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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 09/03/2020

Order Passed on : 19/06/2020

Cr.R. No.388 of 2010

- Dr. R.N. Paridha, S/o. Haribandhu Paridha, aged about 45 years, R/o. Paridha Nursing Home, Behind Collector Bungalow, Ambikapur, District-Surguja, C.G.

---- Applicant

Versus

- State of Chhattisgarh, through: Police Station Ambikapur, District-Surguja, C.G.

---- Non-applicant

For Applicant : Mr. Manoj Paranjpe with Mr. Bharat Sharma,
Advocates.

For State : Mr. Adil Minhaj, Govt. Advocate.

Hon'ble Shri Justice Rajendra Chandra Singh Samant

C A V ORDER

19/06/2020

1. This criminal revision has been brought being aggrieved by the order dated 24.09.2008, passed by the Sessions Judge, Ambikapur, District-Surguja, C.G., in Sessions Trial No.478/2007, in which the prayer made by the applicant for issuance of direction of the Court for additional investigation was rejected.
2. The facts of the case are these that the complainant- Rakesh Bansal has lodged F.I.R. against the applicant stating that his pregnant wife was visiting the applicant for regular check-up in the year 2006. On 27.09.2006, the pregnant wife of the complainant was in distress

because of which she was admitted in the nursing home of the applicant on 28.09.2006. The complainant was not briefed about the situation by the applicant. The wife of the complainant was carrying twins, one of the children was delivered dead and the other died due to infections later on. The complainant has alleged that the applicant has committed gross negligence in examining and providing medical treatment to his wife. The death of the child in womb was suppressed and this fact also was suppressed, that because of the situation, there was likelihood that other child may also die. On this basis, an F.I.R. has been lodged against the applicant. On completion of investigation, charge-sheet has been filed against the applicant for prosecution and offences under Section 316, 304, 338, 201 of I.P.C.

3. The applicant filed an application under Section 173(8) read with Section 91 of Cr.P.C. praying for fresh investigation of the case, on the ground that there are two medical reports which are contradictory to each other and there was necessity to investigate the case in accordance with the guidelines laid down in the case of **Jacob Mathew Vs. State of Punjab** reported in **2005 AIR (SCW) 3685**. The learned trial Court has by the impugned order holding that a similar application was filed before the Court of committal Magistrate which was rejected on 22.12.2007, which was suppressed and also holding that the order passed by the committal Magistrate was revisable against which no revision has been presented by the applicant and for these reasons his application has been rejected.
4. It is submitted that in the case **Jacob Mathew** (Supra), the Full Bench of Supreme Court has very clearly laid down guidelines and gave protection to the practicing doctors against frivolous complaints, allegations and prosecution. It is submitted that in case of **S.K.**

Jhunhunwala Vs. Dhanwanti Kaur & Anr. reported in **(2019) 2 SCC 282**, the Supreme Court has held that if the person accused has acted in accordance with the general and approved practice, that is enough to clear him of charge.

5. It is submitted that the learned trial Court had jurisdiction to order for additional investigation in this case for the simple reason that the case has not been investigated in accordance with the guidelines that have been laid down in the case of **Jacob Mathew** (Supra). Before the report was submitted by the joint Committee of medical professionals and administrative officers on 26.12.2006, one of the members of that Committee namely Dr. Shushma Sinha had submitted report to the Collector, Surguja, stating that the applicant had not committed any reckless and gross negligence and she has opined that no ground is made out for criminal prosecution and similarly, another member Dr. P.K. Shrivastava had given his dissent in trial report. The petitioner had earlier challenged the prosecution against him in W.P.(Cr.) No.702/2009 which has been decided on 05.07.2010, the learned Single Judge has dismissed the petition, however, it was observed that the applicant has liberty to take recourse to remedy of revision against the order dated 24.09.2008 which is the impugned order. At present, the prayer of the applicant is not for discharge but only to bring in other relevant material which has been deliberately not brought by the prosecution in the charge-sheet.
6. It is submitted that in the case of **Vinubhai Haribhai Malaviya & Ors. Vs. State of Gujrat & Anr.** reported in **AIR 2019 Supreme Court 5233**, it is held that the power of the Magistrate to order further investigation under Section 156(3) does not affect the power of the investigation officer to further investigate the case even after the submission of report

