
3. The Additional Inspector General of Police.
4. The Deputy Inspector General of Police (Human Rights), Bihar, Patna.
5. The Inspector of Police, Economic Offences Unit, Bihar, Patna
.... Respondents

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Appearance :

For the Petitioner : Mr. S.B.K. Mangalam & Chandan, Adv.s
For the State : Mr. Rajiv Kumar Singh, G.P. II with
Mr. Indrajit Bhushan, A.C. to G.P. II
For EOU : Mr. Vishwanath Prasad Sinha, Sr. Adv. with
Mrs. Soni Shrivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 23-02-2016

This petition has been filed for quashing the letter/order bearing Letter No. 1068/P-1/41-4-214-08, dated 31.03.2008, (Annexure 6) issued by the Deputy Inspector General of Police, Human Rights, Bihar, Patna, by which request has been made to, further, investigate, Madhepura P.S. Case No. 2 of 207, dated 14.01.2007, for offence under Sections 409/120B/468/467/34 of the Penal Code, by the Criminal Investigation Department in pursuance of the proposal of the Superintendent of Police, Madhubani, bearing Letter No. 1518/CR, dated 25.03.2008 (letter attached), with intimation that the proposal has been confirmed by the Inspector General of Police, on the question raised at the Floor of the House by Legislature and for declaration that the provision contained in Section 173(8) of the Criminal Procedure Code can be exercised, when further evidence obtains and not on question raised by Legislature at the Floor of the House.

2. The fact, in narrow compass, as alleged in the written report of Jainendra Kumar, Executive Officer, Nagar Parishad, Madhubani, that in Yojna No. 4 of 2004-2005 and Yojna no. 0 of 2004-2005, about Rs.4,35,000/- has been defalcated by Smt. Rekha Nayak, the Chairman of the Nagar Parishad, Madhubani, and her

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husband, Sunil Nayak, in collusion with Arun Bhagat. It is, further, alleged that in Kuradan Ghotala (scham) for purchase of 48 Kuradans at the rate of Rs.8,935/- per Kuradan, a defalcation of Rs.4,28,800/- has been made. The modus operandi of the defalcation was that Arun Kumar Bhagat, the Peon of Chairman, Smt. Rekha Nayak, has been made Abhikarta forcibly, without any petition by him for being an Abhikarta. The advance payment has been made in the name of Arun Kumar Bhagat to the tune of Rs.3,35,000/-. The measurement book and muster roll even not attached and money was paid by bearer cheque. It is not proper technically to appoint the Peon of the Chairman of Nagar Parishad as Abhikarta. The receipt of the cheque in the name of Arun Kumar Bhagat and the cheque were kept by Sunil Nayak, husband of Smt. Rekha Nayak. The further case is that there is further scam in construction of drainage scheme, Arun Kumar Bhagat has been made Abhikarta and rupees one lakh paid in advance was kept with Sunil Nayak, the husband of Smt. Rekha Nayak, and the record of the scheme has been lost to defalcate the amount.

3. On the written report of Jainendra Kumar, a first information report lodged and registered as Madhubani P.S. Case No. 2 of 2007, dated 04.01.2007. After the institution of the case, Madhubani police proceeded with the investigation and after completing the investigation, submitted charge sheet under Section 173(2) of the Criminal Procedure Code in the Court of the Chief Judicial Magistrate, Madhubani. Before the submission of the charge sheet, the petitioner approaches the Hon'ble Court for quashing the criminal prosecution of Madhubani P.S. Case No. 2 of 2007 vide Cr. Misc. No. 28119 of 2007 against him and, in the meantime, the police after completing investigation submitted charge sheet against other co-accused, except the petitioner, showing the petitioner not sent up for trial/prosecution. Hence, the Bench of the Hon'ble Court in Cr. Misc. No. 28119 of 2007 taking notice of the fact that the petitioner has not been sent up for trial, ordered that the proceeding against the petitioner be dropped vide order, dated 06.02.2008, passed in Cr. Misc. No. 28119 of 2007.

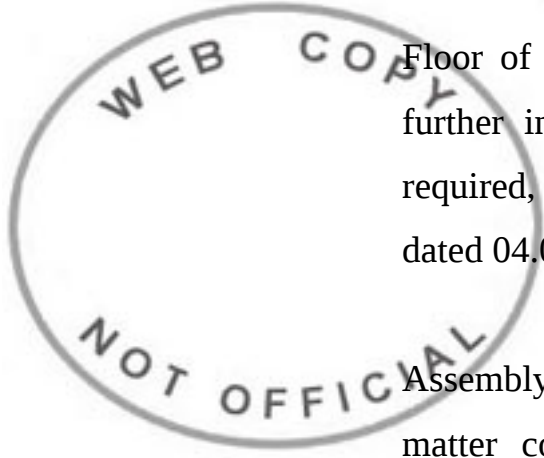
4. After submission of charge sheet the cognizance taken against the accused person against whom charge sheet submitted, but, petitioner not sent up for trial so the proceeding against the petitioner was dropped and case proceeded against other accused.

