

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.474 of 2014

Arising Out of RC .Case No7 (S) of 2004 THANA CBI District- PATNA

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1. Brig. Satish Kapur (Retd.) S/O Late Shri D.R. Kapur, R/o 3644, D-3, Vasant Kunj, P.S. Vasant Kunj, New Delhi- 110070

.... Petitioner/s

Versus

1. The Union of India through Central Bureau of Investigation

.... Respondent/s

with

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Criminal Revision No. 528 of 2014

Arising Out of RC .Case No7 (S) of 2004 Thana CBI District- PATNA

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1. Larsen & Toubro Limited, Ecc Division, Head Quarter, Manapakkam, Mount Poonamalle Road , P.B. No. 979, Chennai 600089.

2. J. Ganguly son of Shri Basanta Kumar Ganguly Vice President, Larsen & Tourbo Limited, E C C Division, Head Quarter, Manapakkam, Mount Poonamalle Road, P B No. 979, Chennai 600089.

.... Petitioner/s

Versus

1. The Union of India Through C.B.I., New Delhi.

.... Respondent/s

with

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Criminal Miscellaneous No. 21008 of 2014

Arising Out of RC .Case No7 (S) of 2004 Thana -C.B.I CASE District- PATNA

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1. SHASHI KUMAR SONI @ S.K. SONI S/O SHRI HARMESH KUMAR SONI R/O A - 546, SECTOR - 19, NOIDA, UTTAR PRADESH

.... Petitioner/s

Versus

1. THE UNION OF INDIA THROUGH CENTRAL BUREAU OF INVESTIGATION

.... Opposite Party/s

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Appearance :

(In CR. REV. No.474 of 2014)

For the Petitioner/s : Mr. S.A. Narayan, Sr. Advocate,
Mr. P.N. Shahi, Sr. Advocate

& Mr. Sandeep Kumar, Advocate

For the Respondent/s : Mr. Bipin Kumar Sinha, SC, C.B.I.

(In CR. REV. No.528 of 2014)

For the Petitioner/s : Mr. S.A. Narayan, Sr. Advocate,
Mr. P.N. Shahi, Sr. Advocate

& Mr. Sandeep Kumar, Advocate

For the Respondent/s : Mr. Bipin Kumar Sinha, SC, CBI

(In Cr.Misc. No.21008 of 2014)

For the Petitioner/s : Mr. S.N. Narayan, Sr. Advocate,
Mr. P.N. Shahi, Sr. Advocate

& Mr. Sandeep Kumar, Advocate

For the Opposite Party/s : Mr. Bipin Kumar Sinha, SC, C.B.I.



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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH
ORAL JUDGMENT
Date: 14-02-2017

Since all the three applications arise out of the same Special Case No.28 of 2004 arising out of RC Case No. 7(S) of 2004 pending in the Court of learned Special Judge, CBI-II, Patna, they have been heard together and are being disposed of by the present common judgment and order.

2. Petitioners of Criminal Revision No. 474 of 2014 and Criminal Revision No. 528 of 2014 are aggrieved by order, dated 01.04.2014 passed by learned Special Judge, CBI-II, Patna, whereby he has rejected applications filed on their behalf to discharge them, under Section 227 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the **Code**). Cr. Misc. No. 21008 of 2014 on the other hand, has been filed under Section 482 of the Code seeking quashing of the same order, dated 01.04.2014, whereby his application under Section 227 of the Code seeking discharge has been rejected.

3. I have heard Mr. S.A. Narayan and P.K. Shahi, learned Senior Counsel appearing on behalf of the petitioners and Mr. Bipin Kumar Sinha, learned Standing Counsel, Central Bureau of Investigation at length.

4. Before referring to the issues involved in the present cases, it would be appropriate to refer to the set of facts, which



are relevant for adjudication of the present cases.