which is provided under Section 173(8) of Cr.P.C. Therefore, the Magistrate has also power to order for reopening the investigation of the case, even after the police submits the final report. It has been similarly held in the case of **Central Bureau of Investigation Vs. R.S. Pai** reported in **2002 AIR (SC) 1644**, it was held that the investigating officer is required to produce all the relevant documents at the time of submitting charge-sheet and there is no specific prohibition that additional documents cannot be produced subsequently, it is always open to the investigation officer to produce the additional documents with permission of the Court. It is similarly held in the case of **Rama Chaudhary Vs. State of Bihar** reported in **2009(6) SCC 346** that police has a right to investigate the case further under Sub-Section 8 of Section 173 of Cr.P.C. but it does not include fresh investigation or re-investigation.

7. It is further submitted that in the case of **Vinay Tyagi Vs. Irshad Ali @ Deepak & Ors.** reported in **2013(5) SCC 762**, it is held that the Magistrate is vested with power to direct further investigation under Section 156(3) of Cr.P.C. Therefore, refusal to exercise this power by the learned Court below is erroneous.
8. It is further argued that the Court has also powers under Section 91 of Cr.P.C. to summon any document where the Court is of opinion that such document is necessary or desirable for the purposes of investigation, inquiry or other proceeding.
9. Reliance has also been placed on the judgment of Supreme Court in **Omprakash Sharma Vs. Central Bureau of Investigation, Delhi** reported in **2000(5) SCC 679** and on the judgment of M.P. High Court in **Atul Shrivastava Vs. Apama Shrivastava & Ors.** reported in **2011 (3) MPHT 362**, it is prayed that the impugned order be set aside and direction be issued for

further investigation as well as the production of other relevant documents connected with the case. It is further submitted that the member of the Committee constituted for inquiry against the applicant, Dr. P.K. Shrivastava had dissented in the report and Dr. Sushma Sinha had given a contradictory report prior to the submission of the report of Committee dated 26.12.2006. Hence, this report dated 26.12.2006 was not of such credence which should have been entertained to initiate investigation procedure against the applicant.

10. Learned State counsel opposes the submissions made by the learned counsel for applicant and submits that the applicant had filed application making a combined prayer under Section 173(8) r/w Section 91 of Cr.P.C. The scope of exercise of power under these two provisions are totally different, therefore, such an application was itself not maintainable.

11. It is also submitted that the reports, which are referred to by the applicant given by Dr. P.K. Shrivastava and Dr. Sushma Sinha are not part of the charge-sheet and these reports, were never submitted before the committee constituted for inquiring against the applicant. The Inquiry Committee was constituted by S.D.O. Dr. P.K. Shrivastava- Civil Surgeon, Dr. Sushma Sinha- Gynecologist and Rajendra Gupta- Tehsildar, Ambikapur were the members, who have jointly given a report holding the applicant responsible for the negligence committed by him, which resulted in the death of the new born child of the wife of the complainant. The guidelines as laid down in the case of **Jacob Mathews** (Supra) by Supreme Court has been followed in this case, therefore, there is no need for any further investigation. It is further submitted that the applicant had earlier filed a writ petition (criminal) praying for quashing of the F.I.R. lodged against him, which has been

dismissed after elaborately considering the evidence present in the prosecution case. During investigation of the medical report that have been collected are present in the record of the prosecution case. Documents on which the applicant is placing reliance, are not the part of the charge-sheet and were not presented at the time of investigation. These documents and another evidence, the applicant seeks to be collected in further investigation, can be his ground of defence, therefore, there is no requirement for directing any further investigation or summoning any document.

