

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.59 OF 2017

Ritu Kishore Bhatia

...Petitioner

Versus

The State of Maharashtra & Ors.

...Respondents

.....

Mr. Mahesh Vaswani with Ms Dharini Nagda Ms Lata Shanbhag, Mr. Sanjay Bhojane i/b. Mr. Gaurav Mane for the Petitioners.
Mr. Prashant Jadhav, APP for the Respondent No.1-State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.

DATED: 16th NOVEMBER, 2017.

P.C.:-

The Petitioner herein has restricted his challenge to the order dated 14th July, 2015 whereby the learned Special Judge (Under PC Act), Greater Bombay dismissed the application (Exh.18) for further investigation under Section 173 (8) of the Cr.P.C.

2. Heard Mr. Mahesh Vaswani, the learned counsel for the Petitioner and Mr. Prashant Jadhav, APP for the Respondent No.1-State.

3. The Petitioner herein had lodged a FIR on 19th November, 2010 pursuant to which Crime No.55 of 2010 for the offences

punishable under Sections 7, 13(1)(d) r/w. 13(2) of Prevention of Corruption Act, 1988 was registered by ACB Mumbai. Upon completion of investigation, charge sheet was filed in the month of January-2013 and the Special Case No.1 of 2013 came to be registered. Charge was framed and thereafter the evidence of PW1 was recorded. The examination-in-chief of the first informant (PW2) was recorded in February-2014. By application dated 18.2.2014 filed under Section 173(8) of the Cr.P.C. the Petitioner i.e. the first informant sought further investigation of the crime on grounds stated in the said application. The learned Magistrate dismissed the said application mainly on the ground that the first informant cannot seek further investigation under Section 173 (8) of the Cr.P.C. Aggrieved by the said order the Petitioner herein has filed the present Petition.

4. Mr. Vaswani, the learned counsel for the Petitioner has submitted that the Magistrate has ample powers under Section 173(8) of the Cr.P.C. to order further investigation. He contends that such powers can be exercised at the instance of the first informant even after taking cognizance of the offence. In support of this contention he has relied upon the decisions of the Apex Court in *Aziza Begum Vs. State of Maharashtra and Anr. MANU SC 0031 2012, Sakiri Vasu*

Vs. State of UP and Ors. MANU SC 8179 2007 as well as the decision of the High Court of Kerala *in Shaji Vs. State of Kerala and Ors, 2004 Cri LJ 187.*

5. He contends that the procedural law is meant to further the ends of justice and not to frustrate the same. He further contends that the Court should not incorporate any provision in a manner which would result in unworkable or impracticable results. In support of this contention he has relied upon the decisions of the Apex Court in *Iqbal Singh Marwah and Anr. Vs. Meenakshi Marwah and Anr. MANU SC 0197 2005, Varala Bharath Kumar and Anr. Vs. State of Telangana and Anr. AIR 2017 SC 4434, Central Bureau of Investigation, Special Investigation Cell-I Vs. Anupam J. Kulkarni MANU SC 0335 1992.*

6. Per contra relying upon the decision of the Apex Court in *Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel & Ors. 2017 (4) SCC 177* the learned APP has submitted that further investigation cannot be ordered after the Court has taken cognizance and that too at the instance of the complainant or the first informant. He has further submitted that the impugned order was passed in the year 2015 and that the present Petition is filed in the year 2017. He

submits that there is inordinate and unexplained delay in filing the Petition and on this count also the Petition is liable to be dismissed.

7. I have perused the records and considered the submissions advanced by the learned counsel for the Petitioner and the learned APP for the Respondent No.1-State.

8. There is no controversy over the fact that Section 173(8) of the Cr.P.C. confers ample powers on Magistrates to order further investigation. Question however, is whether these powers can be exercised by the Magistrate after taking cognizance of the offence and secondly whether such powers can be exercised based on the application filed by the first informant or the complainant.

9. The decisions of the Apex Court in *Sakiri Vasu and Azija Begum* do not deal with this issue. The decision of the Apex Court particularly in *Sakiri Vasu* deals with the powers of the Magistrate under Section 156 (3) of the Cr.P.C. It is true that in *Shaji* (supra), the Kerala High Court has held that the Magistrate is competent to order further investigation even after taking cognizance of the offence. However, said decision cannot be considered in view of the recent

decision of the Apex Court in **Amrutbhai**, supra, which squarely covers the issue in question. In the aforesaid judgment, the Apex Court, after considering the previous pronouncements on the scope and purport of the Section 173(8) of Cr.PC., has held as under :-

“49. 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.

50. The un-amended and the amended sub-Section (8) of Section 173 of the Code if read in juxtaposition, would overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorized to conduct further investigation without limiting the stage of the proceedings relatable thereto. This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings. The recommendation of the Law Commission in its 41st Report which manifesting heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.

51. In contradistinction, Sections 156, 190, 200, 202 and 204 of the Cr.P.C clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156 (3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by the Cr.P.C. to order further investigation 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.”

10. It is thus settled that the powers under Section 173 (8) cannot be exercised after the Magistrate takes cognizance of the offence and further such powers cannot be exercised by the Magistrate suo motu or on an application filed by the complainant-first informant. Contention of Mr. Vaswani, that the said judgment is per curium and cannot be considered is devoid of merits.

11. In the instant case, the application for further investigation was filed by the first informant after the court had taken cognizance of

the offence. In the light of the principles laid down by the Apex Court, the Magistrate is not empowered to order further investigation on the basis of the application filed by the first informant that too after taking of cognizance. It is also pertinent to note that the application was dismissed by the order dated 14th July, 2015. The present Petition is filed in January-2017. There is inordinate delay in approaching the Court. This is yet another reason for not entertaining the Petition.

12. For the reasons stated above, the Petition has no merits and is hereby dismissed.

13. At this stage, the learned counsel for the Petitioner prays that the trial of the case be stayed so as to enable the Petitioner to challenge this order. I do not find any merit in the prayer. The prayer is rejected.

(ANUJA PRABHUDESSAI, J.)