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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2021

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.15030 of 2021 and
Crl.M.P.No.8197 of 2021

Ravi @ Anubav Ravi

...Petitioner

Vs.

The Inspector of Police,
Sholurmattam Police Station,
Kothagiri Circle, The Nilgris District.
(Crime No.158/2017).

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to issue suitable direction to the trial Court to complete the trial of the case in S.C.No.2 of 2018 pending on the file of the learned District Judge-cum-Chief Judicial Magistrate, The Nilgiris.

For Petitioner : Mr.I.Subramanian, Senior Counsel and
Mr.A.L.Somayaji, Senior Counsel for
Mr.C.Iyyapparaj

For Respondent : Mr.R.Shanmugasundaram,
Advocate General and
Mr.Hasan Mohammed Jinnah,
Public Prosecutor

ORDER

This Criminal Original Petition is filed seeking direction for completion of trial in S.C.No.2 of 2018, pending on the file of the District Judge-Chief Judicial Magistrate Court, The Nilgiris.

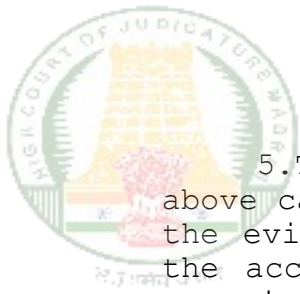
2.The petitioner is PW36 in S.C.No.2 of 2018 which is pending trial before the learned District Judge-Chief Judicial Magistrate, The Nilgiris, for offence under Sections 147, 148, 149, 324, 342, 447, 449, 458, 395 r/w 397, 396 and 302 r/w 120(b) IPC.

3.The gist of the case is that the accused hatched a conspiracy to trespass into Kodanadu Tea Estate Bungalow of the former Chief Minister, The Nilgiris District. In pursuant to the



conspiracy, on 23.04.2017, the accused and others formed into unlawful assembly, trespassed into the premises with deadly weapons committed dacoity and murdered one Om Bahadur Watchmen and caused multiple injuries to another Watchmen Krishnan Dhaba. After committing the offence, the group had left the scene in two cars. On receipt of the complaint, the respondent Police registered a case in Crime No.158 of 2017. On completion of investigation, charge sheet filed before the learned District Judge-Chief Judicial Magistrate, The Nilgiris.

4.The learned Senior Counsel appearing on behalf of the petitioner submitted that the respondent Police had investigated a murder case which took place at Kodanadu Tea Estate Bungalow at Nilgiris District during the month of April 2017. In the said incident, one of the Watchmen of Kodanadu Tea Estate by name Om Bahadur was murdered by a group of persons in order to commit robbery in the Estate Bungalow. During the course of the said incident, another Watchmen by name Krishna Dhaba was also attacked and he sustained injuries. After completion of investigation, charge sheet was filed against ten accused for the offences stated above. The learned Senior Counsel further submitted that one of the accused Kanagaraj who is known to the petitioner was a Driver to his friend Ashok Kumar at Chennai. Whenever the petitioner visited Chennai, he used the service of Kanagaraj Driver and they got well acquainted. On 28.04.2017, at about 08.00 p.m., when the petitioner was watching a movie at Brookfield Cinema Theatre at Coimbatore, Kanagaraj called the petitioner and informed that he and his friends had committed a murder at Kodanadu Tea Estate Bungalow while committing robbery. The petitioner was shocked to hear this news and suggested Kanagaraj to surrender before the concerned Police. The said Kanagaraj preferred to surrender before the Deputy Superintendent of Police, SanKagiri. The said Kanagaraj earlier introduced one Sayan (A1) to the petitioner and after the incident, he severed contact with him. The petitioner is a businessman doing jewellery business in the name of M/s.Anubav Jewellers and also doing real estate business in and around Coimbatore city. Further, the petitioner is the Joint Secretary of AIADMK AmmaPeravaiKovai City. For political reasons the petitioner is threatened from various sources stating that further investigation in Kodanadu case is going to take place and the petitioner has to give statement as required by the respondent. He further came to know that on 13.08.2021, newly appointed Special Public Prosecutor had filed a memo before the trial Court informing that they are investigating the case further. This information was telecasted in all leading television channels and also published in newspaper. On 17.08.2021, he saw the news item published in the newspaper that the main accused Sayan (A1) is intending to give statement before respondent Police disclosing further facts.