12. It is further submitted by the learned counsel for the applicant in reply that the report given by Dr. P.K. Shrivastava, who had been a civil surgeon, in favour of the applicant and similarly Dr. Shushma Sinha, who was gynecologist, gave report in favour of the applicant which were clearly suppressed and it was under some kind of influence that the Committee has given the report against the applicant. There is a clear verdict of the Supreme Court in **Jacob Mathews** (Supra) case that the investigating officer should, before proceeding against the doctor accused of rash and negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in Government service, qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying the Bolam test. The Committee constituted in this case consisted of two officers from the administration, who were not having the qualification as required to give any medical opinion, so they were not qualified to be a member of that Committee. Out of the other two members who were doctors, Dr. P.K. Shrivastava had differed from the opinion given in the report of Dr. Shushma Sinha and the earlier report of Dr. Sushma Sinha was suppressed, therefore, it is a fit case in which the Court itself can

take cognizance and pass order for further investigation and also for summoning of the documents which are sought for.

13. I have heard learned counsel for the both the parties and perused the documents placed on records.

14. The lodging of F.I.R. and the filing of charge-sheet against the applicant is based only on the report dated 26.12.2006. The question here is not about the correctness and veracity of this report but the point raised is this that the learned trial Court has failed to exercise jurisdiction under Section 173(8) of Cr.P.C.

15. The Supreme Court has in the case of **Vinubhai Haribhai Malaviya & Ors.** (Supra) after making a scrutiny of the provisions under Cr.P.C. in Sections 156, 173, 190, 200, 202 and 204 has held in paragraph 19, 22, 23, 33:-

19. With the introduction of [Section 173\(8\)](#) in the [CrPC](#), the police department has been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate. Quite obviously, this power continues until the trial can be said to commence in a criminal case. The vexed question before us is as to whether the Magistrate can order further investigation after a police report has been forwarded to him under [Section 173](#).

22. Indeed, [Section 156\(3\)](#) has remained unchanged even after the advent of the [CrPC](#) of 1973. Thus, in *State of Bihar v. J.A.C. Saldhana and Ors.* (1980) 1 SCC 554: this Court held:

“19. The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) can be exercised

by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8).”

Likewise, in [Sakiri Vasu v. State of U.P. and Ors.](#) (2008) 2 SCC 409, this Court held:

“12. Thus in [Mohd. Yousuf v. Afaq Jahan](#) [(2006) 1 SCC 627: (2006) 1 SCC (Cri) 460: JT (2006) 1 SC 10] this Court observed: (SCC p. 631, para 11) : (AIR 2006 SC 705, at p. 707, para 11)

“11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under [Section 156\(3\)](#) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in [Section 154](#) of the Code. Even if a Magistrate does not say in so many words while directing investigation under [Section 156\(3\)](#) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.”

13. The same view was taken by this Court in [Dilawar Singh](#)

[v. State of Delhi](#) [(2007) 12 SCC 641 : JT (2007) 10 SC 585] (JT vide para 17) : (AIR 2007 SC 3234). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under [Section 156\(3\)](#) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under [Section 156\(3\)](#) CrPC.

14. Section 156(3) states:

“156. (3) Any Magistrate empowered under [Section 190](#) may order such an investigation as abovementioned.”

The words “as abovementioned” obviously refer to [Section 156\(1\)](#), which contemplates investigation by the officer in charge of the police station.

15. [Section 156\(3\)](#) provides for a check by the Magistrate on the police performing its duties under Chapter XII [CrPC](#). In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under [Section 156\(3\)](#) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide [Section 173\(8\)](#). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide [State of Bihar v. J.A.C. Saldanha](#) [(1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 SC 326] (SCC : AIR para 19).

17. In our opinion [Section 156\(3\)](#) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power

to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. [Section 156\(3\)](#) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution.”

23. It is thus clear that the Magistrate’s power under [Section 156\(3\)](#) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - [Article 21](#) of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under [Section 173\(2\)](#); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the “investigation” referred to in [Section 156\(1\)](#) of the CrPC would, as per the definition of “investigation” under [Section 2\(h\)](#), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under [Section 173\(8\)](#) of the CrPC.

