

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.4758 OF 2019

Charanjeet Chanderpal
Occupation: Advocate, Age: 46 years,
having permanent address at
300/1A and 2, Rishabh Apartments,
Off S.K. Bole Road, Dadar West,
Mumbai – 400 028.

.... Petitioner

- Versus -

1. Dharini Narendra Nagda,
Occupation: Lawyer, Age-30 years,
Room No.501, 5th Floor, A-Wing,
Rachna CHSL, Pantnagar,
Ghatkopar East, Mumbai-75.
2. Mahesh Atmaram Vaswani,
Occupation: Advocate and Press
Reporter, Age-58 years, having
address at Flat No.1, Sunil Building,
Meera Baug Road, Santacruz West,
Mumbai – 54.
3. The Senior Inspector of Police,
Azad Maidan Police Station,
Mahapalika Marg, Mumbai-1.
4. The Deputy Commissioner of Police
Zone-1, W.H. Marg, Mumbai-1.

5. The State of Maharashtra

.... Respondents

Mr. Charanjeet Chanderpal, Petitioner, in-person,
present.
Mr. Mahesh Vaswani with Mr. S.J. Khera for
Respondent No.1.
Mr. J.P. Yagnik, Addl. Public Prosecutor for the
Respondent-State.

CORAM: S.C. DHARMADHIKARI &
R.I. CHAGLA, JJ.

DATE : JANUARY 08, 2020

ORAL ORDER (Per Shri S.C. DHARMADHIKARI, J.):

1. This writ petition under Article 226 of the Constitution of India r/w Section 482 of the Code of Criminal Procedure (“**Cr.P.C.**”), 1973 seeks the following reliefs:-

“(a) That this Honorable Court may be pleased to issue a Writ or Direction that the impugned order dated 10.6.2019 passed in Complaint no.689/M/17 arising out of B summary with prosecution report in FIR 250 of 2010 be set aside along with the order dated 17.09.2019 passed by the Sessions Court in Revision No.829 of 19 and all proceedings, arising out of the same be closed or quashed along with the FIR 250 of 2010 registered at Azad Maidan be closed or quashed.

“(b) That the Respondent no.4 and 5 be directed to prosecute the Respondent no.1 and 2 or an appropriate direction in this regard be given to the Magistrate of the 64th Metropolitan Magistrate Court.”

2. The petitioner before us is an Advocate so also the first respondent/original complainant. The 2nd respondent has been impleaded only because he appears as an Advocate for respondent No.1/complainant. The 3rd and the 4th respondents are the Senior Inspector of Police, Azad Maidan Police Station, Mumbai and the Deputy Commissioner of Police, Zone-I,

Mumbai – 400 001 and the 5th respondent is the State of Maharashtra.

3. We do not think that the 2nd respondent could have been impleaded as party-respondent for we are not concerned with any allegations that he may have made against the petitioner. They are pertaining to a distinct case. In the present case we are only concerned with the First Information Report (“**FIR**”) No.250/2010. That is registered at the instance of the first respondent.

4. The petitioner says that this FIR has been registered on 20-12-2010. After investigation, the police machinery filed two reports in the Competent Criminal Court, styled as “B” Summary Reports. The copies of the same were provided to the petitioner and the original complainant.

5. The petitioner before us concedes that these “B” Summary Reports may not bind the Criminal Court. The Court is not bound to agree with them. The Court can spell out reasons for its disagreement and thereafter issue appropriate orders in accordance with law. It is claimed that complaint came to be lodged in which the petitioner has been named as an accused. The petitioner says that after due investigation, the reports were filed. The reports indicated that the acts attributed to the petitioner would not amount to a punishable offence.

However, a further investigation was ordered. The further investigation ought to have followed a specific route. In other words, the report of that investigation should have been filed in accordance with sub-section (2) of Section 173 of the Cr.P.C.. Such a course was not adopted and the Competent Criminal Court merely proceeded on a communication which can never be styled as a report. Taking note and cognizance of that communication, further steps have been taken. The petitioner says that after the further investigation concluded and the communication was filed, the Criminal Court passed the order dated 10-6-2019. That has been confirmed in revision by the Additional Sessions Judge of the City Civil and Sessions Court, Mumbai. Hence, these orders are impugned in the present writ petition.