5. National Highways Authority of India (NHA) for short) is creation of National Highways Act, 1956 having the main responsibility of construction and maintenance of National Highways in the country. M/s Larson and Toubro Limited (L & T for short) is a Company registered under the Companies Act, 1956. M/s Hindustan Construction Company Limited (H.C.C. for short) is also an existing Company registered under the Companies Act. The NHA had awarded contract for construction of Highway in package V-B in Delhi-Kolkata lane NHA-2 from KM 240 to KM 320 to Joint Venture (JV short) of L & T and H.C.C. Mr. R.P. Indoria, General Manager, NHA had executed the agreement on behalf of NHA whereas J. Ganguly, (Petitioner No.2 in Criminal Revision No. 528 of 2014) had signed the agreement on behalf of M/s L & T & HCC, JV on March, 26.03.2002. The total value of the work, which was awarded was approximately 434 crores. The NHA had also entered into a contract agreement with the Joint Venture (JV) of RITES- HALCROW to supervise execution of the work being done by the Contractors M/s L & T Limited and HCC (JV) in the said package V-B. The value of contract with the RITES HALCOW (JV) was approximately 5.55 crores.

6. The petitioner of Criminal Misc. No. 21008 of 2014 Shashi Kumari Soni @ S.K. Soni was, at the relevant point of



time posted as Project Director of National Highways Authority of India from December, 2000 to September, 2003, whereas petitioner Brig. Satish Kapur of Criminal Revision No. 474 of 2014 had been working as Resident /engineer of RITES-HALCROW (JV) from June, 2002 to November, 2003.

7. It appears that the parties had agreed that the work would not be executed through sub-contractors unless it was of highly specialized nature. It was also agreed upon that in a special circumstance, work can be sub-contracted within maximum permissible limit of 10% of total contract. In the Joint Venture of L & T and HCC, the share of L & T was 60% of the total contract price of Rs. 434 crores. Calculated thus, L & T, in terms of the agreement, could have sub-contracted works to the maximum of 26 crores. It is alleged that the L & T immediately after award of contract started negotiations with different sub-contractors for off loading the work to them. In that course, the L & T is said to have sub-contracted work beyond permissible limits at lesser rates to other contractors through J. Ganguly (Petitioner NO.2 of Criminal Revision No. 528 of 2014). It is alleged that J. Ganguly, thus, dishonestly and fraudulently signed sub-contract agreement on behalf of L & T to this effect in breach of contract provisions and concealed this fact from NHAI, Head Office with the objective of obtaining undue monetary benefits by getting the works done at lesser rates, of inferior



quality by sub-contractors. As has been noticed above, the petitioner of Cr. Revision No. 474 of 2014 was at the relevant point of time, team leader of RITES HALCROW (JV). Allegedly, despite no approval having been given, by NHAI, Head Office for sub-contracting the work by main Contractor, the main Contractor is said to have thus entered into sub-contract agreement worth Rs. 100 crores, which was more than permissible limit of 10%.

8. It is, thus, alleged that in furtherance of a criminal conspiracy, S. K. Soni of NHAI (Petitioner of Cr. Misc. No. 21008 of 2014) being a public servant, knowing fully well that the team leader of M/s RITES HALCROW had allowed the main Contractor M/s L & T - HCC (JV) through Vide President, L & T for engaging unauthorized sub-contractors with much lesser price, allowed sub-standard work got done, for which NHAI had paid much higher amount as per the contract agreement and they, thus, obtained undue pecuniary advantage for themselves and for the Company M/s L & T HCC (JV), by abusing their official position with dishonest intention.

9. It further appears from the records that murder of an Engineer of NHAI was being investigated into by the Central Bureau of Investigation in course of which these facts had emerged leading to institution of the present R. C. Case No. 7(S) of 2004.



10. The Central Bureau of Investigation, after completion of its investigation submitted charge-sheet dated 30.07.2007 on 31.07.2007. Cognizance of the offence was taken on the same day against the petitioners Mr. S.K. Soni, Brig. Satish Kapur and J. Ganguly. In addition, charge-sheet was also submitted against L & T Limited Company.