33. We now come to the decision in [Vinay Tyagi v. Irshad Ali and Ors.](#) (2013) 5 SCC 762 : (2013 AIR SCW 220, Paras 13, 19, 22 to 30, 37 to 40). This is another case that arose out of a CBI report to the Magistrate, which requested for closure of the case against the accused. The judgment of the Court first discussed in detail how the criminal investigative machinery is set into motion right until the stage at which the trial begins. The Court then held:

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33. This judgment, thus, clearly shows that the Court of Magistrate has a clear power to direct further investigation when a report is filed under [Section 173\(2\)](#) and may also exercise such powers with the aid of [Section 156\(3\)](#) of the Code. The lurking doubt, if any, that remained in giving wider interpretation to [Section 173\(8\)](#) was removed and controversy put to an end by the judgment of this Court in [Hemant Dhasmana v. CBI](#) [(2001) 7 SCC 536: 2001 SCC (Cri) 1280] : (AIR 2001 SC 2721) where the Court held that although the said section does not, in specific terms, mention the power 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 the court, which has the jurisdiction to do so, then such order should not even be interfered with in exercise of a higher court's revisional jurisdiction. Such orders would normally be of an advantage to achieve the ends of justice. It was clarified, without ambiguity, that the Magistrate, in exercise of powers under [Section 173\(8\)](#) of the Code can direct CBI to further investigate the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the new report to be submitted by the investigating officer, would be governed by sub-section (2) to sub-section (6) of [Section 173](#) of the Code. There is no

occasion for the Court to interpret [Section 173\(8\)](#) of the Code restrictively. After filing of the final report, the learned Magistrate can also take cognizance on the basis of the material placed on record by the investigating agency and it is permissible for him to direct further investigation. Conduct of proper and fair investigation is the hallmark of any criminal investigation.

16. Therefore, it is well settled that the police officer is vested with power to investigate any case further, even after submission of charge-sheet. It is the Magistrate who has the power under Section 156(3) of Cr.P.C. to direct further investigation. Now the question arises whether the Sessions Court is empowered to pass any such order.
17. The prosecution against the applicant is with respect to the offences under Section 316, 304, 338 and 201 of I.P.C. The offences under Sections 316 and 304 have to be tried by the Sessions Court. The charge-sheet for such cases in which the offences are only registered under Indian Penal Code, are not directly filed before the Sessions Court. The charge-sheet is first filed before the Court of Magistrate and thereafter, the Sessions Court receives the case after the committal order is passed.
18. When a charge-sheet is filed before the Magistrate of First Class or any Magistrate of Second Class empowered in that behalf, he is competent to take cognizance of the offences. The Sessions Court can take cognizance of offences under Section 193 of Cr.P.C. only when the case is committed to it by the Magistrate. There is specific mention in Section 156(3) of Cr.P.C. that any Magistrate empowered under Section 190 of Cr.P.C. may order for taking cognizance for such investigation as is mentioned in that Section. The Sessions Court, therefore, is not a Court empowered under Section 190 of the Act. Therefore, it was not within

the domain and jurisdiction of the learned Sessions Court to pass an order for investigation or further investigation as it was sought for in the application filed by the applicant. Hence, I do not find any error in that part of the order by which the learned Sessions Court has denied the prayer of the applicant directing additional investigation or further investigation in the case.

19. It is also worth mentioning that in the impugned order itself, it is mentioned that the similar application was filed before the Magisterial Court which had been rejected vide order dated 22.12.2007 and the applicant did not prefer any revision against that order. It can be said that the applicants have filed an application before the Magisterial Court, which was the Court having jurisdiction and after the rejection of his application, he has not pursued that prayer in the direction in which he could have availed remedy in accordance with law under Code of Criminal Procedure. Therefore, that part of the prayer made by the applicant appears to be settled and finalized by the orders passed by the Court below which needs no interference in this revision petition. The other prayer made by the applicant needs consideration. Section 91 of Cr.P.C. provides as follows:-

91. Summons to produce document or other thing:-(1)

Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce

a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed --

(a) to affect, sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

20. The mention of the word 'any Court' encompasses all the Criminal Courts including the Sessions Court. Therefore, the Sessions Court is vested with power under Section 91 of Cr.P.C. to issue a summons or order to the person in whose possessions or power any document or thing is believed to be present requiring him to attend and produce it. The Supreme Court has in the case of **Omprakash Sharma Vs. Central Bureau of Investigation, Delhi** (Supra) observed in paragraph 6 as directed by the Supreme Court. The question is with respect to proper exercise of judicial discretion of the Court. The words in Section 91 (1) of Cr.P.C. are specified that when any document or other thing is necessary or desirable for the purposes of any inquiry trial or other proceeding, then the Court has the power to exercise such jurisdiction.

