

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr) No. 101 of 2016**

Anil Tuteja, son of Late H.L.Tuteja, aged 52 years, Joint Secretary, Govt. of Chhattisgarh, (I.A.S.), resident of Civil Lines, Raipur, District Raipur, Civil & Revenue District Raipur

---- **Petitioner**

Versus

1. State of Chhattisgarh, through the Secretary, General Administration Department, Mahanadi Bhawan, Mantralay, Naya Raipur, District Raipur
2. The Secretary, Department of Food and Civil Supplies, Govt. C.G. Mahanadi Bhawan, Mantralay, Naya Raipur, District Raipur, District Raipur.
3. The Economic Offences Wing/Anti Corruption Bureau, through its Superintendent/Officer In-charge, Raipur (CG)

---- **Respondents**

For Petitioner	:	Mr. B.P.Sharma and Mr.Manaynath Thakur, Advocates
For Respondents	:	Mr. Arun Sao, Dy. A.G., on advance copy

Hon'ble Shri Justice Sanjay K. Agrawal

C A V Order

24/06/2016

1. The petitioner is a member of Indian Administrative Services and he was posted as Managing Director of Chhattisgarh State Civil Supplies Corporation, Raipur for the period 30.5.2014 to 18.2.2015. First Information Report No.9/2015 was lodged by the State Economic Offence Investigation Bureau, Raipur against the petitioner and some other persons for the offence punishable under Sections 109, 120B, 409 & 420 of the IPC and Section 11, 13(1) (d)

and 13(2) of the Prevention of Corruption Act, 1988 (hereafter called as "the PC Act"), charge-sheet was filed against all other persons except the petitioner and Dr.Alok Shukla on 6.6.2015 stating inter-alia that investigation has already been completed and since sanction for prosecution has to be obtained against the above-stated two officers, supplementary charge-sheet will be filed against them upon receipt of sanction for prosecution. It is pertinent to mention that the State Government has granted sanction for prosecution against against the petitioner for the offence under Sections 109, 120B, 409 and 420 of the IPC.

2. Earlier, the petitioner herein filed Writ Petition (Cr.) No.170 of 2015 (Anil Tuteja vs. Union of India and others) questioning the order granting sanction by the State Government dated 17.7.2015 for the offence under Sections 109, 120B, 420 and 409 of the IPC and also questioned the memo by which the State Government has referred the matter to the Central Government under Section 19(1) (b) of the PC Act for grant of sanction of prosecution against the petitioner for the offence under Sections 13 (1) (d) read with Section 13(2) of the PC Act as the Central Government is appointing authority of the petitioner. It was also prayed that proposed prosecution against the petitioner deserves to be quashed.
3. This Court by order dated 28.8.2015 admitted that writ petition for consideration and rejected the application for grant of interim relief. Against which, Writ Appeal No.562 of 2015 (Anil Tuteja vs. Union of India and others) was filed, which has been disposed by a Division

Bench of this Court by order dated 1.3.2016.

4. Now, the petitioner herein has filed the instant writ petition for issuance of writ of mandamus directing the respondents to make fresh or de novo investigation or to make re-investigation in respect of allegation levelled against the petitioner and for issuance of appropriate writ protecting his fundamental and constitutional rights under the Constitution of India.
5. Mr.B.P.Sharma, learned counsel for the petitioner while arguing the writ petition on the question of admission confining his submission to the further investigation would submit that in view of the subsequent development, further investigation is necessary. He would further submit that the State Government has made statement before the State Legislature on different dates which would show that prosecution agency and the State authorities are coming with two different versions or blowing hot and cold at the same breathe and documents placed before the State Legislature would show that no procurement or distribution of poor quality of rice has taken place at any point of time much less during the tenure of the petitioner as Managing Director of NAN and since the petitioner's liberty is involved and the State instrumentalities are coming with a definite plea after filing of charge-sheet that no procurement or distribution of poor quality of rice has taken place at any point of time, therefore, it is a fit case where further investigation can be directed. Learned counsel placed reliance in the matter of **Chandrababu Naidu vs.**

State through Inspector of Police & ors¹.

