

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

CRIMINAL WRIT PETITION NO.4101 OF 2015

Miss Vishni Lalchand Rajuth	... Petitioner/ Org.Complainant
Versus	
State of Maharashtra and ors. 4/	... Respondent No.2 to Org. Accused

Mr.Saeed Akhtar with Mr.Khushnood Akhtar and Mr.
Hitesh Anil Thorat, Ms.Pradnya Meshram, for the
Petitioner.

Ms. Pallavi Dabholkar, APP for the State.

**CORAM : RAVINDRA V.GHUGE, J.
DATE : 20th MARCH, 2017.**

P.C. :

1. The Petitioner is aggrieved by the interlocutory order dated 17th March, 2015 passed by the learned Metropolitan Magistrate, 72nd Court, Vikhroli, Mumbai.

2. The Petitioner is aggrieved for the reason that the view taken by the Hon'ble Supreme Court in the **Rita Nag Vs. State of West Bengal and ors., 2010 ALL MR**

(Cri) 1337 has been followed by the Trial Court being oblivious to the law laid down by the Hon'ble Apex Court in the matter of **Vinay Tyagi Vs. Irshad Ali @ Deepak and others, (2013)5 SCC 762.**

3. The Hon'ble Apex Court in *Vinay Tyagi (supra)* has concluded in paragraphs Nos. 27 to 31 and 34 as under :-

“In some judgments of this Court, a view has been advanced (amongst others in the case of *Reeta Nag v. State of West Bengal and ors.* MANU/SC/1486/2009: (2009) 9 SCC 129 *Ram Naresh Prasad v. State of Jharkhand and ors.* MANU/SC/0201/2009 : (2009) 11 SCC 299 and *Randhir Singh Rana v. State (Delhi Administration)* MANU/SC/0161/1997 :(1997)1 SCC 361), that a Magistrate cannot suo moto direct further investigation under Section 173(8) of the Code or direct re-investigation into a case on account of the bar contained in Section 167 of the Code, and that a Magistrate could direct filing of a charge sheet where the police submits a report that no case had been made out for sending up an accused for trial. The gist of the view taken in these cases is that a Magistrate cannot direct reinvestigation and cannot suo moto direct further investigation.

However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct 'further investigation' and require the police to submit a further or a supplementary report. A three

judge Bench of this Court in the case of Bhagwant Singh (supra) has, in no uncertain terms, stated that principle, as afore-noticed.

The contrary view taken by the court in the cases of Reeta Nag (supra) and Randhir Singh (supra) do not consider the view of this Court expressed in Bhagwant Singh (supra). The decision of the Court of Bhagwant Singh (supra) in regard to the issue in hand cannot be termed as an obiter. The ambit and scope of the power of a magistrate in terms of Section 173 of the code was squarely debated before that Court and the three Judge Bench concluded as afore-noticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh (supra), are thus squarely in line with the doctrine of precedence. To some extent, the view expressed in Reeta Nag (supra), Ram Naresh (supra) and Randhir Singh (supra), besides being different on facts, would have to be examined in light of the principle of stare decisis.

Having analysed the provisions of the Code and the various judgments as afore-indicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173 and Section 156 of the Code:

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. A Magistrate has the power to direct 'further investigation' after filing of a police report in terms of Section 173 of the Code.
3. The view expressed in (2) above is in conformity with the principle of law stated

in Bhagwant Singh's case (*supra*) by a three Judge Bench and thus in conformity with the doctrine of precedence.

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 cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156 and the language of Section 173 itself. In fact, such power would have to be read into the language of Section 173.
5. The Code is a procedural documents, 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.
6. It has been a procedure of proprietary that the police has to seek permission of the Court to continue 'further investigation' and file supplementary chargesheet. 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.

Having discussed the scope of the Magistrate under Section 173 of the Code, now we have to examine the kind of reports that are contemplated

under the provisions of the Code and/or as per the judgments of this Court. The first and foremost document that reaches the jurisdiction of the Magistrate is the First Information Report. Then, upon completion of the investigation, the police are required to file a report in terms of Section 173 of the code. It will be appropriate to term this report as a primary report, as it is the very foundation of the case of the prosecution before the Court. It is the record of the case and the documents annexed thereto, which are considered by the Court and then the Court of the Magistrate is expected to exercise any of the three options afore-noticed. Out of the stated options with the Court, the jurisdiction it would exercise has to be in strict consonance with the settled principles of law. The power of the magistrate to direct 'further investigation' is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is that obligation of the investigating agency and the Court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the Court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173 of the Code.

We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of Magistrate under Section 228 of the Code.

Wherever a charge sheet has been submitted to the Court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in the case of *Disha v. State of Gujrat and Ors.* MANU/SC/0841/2011:(2011) 13 SCC 337. *Vineet Narain and Ors. v. Union of India and anr.* MANU/SC/0827/1998 : (1998) 1 SCC 226, *Union of India and Ors. v. Sushil Kumar Modi and Ors.* MANU/SC/0086/1997 : 1996(6) SCC 500 and *Rubabbudin Sheikh v. State of Gujrat and Ors.* MANU/SC/0024/2010 : (2010) 2 SCC 200.”

4. The learned AGP submits that a revision under section 397 of the Criminal Procedure Code is maintainable. The petitioner ought to avail of the said remedy. The learned counsel for the Petitioner submits that notwithstanding a remedy under Section 397 of the Cr.P.C., the Petitioner can approach this Court under Section 482 of the Cr.P.C.

5. It requires no debate that the remedy under Section 397 of the Cr.P.C. is a statutory remedy and is equally efficacious. The impugned order being of an interlocutory nature, the Petitioner ought to exhaust the

remedy under Section 397 of the Cr.P.C..

6. Considering the above, this Petition is disposed of with liberty to the Petitioner to avail of the remedy under Section 397 of the Cr.P.C. for challenging the impugned order dated 17th March, 2015.

7. Needless to state, the time spent by the Petitioner in this Court would be a good ground for considering the Revision Petition. In the event, the Petitioner avails of the said remedy, the Revisional Court shall consider the law laid down by the Hon'ble Apex Court in **Vinay Tyagi (supra)** and especially paragraph Nos. 27 to 31 and 34 of the said judgment while deciding the said application.

(RAVINDRA V.GHUGE, J.)