6. A copy of the impugned order, dated 10-6-2019, has been annexed as Exhibit "P", pages 265-267 of the paper-book. In that order the Trial Court has summarised the position. The Trial Court proceeds on the footing that the "B" Summary Reports and the Protest Petition of the original complainant challenging these reports were placed before him. The prosecution has a long and chequered history. The report is lodged in connection with the allegation of outraging the modesty of the complainant on the relevant date. The Trial Court recorded the fact that earlier when the "B" Summary

Report was placed before it, it was not inclined to accept that and directed further investigation by orders dated 2-9-2014 and 21-12-2018. In view of the material placed on record, the only issue or point for consideration was, whether there is a case made out of commission of a cognizable offence. The Trial Court came to the conclusion that the orders passed on previous occasions, namely, 2-9-2014 and 21-12-2018 are self-explanatory. In view of the reasons assigned in that order, the only point for consideration was, whether the "B" Summary Reports should be accepted or rejected. The Trial Court concluded that, on receiving a report of the further investigation there is option to issue or not to issue process by rejecting the earlier "B" Summary Report. The Trial Court could have accepted that report. In this case, it decided to reject it and hence passed an order in the following terms:-

"ORDER

1. *'B' summary report is rejected.*
2. *Process be issued against the accused u/s. 509 of Indian Penal Code.*
3. *Misc application is disposed of accordingly. Prosecution be registered.*

Sd/- 10.6.19
(N.N. Joshi)
Metropolitan Magistrate,
Date: 10.06.2019 64th Court, Esplanade, Mumbai."

7. This order was then challenged before the Sessions Court. From the record it appears that there is an order of

5-7-2019 passed by the learned Sessions Judge. That is an interim order staying the operation and enforcement of the order of the Trial Court. Subsequently, the Revision Application was heard and by order dated 17-9-2019 the same has been rejected.

8. Aggrieved and dissatisfied with these concurrent orders, the present petition has been filed. Mr. Chanderpal, the petitioner appearing in-person, invited our attention to the “B” Summary Reports. He would submit that these reports clearly say that no case is made out of commission of a cognizable offence. In fact, there was throughout a doubt about the incident. There is no clear proof of the incident having taken place and an attempt to establish and prove, even at this *prima facie* stage, that such an incident occurred at a particular place and at a particular time, is not backed by cogent and satisfactory materials. The Trial Court has erred in not appreciating and following the mandate of Section 173, sub-section (2) of the Cr.P.C.. That requires filing of a report and nothing else. A communication from the concerned police station would not suffice. That is a mere letter addressed to the Presiding Judge by the investigating officer. He has to submit a report in the prescribed format and the language of sub-section (2) of Section 173 of the Cr.P.C. admits of no other interpretation. In the present case, there was no report within

the meaning of sub-section (2) of Section 173 of the Cr.P.C.. In these circumstances, the order of the Trial Court cannot be sustained. It is vitiated by an error of law apparent on the face of the record. Therefore, it deserves to be quashed and set aside.

9. In support of the arguments noted above, Mr. Chanderpal has taken us through the memo of the present petition and all its annexures. He first took us through the order that has been passed by the Hon'ble Supreme Court of India on 13-11-2018. He would submit that even if that Special Leave Petition (Criminal) arises out of an order dated 11-3-2015, passed by this Court in Criminal Application No.946 of 2014, it does not exclude in any manner the necessity of filing of a report. In other words, it does not do away with the filing of the report. All that the said order directs is to expedite the case. The Trial Court was directed to expedite the matter arising out of FIR No.250/2010 dated 20-12-2010 registered at the Azad Maidan Police Station, Maharashtra. The Trial Court was directed to decide on the acceptance or otherwise of the closure report ("B" Summary Report). The Trial Court mistook this as a liberty to recommence or reopen the investigation. It, therefore, directed the concerned police officials to make an investigation. In that regard, Mr. Chanderpal invites our attention to the order below Exhibit-1 dated 21-12-2018. He

