

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2017

DELIVERED ON : 27.03.2018

Coram

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

Crl.R.C.No.823 of 2017
and Crl.M.P.No.7527 of 2017

1. Gokul @ Gokula Krishnan
2. Alex William Alexander
- 3.Arivazhagan
- 4.Hari @ Hariharan
- 5.Dinesh
- 6.Satish @ Satishkumar
- 7.Ganesh Prabu
- 8.Jeykanth @ Heyaprabash

... Petitioners/Accused

Vs.

State rep. By

1. The Inspector of Police,
R-7, K.K.Nagar Police Station,
Chennai 600 078.

2. Dr.G.Ilangovan
(R2 impleaded as per the order
of this Court dt:06.09.2017
made in Crl.M.P.No.9230/17 in
Crl.R.C.No.823/17)

...Respondents

Criminal Revision Petition has been filed under Section 397 r/w 401 Cr.P.C., praying to call for the records and to set aside the order passed in Crl.M.P.No.1545 of 2017 made in C.C.No.1298 of 2015, dated 29.04.2017, on the file of the learned Chief Judicial Magistrate, Egmore, Chennai.

For Petitioner : Mr.A.Natarajan, SC
for Ms.A.Madhumathi

For Respondent-1: Mr.C.Iyyapparaj,
Additional Public Prosecutor

For Respondent-2 : Mr.N.Sudharsan

The seal of the High Court of Judicature at Madras is a circular emblem. It features a central yellow temple gopuram (tower) with a red lion capital on top. Below the gopuram is a red lion capital with a face. The entire emblem is set against a background of a green and white striped banner. The words 'HIGH COURT OF JUDICATURE' are written in a semi-circle at the top, and 'MADRAS' is written at the bottom. The word 'ORDER' is written in bold, black, capital letters across the center of the seal.

ORDER

This Criminal revision case has been filed against the order passed by the learned Chief Judicial Magistrate, Egmore, Chennai in Crl.M.P.No.1545 of 2017 made in C.C.No.1298 of 2015 by order dated 29.04.2017.

2. The first respondent/State filed a case against the petitioners/accused for the alleged offence under Section 147, 148, 448,

341, 323, 506(ii) of IPC read with Section 4 of TNPHW Act and Section 3 of TNPPDL Act on 05.01.2014, in Crime No.21 of 2014 on the file of the respondent police. After investigation, the respondent police filed a final report on 08.12.2014, for the offences punishable under Sections 147, 448, 352, 323, 506(ii) read with 149 of IPC and under Section 3 of TN Medical Service Persons and Medicare Service Institution (Prevention of Violence and Damage or Loss to Property) Act, 2008 and Section 3 of Tamil Nadu Property (Prevention and Damage and Loss) Act, 1992.

3. Though after investigation, the final report (charge sheet) had been filed by the respondent police on 08.12.2014, before the Trial Court, on 28.03.2017, the respondent prosecution had come forward to file a petition under Section 173(5) and (8) of Code of Criminal Procedure with the prayer seeking permission of the Court to let in the certificate under Section 65(B) of the Indian Evidence Act issued by one K.T.Ramkumar dated 22.01.2014 and one L.Karthikeyan dated 22.01.2014 , as additional documents.

4. The said petition was filed by the respondent/State seeking such permission from the Trial Court to file the said documents i.e., certificate issued under Section 65(B) of the Indian Evidence Act, for the reason that, during the investigation, though the said certificates were obtained by the respondent State/Investigating officer on 22.01.2014, due to inadvertence, the same had not been filed along with charge sheet where the compact disc alone had been submitted to the Court. Only subsequently, according to the prosecution, they noticed that the certificates under Section 65(B) of the Indian Evidence Act had been left without filing the same before the Court. Therefore, the prosecution had come forward with the present petition dated 28.03.2017 seeking such permission from the Trial Court.

5. Opposing the said petition, a counter affidavit was filed by the revision petitioners/accused before the Trial Court. The main contention raised on behalf of the accused before the Trial Court was that, the said petition filed by the prosecution was not maintainable as the investigation was over and a final report was filed therefore, the

documents said to have been inadvertently omitted to be submitted along with the final report, cannot be filed subsequently, invoking the provisions of Section 173(8) of the Code as the said Section only deals with further investigation, therefore, the said petition can never be filed under Section 173(5) and under Section 173(8) of the Code.

