

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

105-A

CRR-705-2020

Date of decision: 29.09.2020

Hari Parkash

.....Petitioner

Versus

State of Haryana

.....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN KUMAR TYAGI

Present : Ms. Nupur Choudhary, Advocate
for the petitioner.

Mr. Naveen Singh Panwar, DAG, Haryana
for the respondent-State.

ARUN KUMAR TYAGI, J (ORAL)

(The case has been taken up for hearing through video conferencing.)

1. The petitioner accused **Hari Parkash** has filed the present revision petition under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short, "the Cr.P.C.") against order dated 07.02.2020 passed by the learned Additional Sessions Judge, Kurukshetra in case No.SC/34 of 2019 titled as "State Vs. Hari Parkash" FIR No.519 dated 13.11.2018 registered under Sections 302, 323 and 506 read with Section 34 of the Indian Penal Code, 1860 (for short, "the I.P.C.") at Police Station Pehowa, District Kurukshetra.

2. Briefly stated, the facts giving rise to the filing of the present petition are that on 06.11.2018 Mohan Lal Sharma submitted written complaint to the In-charge, Police Post Pehowa. In the written complaint, Mohan Lal Sharma alleged that on 06.11.2018 his nephew Jitender Kumar was present in Saraswati Bazar in connection with his

profession of performing religious ceremonies. Accused Hari Parkash (the petitioner) was having quarrel with Chinu. His nephew Jitender Kumar intervened in the matter and pacified them. After some time, accused Hari Parkash armed with poker arrived with one unknown person and attacked Chinu and Jitender Kumar and inflicted blow with the poker in the abdomen of Jitender Kumar. Accused Hari Parkash fled from the spot while threatening to kill his nephew Jitender Kumar. Pursuant to registration of the above said FIR on the basis of above said complaint, the police investigated the case and on completion of investigation on finding evidence to be sufficient against accused Hari Parkash, the SHO, Police Station Pehowa filed charge-sheet against him.

3. During trial, when the case was fixed for recording of statement of accused under Section 313 of the Cr.P.C., the SHO, Police Station Pehowa filed application seeking permission to carry out further investigation in the case in respect of written complaint, found attached in the police file, purporting to have been signed by the deceased and made regarding the occurrence which will constitute his dying declaration. The said application was allowed by learned Additional Sessions Judge, Kurukshetra vide impugned order dated 07.02.2020.

4. Feeling aggrieved, the petitioner-accused has filed the present revision petition.

5. The revision petition has been opposed by the respondent-State. However, no reply has been filed by the respondent-State.

6. I have heard learned counsel for the petitioner and learned State counsel and gone through the relevant record.

7. Learned counsel for the petitioner has submitted that earlier application for permission to carry out further investigation was filed by the Public Prosecutor which was dismissed vide order dated 09.01.2020. The application filed by the SHO, Police Station Pehowa for the same purpose was not maintainable but the same has been wrongly allowed by the learned Additional Sessions Judge, Kurukshetra without issuing notice to the petitioner and giving opportunity of being heard to him. The said order is also non-speaking one and no reasons have been assigned for grant of permission for carrying out further investigation. Further, in the present case trial commenced with the framing of charges and no permission for carrying out further investigation could be granted by the learned Additional Sessions Judge after commencement of trial. The impugned order suffers from material illegality and the same may be accordingly set aside. In support of her submissions, learned counsel for the petitioner has placed reliance on the observations of Hon'ble Supreme Court in its judgments in ***Vinubhai Haribhai Malaviya and others Vs. State of Gujarat and another (SC) : 2020 (1) R.C.R. (Criminal) 1*** and ***Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and others (SC) : 2017 (1) R.C.R. (Criminal) 1030***.

8. On the other hand, learned State counsel has submitted that under Section 173 (8) of the Cr.P.C. the police is empowered to carry out further investigation if some new facts come to its notice during pendency of the trial. Application filed by the SHO, Police Station Pehowa for permission to carry out further investigation has been rightly allowed by the learned Additional Sessions Judge, Kurukshetra.