11. Clause 67.1 of the condition of contract between NHAI and L & T-HCC (JV) and M/s RITES HALCROW (JV) provided for a *Dispute Review Board* for resolution of the disputes between the parties, arising out of the said contract. In view of the developments as noted above the dispute arising out of sub-contracting of work by M/s L & T-HCC (JV), was referred to the *Dispute Review Board (DRB)* in the year 2009, i.e. two years after submission of the charge-sheet. The said DRB consisted of Former Engineer-in-Chief, Government of Andhra Praesh, Former Chief Engineer, CPWD, Government of India and Former Chief Engineer, PWD, Government of U.P. The DRB in its recommendation dated 13.05.2011 recorded findings to the following effect *inter alia*:-

"1. As seen from the above table though the total amount of work done by the two sub contractor is Rs. 59.56 cr., the actual subcontracting amount was only Rs. 24.12 Cr which is 5.5% of the contract price, i.e. less than 10%. The remaining payment pertains to labour/labour and equipment contracts. Though



the Contractor had entered into agreements for Rs. 67.05 cr and 33.25 cr, but actual the total sub contract work executed was for Rs. 24.12 cr only, which is 5.5.% of contract price i.e. less than 10% provided in the Contract and thus there is no violation of the provisions of the contract.”

12. The *DRB* in its recommendations observed that though on the face of the agreement entered between sub-contractor, there appeared to be breach of GCC of Sub Clause 4.1, the finally executed, accepted and paid works were less than 10% of the contractual limit and, therefore, there was no breach of contract. The said recommendations have been brought on record by way of Annexure-4 to Criminal Revision No. 474 of 2014. The genuineness of the documents is not in dispute.

13. The *NHAI*, not being satisfied with the decision of *DRB* approached the Arbitration Tribunal invoking arbitration clause of the agreement. The Arbitral Tribunal justified the decision of *DRB* on 21.11.2013 and concluded that the percentage of work executed did not exceed the permissible limit. The Tribunal also held that *NHAI* could not establish breach of contract on the part of the contractor nor could substantiate any loss caused to it. The Tribunal also held that there was no substance in the allegation of making unlawful gain. The Tribunal recorded following findings in its award



dated 21.11.2013:-

"6.6. Apparently, after a long silence, the issue of sub-contracting was once again raked up before the DRB, because of CBI Enquiry in the matter. /DRB recommended "Though on the face of the agreements entered with the sub-contractors, there was breach of GCC sub-clause 4.1, the finally executed, accepted and paid works were for Rs. 24.12 crore only, which is less than 10% of the contractual limit. Hence, there is no breach of contract conditions by the Contractor. It is alleged that the respondent has caused a loss of Rs. 21.90 crore to the NHAI by awarding substantial part of the works at a price much less than paid by the NHAI to the Respondent, and claimed under Section 73 of the Indian Contract Act.

6.7(a) As evident from the aforesaid discussion, the AT is of the firm view that the claimant has not been able to establish that the respondent resorted to sub-contracting outside the limits provided in the contract and was in the breach of contract.

6.7 (b) In case of violation of Clause 4.1 of the contract on sub-contracting, clause 63./1 empowers employer for "Termination of contract", but admittedly, in the show cause notice itself the claimant gave a "Go by" to its rights. This obviously amounts to waiver against the respondent and the claimant cannot be allowed to raise this issue again and again.

6/7(c). As regards the allegation of loss suffered on account of the so called lesser rates paid



to the sub-contractors compared to rates paid to the respondent, and thereby unlawful gains and unjust enrichment of the respondent, the claimant has neither established any breach of contract on the part of the respondent, nor has substantiated any loss caused to it. There is no substance in allegation of making unlawful gains, as it was the basic right of the respondent to earn profits within the valid means.