6. I have heard learned counsel for the petitioner on the question of admission.
7. It is not in dispute that FIR against the petitioner has been registered and investigation has been done, but charge-sheet is pending consideration and filing for want of necessary sanction under Section 19(1) (b) of the PC Act and position as such stands on day is that no prosecution has been launched against the petitioner and the petitioner has mainly prayed for further investigation of the matter on the basis of subsequent event particularly statement given by the State officials before the State Legislature.
8. The question for consideration would be whether further investigation can be directed at pre-cognizance stage particularly when charge-sheet/police report is yet to be filed against the petitioner before the jurisdictional criminal court.
9. Section 173 of the CrPC provides for report of police officer on completion of investigation. Sub-section (8) of Section 173 of the CrPC speaks about further investigation. Further investigation can be directed in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate. It would be advantageous to notice sub-sections (1), (2) and (8) of Section 173 of the CrPC, which states as under:-

173. Report of police officer on completion of investigation.-(1) Every investigation under this Chapter shall be completed without necessary delay.

(1-A) xxx xxx xxx

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating-

- (a) the names of the parties;
- (b) the nature of the information;
- (c) the names of the persons who appear to be acquainted with the circumstances of the case;
- (d) whether any offence appears to have been committed and, if so, by whom;
- (e) whether the accused has been arrested;
- (f) whether he has been released on his bond and if so, whether with or without sureties;
- (g) whether he has been forwarded in custody under Section 170;
- (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Sections 376, 376-A, 376-B, 376-C or 376-D of the Indian Penal Code (45 of 1860).

(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)."

10. A critical reading of sub-section (8) of Section 173 of the CrPC would show that further investigation would come only after report under Section 173(2) of the CrPC filed by the officer-in-charge of the police station and upon receipt of further evidence by the in-charge of the police station and thus submission of final report to the jurisdictional Magistrate is *sine que non* for further investigation.
11. Law in this regard is also well settled. Recently, in the matter of

Vinay Tyagi vs. Irshad Ali alias Deepak and others² Their

Lordships of the Supreme Court have categorically held that further investigation can be directed where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This is a kind of continuation of the previous investigation and held as under:-

“22. “Further investigation” is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and therefore, is understood and described as “further investigation”. The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as “supplementary report”. “Supplementary report” would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a “reinvestigation”, “fresh” or “de novo” investigation”.

Their Lordships recorded the following conclusions in regard to regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) of the CrPC. It has held as under:-

“40.1. The Magistrate has no power to direct “reinvestigation” or “fresh investigation” (de novo) in the case initiated on the basis of a police report.

² (2013) 5 SCC 762

40.2 A Magistrate has the power to direct “further investigation” after filing of a police report in terms of Section 173(6) of the Code.

40.3 The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case³ by a three-Judge Bench and thus in conformity with the doctrine of precedent.

40.4 Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

40.5 The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6 It has been a procedure of propriety that the police has to seek permission of the court to conduct “further investigation” and file supplementary charge-sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case.

It has also been held by Their Lordships that further investigation can be directed either by a Magistrate or by the superior Court.

Paragraph 51 of the report states as under:-

“51. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct “further investigation” on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles

³ Bhagwant Singh v. Commr. Of Police, 1(1985) 2 SCC 537

of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct "further investigation" to clear its doubt and to order the investigating agency to further substantiate its charge-sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. 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 jurisdiction can 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. In this regard, we may refer to the observations made by this Court in *Sivanmoorthy v. State*⁴."

12. Very recently the above-stated judgment has been followed/applied by the Supreme Court in the matter of **Chandrababu Naidu** (supra).
13. Concededly, no final report has been submitted by the prosecution till date against the petitioner under Section 173(2) of the CrPC before the jurisdictional Magistrate for taking cognizance of the matter, therefore, no writ/direction for further investigation can be issued by this Court at this stage. Since, prayer made by the petitioner is pre-mature, therefore, petitioner's entitlement for further investigation is not being considered as unnecessary at this stage.

⁴ (2010) 12 SCC 29

14. Thus, the petitioner has failed to make out any case for issuance of any writ for further investigation. Therefore, the writ petition deserves to be and is accordingly dismissed at the stage of admission itself without notice to other side leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K. Agrawal)
JUDGE

B/-