No notice was required to be given to the petitioner who was also not required to be heard before passing of the order on the application granting permission to the police to carry out further investigation. There is no requirement of recording of reasons by the Court for grant of permission for carrying out further investigation. The power of the police to carry out further investigation is available at any stage of the proceedings. The impugned order does not suffer from any illegality. Therefore, the petition may be dismissed.

9. The Code of Criminal Procedure, 1898 did not contain any provision empowering the police to conduct further investigation in respect of any offence after the police report under Section 173 had been forwarded to the Magistrate. The Forty-First Law Commission Report recommended the addition of sub-section (7) to Section 173 as it stood under the Code of Criminal Procedure, 1898 for the following reasons:-

"14.23. A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the magistrate concerned. It appears, however, that courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the magistrate. Copies concerning the fresh material must of course be furnished to the accused."

10. Enabling provision was accordingly incorporated in Section 173 as its sub section (8) at the time of enactment of the new

Cr.P.C. in 1973 which came into force w.e.f. 01.04.1974. Section 173 of the present Cr.P.C. reads as under:-

"173. Report of police officer on completion of investigation.-

(1) Every investigation under this Chapter shall be completed without unnecessary delay.

(1-A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

(g) whether he has been forwarded in custody under section 170.

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Section 376, 376-A, 376-B, 376-C, 376-D or Section 376-E of the Indian Penal Code.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which

section 170 applies, the police officer shall forward to the Magistrate alongwith the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2)."

11. In ***Ram Lal Narang Vs. State (Delhi Administration):***

(1979) 2 SCC 322 Hon'ble Supreme Court held that notwithstanding that a Magistrate has taken cognizance of the offence upon a police report submitted under Section 173 of the Cr.P.C., the right of the police to further investigate was not exhausted and the police could exercise such right when fresh information comes to light. In that case Hon'ble Supreme Court observed as under:-

"21. Anyone acquainted with the day-to-day working of the criminal Courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the

police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate ? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his further course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused, in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the Code of Criminal Procedure in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceedings before the Court is really not of very great substance, since whatever the police may do the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light.

22. As observed by us earlier there was no provision in the Code of Criminal Procedure, 1898 which, expressly or by necessary implication, barred the right of the police to

further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigation on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.”

12. Where the police desires to make a further investigation, the police has to seek formal permission of the Court not because of any statutory requirement but as a matter of customary practice. In

Vinay Tyagi Vs. Irshad Ali @ Deepak (SC) : 2013(2) RCR (Criminal)

197 Hon'ble Supreme Court observed as under:-

“38. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct 'further investigation' or file supplementary report with the leave of the Court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct 'further investigation' and file 'supplementary report' with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the Court to conduct 'further investigation' and/or to file a 'supplementary report' will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.”

13. The question as to whether the Court had power to order conducting of further investigation by the police was set at rest in

Hemant Dhasmana Vs. CBI (SC) : 2001(3) RCR (Criminal) 830. In that case Hon'ble Supreme Court held that although section 173 (8) of the Cr.P.C. 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.

14. The power to carry out further investigation does not have any inhibition including the requirement of hearing the accused before any such direction is made. (see ***Hemant Dhasmana's case (supra)*** and ***Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandha Maharaj Vs. State of Andhra Pradesh and Others, 1999(3) R.C.R. (Criminal) 587.*** In ***Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandha Maharaj's case (Supra)*** Hon'ble Supreme Court also observed that the casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all potential accused to be afforded with the opportunity of being heard.

15. Mere delay in concluding the trial is no ground for denial of permission to carry out further investigation. In ***Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Others (SC) : 2004(2) R.C.R.(Criminal) 463*** Hon'ble Supreme Court observed as under:-

"13. In ***Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322: 1979 SCC (Cri) 479 : AIR 1979 SC 1791]*** it was observed by this Court that further investigation is not altogether ruled out merely because cognisance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts

*come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case." This statement of the law was approved in **Rama Chaudhary v. State of Bihar, 2009(2) R.C.R.(Criminal) 570 : (2009) 6 SCC 346 (at paragraphs 14 to 19) and in Samaj Parivartan Samudaya and Ors. v. State of Karnataka and Ors. 2012(3) R.C.R.(Criminal) 788 : (2012) 7 SCC 407 (at paragraph 58).**"*

