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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.M.C. 3026/2017**

NARESH KUMAR

..... Petitioner

Through: Mr. Suraj Rathi & Mr. Rajiv Singh,
Ms. Kirti, Ms. Karishma, Ms. Sarangi
and Mr. Rishi Tyagi, Advs.

versus

STATE

..... Respondent

Through: Mr. Izhar Ahmed, APP for State

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

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23.10.2019

CRL.M.A. 39118/2019

Allowed, subject to all just exceptions.

This application is, accordingly, disposed of.

CRL.M.C. 3026/2017

Learned APP has pointed out that there are five accused persons in this case and chargesheet has been filed against three accused only and the petitioner has not made been party to the accused in the present petition.

Learned counsel for the petitioner submits that opportunity of being heard to the accused is not necessary in view of the judgment passed by the Hon'ble Supreme Court in the case of ***Sri Bhagwan Samardha Sreepada Vallabha vs. State of A.P. And Others (1999) 5 SCC 740*** whereby the Hon'ble Supreme Court has held as under:-

“In such a situation the power of the court to direct the

police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the magistrate with such an obligation.”

In view of the aforesaid judgment, notice is not required to be issued to the accused.

Vide the present petition, the petitioner seeks direction thereby to set aside the impugned orders dated 01.06.17 passed by the Ld. Revisional court and 06.03.2017 by the Ld. Trial Court.

The case of the petitioner is that vide order dated 06.03.17 passed by the Ld. Trial Court, an application for seeking further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 was dismissed as not maintainable in view of the observations made by the Hon'ble Supreme Court in ***Amrut Bhai Shambhubhai Patel versus Sumanbhai Kantibhai Patel & Others Criminal 2017 2 JCC 1396*** on the ground that once the charge sheet has been filed by the police, the Magistrate cannot suo motu direct further investigation and should take recourse to the provisions of Section 319 Cr.P.C. at the stage of trial.

Learned counsel submits that the Ld. Revisional Court and the Ld. Trial Court failed to consider the judgments passed by the Hon'ble Supreme Court which are clearly and directly applicable to the instant case. The orders passed by the Ld. Revisional Court and learned Trial Court suffer from non application of mind. These judgments have not been overruled till

date.

He further submits that none of these judgments were cited and not brought into the notice of the Hon'ble Supreme Court in the ***Amrut Bhai Shambhubhai Patel (Supra)*** which was relied upon by the Ld. Trial Court in the impugned order.

He further submits that the said issue is no more res integra and is trite law by the Hon'ble Supreme Court in the following judgments. These are as follows:-

(i) ***Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj 1999 5 SCC 740*** held that-

"Power of the police to conduct further investigation, after laying final report, is recognized under Section 173(8) CrPC. even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation";

(ii) In ***Valibhai Qureshi v State of Gujarat & Ors 2004 2 JCC 803*** the Hon'ble Supreme Court observed that:-

"Further investigation is not altogether ruled out merely because cognizance has already been taken by the Court";

(iii) In ***Rajneesh Kumar Singhal v State 2001 2 Crimes 346(FB)*** the Hon'ble Delhi High Court held that-

"The Magistrate is empowered to direct further investigation under Section 173(8) of the Cr.P.C. even in a case where police after investigation filed the challan and the Magistrate takes cognizance of the offence";

iv) In ***Kishanlal V. Dharmender Bafna & Anr.*** 2009 7 SCC 685 the Hon'ble Supreme Court discussed the nature, and scope and the instances when Section 173 (8) may be invoked and moreover complainant's right and options against accused in a criminal trial are as follows:-

- (a) The right to be given notice on filing of police report;*
- (b) The right to file a protest petition, which may be treated as a complaint by a magistrate;*
- (c) The right to question the fairness of investigation and demand further investigation.*

It has been further held that an order of further investigation can be made at various stages including the stage of the trial, i.e., after taking cognizance of the offence.

(v) In ***State of Orissa V. Mahima @ Mahimananda Mishra & Ors.*** 2007 15 SCC 580, the Hon'ble Supreme Court held that:-

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

vi) In ***Hemant Dhasmana V. C. B. I.*** 2001 7 SCC 536, the Hon'ble Supreme Court held that:-

"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."

Learned APP has pointed that the judgment ***Vinubhai Haribhai***

Malaviya and Ors Versus The State of Gujarat and Anr. Criminal Appeal No. 478-479/2017 was pronounced on 16.10.2019 whereas the impugned order passed by the Court below is before the said judgment came into existence.

However, the fact remains that now the Hon'ble Supreme Court while discussing the other judgment and by overruling the same has held that:-

*"38. 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 **Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267]** has, in no uncertain terms, stated that principle, as afore noticed.*

*39. The contrary view taken by the Court in **Reeta Nag [Reeta, Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Crl) 1051]** and **Randhir Singh [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361]** do not consider the view of this Court expressed in **Bhagwant Singh [Bhagwant Singh v. Commr. Of Police, (1985) 2 SCC 537 : 1985 SCC (Crl) 267]** . The decision of the Court in **Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Crl) 267]** 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 aforenoticed. Similar views having been taken by different Benches of this Court while following **Bhagwant Singh [Bhagwant Singh v. Commr. Qf Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267]** , are thus squarely in line with the doctrine of precedent. To some extent, the view expressed in **Reeta Nag [Reeta Nag***

*v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Crl) 1051], **Ram Naresh [Ram Naresh Prasad. State of Jharkhand, (2009) 11 SCC 299 : (2009) 3 SCC (Crl) 1336. Ed.: Ram Naresh case does not seem to indicate that the Magistrate cannot suo motu direct further investigation: rather it seems to indicate that the Magistrate in fact can do so.] and Randhir Singh [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] , besides being different on facts, would have to be examined in light of the principle of stare decisis.”***

Accordingly, in view of the opinion of the Hon’ble Supreme Court in the aforesaid case, I here set aside the impugned orders passed by the learned Revisional Court and learned Trial Court as well. Consequently, the investigating authority is directed to further investigate the case as sought by the petitioner in the application marked as Annexure-B.

Copy of this order be transmitted to the Trial Court concerned for information and compliance.

A copy of this order be given dasti under the signatures of Court Master to learned counsel for both the parties.

SURESH KUMAR KAIT, J

OCTOBER 23, 2019
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