would submit that by this order the Trial Court has directed the I.O. to further investigate on limited points, 1, 5 & 6, summarised in the Trial Court's order. However, the Trial Court directed the investigating officer to collect documentary evidence from G.J. Advani Law College, Bandra in respect of the incident dated 20-12-2010. Upon the investigating officer approaching this college, it informed the I.O. that there is no material with regard to conducting of classes on that particular day. Mr. Chanderpal would, therefore, submit that if there was no material to indicate the presence of the complainant at this college, then, the incident could not have been made the subject-matter of an FIR. The other direction was to collect documentary evidence with regard to position of towers, coverage area of The Fazalbhair Ibrahim & Co. Pvt. Ltd., Ismail Building, 4th floor, 381, Dr. Dadabhoy Naoroji Road, Y.B. Chavan Circle, Women's Hostel, Mantralaya and specific coverage area of this High Court building by calling reports/documents from Bharti Airtel Limited. This report from the said Bharti Airtel Limited indicates that calls were made on the specific date and time, as narrated by the complainant. In fact, calls have been made, as indicated in the report, at about 11:50 a.m.. Therefore, Mr. Chanderpal would submit that it is inconceivable that somebody who has been making a call within the vicinity of these buildings had gone to Bandra and returned back within a short time of about two-and-half to three

hours. It is not possible to travel such a long distance within this time. Then Mr. Chanderpal invited our attention to the communication dated 22-3-2019, copy of which is at page 276 of the paper-book. This is the investigation officer's communication to the Additional Chief Metropolitan Magistrate, 64th Court, Esplanade, Mumbai. The communication says that after the order passed by the Trial Court, the I.O. contacted the company (service provider) through the Deputy Commissioner of Police, Zone-I. The Nodal Officer of Bharti Airtel Limited provided an email and a soft copy. The I.O. is attempting to obtain the certified true copy of the data provided by Bharti Airtel. However, the certification is yet to be received. The other remark is that there is one officer Mr. Prathmesh Manjrekar, serving in the Airtel Company. The I.O. spoke to him on telephone. He informed that the certification/certified is yet not ready. From this, Mr. Chanderpal wants us to infer that this is not a report of further investigation nor the investigation is over, yet the Trial Court rejected the "B" Summary Report and proceeds to issue a process summoning the petitioner.

10. The petitioner in-person also relies upon an additional affidavit which has been filed in support of the allegations in the writ petition. Thus, Mr. Chanderpal has taken us through the report of the college, the communication of the I.O., and he has also taken us through the orders passed by the

Trial Court and the Hon'ble Supreme Court from time to time. He has also brought to our notice the fact that there was an order (dated 12-1-2011) passed by this Court in Criminal Writ Petition No.3672 of 2010. The said petition was filed by Sialesh Gulani Advani & others vs. The Senior Inspector of Police & others. The petitioner Chandrapal was petitioner No.3 in that petition and he appeared in person. That petition sought a relief in the form of a direction to the police authorities to thoroughly investigate complaints filed at Azad Maidan, Santacruz and Bandra Police Stations including FIR No.250/2010 and file a report before the concerned Court. Mr. Chandrapal would submit that Section 173(2) is specifically referred to in the order of this Court. Thus, there is no dispensation of the mandate of Section 173(2) of the Cr.P.C. and there could be none. Mr. Chandrapal invites our attention to paras 3 to 5 of this order of the Division Bench disposing of that writ petition. Our attention is also invited to the order that has been passed by the Trial Court on the two previous occasions. The petitioner also invites our attention to the communication from the I.O. once again to urge that the mandate of Section 173(2) of the Cr.P.C. has not been followed.

11. The substance of the complaint of Mr. Chandrapal is that the Trial Court may reject the "B" Summary or a closure report. However, the Trial Court has to apply its mind

independently to arrive at the conclusion as to why the closure report should be discarded or rejected. In doing so, the Trial Court should not assist the prosecution in any manner, particularly to get over the deficiencies and lacunae in the investigation reports. In the garb of issuing any order and direction or seeking clarification or further report, the Trial Court is not expected to abdicate its duty and surrender its discretion and power totally to the prosecution. The Trial Court, while rejecting the closure report, has to assign cogent and satisfactory reasons. In this case, the Trial Court has not performed its duty in accordance with law. It has by a sweeping observation rejected the closure report and directed the summoning of the petitioner as an accused to answer the charge. This is contrary to law.