6. The further submission raised by the accused before the Trial Court opposing the said petition of the prosecution was that, it was claimed by the prosecution that the said certificates issued by two persons dated 22.01.2014 were collected by the prosecution which were purported to be under Section 65(B) of the Indian Evidence Act, during investigation, further the statement given by the said two persons under Section 161 of the Code, which was recorded by the investigating officer, did not indicate any such certificates issued by the two persons. Moreover, there was no Mahazar available for collecting those two certificates from the respective witnesses. Therefore, raising these objections on the side of the accused, it was contended before the Trial Court that the said petition filed by the prosecution cannot be accepted or entertained and therefore, the same was liable to be rejected and the

said two certificates purported to have been issued under Section 65(B) of the Indian Evidence Act on 22.01.2014, by two witnesses, should be rejected in toto.

7. The learned Trial Judge having considered the request made by the prosecution as well as the objection raised by the accused side through the counter affidavit and also considering the arguments advanced by both sides, ultimately has come to the conclusion that the petition of the prosecution for permitting them to file those two documents can be accepted and accordingly, the learned Trial Court Judge allowed the said petition filed by the prosecution by order dated 29.04.2017. Against the said order, the accused persons/revision petitioners, filed this Criminal Revision case before this Court.

8. Mr.A.Natarajan, learned Senior Counsel appearing for the revision petitioners submitted that, if at all the 65(B) Certificates were obtained by the investigating officer from the two witnesses on 22.01.2014, the said factor could have been recorded in the case diary. However, the fact remains that no case diary either has been maintained

to that effect or the same has not been produced before the Trial Court supporting the case that they collected the certificates on 22.01.2014.

9. Learned Senior Counsel would also submit that, in the 161 Statement issued by the witness one Karthikeyan, dated 05.01.2014, his name has been mentioned as Karthikeyan, S/o Balakrishnan, aged 46, whereas, in the alleged 65(B) certificate dated 22.01.2014, claimed to have been given by the said Karthikeyan, his name has been mentioned as L.Karthikeyan, S/o Lakshmanan. Even this discrepancy would go to show that things were not well on the side of the investigating officer to claim that the 65(B) certificates were given by the witnesses on 22.01.2014 but due to inadvertence, the same could not be produced along with compact disc which was submitted at the time of final report.

10. If any electronic evidence is produced by way of original, the same can be considered as a preliminary evidence and here in the case in hand, as claimed by the prosecution only the back up had been taken from the CCTV and that was alone produced before the Trial Court

and therefore, since it is being a secondary evidence, a certificate under Section 65(B) of the Indian Evidence Act is mandatory, therefore, in order to plug the hole i.e., not filing the Section 65(B) certificate, the prosecution belatedly, that too after two years, has come forward to file this petition seeking the permission of the Trial Court to file those two documents. Therefore, the learned Senior Counsel would contend that, this petition is a clear after thought on the side of the prosecution as they did not get any such certificate on 22.01.2014 as they claimed and it is also not supported by any evidence that those certificates were part of the record, which were inadvertently could not be filed before the Trial Court at the time of filing the final report. Therefore, the learned Senior Counsel would argue that, the petition was a clear after thought in order to cover up the blunder committed by the prosecution and therefore, the accused had every right to oppose such petition and though such opposition was made by filing suitable counter, the Trial Judge, not accepting the same, allowed the petition.

11. The learned Senior Counsel would further argue that Section 173(5) and (8) of the Code does not contemplate any such

exercise of filing documents belatedly after two years of filing the final report, under Section 173(2) of the Code. If at all, 173(5) and (8) vests power with the investigating agency, to further investigate the matter and produce new evidence, if any, collected by them on such further investigation, the said power cannot be stretched upon for the purpose of obtaining or creating a documentary evidence after few years of filling the final charge sheet stating that the prosecution is having power to do so, under Section 173(5) and (8) of the Code.

12. The learned Senior Counsel in support of his arguments has relied upon a judgement of the Delhi High Court in **Vikas Shukla vs. Central Bureau of Investigation and Others** made in Crl.M.C.No.2455 of 2012 & Crl.M.A.No.8318 of 2014 dated 20.11.2014.