5.The learned Senior Counsel further submitted that in the above case, sofar 41 witnesses have been examined and thereafter, the evidence on the side of the prosecution closed. Thereafter, the accused were questioned under Section 313 Cr.P.C., and the case is now at the stage of defence from April 2021. The accused are dragging on the proceedings and not examined any defence witness, despite this Court on three occasions had given direction in Crl.O.P.No.11805 of 2021, dated 04.08.2021, Crl.O.P.Nos.8488 & 8495 of 2020, dated 28.08.2020 and Crl.R.C.No.1298 & 1301 of 2019, dated 19.01.2021 to complete the trial within a period of three months. The present prosecution and the defence side are not complying the orders of this Court and dragging the proceedings.

6.The learned Senior Counsel further submitted that the social activist K.R.Ramasamy @ Traffic Ramasamy earlier filed a transfer of investigation petition before the Hon'ble Apex Court in W.P(Crl.).No.15 of 2019. The Hon'ble Apex Court considering the petition and on perusal of the relevant materials held that "it is not a fit case for admission and hence, dismissed the same on 25.01.2019, which was widely publicized in the newspaper. Despite the same, the present position taken by the prosecution that they are conducting further investigation is with ulterior motive and to delay the completion of the trial". For the past three years the case is pending trial and the stand taken by the prosecution to examine one of the main accused and to record his statement has no logical reason. The learned Senior Counsel further submitted that due to the representation made by the prosecution before the trial Court, now the case gained momentum and given wide publicity. The petitioner and the other witnesses apprehended that due to the protraction of the trial proceedings, the threat and pressure will continue. The petitioner is living with fear since he is a witness.

7.In support of his submissions, the learned Senior Counsel for the petitioner relied on the following decisions:-

8.In the case of "AmrutbhaiShambhubhai Patel Versus SumanbhaiKantibhai Patel &Ors reported in MANU/SC/0104/2017", it is held that "there are three options open to the Magistrate, after a report is submitted by the Police on completion of the investigation, as authoritatively enumerated in "Bhagwant Singh v. Commissioner of Police &Anr., reported in (1985) 2 SCC 537", the Magistrate either to take cognizance of the offence or discharge the accused. The investigating agency may for good reasons inform and seek permission to conduct further investigation, the Magistrate suomotu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant or informant, after cognizance is taken and the accused person appears, pursuant to the process, issued or is



discharged is incompatible with the statutory design and dispensation."

9. In the case of "Vinubhai Haribhai Malaviya Versus the State of Gujarat reported in (2019) 17 SCC 1", it is held 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."

10. In the case of "Dinesh Dutt Joshi Versus State of Rajasthan and Anr reported in (2001) 8 SCC 570", it is held that "Section 482 of Cr.P.C., confers power on the High Court to do real and substantial justice for the administration alone of which it exists or to prevent abuse of process of Court". In this case, the act of the prosecution is clearly abuse of process.

11. In the case of "Sathish Kumar Nyalchand Shah Versus State of Gujarat reported in (2020) 4 SCC 22.", for the point that the prime accused in this case Sayan (A1) had sent a letter, dated 29.07.2021 disclosing certain facts. Based on it, further investigation is carrying out, which cannot be entertained. In this case, the charge sheet filed and the trial already progressed. In view of the same, further investigation on his request cannot be entertained. For the same preposition, the learned Senior Counsel relied on the case of "Athul Rao Versus State of Karnataka reported in (2018) 14 SCC 298."

12. Relied on the case of "Prithipal Singh etc Versus State of Punjab & Anr., etc., reported in (2012) 1 SCC 10", for the point that a representation of Sayan is at the most is in the nature of accomplice witness whether accomplice not on trial would be a competent person whether at all representation can form the basis for further investigation. Further, there is nothing on record to discredit the testimony of the witnesses already whose evidence has been recorded.