16. In **Amrutbhai Shambubhai Patel's case (Supra)** (first case relied upon by learned Counsel for the petitioner) the appellant/Informant therein sought a direction under Section 173 (8) of the Cr.P.C. from the Trial Court for further investigation by the police at the culminating stages of the trial after recording of statements of the accused under Section 313 of the Cr.P.C. The trial Court allowed the application. The High Court set aside the order holding that it was permissible for the investigating officer or the officer-in-charge of the police station to undertake a further investigation even after the filing of the charge sheet, but neither the informant nor the accused could claim as a matter of right, any direction from the Court directing such further investigation under the said provision after a charge-sheet was filed. In the absence of any application or prayer made by the investigating agency and delay on the part of the applicant informant in making the request the trial court had erred in allowing the application.

The two Judge Bench of Hon'ble Supreme Court did not interfere with

the order holding that once the trial had begun with the framing of charges, the stage of investigation or inquiry into the offences was over and further investigation into the offence could not be ordered by the Trial Court and also in view of delay the request of the applicant informant for further investigation was not entertainable. This judgment was followed in ***Athul Rao Vs. State of Karnataka and Another : 2017(4) R.C.R. (Criminal) 361*** and ***Bikash Ranjan Rout Vs. State through the Secretary (Home), Government of NCT of Delhi : 2019 (2) R.C.R. (Criminal) 898***. However, judgments in ***Amrutbhai Shambubhai Patel's case (Supra)***, ***Athul Rao's case (Supra)*** and ***Bikash Ranjan Rout's case (Supra)*** have been partly over ruled by Hon'ble Supreme Court in ***Vinubhai Haribhai Malaviya's case (supra)*** and the relevant para of the said judgment is reproduced as under:-

“38. 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, 1973 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.”*

17. In ***Vinubhai Haribhai Malaviya's case (supra)*** (second case relied upon by learned Counsel for the petitioner) pursuant to the filing of the FIR, investigation was conducted by the police, which resulted in a charge-sheet dated 22.04.2010 being submitted to the Judicial Magistrate First Class, Surat who took cognizance on 23.04.2010 and issued summons to the accused regarding offences under Sections 420, 465, 467, 468, 471, 384 and 511 of the IPC who appeared in the case. Accused No. 1 to 6 filed applications for further investigation under section 173 (8) of the Cr.P.C. and for discharge respectively which were dismissed by the Judicial Magistrate First Class, Surat vide order dated 24.08.2011 and 21.10.2011. Accused Vinubhai Haribhai Malaviya and the other accused filed another application for registration of FIR and investigation under section

156(3) of the Cr.P.C., 1973 which was rejected by the Judicial Magistrate First Class, Surat vide order dated 09.09.2011. On revision the learned Second Additional Sessions Judge, Surat allowed the application under Section 173(8) of the Cr.P.C. for further investigation and in view thereof dismissed application for registration of FIR and investigation under section 156(3) of the Cr.P.C. and confirmed the order rejecting the discharge applications. The Investigating Officer submitted two interim further investigation reports first dated 09.03.2012 (within three days) and second dated 10.04.2012. The accused withdrew application filed before the High Court challenging the order passed by the learned Revisional Court confirming order rejecting discharge applications with liberty to move application for discharge before the Judicial Magistrate First Class, Surat. The High Court set aside order directing further investigation and two further investigation reports on the ground that as a matter of law, the Magistrate does not possess any power to order further investigation after a charge-sheet is filed and cognizance is taken. The High court remanded the application for registration of FIR and investigation under section 156 (3) of the Cr.P.C. for fresh consideration to the learned Second Additional Sessions Judge, Surat. Pursuant to the aforesaid remand the learned Additional Sessions Judge, Surat rejected the application under section 156(3) of the Cr.P.C. on merits against which Special Criminal Application was filed before the High Court which was pending disposal. The three Judge Bench of Hon'ble Supreme Court set aside the impugned High Court judgment insofar as it stated that post-cognizance the Magistrate is denuded of power to

order further investigation but as the facts stated in the application for further investigation had no direct bearing on the investigation conducted pursuant to FIR dated 22.12.2009 upheld the impugned High Court judgment insofar as it had set aside the judgment of the learned Second Additional Sessions Judge, Surat for further investigation, and two additional interim further investigation reports and also set aside the impugned High Court judgment insofar as it remanded the matter to the Revisional court and judgment of the learned Additional Sessions Judge, Surat upon remand rendering Special Criminal Application against the same pending before the High Court as infructuous. However, given the serious nature of the facts alleged in the communication of the Commissioner of Revenue dated 15.03.2011, Hon'ble Supreme Court directed the police to register an FIR on the basis thereof.