13. In the said judgement, the learned Senior Counsel would rely upon the following passage:

" In the instant case, the impugned order is silent about there being any certificate under Section 65B of the Indian Evidence Act, 1872 in respect of the audio and video CDs and even during the course of hearing, it was asserted on behalf of the respondent-CBI that aforesaid mandatory certificate of

18th December, 2009 is there, but respondent-CBI has failed to show that such a certificate has been filed along with the charge sheet. Attention of this Court was not drawn to statement of any witness to show that inference of criminal conspiracy can be drawn against the petitioners. Pertinently, although this Court is not required to look into photocopy of certificate under Section 65B of the Indian Evidence Act, 1872 furnished in respect of fifteen CDs in packet "A" but there is no such certificate in respect of the seven CDs in packet 'B' which is solely relied upon by the prosecution. Thus, aforesaid certificate (which is not on record) is of no avail. So, there is no point in now permitting the prosecution to place the original of such certificate on record. It was also not shown during the course of the hearing that when the CDs were prepared but since this case was registered on 23rd November, 2009 therefore these CDs must have been prepared soon thereafter and the certificate under Section 65B of the Indian Evidence Act, 1872 has to be of the date when the CDs were prepared but the photocopy of the aforesaid certificate shows that it was prepared on 18th December, 2009 and is thus of no avail."

14. By making the aforesaid contention, the learned Senior Counsel would urge that the impugned order therefore, of the learned Trial Court Judge is liable to be interfered with in this revision, otherwise, great prejudice would be caused to the petitioners/accused.

15. Per contra, Mr.C.Iyaapparaj, learned Additional Public Prosecutor appearing for the respondent State would submit that, on factual matrix, the statement given by the two witnesses, namely, K.T.Ramkumar and Karthikeyan has been reduced by way of statement under Section 161 by the investigating officer. In the said 161 statement of the Karthikeyan, he has clearly stated what had happened on 05.01.2014 and how he retrieved the back up from the CCTV camera. As the said witness had been maintaining the CCTV camera in the hospital of the defacto complainant, also he had explained how and when back up taken by him had been produced to the investigating authority and also he has stated that on 22.01.2014, he had given the information through the letter.

16. Like that, the learned Additional Public Prosecutor would further submit that the said Karthikeyan also had given 161 statement on 05.01.2014 and subsequently, on request of the investigating officer, he has also given certificate under Section 65-B of the Indian Evidence Act on 22.01.2014. Therefore, the learned Additional Public Prosecutor

would submit that two certificates dated 22.01.2014 issued by the two witnesses under Section 65-B of the Indian Evidence Act were obtained and were available before the investigating agency at the time of filing charge sheet on 08.12.2014. However, the learned Additional Public Prosecutor would submit that, due to inadvertence, the said certificates had not been produced before the Court along with compat disc produced at the time of filing the final report.

17. In this regard, the learned Additional Public Prosecutor would further contend that, the power of the investigating agency under Section 173(8) of the Code for further investigation even after filing the final report is unassailable and untrammelled right vested with the investigating agency. On such further investigation, new factors can be brought into light, new evidences can be collected and new charges against every accused can also be laid, by way of additional charge sheet or final report. When such an extended power vested with the investigating agency under Section 173(8) of the Code is available even to the extent of making further investigation and file an additional charge sheet including new evidences collected by the prosecution, the

right of filing the document and evidences, which were collected even prior to the filing of the final report on the ground that the said evidence or documents could not be filed due to inadvertence, cannot be construed as a violation of Section 173(8) of the Code. Therefore, the learned Additional Public Prosecutor would contend that, the petition filed in this regard before the Trial Court by the prosecution was within the power of the prosecution under Section 173(8) of the Code and therefore, the learned Judge has rightly allowed the said petition.

18. I have considered the said rival submissions made by the learned counsel appearing for both sides and also heard the submission made by the learned counsel appearing for the second respondent and I have considered the materials placed before this Court for perusal.