In view of the aforesaid position, the A. T. feels that the allegation of loss of Rs. 21.90 crore has remained unsubstantiated.” (Emphasis mine)

14. The Arbitral Tribunal rejected the claim of the NHAI. It seems that the NHAI has paid the main contractor, viz, M/s L & T Ltd. the entire dues as determined by the Arbitral Tribunal after L & T Ltd. had decided to forego the interest on the amount of award. It transpires from the record that for one reason or the other, till award of Arbitral Tribunal came to be passed in November, 2013, charges against the petitioners were not framed. Having become emboldened with the findings of the DRB and the Arbitral Tribunal, the petitioners filed their applications under Section 227 of the Code for their discharge. The said application has been rejected by the impugned order dated 01.04.2014.

15. Learned Senior Counsel appearing on behalf of the petitioners has submitted that in view of subsequent



categorical findings recorded by the *DRB* consisting of experts in their respective fields and the Arbitral Tribunal headed by a retired Judge of Delhi High Court, the very basis of lodging of the First Information Report does not survive any more. According to him, the Court below ought to have, in view of subsequent developments as noted above, discharged the petitioners since the documents, which were made available to the Court were of unimpeachable character. He has placed reliance on various decisions of Supreme Court's , which are as follows:-

1. ***(2011) 3 SCC 357 (Harshendra Kumar D. V. Rebatilata Koley)***

2. ***(2008) 14 SCC 1 (Rukmini Narvekar Vs Vijya Satardekar and others.)***

3. ***(2013) 3 SCC 330 (Rajiv Thapar and others Vs. Madan Lal Kapoor***

4. 2008 (1) PLJR 51 (SC) (All Cargo Movers (I) Pvt. Ltd. & ors. Vs. Dhanesh Badarmal Jain and anr).

5. ***(2012) 1 SCC 520 (Anita Malhotra Vs. Apparel Export Promotion Council and another)***

16. He has made special reference to the decision in case of ***Rukmini Narvekar Vs. Vijay Satardekar and others***



reported in **(2008) 14 SCC 1** to submit that if the documents are of unimpeachable character and if on that basis it can be shown that no offence can be said to have been committed, this Court in exercise of extraordinary jurisdiction under Section 482 of the Code may quash the entire criminal prosecution. He has also submitted that the Court below erred in not looking into those documents for the purpose of just decision on the application filed on behalf of the petitioners under Section 227 of the Code. He has further submitted that the impugned order is cryptic and non-speaking inasmuch as grounds taken on behalf of the petitioners for their discharge have not duly discussed and answered. He has contended that since the criminal prosecution arises out of the civil dispute between the parties of contractual nature, it should not be allowed to continue any more for the ends of justice.

17. Mr. Bipin Kumar Sinha, learned Counsel appearing on behalf of the Central Bureau of Investigation has vehemently opposed the relief sought for in the present batch of applications. He has submitted that development subsequent to filing of the charge-sheet could not have been taken into account and looked into by the Court below for the purpose of entertaining application filed on behalf of the petitioners for their discharge. Defending the order passed by the learned Court below, he has submitted that the order assigns reason as



to why the discharge application could not be allowed. According to him, the order cannot be said to be non-speaking or cryptic inasmuch as it has mentioned, though briefly, the reasons for dismissing the application under Section 227 of the Code. In support of his submission that developments subsequent to taking of cognizance cannot be looked into or taken into account for the purpose of consideration of an application for discharge, he has relied on few Supreme Court decisions. Mr. Sinha, has referred to decision of the Supreme Court's in case of ***Vinay Tyagi Vs. Irshad Ali alias Deepak and others*** reported in **(2013) 5 SCC 762** with particular reference to paragraphs 23 and 24 thereof to contend that after taking of cognizance, defence of an accused cannot be looked into at the time of framing of charge. He has also relied on Supreme Court's decision in case of ***Om Wati Vs. State through Delhi Administration and others*** reported in **(2001) 4 SCC 333** with special reference to paragraph 7 to contend that only in case where Court allows an application for discharge, the Court is required to record reasons. In addition, he has relied following decisions of the Supreme Court's:-