21. The Supreme Court has in case of **Vinubhai Haribhai Malaviya & Ors.** (Supra) observed in paragraph 17:-

"It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal

procedural requirement that is the fundamental requirement of [Article 21](#) of the Constitution of India cannot be doubted. It is the hovering omnipresence of [Article 21](#) over the CrPC that must needs inform the interpretation of all the provisions of the CrPC, so as to ensure that [Article 21](#) is followed both in letter and in spirit."

22. In case of ***Pooja Pal Vs. Union of India*** reported in ***2016(3) SCC 135***,

the Supreme Court has observed that a trial encompasses investigation, Inquiry, trial or appeal and retrial that is the entire range of scrutiny including the crime detection and adjudication of this basis thereof. Hence, on this basis, it can be said that there is no stage prescribed on which, the application under Section 91 of Cr.P.C. can be filed by any person. At the same time, it can also be said that the rejection of the prayer of the applicant by the Magistrate under Section 91 does not withhold the entitlement of the applicant to file such application before the Sessions Court which has taken cognizance to conduct the trial of the case.

23. On summing the powers of a Magistrate, it would be found that the Magistrate First Class or Magistrate Second Class is empowered in this respect and has power to take cognizance of the offences, when the charge-sheet is filed before such Court. The next step is the Magistrate has to comply with the provisions under Section 207 and 208 of Cr.P.C. The provision under Section 208 is applicable for the Sessions case initiated on complaint. The next step in which the Magistrate is empowered, is to commit the case under Section 209 of Cr.P.C., Therefore, on examining these provisions, it would be seen that the role of Magistrate First Class or Magistrate Second Class who has been empowered, is very limited and that too to the extent of taking

cognizance, compliance of the other provisions regarding supply of copies to the accused person and then committing the case to the Sessions Courts. The proceeding before the Magistrate cannot be said to be an inquiry, investigation or trial. The emphasis is on the word that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under the code. There is nothing to suggest or hold that the production of any document or other thing can be necessary or desirable in a committal proceeding, therefore, the other proceedings mentioned in the Section 91(1) of Cr.P.C. is certainly not the committal proceeding. All that can be said is that the prayer that was made by the applicant under Section 91 of Cr.P.C. before the Magistrate, was not made before the appropriate forum and therefore, dismissal of the same by the Magistrate has no effect.

24. On considering the submissions made and the documents on which the applicant side has placed reliance, I am of this view that clearly there is a difference of opinion given by one of the medical persons in the Committee and secondly, the claim of the applicant is that the second medical person in the Committee had earlier given a different opinion by submitting a written report to the Collector, whereas at the stage of submission of the report by the Committee, that medical person has concurred with the opinion of the other two members of the Committee who were not qualified as medical persons.

25. Criminal trial in Indian Courts follows the adversarial system in which the prosecution as well as the defence have to establish their cases. The applicant in this case is insisting for that opportunity to establish his defence by way of production of the documents. Therefore, he has an entitlement to make such prayer and also for the reason that the

document regarding which the prayer made under Section 91 of Cr.P.C. appears to be necessary or desirable for the purposes of the trial against the applicant, the learned trial Court has committed error on this part by not allowing the prayer of the applicant under Section 91 of Cr.P.C.

26. On the basis of the discussions made hereinabove, this revision petition deserves to be partly allowed. The revision petition is allowed in part. The prayer of the applicant for further investigation under Section 173 (8) of Cr.P.C. in this revision petition is rejected, however, the prayer made by the applicant under Section 91 for production of the requisite documents for calling the previous medical report of two Members namely Dr. P.K. Shrivastava and Dr. Sushma Sinha from the office of S.D.M. Ambikapur or any other office wherever that may be found, is allowed. The trial Court is directed to seek compliance of this order.

27. Accordingly, the petition stands disposed off.

Sd/-
(Rajendra Chandra Singh Samant)
Judge