13. Relied on the case of "Anand Kumar Jhawar Versus State and Ors., reported in MANU/TN/3404/2016", for the point that how the accused by sending a representation used the legal system in ingenious manner for executing the illegal act.

14. Relied on the case of "Sri Basavaraj Shivappa Muttagi Versus State of Karnataka & Ors., in W.P.No.51012 of 2019", for the point that one final report has been submitted under Section 173(2) Cr.P.C., seeking further investigation would be permissible only with the leave of the said Court. In this case, no such permission was obtained. Further, this case is now pending before the Hon'ble Apex Court in CrI.A.No.1348 of 2020.



The main accused Sayan whose bail was cancelled by the trial Court, since he violated the bail conditions and agitated the same before this Court in Crl.O.P.No.4533 of 2019, wherein this Court elaborately dealt and found that the said Sayan in conspiracy with one Mathew Samuel had fabricated and projected a new dimension to the prosecution case and rejected the same confirmed the cancellation of the bail granted. Now the said Sayan is now raising the same issue which cannot be found basis for the respondent Police now to commence further investigation. Placed reliance on the cases of "Central Bureau of Investigation Versus Basavaraj Shivappa Muttagi & Anr, in S.L.P(Cri).No.1348 of 2020." and "K.V.Sayyan & Anr., Versus State in Crl.O.P.No.4355 of 2019."

15.The learned Senior Counsel for the petitioner filed the Additional Typed Set-II, annexing the notice dated 22.08.2021 issued to the petitioner under Section 161 Cr.P.C., directing the petitioner to appear before the respondent Police on 23.08.2021, the petition copy and dismissal order of the Hon'ble Apex Court in W.P(Crl.)No.15 of 2019 filed by K.R.Ramasamy @ Traffic Ramasamy. The grounds raised in W.P(Crl.)No.15 of 2019 is that the investigation by the State police is in total control of the then Chief Minister who is directly involved in the instant murder case, as confessed by the accused. It is doubtful that an impartial and independent investigation over the instant murder case against the then Chief Minister is possible. The then Chief Minister addressed in the press conference denying the allegations made against him and warned that the Police would take action against the persons behind the accused persons who linked him in the murder case. Thus, the Investigating Agency who are under the control of the then Chief Minister at that point of time had not properly conduct investigation. It was further averred following the decision in the case of "K.Anbazhagan Versus the Superintendent of Police, reported in (2004) 3 SCC 767", wherein it is held that "free and fair trial is sine quo non of Article 14 of the Constitution. It is trite law that justice should not only be done but it should be seems to have been done. If the criminal trial is not free and fair and not free from bias, judicial fairness and the criminal justice system would be at stake shaking the confidence of the public in the system and woe would be the rule of law. It is important to note that in such a case the question is not whether the petitioner is actually biased but the question is whether the circumstances are such that there is a reasonable apprehension in the mind of the petitioner." In the present case, such circumstance prevails. Considering all these facts, the Hon'ble Apex Court had negatived the prayer of K.R.Ramasamy @ Traffic Ramasamy what could not be done then is now being attempted after change of dispensation under the guise of further investigation. Now motivated allegations are made and pointed towards certain persons to



somehow implicate them in this case, which they attempted earlier and failed.

16. From the newspaper publication of 'Daily Thanthi', 'Dinakaran' and 'Hindu', news was published as though Sayan (A1) is going to give a disclosure statement involving others. The accused after all these years giving such statement is obviously to escape from the case. It is a settled preposition that the accused cannot have a say in the investigation and that too at this stage. Based on this statement alone, the prosecution intends to proceed with further investigation. From the adjudication of the trial Court dated 13.08.2021, it is seen that "Sayan (A1) had sent a letter dated 29.07.2021 to this Court already seeking for direction for further investigation and the same is ordered to be kept in file. The prosecution had filed the memo that they are investigating the case further. The same is recorded."