19. It is not in dispute that after investigation, the prosecution laid a final report on 08.12.2014. It is the claim of the prosecution that on 05.01.2014 itself both the witnesses, who have given the 65-B certificate, had, on request, visited the scene of crime and the one person K.T.Ramkumar, since he was running a software

business under the name and style of High Tech Point had been in the maintenance service of the CCTV camera at the hospital of the defacto complainant, where the alleged occurrence said to have taken place on 05.01.2014 in the early morning. The said Ramkumar claimed to have stated in the 161 statement that as per the request of the investigating officer on 05.01.2014, at 7.00 am he had taken up the back up on DVR and handed over the DVD to the defacto complainant at 8.00a.m. on the same day. In the said statement under Section 161, it has further been recorded that the K.T.Ramkumar, on 22.01.2014, on the request of the investigating officer had stated that since the recording capacity of the CCTV was only 500GB, once in 15 days, the recordings would get deleted automatically. Therefore, the 65-B certificate dated 22.01.2014, given by the said Ramkumar has only stated that he had downloaded or copied the video footage in the CD and the entire back up of the incident which occurred on 05.01.2014 at 4.15.a.m. had been downloaded in the compact disc.

20. Therefore, whether the certificate dated 22.01.2014 is pertaining to the DVD or copying of the video footage taken on

05.01.2014 or not, is the matter to be decided only at the time of the prosecution marking the said certificates i.e., 65-B certificates issued by the said Ramkumar. Like that, the other certificate under Section 65-B issued by L.Karthikeyan, dated 22.01.2014, speaks about the photographs which he has taken and developed on 05.01.2014. The veracity of these two certificates, issued under Section 65-B of the Indian Evidence Act can only be gone into by the Trial Court at the time of claim to be made by the prosecution, for marking the said documents through the prosecution witnesses.

21. Further, in the present petition, the claim of the prosecution is that, the said two certificates under Section 65-B, though had been collected on 22.01.2014, could not be filed along with the production of the compact disc before the Trial Court at the time of filing final report, due to inadvertence and therefore, in order to produce the said certificates, the said petition had been filed by the prosecution under Section 173(8) of the Code.

22. Therefore, the only issue to be decided is as to whether the prosecution is empowered to seek the permission of the Trial Court to file the said two documents obtained under Section 65-B of the Indian Evidence Act before the Trial Court or not.

23. I have gone through the impugned judgement of the learned Judge. The claim of the prosecution as well as the objection raised by the other side had been taken into account by the learned Judge by relying upon the judgement of the Honourable Apex Court in **Central Bureau of Investigation vs. R.S.Pai and Another**, the learned Judge has given the following findings and reasoning for accepting the said petition of the prosecution, which are re-produced here under for easy reference:

"The learned Additional Public Prosecutor has argued that the prosecution had filed the additional documents before the Court after obtaining permission from the Court by relied upon citation in a case law in 'Central Bureau of Investigation vs. R.S.Pai and Another' in "Appeal (Crl.) 1045 of 200, which was taken from the website, in which out Hon'ble Supreme Court has held as follows:-

Further the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to investigation. In such cases, there can not be any prejudice to the accused".

Further the Hon'ble Supreme Court has also held as follows:-

Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173(4) of the Code of Criminal Procedure, 1898 was considered by this Court in *Narayan Rao v. The State of Andhra Pradesh*, 1958 SCR 283 at 293 and it was held that the word 'shall' occurring in sub-section 4 of Section 173 and sub section 3 of Section 207A is not mandatory but only directory".

Whether the prosecution can file a particular document before the Court after submitted the final report under Section 173 of Cr.P.C. is the question raised in this petition and for which the provisions of Section 173(8) is having a clear cut answer, which reads as follows:-

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,,whereupon 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".

It is the settled position of law that final report is not accurate or complete and the provision of Section 173 of Cr.P.C. does not prevent the prosecution from filing the additional document or additional final reports as the case may be."