18. In *Dharam Pal Vs. State of Haryana (SC) : 2016 (1) RCR (Criminal) 926* it was observed by Hon'ble Supreme Court that power of the police to further investigate is unrestricted. In *Amruthbhai Shambubhai Patel's case (Supra)* Hon'ble Supreme Court further observed that power to further investigate was available to the police at any stage of the proceedings. In *Vinubhai Haribhai Malaviya's case (supra)* the three Judge Bench of Hon'ble Supreme Court observed in para 19 of its judgment that **“With the introduction of section 173 (8) in the CrPC, 1973 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” and made similar observations in para 38 of its judgment. However, in both the cases - *Amrutbhai Shambubhai Patel's case (Supra)* and *Vinubhai Haribhai Malaviya's case (Supra)* question before Hon'ble Supreme Court was as to whether the Magistrate can order further investigation after a police report has been forwarded to him under Section 173 and if so up to what stage of a criminal proceeding and the question up to what stage of a criminal proceedings the police can carry out further investigation was not involved and can not be said to have been finally decided in these cases.

19. In *Union of India Vs. Dhanwanti Devi (SC) : (1996) 6 SCC 44* Hon'ble Supreme Court observed in para 9 of its judgment as under :-

“9.....It is not everything said by a judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well settled theory of precedents, every decision contains three basic postulates - (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts, and (iii) judgment based on the combined effect of the above. A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in the judgment. Every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there is not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. It would, therefore, be not profitable to extract a sentence here and there from the judgment and to build upon it because the essence of the decision is its ratio and not every observation found therein. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a

precedent. The concrete decision alone is binding between the parties to it, but it is the abstract ratio decidendi, ascertained on a consideration of the judgment in relation to the subject matter of the decision, which alone has the force of law and which, when it is clear what it was is binding. It is only the principle laid down in the judgment that is binding law under Article 141 of the Constitution. A deliberate judicial decision arrived at after hearing an argument on a question which arises in the case or is put in issue may constitute a precedent, no matter for what reason, and the precedent by long recognition may mature into rule of stare decisis. It is the rule deductible from the application of law to the facts and circumstances of the case which constitutes its ratio decidendi.”

20. Hon'ble the Supreme Court in the case of ***Director of Settlements, A.P. Vs. M.R. Apparao (SC): (2002) 4 SCC 638*** observed in para 7 of its judgment as under:-

“7.Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all Courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has 'declared law' it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a bind effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case.....”

21. In ***State of Haryana Vs. Ranbir alias Rana (SC): 2006 (2)***

RCR (Criminal) 513 , Hon'ble the Supreme Court observed in para 11 of its judgment as under :-

"..... A decision, it is well settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect. (See Additional District Magistrate, Jabalpur etc. v. Shivakant Shukla etc., (1976) 2 SCC 521). It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not authoritative. (See Divisional Controller, KSRTC v. Mahadeva Shetty, 2005(1) RCR(Civil) 423 : (2003)7 SCC 197)."

22. Similar observations have been made by Hon'ble Supreme Court in **Arun Aggarwal Vs. State of Madhya Pradesh (SC) : 2011 (4) RCR (Criminal) 137**. In **Dr. Shah Faesal and others Vs. Union of India (SC): (2020) 4 SCC 1** observations made by Hon'ble Supreme Court in **Dhanwanti Devi's case (Supra)** were referred to as authoritative pronouncement on the subject.