17. The learned Senior Counsel further submitted that there is nothing to indicate whether at all the prosecution has sought for permission and the trial Court had given any permission for conducting further investigation. In unilateral manner, with scant respect to the Court, to the procedure and against the principle of justice, the respondent Police is proceeding in the above case. Now on the guise of the further investigation, opening pandero box would only cause further delay in proceeding the trial. The trial is at the stage of examination of defence witnesses which is pending from April 2021. Normally, the Sessions Cases preferably are to be conducted on a day to day basis and to be completed within a stipulated time. Already, this Court on three occasions gave direction to complete the trial within a stipulated period. Now further investigation is commenced and the trial is kept pending endlessly. Hence, he prayed for direction for completion of trial.

18. The learned Advocate General and learned Public Prosecutor appearing for the respondent Police submitted that in this case, the charge sheet was filed citing 103 witnesses and 65 documents. Out of 103 witnesses, only 41 witnesses were examined. A1 had sent a letter, dated 29.07.2021 from the prison to the respondent Police disclosing certain important information about evidences being suppressed by the prosecution. Further, he lost his wife and daughter in front of his eye and he suffered serious injuries in a car accident under mysterious circumstances. Many facts are suppressed by the prosecution earlier, despite tangible materials and evidence are available. The above case is one relating to murder and dacoity with criminal conspiracy to commit the offence that too in the Bungalow of the Former Chief Minister. It is a settled preposition that after filing of the final report, if new factors comes to the knowledge of the



prosecution or some other evidence are available, it has to be proved by the Investigating Agency. The various angles to the conspiracy leading to the above incident are being probed to find out the truth. To unravel the mystery of truth, the further investigation under Section 173(8) of Cr.P.C., necessitated. It is an extraordinary provision giving wide power to the Investigating Agency to conduct further investigation.

19.The learned Public Prosecutor filed counter affidavit and submitted that though in this case 103 witnesses were cited and listed, only 41 witnesses were examined and 62 witnesses were dispensed with by the former Public Prosecutor. Further, the vital witnesses who can speak about the scene of occurrence and the properties inside Kodanadu Tea Estate have been dispensed with. The persons, who resided there and owner of the premises would be the right persons to speak about the properties which are missing from the scene of occurrence. In this case, Kanagaraj (A1) died in a road accident on 28.04.2017 at about 20.45 hours on Salem to Chennai National Highway, hardly four days after the occurrence. An FIR was registered in Crime No.269 of 2017 on 29.04.2017 by the Inspector of Police, Attur Police Station, Salem District for offence under Sections 279 and 304-A IPC. Likewise, Sayan also met with an accident on 29.04.2017 and he sustained grievous injuries in the accident, hardly five days after the occurrence. In the accident, his wife and daughter died on the spot and hence, a case in Crime No.425 of 2017 was registered by Palakad South Traffic Police Station for offence under Sections 279 and 304-A IPC. An employee Dinesh Kumar, who was incharge of the computer section of Kodanadu Tea Estate and knew about all electronic gadgets its working and purpose in the estate, died under unnatural suspicious circumstances on 03.07.2017. Pursuant to the proceedings of the trial court dated 13.08.2021, further investigation has been taken up, examination of witnesses commenced. It is settled law that carrying out further investigation after filing of the charge sheet is a statutory right of the Police which could not be curtailed or questioned by the petitioner who is only a witness, how he is aggrieved by further investigation is not known. In this case, to unearth the truth and to disscreen the attempt to screen the evidence in a serious case of murder and dacoity in an official residence of the former Chief Minister further investigation is very much required.