12. Mr. Chanderpal, in support of his contentions, relies upon the following Judgments and Orders:-

- (1) Judgment of the Hon'ble Supreme Court dated 8-4-2019, passed in Criminal Appeal No.614 of 2019 (@ out of SLP No.(s). 814/2019 {**Ramswaroop Soni vs. The State of Madhya Pradesh & Anr.**},
- (2) Judgment dated 21-8-2012 delivered by a Single Judge of this Court, Bench at Nagpur, in Criminal Writ Petition No.610 of 2010 {**Dattaprabhu s/o Sharadchandra Joshi vs. The State of Maharashtra & Anr.**}.

- (3) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.687 of 2019 (arising out of SLP (Cri.) No.297 of 2015) **{Bikash Ranjan Rout vs. State through the Secretary (Home), Government of NCT of Delhi, New Delhi}** dated 16-4-2019, and
- (4) Judgment of the Hon'ble Supreme Court in Criminal Appeal No.1015 of 2019 (arising out of SLP (Cri.) No.9654 of 2017) **{Vishnu Kumar Tiwari vs. State of Uttar Pradesh}** dated 9-7-2019.

13. On the other hand, Mr. Vaswani, appearing on behalf of the original complainant, would submit that this writ petition deserves to be dismissed. It should be dismissed on the ground that it is not maintainable. Our attention has been invited by Mr. Vaswani to the affidavit in reply filed by the original complainant. Mr. Vaswani would submit that the petitioner has suppressed relevant and material facts including that, against the orders rejecting the closure report the petitioner had approached the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India had rejected the SLPs summarily. Further, whenever there was an order passed by the Trial Court on the contents of the closure report and issuing a direction to carry out further investigation, the petitioner has directly approached the Hon'ble Supreme Court of India. The prayers in the SLPs should be noted by us together with the grounds of challenge. Noted thus, it would reveal that the very same reliefs which are sought in the present petition were

sought in the SLPs. The rejection of these SLPs would thus denote that the present petition is not maintainable. The petitioner is in the habit of taking chances by approaching conveniently either the Apex Court or this Court. Depending upon his convenience, he approaches either Court and whenever his approach to the higher Court is unsuccessful, he suppresses that fact and brings a challenge to the very action by filing a fresh petition or proceedings in this Court. The petitioner was aware of all this and yet filed a revision application in the Sessions Court. Both the Trial Court and the Sessions Court have rendered concurrent findings and concluded that the closure report cannot be accepted. This finding of fact is not perverse nor is it vitiated by any error of law apparent on the face of the record. For this reason, this Court should dismiss the petition both on the ground of maintainability as also on merit.

14. Mr. Vaswani relies upon the following decisions in support of his contention:-

- (1) Judgment in the case of **Vishnu Kumar Tiwari vs. State of Uttar Pradesh**, reported in (2019) 8 SCC 27, and
- (2) Judgment in the case of **Rupan Deol Bajaj (Mrs.) and Another vs. Kanwar Pal Singh Gill and Another**, reported in (1995) 6 SCC 194.

15. For proper appreciation of the rival contentions, we must carefully peruse the statement of the complainant based on which the FIR has been registered. A copy of that statement is found in the paper-book. It is at more than one place but the legible copy of the said statement recorded on 20-12-2010 is at page 512 of the paper-book. There, respondent No.1/original complainant says that she resides at Ghatkopar, Mumbai, along with her parents and brother and sister. She has said that she is taking education in the Third Year LL.B. Course at C.J. Advani Law College, Linking Road, Bandra, Mumbai. Whenever she is free from her classes at the college, she attends the office of the 2nd respondent to this petition. She accompanies the 2nd respondent when he appears as an Advocate for various parties in the High Court as also the Sessions Court. She says that she knew the 2nd respondent three years prior to the date of her statement.

16. She says that at about 3:00 p.m. on 20-12-2010, she left the college and came to C.S.T. (Chhatrapati Shivaji Terminus, Mumbai). Thereafter, she contacted the 2nd respondent on mobile. She enquired as to whether he has any cases in any Court and whether she can accompany him and attend the cases. On that occasion he said that there is a matter in which he is appearing in this Court in Room No.40. She, therefore, reached the High Court at about 3:30 hours in

the afternoon. She reached Court Room No.40. She met Advocate Mr. Khera, a colleague of the 2nd respondent. The 2nd respondent was also present. Thereafter, she says that the matter in which Mr. Vaswani was appearing was listed at serial No.16. When she reached Court Room No.40, serial No.8 was being called out. Thereafter, the board was discharged. She, together with respondent No.2 and the colleague Advocate, left the Court Room and came near the lift. When they were waiting for the lift, the petitioner/accused was waiting to enter it. The junior Advocate of the petitioner was also present. The office staff was also present. The petitioner uttered a sentence, attributed to him and set out in detail in the statement. At that time the complainant was having a conversation with the 2nd respondent. The petitioner then turned towards the 2nd respondent and uttered the sentence which, according to the complainant, was highly objectionable. Thereafter, there was a heated exchange and after this incident the complainant approached the Azad Maidan Police Station and her statement was recorded, based on which the FIR was registered.