23. In **Mihan Vs. Inder (PHHC): 2008 (3) RCR (Civil) 124** five judge large Bench of this Court held that only ratio decidendi of a judgment is of binding character and not the obiter dictum and referred to judgments of Hon'ble Supreme Court in **Director of Settlements, A.P. Vs. M.R. Apparao (SC) : (2002) 4 SCC 638; Municipal Corporation of Delhi Vs. Gurnam Kaur (SC): (1989)1 SCC 101; Hameed Joharan Vs. Abdul Salam (SC): 2001(4) RCR (Civil) 184** and **State of Haryana Vs. Ranbir alias Rana (SC) : 2006 (2) RCR(Criminal) 513** in this regard. Similar view was taken by three judge Bench of this Court in **Dheera Singh Vs. U.T. Chandigarh Administration (PHHC) : 2012 (4) RCR (Civil) 970**. In that case the

Bench observed as under:-

*“62. It is the solemn duty of all Courts within the territory of India to follow the judgements of the Hon'ble Supreme Court as they amount to declaration of the law under Article 141 of the Constitution. It is the ratio decidendi, namely, the reasons assigned in support of its conclusion by the Supreme Court which are binding in nature. Mere observations or what has been finally done in a given case without laying down the law would not constitute as an obligatory ratio of the Supreme Court judgement to be followed by the Courts in India. Equally true is that a decision of the Supreme Court is an authority for the point in issue it decides and not for what was neither decided nor there was an occasion for it to express its opinion. Per contra, an obiter dicta is the expression of view by a Court on a question of law though raised before it but did not arise for consideration in such a manner that the case could not have been decided unless such question was also answered. It is thus an incidental statement made in a Court opinion that was not required for deciding the case. It may be a superfluous observation without which also the lis could be effectively adjudicated. "Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect". [Ref. **State of Haryana v. Ranbir alias Rana, 2006(2) R.C.R.(Criminal) 513 : 2006(2) Apex Criminal 53 : 2006(5) SCC 167]***

*63. An obiter or indirectly-expressed view by the Supreme Court on a pointedly raised issue does carry persuasive value though may not be binding on a co- ordinate Bench. It is however, equally well placed that an obiter of the Supreme Court is worthy of respect, has persuasive value and considerable weight and in the absence of any direct pronouncement on that question elsewhere by the Supreme Court, it has a binding force on the High Courts. [Ref. **Oriental Insurance Co. Ltd. v. Meena Variyal, 2007(5) SCC 428]**”*

24. In **Meena Variyal's case (Supra)** Hon'ble Supreme Court observed as under:-

“An obiter dictum of this Court may be binding only on the High Courts in the absence of a direct pronouncement on that question elsewhere by this Court.”

25. In **Vinubhai Haribhai Malaviya's case (Supra)** Hon'ble Supreme Court while making the above referred observations, relied upon by learned counsel for the petitioner, also simultaneously

emphasised the aspect of **fair investigation as part of fair trial** guaranteed under Article 21 of the Constitution. In that case Hon'ble Supreme Court observed as under:-

*“16. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in **Mrs. Maneka Gandhi v. Union of India & Anr. (1978) 1 SCC 248**, be "right, just and fair and not arbitrary, fanciful or oppressive" (see paragraph 7 therein). Equally, in **Commissioner of Police, Delhi v. Registrar, Delhi High Court, New Delhi (1996) 6 SCC 323**, it was stated that Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice (see paragraph 16 therein).*

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.

*18. **Pooja Pal v. UOI, 2016(1) R.C.R.(Criminal) 880 : (2016) 3 SCC 135** is an important judgment which speaks of the fundamental right under Article 21 of the Constitution in the context of the goal of "speedy trial" being tempered by "fair trial". The Court put it thus:*

"83. A "speedy trial", albeit the essence of the fundamental right to life entrenched in Article 21 of the Constitution of India has a companion in concept in "fair trial", both being inalienable constituents of an adjudicative process, to culminate in a judicial decision by a court of law as the final arbiter. There is indeed a qualitative difference between right to speedy trial and fair trial so much so that denial of the former by itself would not be prejudicial to the accused, when pitted against the imperative of fair trial. As fundamentally, justice not only has to be done but also must appear to have been done, the residuary jurisdiction of a court to direct further investigation or reinvestigation by any impartial

agency, probe by the State Police notwithstanding, has to be essentially invoked if the statutory agency already in charge of the investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. As the cause of justice has to reign supreme, a court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion. Justice then would become a casualty. Though a court's satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analysed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.

xxx xxx xxx

86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice."