5. However, in the meantime, the question was raised at the Floor of the House by local Member of Legislative Assembly for further investigation by the Criminal Investigation Department is required, in connection with Madhubani P.S. Case No. 2 of 2007, dated 04.01.2007.

6. On the question raised by a Member of Legislative Assembly on the Floor of the House of the Legislative Assembly the matter considered by the police authority and the proposal by Superintendent of Police, Madhubani, for further investigation vide letter no. 1518/CR, dated 25.03.2008, confirmed by the Inspector General of Police, Bihar, Patna, for further investigation by Criminal Investigation Department and in consequence the letter of request was sent by the Deputy Inspector of General of Police, Human Rights, Bihar, Patna, vide letter no. 1068, dated 31.03.2008, to the Additional Director General of Police, Criminal Investigation Department, Patna, for investigation of the case by the Criminal Investigation Department.

7. The Criminal Investigation Department took up the request of further investigation and criminal bench team constituted by Criminal Investigation Department for further investigation. The crime branch team filed a petition before the Chief Judicial Magistrate, Madhubani, for orders to further investigate the case. The said petition, filed under Section 173(8) of the Criminal Procedure Code, for further investigation before the Chief Judicial Magistrate, Madhubani, was rejected by order, dated 22.12.2008.

8. Against the order, dated 22.12.2008, rejecting the petition for further investigation under Section 173(8) of the Criminal Procedure Code in connection with Madhubani P.S. Case No. 2 of 2007, a revision was preferred bearing Criminal Revision No. 455 of 2009 before the Session's Judge, Madhubani. The said criminal revision was disposed off by order, dated 26.04.2010, passed by the



Additional Sessions Judge, III, Madhubani, setting aside the order of the Chief Judicial Magistrate, dated 22.12.2008, with a direction to the Chief Judicial Magistrate, to pass fresh order on fresh material. On the order, dated 26.04.2010, passed in the Criminal Revision No. 455 of 2009, the Chief Judicial Magistrate passed an order, dated 14.12.2013, directing the investigating officer to further investigate and submit supplementary final form in Madhubani P.S. Case No. 2 of 2007.

9. The petitioner has neither challenged the order, dated 26.04.2010, passed by the Additional Sessions Judge, III, Madhubani, in Criminal Revision No. 455 of 2009, nor challenged the order passed by the Chief Judicial Magistrate, Madhubani, dated 04.12.2013, for further investigation under Section 173(8) of the Criminal Procedure Code, in pursuance of the order passed by the Additional Sessions Judge.

10. However, in stead of challenging those judicial orders for further investigation, has filed this writ petition for quashing Annexure 6 and raising a question whether by Annexure 6 the letter issued by Deputy Inspector of General of Police, Human Rights, Bihar, Patna, to Criminal Investigation Department for further investigation, can be permitted in pursuance of the question raised by the Legislature on the Floor of the House.

11. The learned counsel for the petitioner contends that a first information report was lodged bearing Madhubani P.S. Case No. 2 of 2007 in which the petitioner was named in the first information report, but, the police after investigation submitted the charge sheet against Smt. Rekha Nayak, the Chairman of the Nagar Parishad, Madhubani, and her husband, Sunil Nayak, as well as the Peon, Arun Kumar Bhagat, but, the petitioner was not sent up for trial. The petitioner moved before the Hon'ble High Court to quash the first information report and criminal proceeding in Cr. Misc. No. 28119 of 2007 and the proceeding against the petitioner ordered to be dropped and in pursuance of the order of the Hon'ble High Court, dated 06.02.2008, passed in Cr. Misc. No. 28119 of 2007 the proceeding against the petitioner was dropped. Hence, it is submitted that police

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officers is not entitled to make further investigation against the petitioner with respect to the offence for which final form has been submitted under Section 173(2) of the Criminal Procedure Code and the proceeding having been dropped. Reliance has been placed on a decision of this Hon'ble Court reported in **2002(4) P.L.J.R., 297 (Awadhesh Kumar Vrs. State of Bihar)**. It has, further, been contended that step has been taken by the police for further investigation in pursuance of question raised at the Floor of the House by the Member of Legislative Assembly. Hence, it is submitted that it appears that the action for further investigation taken at the initiative by a political party amounts to political interference and has placed reliance on the observation made by Lord Danning that it is no business of a Minister of the Crown can ask the police to prosecute this a or that man and referred a passage quoted in decision reported in **(1997) 4 SCC 770 (Union of India & Ors. Vrs. Sushil Kumar Modi & Ors.)**.