17. The record indicates that when the investigation concluded, a report was filed in the Competent Criminal Court. The Competent Criminal Court found that this report cannot be accepted. It passed two orders, the first on 2-9-2014 and the second on 21-12-2018. In the two exhaustive orders, the Trial

Court recorded its disagreement with the closure report. It summarised the case pursuant to the alleged incident which occurred in this High Court's premises on 20-12-2010. It then referred to the order of 2-9-2014 which directed further investigation. Meanwhile, after the further investigation, the investigating officer filed another report which was a closure report. The accused approached this High Court by filing Criminal Application No.946 of 2014 for acceptance of the closure report and to quash and set aside the order dated 2-9-2014. The criminal application was disposed of by this Court on 11-3-2015. Aggrieved and dissatisfied with that order, the petitioner/accused approached the Hon'ble Supreme Court and it made the following order on 13-11-2018:-

"UPON hearing the counsel the Court made the following

ORDER

Heard the learned counsel for the petitioner and perused the relevant material.

Delay condoned.

Exemption from filing certified copy of the impugned order and O.T. is granted.

Permission to file additional documents/facts is granted.

The Special Leave Petition as also the Writ Petition are not entertained and are accordingly dismissed. However, the learned trial Court is directed to expedite the matter arising out of FIR No.250 of 2010 dated 20th December, 2010 registered at the Azad Maidan Police Station, Maharashtra and decide on the acceptance or otherwise of the closure report

("B summary" report) in the light of the protest petition that has been filed by the complainant. The learned trial Court shall decide the matter within a period of six weeks from the date of receipt of a copy of this order. We make it clear that we have expressed no opinion on merits."

18. The order dated 2-9-2014 has been reproduced in the Trial Court's order dated 21-12-2018. That order says that the complaint was perused together with the record. The Protest Petition of the complainant was also perused. The Trial Court also perused the orders of this Court. The Protest Petition says that the closure/B-summary report be rejected for the grounds stated in the said report. The complainant prayed for a further investigation and a report thereof by taking recourse to sub-section (8) of Section 173 of the Cr.P.C.. The complainant was heard. After a detailed hearing, the Trial Court came to the conclusion that the complainant says that the report should not be accepted and for the reasons set out in the Protest Petition. The petitioner/accused supported that report. However, the record indicates, according to the Trial Court, that the name of the complainant is entered at serial No.6397 on 20-12-2010, on page 180 and 181 in the Register kept/maintained at the entrance of this Court and her mobile number is also entered therein. The time of her entry in the Court is mentioned as 11:50 a.m.. Thus, the complainant alleged that the first ground assigned in the closure report is not correct. There is Case Diary No.9, dated 15-4-2011, which has also been produced

along with the closure report. In that Case Diary, the investigating officer/police has mentioned two mobile numbers of the complainant and two mobile numbers of respondent No.2 before us. However, the investigating officer has called for the details of the two mobile numbers and tower locations as per Case Diary No.7/11 dated 7-3-2011. Case Diary No.8/11, dated 8-4-2011, reveals the call details and tower location of the mobile phone number of the 2nd respondent. The report reveals that this mobile number of the complainant is not activated on 20-12-2010. The Diary also mentions that in the copy of the Register obtained from the Registrar of this Court, the name of the complainant is not found. The petitioner before us also made a grievance that the complainant was claiming Rupees Two Lakhs to withdraw the complaint and she would come to his office on 16-4-2011 and at his demand a police personnel was deputed at his office in civil dress but the complainant did not turn up. The complainant is supposed to have visited the police station along with another person and when his statement was being recorded, the complainant gave her mobile to the police officer and on the mobile Advocate Vaswani talked with the police officer and thereafter the complainant told that she does not want to record the statement of the witness accompanying her. The witness left the police station when his statement is not completely recorded. Then there are other two witnesses on whose statements the I.O.