26. The object of every investigation, as observed in ***Samaj Parivartan Samudaya Vs. State of Karnataka (SC) : 2012(3) R.C.R.(Criminal) 788*** is to arrive at the truth by conducting a fair, unbiased and proper investigation. In ***Ram Lal Narang Vs. State (Delhi Admn.) (SC) : (1979) 2 SCC 322*** it was observed by Hon'ble Supreme Court that when defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted.

27. In ***Sidhartha Vashist @ Manu Sharma Vs. State (NCT of Delhi) (SC) : 2010(2) R.C.R.(Criminal) 692*** Hon'ble Supreme Court observed that it is not only the responsibility of the investigating agency but as well as of the courts to ensure, that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. It underlined, that the equally enforceable canon of criminal law is that high responsibility lies upon the investigating agency, not to conduct an investigation in a tainted and unfair manner and that such a drill should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law de hors his position and influence in the society as nobody stands above law. In ***Babu Bhai Vs. State of Gujarat (SC) : 2010(4) RCR (Criminal) 311*** Hon'ble Supreme Court held that investigation must be fair, transparent and judicious as it is the minimum requirement of law. In that case Hon'ble Supreme Court propounded that the word "ordinarily" applied under Section 173(8) of the Code, did attest that if the investigation is unfair and deliberately incomplete and has been done in a manner with an object of helping a party, the court may direct

normally for further investigation, and not for reinvestigation. It was however added as a sequiter that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, and if it is considered necessary, may direct for de novo investigation as well. It was observed that if an investigation has not been conducted fairly, the resultant charge sheet would be invalid. It was held as well, that such investigation would ultimately prove to be a precursor of miscarriage of criminal justice and the court in such a contingency would be left to guess or conjecture, as the whole truth would not be forthcoming to it. It was held that fair investigation is a part of the constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India and thus the investigating agency cannot be permitted to conduct an investigation in a tainted or biased manner. It was emphasised that where non-interference of the court would ultimately result in failure of justice, the court must interfere and in the interest of justice choose an independent agency to make a fresh investigation.

28. The essentiality of further investigation where the investigation is neither effective nor purposeful nor objective nor fair is best demonstrated by the case ***Criminal Appeal No.332-DB of 1998 and Criminal Misc. No. 35100 of 2009 titled as 'Naccattar Singh alias Khanda Vs. State of Punjab'*** decided on 23.09.2009 which came up before a Division Bench of this Court. In that case during hearing of appeal against conviction and sentence under sections 364/302, 148/149, 201 IPC of the appellants for abduction and murder of Jagseer Singh alias Sira and destruction of evidence, in the course of arguments the defence Counsel claimed that said Jagseer Singh alias

Sira was alive. Enquiry was held by the Division Bench to verify this fact. Since said Jagseer Singh alias Sira was in custody in some other case, his presence was secured, his statement was recorded and in view thereof the judgment of conviction and order of sentence of the appellants were set aside and the appellants were also ordered to be compensated. Needless to say that had the alleged deceased not been in custody pursuant to investigation in other case, effective further investigation would have been essential to trace him and to collect and produce evidence before the Court to prove the fact of his being alive and impermissibility of any such further investigation would have caused grave miscarriage of justice.

29. In ***Dharam Pal's case (Supra)*** where request for de novo investigation made due to defective investigation conducted by ASI of Police, who was reverted to the post of Head constable, was rejected by this Court on the ground that trial had already commenced, order of this Court was set aside by Hon'ble Supreme Court.

30. In ***Rama Chaudhary Vs. State of Bihar (SC) : 2009 (2) R.C.R. (Criminal) 570*** Hon'ble Supreme Court was considering the scope of Sections 173 (8), 173 (2) and 319 of the Cr.P.C. in relation to directing further investigation. The accused raised a contention that in that case report had been filed, charges had been framed and nearly 21 witnesses had been examined and at that stage, in furtherance to investigation taken thereafter, if a supplementary charge sheet is filed and witnesses are permitted to be summoned, it will cause serious prejudice to the rights of the accused. It was contended that the Court has no jurisdiction to do so. The Trial Court permitted summoning and

examination of the summoned witnesses in furtherance to the supplementary report. The order of the Trial Court was upheld by the High Court. The special leave petition filed against the same was also dismissed by Hon'ble Supreme Court.