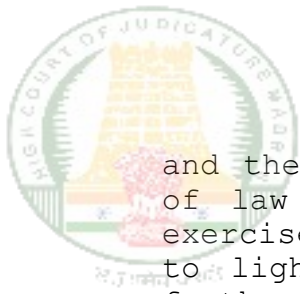
20.The citations referred by the learned Senior Counsel for the petitioner in the case of "VinubhaiHaribhaiMalaviya Versus the State of Gujarat reported in (2019) 17 SCC1" not overruled or expressed any contrary view in respect of "Ram Lal Narang Versus State (Delhi Administration) reported in (1979) 2 SCC 322" In the case of "Hasanbhai Valibhai Qureshi Versus State of Gujarat and Others reported in (2004) 5 SCC 347" it is held that Section



173(8) Cr.P.C., can be invoked at any stage after final conclusion and to do real and substantial justice.

21. The learned Advocate General and the learned Public Prosecutor further submitted that as per Section 173(8) of Cr.P.C., 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 when Investigating Officer obtained further evidence both oral or documentary, he shall forward to the Magistrate a report or reports on collection of such evidence to the concerned Magistrate. Thus, it is a non obstante clause which gives wide power to the Investigating Officer to continue with the investigation in the case when charge sheet already filed. In this case, the Investigating Officer received valuable evidence of credence which will have a bearing on the case. Further investigation is necessary to prove and unravel the truth. The respondent Police filed a memo before the trial Court seeking permission to place on record the materials which are in the process of collection. The trial Court received and acknowledged the memo filed by the Investigating Officer. The further investigation would not cause much delay and the investigation itself could be completed within a period of eight weeks.

22. They further submitted that the decision relied on by the learned Senior Counsel for the petitioner in the case of "Vinubhai Haribhai Malaviya Versus the State of Gujarat in Crl. Appeal. Nos. 478-479 of 2017" is that the fair and just investigation to be conducted following the Article 21 of the Constitution, for which purpose Section 173(8) of Cr.P.C., is brought in. This power can be used only at the stage of framing of charges and till pretrial proceedings is on a wrong premise putting a gag. In the case of "Ram Lal Narang Versus State (Delhi Administration) reported in (1979) 2 SCC 322" the Hon'ble Apex Court had an occasion to deal with the provisions of the old Criminal Procedure Code, 1898 as well as new Criminal Procedure Code, 1973 and in depth analyzed the necessity for further investigation. Further held that there was no provision in the 1898 Code prescribing the procedure to be followed by the police, where after the submission of a report under Section 173(1) Criminal Procedure Code and after the Magistrate had taken cognizance of the offence, if fresh facts came to light which required further investigation. Further submitted that if there is any restriction to reopen to the investigation, it would place hindrance in the way of investigating agency which can be very unfair to the prosecution and for that matter even to the accused. The law commission recognized the position and recommended that the right of the Police to make further investigation should be statutorily affirmed. The functions of the judiciary and the police are complementary, not overlapping,



and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function. Whenever defective investigation comes to light during the course of a trial, it may be cured by further investigation, if circumstances permit it and further, it had held that 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. In this case, the Investigating Officer, on the fresh facts coming to light, filed a memo before the trial Court. The trial Court received and acknowledged the same and thereby, the investigating officer is proceeding with further investigation, which cannot be now questioned.

23. The learned Advocate General placed reliance on the Apex Court in the case of "HasanbhaiValibhai Qureshi Versus State of Gujarat and Others reported in (2004) 5 SCC 347" wherein it had held that further investigation may delay the trial, cannot be a reason to deny further investigation. The ultimate object is to arrive at the truth. He placed reliance on the case of "Rama Chaudhary Versus State of Bihar reported in (2009) 6 SCC 346" wherein it is held that at any stage further investigation can be conducted even at a belated stage. Further, the power under Section 173(8) Cr.P.C., to conduct further investigation is a right which confers the statutory duty on the investigating agency to conduct further investigation and submit supplementary charge-sheet on the basis of fresh materials at any stage. The law does not mandate taking of prior permission from the Magistrate for further investigation which is permissible and the mere facts 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. Fair trial is possible only if the investigation itself is just and fair.