relied upon. The Trial Court considered all the materials and the principles of law which can be summarised from the Judgments of the Supreme Court. The Trial Court concluded that the matter is at the stage of acceptance of the closure report. At that stage, it is not necessary to evaluate the evidence or assess it as if the Court is holding a trial. In other words, acceptance or rejection of all the materials on record is not an exercise necessary to be carried out at this stage. The I.O. appears to have submitted a report of closure on insufficient grounds. The issue about the date and time mentioned in the FIR, when the complainant entered this Court and the time mentioned in the Register should also be investigated properly. There is a reference to the rivalry between the petitioner and the 2nd respondent. However, that would not be enough to submit a closure report. It is in these circumstances that the report was rejected and the further investigation in the subject FIR was directed to be carried out under Section 156(3) of the Cr.P.C..

19. The Trial Court in the further order passed on 21-12-2018 adverted to the prior order, the contents of the closure report and in para 5 of its order, at running pages 212-213 of the paper-book, set out the main contentions.

20. Then in para 6 it noted the arguments of the

petitioner before us which are more or less identical. Thereafter, it also adverted to the arguments of the 2nd respondent, who appeared on behalf of the complainant. The 2nd respondent argued that this closure report be rejected. He complained that the investigating officer has not performed his duty. The Trial Court found substance in this complaint of the complainant/respondent No.1 before us. The Trial Court in para 9 of the order passed on 21-12-2018, concluded that the I.O. has not bothered to do any proper investigation about the call data record details and the presence of the complainant as also the accused at the spot of the incident. That was the main point on which the closure report was filed by the earlier investigating officer Mr. Somdutt Khandare. The present investigating officer has also not investigated the same and relying upon the call detail record furnished earlier and the statements of four constables about lack of presence of a lady on the spot of the incident, again filed a closure report. In para 10 of the order, the Trial Court held that all the statements made by the complainant and the witnesses are *prima facie* corroborating the version of the complainant. The investigating officer could not have set out, with certainty, that the accused was not present at the date of the incident nor can he say about the absence of the complainant categorically. Once the object of the further investigation was to assist the Court, that has not been achieved, according to the Trial Court by the two reports.

It is in these circumstances that the arguments of Mr. Chanderpal have been rejected and the Trial Court directed the matter to be sent for further investigation. The Trial Court desired that the investigating officer should inform it specifically about the points at serial Nos.1, 5 & 6. These points are summarised in para 5 of the order dated 21-12-2018. Thus, the investigating officer was to collect documentary evidence from the Law College and in respect of the lectures or otherwise held on 20-12-2010 and thereafter the call detail record in relation to the calls from the mobile number within the vicinity of this Court, Mantralaya and Fort, Mumbai.

21. It is pertinent to note that after these two orders were passed and the reports were furnished to the Trial Court, it came to the conclusion that based on the same it would not be proper to close the proceedings. The impugned order assigns reasons for not accepting the closure reports. At this stage, it is not necessary to assign detailed reasons and as Mr. Chanderpal would like to be assigned by us. At the relevant stage, the Trial Court was not conducting a full-fledged trial. It was not necessary for it to appraise and appreciate the evidence on record. All that it was required to consider and apply its mind to was whether the closure reports placed on record by the police machinery deserve to be accepted. The Trial Court found that they cannot be accepted not just because

of the Protest Petition of the original complainant but because the grievance of the complainant, as projected in the Protest Petition, has substance. The Trial Court has in the impugned order found that the two directions to the I.O. were clear. The directions were contained in the detailed orders of 2-9-2014 and 21-12-2018. These have not been abided by and another perfunctory report was placed on record. The charge was serious and of outraging the modesty of a lady. If that was the charge, the investigations were expected to proceed in accordance with the tests laid down in the Judgments of the Hon'ble Supreme Court and the provisions of the Cr.P.C.. The Trial Court found that in this case bare statement/report of a person was enough to set the law in motion. There was no occasion for the investigating officer to bring any extraneous materials with regard to the rivalry between two Advocates. At this stage, it would not be necessary for the Trial Court to consider as to whether Mr. Vaswani has influenced the complainant, his junior, to implicate the petitioner Mr. Chanderpal in a false criminal case. So long as the statement made by the complainant a junior Advocate, may be in the chamber of Mr. Vaswani, is *prima facie* enough to proceed then, other issues are irrelevant. It is on such reasons that the closure report is rejected and process has been issued summoning the petitioner to answer the charge under Section 509 of the Indian Penal Code ("**IPC**").