24. It was the vehement contention of the learned Senior Counsel appearing for the accused side that, the power vested with the investigating agency under Section 173(8) of the Code for further investigation cannot be stretched upon to file documents which are claimed to have been obtained even prior to the filing of the charge sheet during original investigation but had not been filed due to inadvertence. In order to meet this argument of the learned Senior Counsel on the side of the revision petitioners, let me take some of the judgements of the Honourable Apex Court on the power of investigating agency under Section 173(8) of the Code. In **State of West Bengal vs. Salap Service Station and others** reported in **1994 Suppl (3) SCC 318** the issue which was projected before the Supreme Court was that, whether the Court has got power to reject out rightly the charge sheet

without taking it on file. Dealing the said issue the Honourable Apex Court has given the following findings at paragraph 2 of the said judgement which is extracted hereunder:

"We have heard both the counsel at length. The simple question that arises ultimately for consideration in this matter is whether the supplementary report filed by the investigating agency under Section 173(8) Cr.P.C. can be taken on file by the Magistrate or not? Section 173(8) lays down that nothing in Section 173 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 whereupon 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. But the Special Judge instead of taking it on file rejected the same holding that 'no cognizance of the offence on the basis of the supplementary charge-sheet can be taken'. It may be mentioned here that in the supplementary charge-sheet allegations are to the effect that there was violation of Direction 12 of the Control Order. The question of taking cognizance does not arise at this stage since cognizance has already been taken on the basis of the main charge sheet. What all Section 173(8) lays down is that the investigating agency can carry on further investigation in respect of the offence after a report under sub-section(2) has been filed. The further investigation may also disclose some fresh offences but connected with the transaction which is the subject matter of the earlier report. In the instant case, the supplementary charge sheet mentions that there was a contravention of Direction 12 and whether the same is substantiated or not by sufficient material would be a question which has to be considered at a later stage. At the stage of filing

supplementary report itself the trial court which took cognizance cannot reject the same outright since it is only a supplementary report in support of the earlier report. Somehow, the Special Court rejected the report without taking it on record holding that no cognizance can be taken since facts do not support offence under Direction 12. There is no question of taken cognizance at this stage since cognizance has already been taken. The purpose of sub-section(8) Section 173 Cr.P.C. is to enable the investigating agency to gather further evidence and that cannot be frustrated. If the materials incorporated in the supplementary charge sheet do not make out any offence, the question of framing any other charge on the basis of that may not arise. But in case the court frames a charge it is open to the accused persons to seek discharge in respect of that offence also has they have done already in respect of the offence disclosed in the main charge sheet. The rejection of the report outright at that stage in our view is not correct."

25. In another case in *Rama Chaudhary vs. State of Bihar* reported in 2009(6) SCC 346, the Honourable Apex Court has distinguished the scope of further investigation from fresh investigation or re-investigation. Underlining the scope and ambit of Section 173(8) of the Code, the Honourable Apex Court in the said judgement, has made the following observations.

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 part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. The abovesaid provision also makes it clear that further investigation is permissible, however, reinvestigation 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 Gujarat* [(2004) 5 SCC 347 : 2004 SCC (Cri) 1603] 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 “the 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)

26. In yet another judgement in *State of Orissa vs Mahima @ Mahimananda Mishra and Others* reported in 2007 (15) SCC 580, the issue

raised before the Honourable Supreme Court was that, whether the High Court has got power under revisional jurisdiction to give a restricted interpretation to Section 173(8) of the Code of Criminal Procedure and thereby, the permission given by the Trial Court for further investigation under the said Section can be set aside. Answering the said question, the Honourable Apex Court in the said judgement cited supra, has given the following findings:

" 2. The state is in appeal against an order of the Orissa High Court which, inter alia, records as below:

"I am, therefore, of the view that reopening the investigation by examining those witnesses who were examined or available to be examined at the time of earlier investigation and recording their statements almost five and half years after the final form was submitted do not appear to be bona fide and further investigation on the basis of statements of witnesses available to be examined during earlier investigation amounts to abuse of process of court and exercise of power not intended to be exercised under Section 173(8) of the Code. The scope of Section 173(8) of the Code cannot be stretched to that extent. Having observed that further investigation by the crime branch by way of examining these witnesses is not bona fide, I quash further investigation on that ground. However, it shall be open for the investigating agency to make further investigation in terms of Section 173(8) of the Code on the basis of such materials which were not available at that time of earlier investigation or not within the knowledge of the investigating agency."