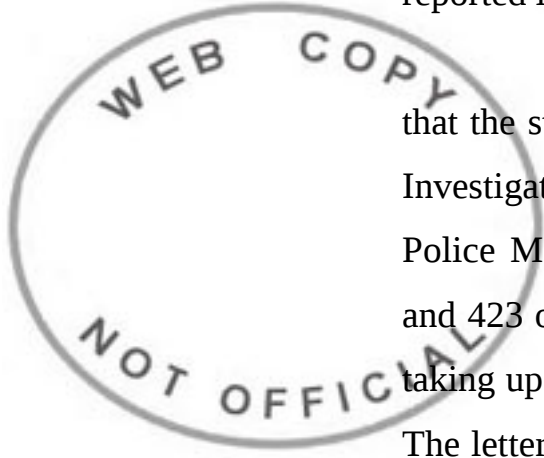
“I have no hesitation, however, in holding that, like every constable in the land, he should be, and is, independent of the executive. He is not subject to the orders of the Secretary of State, I hold it to be the duty of the Commissioner of Police, as it is of every chief constable, to enforce the law of the land. He must take steps so to post his men that crimes may be detected; and that honest citizens may go about their affairs in peace. He must decide whether or not suspected persons are to be prosecuted; and, if need be, bring the prosecution or see that it is brought; but in all these things he is not the servant of anyone, save of the law itself. No Minister of the Crown can tell him that he must, or must not, keep observation on this place or that; or that he must, or must not, prosecute this man or that one. Nor can any police authority tell him so. The responsibility for law enforcement lies on him. He is answerable to the law and to the law alone.”

12. It has, further, been submitted by the learned counsel for the petitioner that the investigation given to the Criminal Investigation Department amounts to reinvestigation and the police has no right for fresh investigation or reinvestigation and further submitted that any further investigation by different agency is not permissible and has placed reliance on a decision reported in **(1998) 5**

SCC 223 (K. Chandrashekhhar Vrs. State of Kerala). It has, further, been submitted that any investigation is only permissible when either new fact come to notice or certain aspect has not been considered and other ground and has placed reliance on a decision reported in **(2009) 7 SCC 685 (Kishan Lal Vrs. Dharmendra).**

13. The learned counsel for the State, however, contends that the step has been taken for further investigation by the Criminal Investigation Department in accordance with law under the Bihar Police Manual, the Bihar Police Manual provides, under Rules 410 and 423 of Chapter IV of the Bihar Police Manual, the procedure for taking up the investigation by the Criminal Investigation Department. The letter has been issued for investigation by Criminal Investigation Department, in pursuance of Rules under the Bihar Police Manual and the team started the further investigation after taking due permission from the Magistrate under Section 173(8) of the Criminal Procedure Code, which has not been challenged by the petitioner. It has, further, been submitted that the police has statutory right for further investigation under Section 173(8) of the Criminal Procedure Code and has placed reliance upon decision reported in **(2009) 6 SCC, 346 (Rama Choudhary Vrs. The State of Bihar).** It is, further, submitted that it is true that re-investigation or fresh investigation is not permissible, but, the further investigation is permissible under Section 173(8) of the Criminal Procedure Code.

14. In respect of the respective submissions of the parties, the question for consideration whether the further investigation is permissible against the person not sent up for trial and against whom final form submitted in consequence the proceeding against him was dropped. The further question raised whether further investigation is permissible on question raised at the Floor of the House whether Annexure 6, a letter issued by the Deputy Inspector of General of Police, Human Rights, Bihar, Patna, to the Additional Director General, Criminal Investigation Department, Bihar, Patna, for further investigation of the case by the Criminal Investigation Department is permissible or required to be quashed and further whether further investigation is permissible by a different agency and, further,



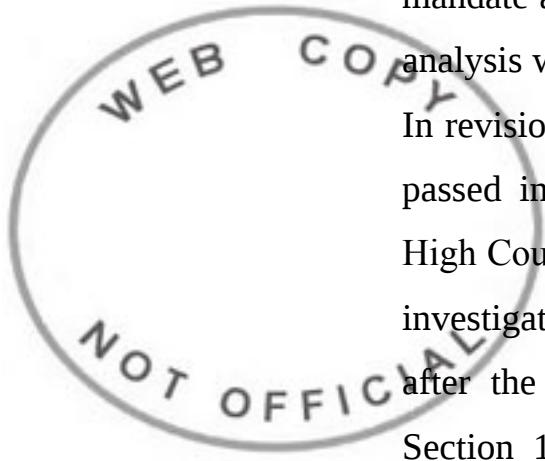
whether further investigation under Section 173(8) of the Criminal Procedure Code is permissible on the facts and circumstances of the case.