22. We are not expressing any opinion on the merits of this charge. We are also not expressing any opinion on whether the materials collected till date are enough or adequate to bring home the charge. There is no question of pronouncing upon the guilt or otherwise of the accused. Similarly, the order of the Trial Court nor our endorsement thereof can be construed as acceptance of the allegations of the complainant. Today, she has placed her version before the Trial Court. It is the prosecution which will have to establish and prove the charge. The complainant would be examined and the accused/petitioner before us would have an opportunity to cross-examine her. At that stage, he can always question her with regard to her statement and the details therein, particularly of her attendance at the college, her leaving the college and reaching the Chhatrapati Shivaji Terminus, Mumbai, contacting her senior Mr. Vaswani on mobile, attending this Court allegedly together with Mr. Vaswani as his junior in a case in Court Room No.40, at serial No.16 on that day, namely, 20-12-2010. To our mind, when all these avenues are open to the petitioner, it is not necessary for us to entertain this petition.

23. We have found that the petitioner has unsuccessfully challenged not only the order of the Trial Court dated 2-9-2014 but equally the subsequent orders, including

that of 21-12-2018. On every occasion the petitioner has directly approached the Hon'ble Supreme Court of India and not only prayed for quashing and setting aside the orders of the Trial Court but the proceedings as a whole. The prayers in that behalf are eloquent enough. That they may not have been pressed or that they may not have been referred in the order passed rejecting the SLP is neither here nor there. Suffice it to say that the petitioner has taken chances by approaching the higher Court and was unsuccessful. All the more, therefore, we are not inclined to exercise our writ jurisdiction and interfere with the impugned orders. We do not find the impugned orders to be so perverse or contrary to law as would warrant our interference in our discretionary, equitable and extraordinary jurisdiction under Article 226 of the Constitution of India. We do not find that the Trial Court has acted beyond its power or exceeded its jurisdiction so as to warrant interference in the impugned orders under Article 227 of the Constitution of India. Thus, there is neither any error of jurisdiction nor has the jurisdiction been exercised illegally or with material irregularity resulting in manifest injustice. The writ petition, therefore, deserves to be dismissed.

24. We do not think that Mr. Chanderpal's reliance on the Judgment of the Hon'ble Supreme Court in the case of **Ramswaroop Soni** (supra) would carry his case any further. In

Ramswaroop Soni, the Two Judge Bench of the Hon'ble Supreme Court was concerned with a criminal case. That was against the appellant Ramswaroop Soni for offences punishable under Sections 326 and 294 of the IPC and Section 3(1) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. A final report under Section 173(2) of the Cr.P.C. was filed on 20-6-2009. The final report said that no offence was found to have been committed by the appellant Ramswaroop Soni.

25. The matter was thereafter taken up by the Chief Judicial Magistrate, Vidisha, Madhya Pradesh and he passed the order which has been reproduced by the Hon'ble Supreme Court. The Supreme Court referred to the settled principle of law that a final report and particularly the one of closure does not bind the trial Court. There are courses open to the Magistrate and which have been summarised in this order. We do not think that the Trial Court, in the case at hand, has deviated or departed from the principles summarised in Ramswaroop Soni. In fact, the trial Court was aware that these are the courses open to it. When it found that on two occasions the investigating officer was specifically directed to investigate certain matters and report, then, the Trial Court has not committed any error of law apparent on the face of the record in not accepting the report of the further investigation. The reports

did not adhere to the directions issued by the Trial Court. In fact, the report that was forwarded after the order of 21-12-2018 has been expressly referred by the Trial Court in the impugned order dated 10-6-2019 to hold that there is enough substance in the grievance of the complainant that the closure report is perfunctory in nature and deserves to be discarded by assigning independent reasons and consistent with the principles of law summarised in Ramswaroop Soni (supra), that the Trial Court passed the impugned order.