3. Mr. Das, learned counsel appearing for the state, has been rather emphatic in his submission that the High Court hadn't had the requisite jurisdiction to interfere with an order directing further investigation, since the language of [Section 173\(8\)](#) of the Code of Criminal Procedure (hereinafter referred to as "The Code") is rather clear and categorical in that regard. [Section 173\(8\)](#) of the Code, for proper appreciation, however, is noticed hereinbelow:

173 (8) nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (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).

4. A plain reading of the language itself suggests that the power of the police to conduct further investigation cannot possibly be restrictive in nature and it is of widest possible amplitude. It is in this context Mr. Das placed reliance on a decision of this Court in [Hemant Dhasmana v. Central Bureau of Investigation and Another](#), wherein this Court in paragraph 16 observed:

"16. Although the said sub-section does not, in specific terms, mention about the powers of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by a court which has the jurisdiction to do so, it would not be a proper exercise of revisional powers to interfere therewith because the

further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation, the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back on that track. If they come to the same conclusion, it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the special judge's direction would be of advantage for the ends of justice. It is too premature for the High Court to predict that the investigating officer would not be able to collect any further material at all. That is an area which should have been left to the investigating officer to survey and recheck."

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8. The language of the statute is clear enough to indicate that it is not a restrictive one but it has a widest possible sanctity. The statute has provided the said provision for the sake of concept of justice and in the event, the interest of justice so requires, this further power of investigation has been conferred on to the police under [Section 173\(8\)](#) of the Code.

9. On the wake of the aforesaid and having considered the submissions and observations of this Court as in Hemant's case (supra), we do feel it expedient to record that the learned single judge in exercise of the power under criminal revisional jurisdiction ought not to have interpreted [Section 173\(8\)](#) of the Code with a restriction. The last two lines of the paragraph noticed above viz. "which were not available at the time of earlier

investigation or not within the knowledge of the investigating agency" cannot be said to be a proper expression of law in terms of Section 173(8) of the Code. The judgment impugned is erroneous on a reading of Section 173(8) of the Code and as such cannot be concurred with. The appeal is thus allowed. The order impugned is set aside."

27. In the present case, the issue is, whether the trial Court can give permission to the prosecution to file documents, which, though had been available to the prosecution before filing the final report, could not be filed due to inadvertence, after the filing of the charge sheet by invoking Section 173(8) of the Code. If we dwell in to the said questions as to whether the investigating agency is having such a power to seek permission of the Trial Court under Section 173 of the Code to file those documents, the emphatic answer would be 'Yes', in view of the aforesaid judgements of the Honourable Apex Court.

28. The Honourable Apex Court in 2007 (15) SCC 580 cited supra, has categorically held that the language of the statute in Section 173(8) of the Code indicate that it is not restricted one but has the widest possible sanctity. In the said case, the factual situation which

was dealt with by the Honourable Apex Court was that, the prosecution though had investigated and filed the charge sheet, after 5 1/2 years wanted to further investigate and examine the very same witnesses, who had already been investigated during the first investigation and that, permission was since had given by the Trial Court, the High Court ,which dealt with the matter was of the view that the power of the prosecution under Section 173 of the Code cannot be stretched upon to further investigating the very same witnesses, who were either examined or were made available to be examined at the time of earlier investigation. The said exercise of the prosecution, according to the High Court, did not appear to be a bonafide and the further investigation on the basis of the statements of witnesses available to be examined during the earlier investigation amounts to be abuse of process of Court and such exercise of power was not intended under Section 173(8) of the Code.

29. The said findings given by the High Court was negatived by the Honourable Apex Court and it was held that, the very words observed by the High Court that, "which were not available at the time of earlier investigation or not within the knowledge of the investigating

agency", cannot be said to be a proper expression of law in terms of Section 173 (8) of the Code.

30. If the said principle of the Honourable Apex Court in the aforesaid case cited supra, is applied to the present facts of the case, it can be easily stated that the course of action adopted by the learned Judge in the order impugned herein cannot be termed to be in violation of Section 173 (8) of the Code. What was sought for by the prosecution before the Trial Court that, they want the permission of the Trial Court to file the documents which were, according to the prosecution, collected, obtained or available, even prior to the filing of the charge sheet, however, due to inadvertence those documents were not filed.