1. ***AIR 1997 SC 639 (Randhir Singh Rana vs. State (Delhi Admn.)***
2. ***(1999) 8 SCC 686 (Trisuns Chemical Industry Vs. Rajesh Agarwal and others)***



3. (2009) 4 SCC 439 (Mahesh Choudhary Vs. State of Rajasthan)

4. AIR 2011 SCW 2909 (Sushil Suri Vs. The C.B.I)

5.(2011) 4 PLJR(SC) 287 (Mohan Singh Vs. State of Bihar

6. (2014) 1 PLJR (SC) 10 Central Bureau of Investigation Vs. Jagjit Singh)

7. AIR 2014 SC (cri) 730 (State of Tamilnadu Vs. N. Suresh Rajan)

8 AIR 2015 SC (Cri) 1249 (State Vs. Maria Anton Vijay)

9. AIR 2016 SC 4675. (A. Ayyapsamy Vs. A. Paramasivam and others)

18. On perusal of the materials on record including the First Information Report and the charge-sheet submitted by the Central Bureau of Investigation, in the present facts and circumstances of the case, I am in agreement with the submissions advanced on behalf of the Central Bureau of Investigation that ordinarily after taking cognizance, for the purpose of entertaining an application for discharge under Section 227 of the Code, defence of an accused or developments subsequent to taking of cognizance should not be looked into or taken into account. In the present case, the



ground of the petitioners for discharge is based on recommendations made by DRB and award made by the Arbitral Tribunal. Before the Arbitral Tribunal, National Highways Authority of India Limited, L & T-HCC (JV) and RITES HALCROW (JV) were parties. The First Information Report and the charge-sheet allege commission of offences against officials of NHAI, L & T-HCC (JV) and RITES-HALCROW (JV). In that view of the matter, despite the said documents, viz, recommendations of DRB and award made by the Arbitral Tribunal being of unimpeachable character, it may not be safe for the High Court to quash the entire prosecution in exercise of inherent extraordinary power under Section 482 of the Code. For the same reason, it would not have been proper for the Court below to have exercised power under Section 227 of the Code by discharging the petitioner, based on recommendations of the DRB and award of the Arbitral Tribunal. I do not find the impugned order passed by the Court below to be erroneous or illegal, requiring this Court's interference.

19. The submission advanced on behalf of the petitioners that the order impugned is cryptic and non-speaking cannot be accepted. I have carefully perused the impugned order. The learned Court below has assigned reasons for not accepting the plea on behalf of the petitioners for their discharge under Section 227 of the Code.



20. However, I am of the view that developments in the form of recommendations made by the DRB and award of the Arbitral Tribunal are of much significance and cannot be completely brushed aside on a technical plea that any document or any development subsequent to taking of the cognizance can in no circumstance be looked into and the same can be looked into only after charges are framed and accused persons were put on trial. Putting any person to face a criminal trial is a serious step and if any material which is of significant nature is available, the same should be given due weightage to serve ends of justice.

21. The present case is of its own nature. The Central Bureau of Investigation was initially not investigating any misappropriation of public money by the officials of NHAI, L & T-HCC (JV) and RITES-HALCROW (JV) in the matter of carrying out the work of construction in question. The Central Bureau of Investigation was in fact investigating into the murder of an Engineer of NHAI, late Satyendra Dubey. It seems that an angle behind his murder was given that it happened because he had raised certain issues against the functioning of NHAI. While investigating the murder case from that perspective it appeared to the Central Bureau of Investigation that the officials of NHAI and Joint Venture Companies as mentioned above, had sub-contracted works to



other contractors at low rates and they, thus obtained undue pecuniary advantage for themselves and for the Company M/s L & T- HC (JV), by misusing their official position, with dishonest intention.