31. In the case of ***National Human Rights Commission Vs. State of Gujarat and others (SC) : (2009) 6 SCC 342*** Hon'ble Supreme Court was dealing with different cases pending in relation to the communal riots in the State of Gujarat and the trial in one of the cases was at the concluding stage. In the meanwhile, in another FIR filed in relation to a similar occurrence, further investigation was being conducted and was bound to have a bearing even on the pending cases. The Court, while permitting inquiry/investigation including further investigation completely stayed the proceedings in the Trial Court as well.

32. In the present case permission for carrying out further investigation has been granted by learned Additional Sessions Judge, Kurukshetra on application filed by the SHO, Police Station Pehowa. The application was filed on the grounds that one complaint allegedly signed by deceased Jitender Kumar regarding cause of his death and occurrence in question was found attached in the police file. The necessity for further investigation has arisen out of alleged misconduct of the concerned Investigating Officer in deliberate withholding/omission to place on record written complaint allegedly submitted by the deceased to the police which in the eye of law will constitute his dying declaration, if the genuineness thereof is proved. The facts discovered are undoubtedly suggestive of defective/faulty

investigation and misconduct on the part of the Investigating Officer of deliberate withholding of material evidence from the Court and justify further investigation to cure the defective/faulty investigation and discover the truth regarding the same. The relevant facts as to when by whom and to whom the said written complaint was submitted and when by whom the said written complaint was attached with the police file but was not made part of investigation can be ascertained only by further investigation and not by recourse to Section 311 or Section 319 of the Cr.P.C. Since earlier application for grant of permission for carrying out further investigation was filed by the Public Prosecutor without any request/application by the police, the same was rightly dismissed on this ground by learned Additional Sessions Judge, Kurukshetra. However, dismissal of the application filed by the Public Prosecutor did not bar grant of permission for carrying out further investigation on application filed by the SHO, Police Station Pehowa filed subsequently before the Court. Evidently due to reasons of defective/faulty investigation referred to above the application was filed by the SHO, Police Station Pehowa for permission to carry out further investigation which was granted in view of the reasons mentioned in the application.

33. In view of observations in *Hemant Dhasmana's case (Supra)* and *Shri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandha Maharaj's case (Supra)* the petitioner accused was not required to be heard before grant of permission to carry out further investigation. Under Section 173(8) of the Cr.P.C. and also the judgments construing the same there is no requirement of law requiring

giving of reasons by the Court for grant of permission to the police for carrying out further investigation. Therefore, the impugned order granting permission to carry out further investigation for the reasons mentioned in the application can not be said to be bad in law. No, doubt carrying out further investigation is bound to cause delay in conclusion of the trial but as held in *Hasanbhai Valibhai Qureshi' case (Supra)* doing substantial justice in a criminal case is more important than avoiding further delay being caused in concluding the criminal proceedings. In *Hemant Dhasmana's case (Supra)* Hon'ble Supreme Court observed that it would not be a proper exercise of revisional powers to interfere with order of competent Court directing further investigation as generally further investigation would be of advantage for the ends of justice.

34. In the present case even if the impugned order passed by learned Additional Sessions Judge, Kurukshetra be held to be liable to be set aside on the ground of impermissibility of further investigation by the police after commencement of trial, even in such an eventuality the facts and circumstances of the case unmistakeably point to defective/faulty investigation and misconduct on the part of the concerned investigating officer withholding material evidence by manipulation of record which calls for interference by this Court in exercise of powers under Section 482 of the Cr.P.C. by ordering such further investigation.

35. In view of these facts and circumstances of the case and law laid down by Hon'ble Supreme Court, I am of the considered view that the impugned order does not involve any such material irregularity

as will result in grave miscarriage of justice and does not call for interference by this Court in exercise of its revisional jurisdiction.

36. Accordingly, the present revision petition being devoid of any merit is hereby dismissed with no order as to costs and the SHO, Police Station Pehowa is directed to expeditiously conduct further investigation and submit supplementary report at the earliest.

29.09.2020

Vinay/Kothiyal

(ARUN KUMAR TYAGI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No