31. The said move of the prosecution, in this case was opposed on the main ground, by the accused side that, such power is not available to the prosecution under Section 173(8) of the Code and also such exercise is impermissible after two years of filing the charge sheet. Further, in the case cited above in 2007 (15) SCC 580, the Honourable Apex Court held that the power of the investigating agency under Section

173(8) of the Code is having the widest possible sanctity. The Honourable Apex Court also had expressed its view that the plain reading of the language used in the said Section suggests that the power of the police to conduct further investigation cannot possibly be restrictive in nature.

32. Here in the case in hand, the two years delay is raised as an issue, whereas, in the said case the Honourable Apex Court has reversed the findings of the High Court in restricting the power of the prosecution to re-examine the witnesses, who were available earlier also, after 5 1/2 years of filing the charge sheet. When that being the governing law as per the said judgement of the Apex Court, the present act on the side of the prosecution, seeking such permission from the Trial Court cannot be termed to be either excessive jurisdiction or power, of the investigating agency or beyond the scope of the power of the prosecution under Section 173(8) of the Code.

33. Moreover, the learned Judge in the impugned judgement has very clearly mentioned that, the issue before the Court was as to

whether the document can be received by the Court or not. The learned Judge has very specifically stated that receiving of a particular document is different from marking of the document and the marking of the documents is entirely different from proving the contents of those documents. The learned Judge has further observed that, there are three stages and hence, whether the particular document has been proved by a party or not shall be decided only at the time of trial. It has further been observed by the learned Judge in the impugned judgement that the learned counsel appearing for the accused has got every right to raise his objection when the documents are marked by the prosecuting agency, therefore, the objection raised even for receiving the documents was not an acceptable one.

34. This Court is fully agreeing with the view expressed by the learned Judge, who made the impugned order, as the only issue before the learned Judge in the said petition was as to whether the said documents issued under Section 65(B) of the Act can be filed or not. Mere filing of the documents would not *ipso facto* prove the case of the prosecution as the same has to be marked and has to be accepted as an

evidence by the Court. The accused has got every right to raise their objection at the time of marking the documents and can raise all objections which were raised before the Trial Court in the present petition.

35. Moreover, number of discrepancies were pointed out by the accused side such as, the father name of one of the witness, who gave the certificate is different from 161 statement to Section 65(B) certificate and also the case diary recording such collection of the document on 22.01.2014 was not available or has not been produced. These aspects can very well be raised by the accused side before the Trial Court about the admissibility of the said two documents, in support of the electronic evidence as secondary evidence, within the meaning of Section 65(B) of the Indian Evidence Act.

36. In view of the said legal preposition as has been held by the Honourable Apex Court in a number of judgements as quoted above, the judgement cited by the learned Senior Counsel appearing for the petitioners/accused i.e., Vikas Shukla's case of Delhi High Court, in the

opinion of this Court, cannot advance the case of the accused.

37. The stage of marking the document or accepting or admitting the said document as an admissible evidence has not come so far and only at that stage, as has been rightly pointed out by the learned Judge, in the impugned order, the accused can have every right to raise those objections. Hence, the said judgement of the Delhi High Court as relied by the learned Senior Counsel for the accused cannot be pressed into service at this stage.

38. The only legal issue that was raised before this Court for consideration is as to whether, the prosecution is having the power to invoke Section 173(8) of the Code seeking permission of the Trial Court to file the documents which were, according to the prosecution, available even prior to filing of the final report but due to inadvertence could not be produced at that time. The said issue can safely be answered in favour of the prosecution, in view of the aforesaid discussions, and circumstances of the case.

39. In the result, this Court is of the view that the revision petitioners have not made out any case to interfere with the impugned order of the learned Judge and hence, the said impugned order is sustainable. Accordingly, this revision fails and therefore, the same is dismissed. Consequently, connected miscellaneous petition is closed.

27.03.2018

Index : Yes/No
Speaking/Non-Speaking order
smi

To

1. The Chief Judicial Magistrate,
Egmore, Chennai.
2. The Inspector of Police,
R-7, K.K.Nagar Police Station,
Chennai 600 078.
3. The Public Prosecutor
High Court, Madras.

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R.SURESH KUMAR, J.

smi



Pre-Delivery Order in
Crl.R.C.No.823 of 2017
and Crl.M.P.No.7527 of 2017

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27.03.2018