22. From the materials on record, it transpires that the Central Bureau of Investigation subsequently solved the murder case of Sytendra Dubey and upon completion of investigation, the persons involved in commission of the said crime, according to the case of the Central Bureau of Investigation, were put on trial. They came to be convicted of the offence punishable under Section 302 of the Indian Penal Code for murder of said late Satyendra Dueby. Nothing has been shown nor there is any material that murder of said late Satyendra Dubey had any connection with the transaction, which is subject matter of the present case. The appeals of such convicts are said to be pending in this High Court.

23. In the back of above noted facts, I had expressed my view, in course of arguments being advanced, that in the light of the findings recorded by the *DRB*, its recommendations and award made by the Arbitral Tribunal, the Central Bureau of Investigation could have, in all fairness, undertaken the exercise of further investigation under Section 173(8) of the Code.

24. Learned counsel appearing on behalf of the



petitioners after having realized that their submissions on the question of discharge was not finding favour with this Court, agreed and submitted that for the ends of justice, the matter can be directed to be inquired into by the Central Bureau of Investigation in exercise of power under Section 173(8) of the Code.

25. Mr. Bipin Kumar Sinha, learned Counsel for the Central Bureau of Investigation is, however, opposed to it.

26. Mr. Sinha has placed heavy reliance on recent Supreme Court's decision in case of ***Amrutbhai Sahmbhubhai Patel v. Sumanbhai Kantibhai Patel*** and ors in Criminal Appeal No. 1171 of 2016 dated 02.02.2017 (arising out of SLP (Criminal) No. 3338 of 2015) with particular reference to paragraphs 47 and 49. He has submitted with his usual vehemence that in no circumstance the Court can direct for further investigation under Section 173(8) of the Code after cognizance having already been taken. He has also relied on another Supreme Court's decisions in case of ***Oriental Insurance Company Limited Vs. Ozma Shipping Company and another*** reported in ***(2009) 9 SCC 159*** (Paragraphs 25 to 27). The said decision has been considered by the Supreme Court in case of ***Amrutbhai Shambhubhai Patel*** (supra).

27. Learned Senior counsel representing the petitioners has also placed reliance on the said decision of the



Supreme Court's in case of ***Amrutbhai Shambhubhai Patel*** (supra), and has submitted that no provision under the Code nor decision of the Supreme Court restricts this Court from exercising power and directing the investigating agency to carry out further investigation under Section 173(8) of the Code in appropriate cases. He has also referred to the same paragraph of Supreme court's decision in case of ***Amrutbhai Shambhubhai Patel*** (supra) in support of his submission. Reference has also been made to Supreme Court's decision in case of ***Dharampal Vs. State of Haryana*** reported in ***(2016) 4 SCC 160***.

28. Mr. Bipin Kumar Sinha, learned counsel for the C.B.I has submitted, in response to this submission that case of ***Dharampal Vs. State of Haryana*** (supra) has no application at all in the facts and circumstances of the case.

29. I will first take note of the latest Supreme Court's decision on the question of power of the Court to direct for further investigation under Section 173(8) of the Code. The said decision of the Supreme Court has considered almost all previous decision on the power of the Courts to direct for further investigation under Section 173(8) of the Code.

30. Paragraphs 47 and 49 of the said decisions read thus:-

"47. *On an overall survey of the pronouncements of this Court on the scope and*



purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.

49..... If the power of the Magistrate, in such a scheme envisaged by the Cr.P. C to order further investigating even after the cognizance is taken, accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of the Cr. P.C adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8)



of the Cr.P.C would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in Bhagwant Singh (supra), the Magistrate, in both the contingencies, namely, when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 Cr.P. C., whereunder any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any



interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court."