15. The first question raised whether a further investigation permissible against a person, who is named in the first information report, but, charge sheet having not been submitted as he has not been sent up for trial and the proceeding is dropped against him. It is pertinent to mention that if a first information report is lodged against a person having been named in the first information report, his status is like a 'suspect' in the case. The fact of the present case is that on a written report of Jainendra Kumar, Executive Officer, Nagar Parishad, Madhubani, the name of the petitioner found in written report with the specific allegation against him. Hence, his status in the case at the time of investigation of a case and during the investigation is like a suspect. When the investigating officer, after investigation, submits charge sheet and a cognizance is taken against a person suspect in the case, then, he does come under the definition of an accused. The fact remained in the case though the petitioner has been named in the first information report and the charge sheet has been submitted in the case, but, the petitioner was not sent up for trial and the proceeding against him was dropped and neither cognizance taken against him nor process issued against him under Section 204 of the Criminal Procedure Code rather proceeding against him is dropped, hence, he can not be assigned as an accused, in the case, as it is well settled that in police case, till the submission of the charge sheet and cognizance has been taken against a person, he can not be assigned as an accused.

16. The submission of the learned counsel for the petitioner relying upon a decision reported in **2002(4) P.L.J.R., 297** (supra) that no further investigation is permissible against accused is not applicable in this case at hand. In the above reported case the fact remained that on a private complaint the learned Magistrate sent the matter for instituting the case under Section 156(3) of the Criminal Procedure Code and the police after submission of the charge sheet after investigation by police, the Magistrate took cognizance and the

accused was remanded after taking cognizance and charges were levelled against him and in that circumstance, the investigating officer filed a petition under Section 173(8) of the Criminal Procedure Code for seeking permission of the Court requiring the mandate against the accused to give his signature for comparison and analysis while opposed by the accused and rejected by the trial Court. In revision against the said order of refusal was set aside. The order passed in revision by revisional Court was challenged before this High Court and it was held by the Hon'ble High Court that no further investigation in respect of offence in relation to the same accused after the police submitted charge sheet under sub section (2) of Section 173 of the Criminal Procedure Code. The ratio decided **2002(4) P.L.J.R., 297** (supra) that the prosecution agency can not be allowed to make further investigation into the very offence in relation to the same accused if the trial has already commenced. However, the fact of prosecution case is quite different, neither charge sheet submitted against the petitioner nor cognizance taken to bring the petitioner under the definition of accused. However, having regard to the facts and circumstances of the case since, the petitioner has not come under definition of accused as charge sheet has not been filed against him nor cognizance taken nor process issued, hence, ratio of the case decided in **2002 (4) P.L.J.R., 297(Awadhesh Kumar Vrs. The State of Bihar)** is not applicable. Hence, there is no merit in submission that a further investigation can not be proceeded against a person under Section 173(8) of the Criminal Procedure Code, who is not accused in a case. However, it is well settled that the further investigation is statutory right of the police under Section 173(8) of the Criminal Procedure Code and reliance placed on decision reported in **(2009) 6 SCC, 346** (supra).

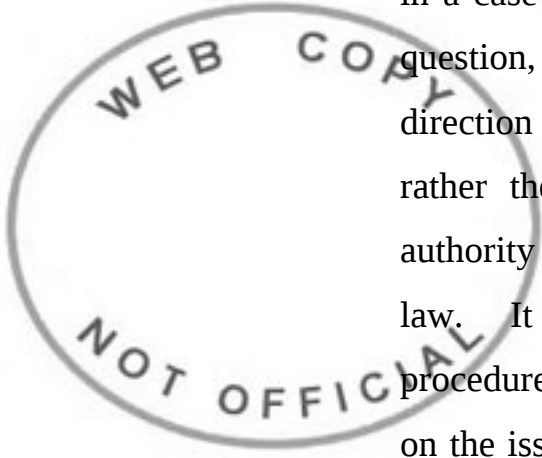
17. The next question raised that the decision for further investigation taken in consequence of the question raised by the Member of Legislative Assembly on the Floor of the House amounts to a decision taken by a political party as a decision of political party, hence, it amounts to political interference and has place reliance on a decision reported in **(1997) 4 S.C.C., 770** (supra) in which it has



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been observed that it is not business of the Minister Crown to ask the people to prosecute this or that man.