26. Another Judgment relied upon is rendered by a Single Judge of this Court at Nagpur in **Dattaprabhu Sharadchandra Joshi** (supra) {Criminal Writ Petition No.610 of 2010} in a petition filed under Article 227 of the Constitution of India and Section 482 of Cr.P.C. for quashing and setting aside an order of the Judicial Magistrate, First Class, Yavatmal in Criminal Case No.564 of 2007. The allegations were that offences punishable under Section 294 of the IPC and several clauses of sub-section (1) of Section 3 of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, are committed by the accused. The cognizance was taken of these offences. The cognizance was challenged by filing a Revision but the order of cognizance was upheld by the Sessions Court and it declined to exercise its revisional jurisdiction.

27. After the allegations were summarised in the order of the learned Single Judge, he came to the conclusion that reasons have to be assigned for not accepting the report submitted by the investigating officer. The options that are available to the Trial Court are thus noted. After noting the legal options and the permissible course for the Magistrate/Trial Judge, the Court found that there is discretion vesting in the Magistrate but which has to be exercised judiciously. There has to be application of mind. There is no quarrel with this legal principle but its application will depend upon the facts and circumstances of each case. In the Judgment rendered by the learned Single Judge, he found that materials have not been referred to with such depth as is required for an independent application of mind. It is in these circumstances that the learned Single Judge held that the order passed by the Judicial Magistrate, First Class, Yavatmal taking cognizance of the criminal case, cannot be sustained. The concurrent orders would have to be set aside for they are vitiated by non-application of mind and perversity. That is because relevant and germane materials were omitted from consideration by the Trial Court. As far as the Judgment of the Hon'ble Supreme Court in **Bikash Ranjan Rout** (supra) is concerned, there as well the Hon'ble Supreme Court found that the accused was discharged. The FIR was lodged and although investigations

were directed, later on an order came to be passed on 5-2-2013 by which further investigation was directed. That was because the investigation carried out earlier was faulty or not proper at all. The accused was aggrieved and dissatisfied with such approach of the Trial Court and confirmed by the High Court. He found that if the case was fit enough for his discharge, then, the order of the learned Magistrate could not be sustained. It is in these circumstances that both sides advanced detailed arguments and as the Court below having invoked the power of discharge, even the provisions in relation thereto have been referred by the Hon'ble Supreme Court. Once again the legal principles summarised in para 7 of the Judgment of the Supreme Court would not carry the case of Mr. Chanderpal any further. Eventually, it is their application to the facts of each case, which is relevant.

28. Even the Judgment in the case of **Vishnu Kumar Tiwari** (supra) would not assist Mr. Chanderpal for the simple reason that aware as we are of the difference in the language of the clauses of sub-section (1) of Section 190 of the Cr.P.C., it would be apparent from a reading thereof that cognizance can be taken by the Magistrate on a complaint or as set out in clause (b) on the report of the police. In the present case, the Trial Court has invoked clause (b) of sub-section (1) of Section 190 of the Cr.P.C. after reports of the investigations were

placed before it. In these circumstances, neither the mandate of sub-section (2) of Section 173 of the Cr.P.C. has been disobeyed in this case nor is there any case of the trial Court failing to apply its independent mind. In fact, it applied its independent mind but disagreed with the contents of the closure reports. It has assigned independent reasons for the same. The orders of the Trial Court disagreeing with the reports have been challenged on more than one occasion but the petitioner was unsuccessful. In these circumstances, even this Judgment is of no assistance to the petitioner.

29. As a result of the above discussion and finding that the Trial Court applied the correct legal principles, all the more we are disinclined to entertain this petition. It is dismissed.

30. At this stage, Mr. Chanderalpal, the petitioner before us, prays for a stay of the order passed in this writ petition for a period of four weeks to enable him to approach the higher Court.

31. We have considered this request but we find that our order rejects the writ petition filed by Mr. Chanderalpal before this Court. Such an order cannot be stayed. Once the writ petition is dismissed and the order of the trial Court and that of the Revisional Court, which are concurrent in nature, are found to be passed in accordance with law and by applying the

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correct legal principles, there is nothing that we can stay or keep in abeyance, as desired by Mr. Chanderpal. The law has to take its own course and simply because Mr. Chanderpal is summoned to answer the charge, does not mean that he is either convicted or sentenced to suffer any imprisonment. All the more, therefore, his request is rejected.

(R.I. CHAGLA, J.)

(S.C. DHARMADHIKARI, J.)

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