24. Further relied on the case of "VinubhaiHaribhaiMalaviya Versus the State of Gujarat reported in (2019) 17 SCC1" and submitted that the aim of all investigation and inquiry is to ensure that those who have actually committed a crime are correctly booked, and those who have not arraigned to stand trial. This is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. The goal to speedy trial is being tampered by the fair trial. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. The apprehension that further investigation by the police would trench upon the proceeding 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. It is



sufficient safeguard against any excessive use or abuse of the power of the Police to make further investigation. It is premature to predict that the investigating officer would not be able to collect any further material at all. This is an area which should have been left to the investigating officer to survey and recheck.

25. Thus, in sum and substance, as per Section 173(8) of Cr.P.C., as well as by various decisions of the Hon'ble Apex Court, further investigation by the Investigating Agency after presentation of the charge sheet under Section 173(2) Cr.P.C., can be done.

26. The learned Public Prosecutor appearing for the State produced the memo filed by the prosecution before the trial Court and submitted that mere apprehension of delay in progress of the trial cannot be a reason to delay further investigation. He further submitted that the learned Senior Counsel for the petitioner placed reliance on the decision of the Hon'ble Apex Court in the case of "Amrutbhai Shambhubhai Patel Versus Sumanbhai Kantibhai Patel & Ors reported in MANU/SC/0104/2017" pertains to a case where the accused had filed a petition under Section 173(8) Cr.P.C., after filing of the final report and in that circumstances it was held that the petition filed by the accused is in the nature of evidence of the defence which could be only taken in the trial and presuppose the case. In the present case, the petitioner is PW36, who in his evidence clearly stated that he is in privy to the conversation with Kanagaraj, the main accused, who died under mysterious circumstances. The deceased Kanagaraj had disclosed to the petitioner about the happenings, the vital facts and factors before, during and after the occurrence. In view of further vital materials coming to the knowledge of the Investigating Agency, the petitioner was called for further investigation. The learned Public Prosecutor assured that the petitioner is only called for enquiry for limited purpose, which cannot be termed as harassment. The apprehension of the petitioner is a myth. Further for the delay, the Apex Court time and again held that the fair and impartial trial to be conducted. The delay if at all occurs, the aggrieved person is the defacto complainant, victim or the accused. In this case, the petitioner cannot be termed one among the above.

27. This Court considered the rival submissions and perused the materials available on record.

28. The crux of the issue in this case is whether the investigating agency can invoke Section 173(8) Cr.P.C., after filing of the charge sheet and comment of trial. It would be beneficial to extract Section 173(8) of Cr.P.C., :-

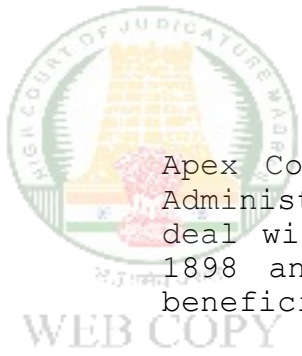


"173. Report of police officer on completion of investigation -

(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)."

29. Section 173(8) starts with non obstante provision. Nothing shall preclude further investigation in respect of an offence after the charge sheet filed under Section 173(2) Cr.P.C., before the concerned Magistrate. When the officer in charge of the police station obtains further evidence both oral and documentary, he shall proceed to collect the same and file report before the concerned Magistrate. Thus, in clear terms it is mentioned that nothing can stop the investigating officer to continue with further investigation after filing of the charge sheet when he comes across and obtains further evidence. The Hon'ble Apex Court in the case of "Vinubhai Haribhai Malaviya Versus the State of Gujarat reported in (2019) 17 SCC1" dealt with the question of law whether after charge sheet is filed by the Police, the Magistrate has power to order further investigation and if so up to what stage of criminal proceedings. Further, the Hon'ble Apex Court had never intended or questioned the power of the Investigating Officer/Police. The accused therein had filed a petition seeking further investigation under Section 173(8) of Cr.P.C., which was rejected by the Magistrate and thereafter, a revision was filed before the Sessions Court. The Sessions Court ordered further investigation and the same was challenged before the High Court. The order of the Sessions Court was set aside by the High court against which the accused approached the Hon'ble Apex Court. In such situation, the question framed is that whether after charge sheet is filed by the Police, the Magistrate has power to order further investigation on the application and if so, up to what stage of criminal proceedings.

