

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition (Cr.) No. 1216 of 2019**

Samual James, S/o Late Shri Walis James, Aged about 69 years, R/o Jarhabhatha, Near Mandir Chowk, Bilaspur, Police Station – Civil Line Bilaspur, Distt. - Bilaspur (C.G.)

-----Petitioner

Versus

1. State of Chhattisgarh Through:- the Secretary, Department of Home and Police, Mantralaya, Mahanadi Bhawan, Raipur (C.G.)
2. The Director General of Police, Raipur, District – Raipur (C.G.)
3. The Inspector General of Police, Bilaspur Range, Bilaspur (C.G.)
4. The Superintendent of Police Bilaspur, District – Bilaspur (C.G.)
5. The Station House Officer, Police Station – Civil Line Bilaspur, District Bilaspur (C.G.)

----- Respondents.

For Petitioner : Shri Rishi Rahul Soni, Advocate.
For Respondents : Shri Mateen Siddiqui, Dy. A.G.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

11/12/2019

(1) Learned counsel for the petitioner submits that the petitioner has been charge sheeted for the commission of offence under Sections 354 A,B,D, 506-B, 294, 323 read with Section 34 of the Indian Penal Code but it has not been investigated properly and needs further investigation. To which, counsel for the State submits that in view of the

judgment of the Supreme Court in the matter of Vinubhai Haribhai Malaviya and others v. State of Gujarat and another¹, the petitioner may move before the jurisdictional criminal Court for further investigation.

(2) I have heard learned counsel appearing for the parties.

(3) In the matter of Vinubhai Haribhai Malaviya and others (supra), their Lordship of the Supreme Court has held as under :-

"49. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to

further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173 (8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculping or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi* (supra). Therefore, to the extent that the judgments in *Amrutbhai Shambubhai Patel* (supra), *Athul Rao* (supra) and *Bikash Rajan Rout* (supra) have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Administration)*, (1997) 1 SCC 361 and *Reeta Nag*

v. State of West Bengal, (2009) 9 SCC 129 also stand overruled."

(4) In view of the aforesaid legal position, the writ petition (Cr.) stands finally disposed reserving liberty in favour of the petitioner to move before the jurisdictional Criminal Court for further investigation in accordance with law.

Certified copy, as per rules.

Sd/-
(Sanjay K. Agrawal)
Judge

D/-