18. However, I do not find any merit in the submission. The question raised at the Floor of the House for further investigation in a case of defalcation of the public money there is nothing in the question, raised, to prosecute this man or that man, there is no direction by Minister or Crown to prosecute this man or that man rather the parliamentary procedure is only to ensure the public authority to ensure their statutory duty in proceeding established by law. It is well settled that in a parliamentary democracy the procedure and practice for raising question on the Floor of the House on the issue of public importance or individual grievance that public authority perform their statutory duty in accordance with law in conformity of the procedure established by law. The Minister of a Department is responsible to the Parliament or State Assembly to ensure the house that the public authorities are performing their duties in compliance to the statutory duty. The Member of Legislative Assembly being the public representative raises the voice of the people/public only to ensure that the public functionaries perform their statutory duty in accordance with law. The fact of the case that the investigation is with regard to defalcation of public money and it is a matter of public importance. To raise the issue about proper investigation in case of defalcation of public money does not mean to influence on merit. If the grievance of the public is raised by the public representative at Floor of the House it can not be said that they are influencing the process of law or there is any influence of political party merely because the public representative raised the issue at the Floor of the House. The whole purpose of raising question at the Floor of the House is only to ensure that the public authorities to function their statutory duty in accordance with law. The raising of the question on the Floor of the House is only to ensure that public authority shall function in accordance with law and is nothing to give a direction on merit of the case. Under the facts and circumstances, there is no allegation that the Minister or the State or any political party or executive or the legislature or the Member of Legislative



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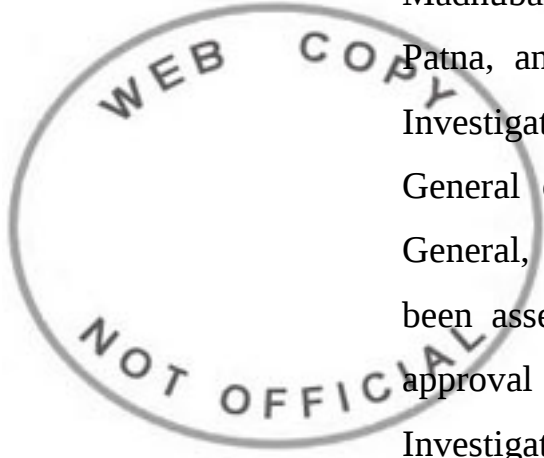
Assembly has given any direction or either to falsely implicate or act otherwise then in accordance with law to influence the investigation and merely because the police acted in accordance with law or in pursuance of the statutory duty in compliance with statute on the question raised at the Floor of the House can not be taken as decision influenced by the State or political party. There is no material to suggest that Annexure 6, the letter of request of the Deputy Inspector of General of Police, Human Rights, Bihar, Patna, to Criminal Investigation Department for further investigation has been issued in pursuance of any interference at the intervention of the political party or the Minister rather the letter of request issued on the proposal of the Superintendent of Police, Madhubani. It is police who duly considered the matter for proposal for investigation as per the Rule provided under the Bihar Police Manual. The Member of Legislative Assembly may be of a particular political party, but, he is a public representative and only raised the issue at the Floor of the House that the police responded and the investigation be proceeded in accordance with law and it is only the police who has to respond in the police investigation uninfluenced by executive, minister or any other agency.

19. The next question raised is quashing of Annexure 6, the letter issued by the Deputy Inspector of General of Police, Human Rights, Bihar, Patna, by which a request has been made to investigate Madhubani P.S. Case No. 2 of 2007. The criticism has been made that the said letter issued on the question raised at the Floor of the House, however, as discussed above, the question raised at the Floor of the House to ensure the public authority to respond in accordance with law.

20. The police has responded on the question raised at the Floor of the House and the Superintendent of Police, Madhubani, went into the cause of case and taken steps as per the Rules under the Bihar Police Manual and proceeded for investigation by Criminal Investigation Department duly approved by Inspector General of Police and in pursuance the letter issued by the Deputy Inspector of General of Police, Human Rights, Bihar, Patna. It has been brought

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on the record that the step has been taken under Rules 410 and 423 of Chapter IV of the Bihar Police Manual for investigation of a case from general police to Criminal Investigation Department and under those provisions letter was sent by the Superintendent of Police, Madhubani, was approved by the Inspector General of Police, Bihar, Patna, and said request for further investigation by the Criminal Investigation Department was sent by the Deputy Inspector of General of Police, Human Rights, Bihar, Patna, to the Director General, Criminal Investigation Department, Patna. It has, further, been asserted by the State that the Rules and Guidelines for the approval of investigation of the case from general police to Criminal Investigation Department, Bihar, Patna, has been given in Chapter IV of Bihar Police Manual which provides the procedure for taking up the investigation of the case from general police to Criminal Investigation Department or to assist the general police and in pursuance thereof a letter of request was sent by the Deputy Inspector of General of Police, Human Rights, Bihar, Patna, to the Criminal Investigation Department for taking up investigation, which is Annexure 6 in the writ petition, which has been challenged. It has, further, been stated that in pursuance of the letter issued by the Deputy Inspector of General of Police, Human Rights, Bihar, Patna, the Criminal Investigation Department taken up the case, constituted crime bench team for further investigation and the criminal bench team filed petition before the Chief Judicial Magistrate, Madhubani, for order for further investigation. It has, further, been brought to the notice that Rule 410 of the Bihar Police Manual laid down special function of the intelligence department and it provides functioning of the Criminal Investigation Department was specifically distribution of information regarding the provisional cases and clauses of crime details. Rule 425 of the Bihar Police Manual provides methods of assuming control and provides that the Deputy Inspector of General of Police, Criminal Investigation Department, assumes control of a case on receipt of either to first supplementary report or second supplementary report to him for Rule 1010 of the Bihar Police Manual. Section 423 of the Bihar Police Manual provides that the