30. Thus, the point in which the Hon'ble Apex Court dealt with Section 173(8) of Cr.P.C., is completely on a different preposition projected from the side of the accused. The authority and power envisaged to the Investigating Officer/Police had never been questioned or dealt with. On the other hand, the Hon'ble



Apex Court in the case of "Ram Lal Narang Versus State (Delhi Administration) reported in (1979) 2 SCC 322" had an occasion to deal with the provisions of the old Code of Criminal Procedure, 1898 and new Code of Criminal Procedure, 1973. It would be beneficial to extract the relevant portion:-

"20. Anyone acquainted with the day today 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 future 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



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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.

21.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 investigations 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."

31.The Hon'ble Apex Court found in the above case (Ram Lal Narang) that even when there is no provision in the old Code of Criminal Procedure, 1898 as that of 173(8) Cr.P.C., the Investigating Agency has got power once it comes across materials to proceed with the further investigation. Further, the Forty-First Law Commission, considering all these aspects have brought in Section 173(8) Cr.P.C. Section 173(8) Cr.P.C., and entrusted the power of Investigating Agency/Police to conduct further investigation at any stage.

32.In view of the same, this Court holds that the investigating agency/Police invoking Section 173(8) Cr.P.C., at



any stage of the criminal proceedings cannot be doubted, objected and faulted with.

33. The apprehension of delay caused on initiation of further investigation has been dealt with in the case of "Hasanbhai Valibhai Qureshi Versus State of Gujarat and Others reported in (2004) 5 SCC 347", wherein it had clearly held that further investigation may delay the trial, but the ultimate object is to arrive at the truth. When defective investigation comes to light during course of trial, it may be cured by further investigation. The only condition is that the Investigating Agency/Police to inform the Court, seek formal permission to conduct further investigation. In this case, a memo is filed by the respondent Police before the trial Court informing about further investigation, which was received and recorded by the trial Court. The law does not mandate taking prior permission from the Magistrate to carry out further investigation. In this case, major witnesses examined and at the penultimate stage, the Investigating Agency/Police obtained fresh and further materials and required further probe. Hence, further investigation ought to be done and it cannot be denied. The fair trial is the first imperative of dispensation of the justice and there is qualitative difference between right to speedy trial and fair trial. The duty cast upon the Court is to see that there is proper, fair, impartial and effective investigation. The filing of charge sheet or the pendency of the trial can by no means be a prohibitive to conduct further investigation.

34. The object of criminal trial is to discover the truth and plausible evidence is to be brought on record, whatever stage it may be. In this case, not only the murder and dacoity had taken place at Kodanadu Tea Estate, it had been followed by serious of suspicious deaths. Whatever materials are collected, it is ultimately the concerned Court to decide the acceptance and otherwise of the same. It is always better to have fair and impartial trial to arrive at a just decision. Further, in this case, the petitioner is neither a defacto complainant, nor a victim or accused. He is only a witness in this case. The petitioner has no say in the manner of investigation and trial of the above case. Further, no prejudice would be caused to the petitioner if further investigation is conducted. It is seen that in view of no relief has been sought against the petitioner and nothing to show that the petitioner has locus or say in the application for further investigation under Section 173(8) Cr.P.C.

35. In view of the above discussions, this Court has got to hold that the investigating agency/Police invoking Section 173(8) Cr.P.C., and conducting further investigation needs no interference. Hence, this Criminal Original Petition stands



dismissed. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The District Judge-cum-Chief Judicial Magistrate,
The Nilgiris.
2. The Inspector of Police,
Sholurmattam Police Station,
Kothagiri Circle,
The Nilgris District.
3. The Public Prosecutor,
High Court, Madras.

+5ccs to Mr.C.Iyyapparaj, Advocate, Sr.43269

Cr1.O.P.No.15030 of 2021

JP[co]
NSK 20/09/2021