31. On careful reading of the paragraphs 47 and 49 of the Supreme Court's decision in case of ***Amrutbhai Shambhubhai Patel*** (supra). It is easily evincible that the Supreme Court has, in most unambiguous terms, held that the Magistrate does not have the power to direct further investigation under Section 173(8) of the Code after having taken cognizance. The Supreme Court has categorically held that such power of further investigation rests with the Investigating agency only. However, the observations in case of ***Amrubhai Shambhubhai Patel*** (supra), paragraph 37 is of much significance for the purpose of the present case which reads thus:-

"37. Additionally, this Court also dwelt upon the three facets of investigation in succession i.e. (i) initial investigation (ii) further investigation and (iii) fresh or de novo or reinvestigation. Whereas initial investigation was alluded to be one conducted in furtherance of registration of an FIR leading to a final report under Section 173(2) of the Code, further



*investigation was a phenomenon where the investigating Officer would obtain further oral or documentary evidence after the final report had already been submitted, so much so that the report on the basis of the subsequent disclosures/discoveries by way of such evidence would be in consolidation and in continuation of the previous investigation and the report yielded thereby. Fresh investigation reinvestigation de novo investigation, however is an exercise, which it was held, could neither be undertaken by the investigating agency suo motu nor could be ordered by the Magistrate and that it was essentially within the domain of the higher judiciary to direct the same and that too under limited compelling circumstances warranting such probe to ensure a just and fair investigation and trial. Adverting to Section 173 of the Code again, this Court recalled its observations in *State of Punjab V. CBI and others* (2011) 9 SCC 182 that not only the police had the power to conduct further investigation in terms of Section 173(8) of the Code. Even the Trial Court could direct further investigation in contradistinction to fresh investigation even where the report had been filed.” (Emphasis mine)*

32. In case of **Amrutbhai Shambhubhai Patel** (supra), the Supreme Court has held that the Magistrate cannot direct the Investigating agency to carry out further



investigation under Section 173(8) of the Code after taking of cognizance either *suo motu* or on a request or prayer of the complainant/informant.

33. In the present case the question is as to whether this Court in exercise of power under Section 482 of the Code, in peculiar facts and circumstances of the present case, in view of the development subsequent to filing of the charge-sheet and taking of cognizance can direct for further investigation by the Central Bureau of Investigation under Section 173(8) of the Code or not.

34. Section 482 of the Code reads thus:-

"482. Saving of inherent powers of High Court. Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

35. The said power of the High Court under Section 482 of the Code is inherent and no provision under the Code limits or affects such powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or "to prevent abuse of the process of the Court" or "otherwise to secure the ends of justice."

36. Since there is final adjudication on the dispute by



an award headed by a Judge of the High Court, which is the very foundation of the lodging of the First Information Report, I am of the view that the Central Bureau of Investigation should be directed to look into subsequent development and documents in the nature of (a) recommendations of the *DRB* and (b) award made by the Arbitral Tribunal” under Section 173(8) of the Code.

37. I, accordingly, direct the Superintendent of Police, SC-III, Central Bureau of Investigation to look into and examine these two documents and connected records if the same are furnished by the petitioners by 31.03.2017 and conduct further investigation under Section 173(8) of the Code for the said limited purpose. He will be required to ensure that further investigation is completed within two months from the date the petitioners submit their documents in compliance of the present order. If for any reason, the further investigation is not concluded within a period of two months as directed by this Court, The Superintendent of Police, SC-III, Central Bureau of Investigation will be required to file an application for extension of time.

38. In the meanwhile, all the proceedings before the Court below arising out of Special Case No. 28 of 2004 (R.C. No. 7 (S)/2004 pending in the Court of Special Judge, CBI-II, Patna shall remain stayed, till 31.05. 2017.



39. These applications stand disposed of with direction as above.

(Chakradhari Sharan Singh, J)

ArunKumar/-

AFR/NAFR	N/A
CAV DATE	N/A
Uploading Date	10.03.2017
Transmission Date	10.03.2017

