

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Petition (Cr.) No.1210 of 2019

Nathan Lal Shriwas S/o Late Nakchhed Prasad Shriwas,
 aged about 62 years, R/o Village-Shikarinar, Police
 Station-Jaijaipur, Civil & Revenue District-Janjgir-
 Champa (CG)

---- Petitioner

Versus

1. State of Chhattisgarh, Through – the Secretary,
 Department of Home, Mahanadi Bhawan, New Raipur, Civil
 & Revenue District Raipur (CG)
2. The Director General of Police, Raipur, Civil &
 Revenue District Raipur (CG)
3. The Inspector General of Police Range Bilaspur, Civil
 & Revenue District Bilaspur (CG)
4. The Superintendent of Police, Janjgir, Civil & Revenue
 District-Janjgir-Champa (CG)
5. The Station House Officer, Police Station-Jaijaipur,
 Civil & Revenue District-Janjgir-Champa (CG)

---- Respondents

For Petitioner	: Mr.P.M.Shriwas, Advocate
For Respondents	: Mr.Rahul Jha, Govt.Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

06/12/2019

1. The petitioner has filed this writ petition stating
 inter-alia that though charge-sheet has been filed,
 but only against one accused person and it requires
 further investigation.
2. I have heard learned counsel for the petitioner and
 perused the documents appended with the writ petition.
3. Recently, the Supreme Court in the matter of Vinubhai
 Haribhai Malaviya and others v. State of Gujarat and
 Another¹ 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 mid-way 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 inculcating 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 Ranjan 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 and Ors. (2009) 9 SCC 129 also stand overruled."

4. In view of above, the petitioner is at liberty to make an application for further investigation before the jurisdictional criminal Court where the case is pending.
5. Needless to say, if such an application is filed, the jurisdictional criminal Court shall consider and decide the same in accordance with law.
6. With the aforesaid observation, the writ petition finally stands disposed of. NO cost(s).

Sd/-

(Sanjay K. Agrawal)
Judge

B/-