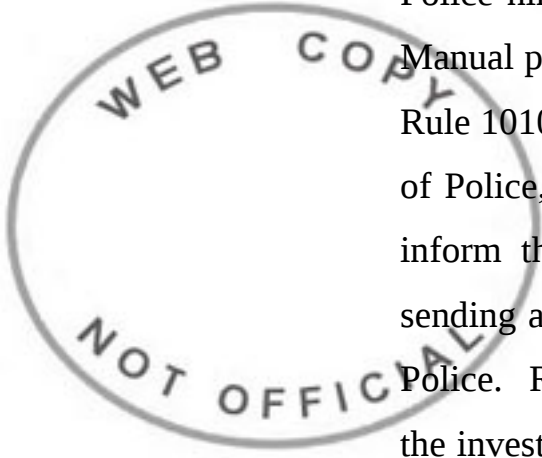


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Deputy Inspector of General of Police may assume control or assist. The Rule 1010 of the Bihar Police Manual provides for supplementary report to the intelligence department. The supplementary report shall be provided by the Superintendent of Police himself at the headquarters. Section 410 of the Bihar Police Manual provides that the report of the Superintendent of Police under Rule 1010 of the Bihar Police Manual lay before the Director General of Police, Bihar, Patna, and if he decides to assume control he shall inform the then Deputy Inspector of General of Police forthwith sending a copy of his request with direction to the Superintendent of Police. Rule 410(2) of the Bihar Police Manual provides to control the investigation into the serious crimes in which the control requires assistance is invoked by the legal authority that the approval of the Inspector General of Police or Government. Hence, having regard to the fact that the letters sent on the report of the Superintendent of Police, Madhubani, having been approved by the Director General of Police and sent proposal for investigation to the Criminal Investigation Department is a letter issued with a request to investigate the case by Criminal Investigation Department is well within Chapter XV of the Bihar Police Manual are in accordance with rule and statutory provision.

21. There is no mention or material placed by the petitioner that Annexure 6 has been issued at the influence of the political party or the intervention of the Minister for ulterior motive, hence, there is no merit in the submission that the Minister is instrumental in decision rather.

22. Having regard to the fact that on question raised at the Floor of the House the Superintendent of Police, Madhubani, responded and sent a proposal for investigation by Criminal Investigation Department was approved by the Inspector General of Police, Bihar, Patna, for investigation by Criminal Investigation Department. In consequence thereof letter of request was sent by the Deputy Inspector of General of Police, Human Rights, to the Additional Director General of Police, Criminal Investigation Department for investigation of case by Criminal Investigation



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Department in compliance to Rules 410 and 423 of the Chapter IV as well as Rule 1010 of the Bihar Police Manual and the Criminal Investigation Department took up the investigation and in consequence constituted crime bench team and the bench team proceeded with petition under Section 173(8) of the Criminal Procedure Code before the Chief Judicial Magistrate, Madhubani, for further investigation, which was refused and there in revision case remanded and finally Chief Judicial Magistrate passed order. The orders of the Additional Sessions Judge and the Chief Judicial Magistrate have not been challenged by the petitioner. Hence, the further investigation of the case in consonance of statutory rule at the instance of the police and there is nothing to show that said direction was in any manner was otherwise influenced either by the executive or the Legislator or the minister to interfere on the ground. Hence, the mere fact that the Superintendent of Police responded at the question raised at the Floor of the House was influenced by a political party or minister is not sustainable. More over it is well settled that the further investigation is indivisible right of the police. It is true that there is no provision for re-investigation or afresh investigation. It is relevant to quote paragraphs 15 to 19 of the decision reported in **(2009) 6 S.C.C., 346** (supra).

“15 : Among the other sub-sections, we are very much concerned about sub-section (8) of Section 173 which reads as under :

173. (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).

A mere reading of the above provision makes it clear that irrespective of the report under sub-section (2) forwarded to the Magistrate, if the officer in charge of the police station obtains further evidence, it is incumbent on his

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part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. The above said provision also makes it clear that further investigation is permissible, however, re-investigation is prohibited.



16. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.

17. From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of the police report under sub-section (2) on completion of the investigation, the police has a right to “further” investigation under sub-section (8) of Section 173 but not “fresh investigation” or “reinvestigation”. The meaning of “further” is additional, more, or supplemental. “Further” investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether”.

18. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a “further” report and not a fresh report regarding the “further” evidence obtained during such investigation.

19. As observed in *Hasanbhai Valibhai Qureshi v. State of Gujrat* the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of the investigating agency for further investigation should not be tied down on the ground of mere delay. In other words

[t]he mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice”. (SCC p.351, para 13)”

23. Hence, it is apparent that further investigation after submission of charge sheet is permissible in law and police has indivisible right for further investigation even without permission of the investigation. However, in view of the decision of **Ram Lal Narang reported in 1979 S.C.C. (Cri.), 479** that it is proper that investigating agency to take formal permission of the Court before

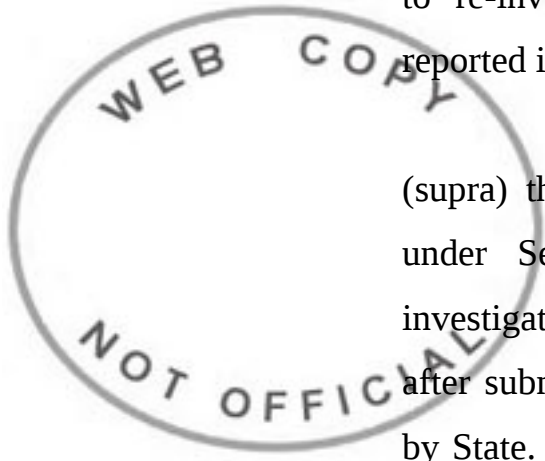
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taking up further investigation and the police duly took permission of the Judicial Magistrate before proceeding for further investigation.

24. The next question raised by the learned counsel for the appellant is that the further investigation by different agency amounts to re-investigation and reliance has been placed on a decision reported in **(1998) 5 S.C.C., 223** (supra).

25. However, in case reported in **(1998) 5 S.C.C., 223** (supra) the question in issue was whether consent given by State under Section 6 of the Delhi Police Establishment Act for investigation of case by Central Bureau of Investigation withdrawn after submission of charge sheet and fresh investigation permissible by State. The answer was well founded on the principle reported in **Kazi Lhendupdoorji** where it was held that once the State has given a consent for investigation by Delhi Police Establishment Act, then, the State can not stop the consent midway by withdrawing the consent on principle that consent given under Section 6 of the Delhi Police Establishment Act fell in category of conditional legislation and the question of withdrawal does not or could not and did not arise and held that once the investigation under taken by Central Bureau of Investigation pursuant to a consent granted under Section 6 of the Delhi Police Establishment Act is to be completely notwithstanding withdrawal of consent and that further investigation is continuation of such investigation which culminated in further police report under sub section (8) of Section 173 of the Criminal Procedure Code and held that withdrawal of consent would not entitled the State police to further investigation. Hence, ratio decided is whether consent given for investigation of the case by Central Bureau of Investigation can be withdrawn to get the case investigated by State police.

26. Hence, the ratio decided in the case that the State can not withdraw the consent once the consent is given under Section 6 of the Delhi Police Establishment Act. The ratio decided that the police can not proceed for fresh investigation or re-investigation of the case in which consent is given by the State under Section 6 of the Delhi Police Establishment Act. However, under the facts and circumstances, there is neither any consent given under Section 6 of



the Delhi Police Establishment Act nor there is a case of withdrawal of consent and the matter relating to further investigation in conformity to Rules under Bihar Police Manual for further investigation by the Criminal Investigation Department. In this regard the observation in **(2008) 5 S.C.C., 413 (Ram Chandran Vrs. Udhaya Kumar)** is relevant which has duly considered **K. Chandra Shekhar** case.

27. In the decision reported in **(2008) 5 S.C.C. 413** (supra) the fact was that a case lodged for offence under Section 302 of the Penal Code. The police, after investigation, filed charge sheet. Superintendent of Police reported that further investigation is necessary. The Inspector filed petition under Section 173(8) of the Criminal Procedure Code to Magistrate seeking permission to investigate. In the meantime, Inspector wrote to Director, Prosecution, seeking opinion whether case required to be transferred to CB-CID, case ought to be transferred to the CB-CID, legal opinion given by the Director of prosecution. Respondent no. 1 filed petition before the High Court for seeking direction of re-investigation of the case by Central Bureau of Investigation. The Single Judge by order, dated 18.12.2006, directed the case to be transferred to CB-CID to investigate the case afresh and to file final report. This order was challenged before Supreme Court. It is relevant to quote paragraphs 7 and 8 in which the Supreme Court held:

“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. This was highlighted by this by this Court in K. Chandrasekhar v. State of Karala. It was, inter alia, observed as follows :

“24. The dictionary meaning of ‘further’ (when used as an adjective) is ‘additional; more; supplemental’. ‘Further’ investigation therefore is the continuation of the earlier investigation and not a fresh investigation or re-investigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the act that sub-section (8) clearly envisages that on

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completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports – and not fresh report or reports – regarding the 'further' evidence obtained during such investigation.”

“8 : In view of the position of law as indicated above, the directions of the High Court for re-investigation or fresh investigation are clearly indefensible. We, therefore, direct that instead of fresh investigation there can be further investigation if required under Section 173(8) of the Code. The same can be done by CB CID as directed by the High Court.”

28. Hence, it is apparent that the Supreme Court held that re-investigation or fresh investigation is clearly not permissible and instead for fresh investigation directed further investigation can be done by CB-CID as directed by the High Court, hence, it is apparent further investigation permitted by CB –CID in case of investigation and charge sheet submitted by State Police after due consideration of **K. Chandrashekhar Vrs. State of Kerala** i.e., decision reported in **(1998) 5 S.C.C., 223** (supra).

29. The learned counsel for the petitioner has, further relied on paragraph 16 of the decision reported in **(2009) 7 S.C.C. 685** (supra) that the investigating officer may exercise his statutory provision for further investigation in several situation when new fact come to his notice, when certain aspect of the matter has not been considered by him and he found that further investigation is necessary to be corrected out from a different angle. Apart from aforesaid ground the learned Magistrate or the superior Court can direct for further investigation if the investigation is found to be tainted or otherwise unfair or necessary in end of justice.

30. However, the fact of the case reported in **(2009) 7 S.C.C., 685 (Kishan Lal Vrs. Dharmendra Bafna & Anr.)** a complaint was lodged against nine accused, the investigation transferred to CB CID and charge sheet submitted against accused 1 and 2. The Magistrate took cognizance against said accused person, but, not taken cognizance against other accused against whom charge sheet not submitted. The petitioner filed an application under Section 482 of the Criminal Procedure Code before High Court for setting



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aside the order passed by the Magistrate. The application disposed off by High Court with direction that petitioner is at liberty to file an appropriate petition before concerned Magistrate incorporating his grievance and the lapse by investigating officer and on such petition filed, the learned Magistrate shall consider the same in accordance with law and if Magistrate is satisfied that case made out for further investigation under Section 173(8) of the Criminal Procedure Code, then, shall direct for further investigation. The appellant filed petition for further investigation before learned Magistrate and learned Magistrate directed for further investigation. Accused filed revision before Hon'ble High Court. The Hon'ble High Court allowed the revision by it's judgment and order which was challenged by the appellant and the case proceeded on merit of the case the question, raised, whether there was material on petition filed under Section 173(8) of the Criminal Procedure Code matter decided on merit of the case whether further investigation permissible.

31. However, under the facts and circumstances of the case, at hand, the crime bench team constituted for further investigation filed petition before the Magistrate under Section 173(8) of the Criminal Procedure Code, which was rejected by the Magistrate. Then against the said order, rejecting the petition under Section 173(8) of the Criminal Procedure Code a revision petition moved before the Additional Sessions Judge, bearing Criminal Revision No. 455 of 2009 and in the said revision the order passed on 26.04.2010 remanding the case for fresh consideration by the Chief Judicial Magistrate and the Chief Judicial Magistrate by order, dated 14.12.2013, passed order for further investigation. The judgment passed by the Additional Sessions Judge on 26.04.2010 and the order, dated 14.12.2013, has not been challenged by the petitioner on merit and the petitioner has not challenged those judicial orders and has come in writ jurisdiction challenging Annexure 6 for quashing the letter of the Deputy Inspector of General of Police, Human Rights, Patna, Bihar, on the ground that letter issued in pursuance of the question, raised, at the Floor of the House is not permissible and has not raised the question on merit as has not challenged the judicial

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orders passed by the Chief Judicial Magistrate and Additional Sessions Judge on petition under Section 173(8) of the Criminal Procedure Code, hence, not brought on record the material and has not exhausted the alternative remedy nor has raised the point in writ petition challenging the judicial orders on merit and unless he exhaust his alternative remedy, the point can not be raised in writ jurisdiction, hence, I do not find any merit in this petition.

32. Hence, there is no merit in the petition as the petitioner wants to circumvent the judicial order passed under Section 173(8) of the Criminal Procedure Code by challenging the order, Annexure 6, issued in pursuance of the statutory rules under the Bihar Police Manual.

33. I do not find any merit in the petition. This writ petition is **dismissed**.

(Gopal Prasad, J.)

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