

104

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

**CRM-M-41438-2020
Date of Decision: 01.02.2021**

Tohsif and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDIP AHLUWALIA

Present: Ms. Mehak Sawhney, Advocate,
for the petitioners.

Mr. Anmol Malik, DAG, Haryana, assisted by
ASI Kaptan Singh (Investigating Officer).

Mr. Deepender Singh, Advocate,
for the complainant.

SUDIP AHLUWALIA, J.

The present petition is directed against the order passed by the Ld. Additional Sessions Judge, Faridabad, dated 23.11.2020 (Annexure P-4), whereby the revision preferred by the petitioners and Ajruddin, challenging the earlier order dated 16.11.2020, passed by the the Court of Ld. Judicial Magistrate, Ist Class, Ballabgarh (Annexure P-3), was dismissed.

2. It may be mentioned that the present petitioners, namely Tohsif and Mohammad Rihan, were arrested on 26.10.2020 and 27.10.2020, respectively, after FIR No.667 dated 26.10.2020, under Sections 302, 364,

120-B and 34 of the IPC and Sections 25, 54 and 59 of the Arms Act, was registered at Police Station Ballabgarh City, District Faridabad (Annexure P-1) to the effect that Nikita Tomar (since deceased), sister of the complainant Naveen Tomar, had been shot dead by petitioner No.1, after she had came out of the Aggarwal College, situated at Milk Plant Road, Ballabgarh, at around 3:30 pm on 26.10.2020. After completion of their investigation, the Police submitted their Final Report against the present petitioners and one Ajruddin, following which an application seeking further investigation under Section 173(8) read with Section 156(3) and 2 (H) of the Cr.P.C. was filed on their behalf in the Court of Ld. JMIC, Faridabad (Annexure P-5), which was subsequently dismissed, and the revision preferred against dismissal of the same was also dismissed vide the impugned orders (Annexures P-3 and P-4 respectively).

3. The petitioners Tohsif and Mohammad Rihan have thereafter approached this Court to challenge the said impugned orders (Annexures P-3 and P-4).

4. At the outset, it would be appropriate to first of all observe that grievance of the petitioners is essentially directed against the investigation, which according to them was hurriedly conducted by the Police Authorities, who submitted their Final Report in just eleven days after the FIR was lodged, and according to the petitioners, such hurried investigation was both unfair and improper. To further substantiate this contention, it has been submitted on behalf of the petitioners that after the occurrence had taken place on 26.10.2020 and the petitioners got arrested, there was a huge outcry in the locality and it actually became a sensational case with

profound Media coverage. In Grounds No. (c), (d) and (e) in sub Paras No.4 (c), 4(d) and 4(e) of the petition, it has been alleged that since petitioner No.1 happens to be a Muslim boy, the entire incident attracted a lot of Media coverage and was portrayed as a case of 'Love Jihad', after which on 30.10.2020, a Panchayat/gathering was arranged to pressurize the Administration and Police Officials, and the said gathering turned so violent that it caused a lot of damage to the public property and an FIR was also registered in this regard. Consequently, according to the petitioners, the Police Authorities hurriedly completed their investigation, *“in an absolutely accelerated, arbitrary and pre-determined manner, in order to satisfy the mob and the false claim of the family of the deceased”*, and that an absolutely one sided enquiry was conducted to frame the petitioners at hand, and that the Final Report under Section 173 of the Cr.P.C. was filed in undue haste and without awaiting the results of the alleged Scientific Investigations, claimed to be conducted by the Investigating Agency.

5. Ld. Counsel for the petitioners has thereafter also relied upon four judgments, all passed by the Apex Court, which constitute the Compendium sent up by her on 14.01.2021, in support of her aforesaid contentions, which are being taken up for consideration hereafter.

6. In **“Vinubhai Haribhai Malaviya Vs. State of Gujarat”**, 2020 (1) R.C.R. (Criminal) 1, it was observed by the Apex Court:-

“.... 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.”

7. In **“Pooja Pal Vs. Union of India”, 2016(1) R.C.R. (Criminal) 880**, it was noted:-

“.... 64. This Court in Babubhai (supra) India (SC) 2016 (1) RCR(Criminal) 880 67, 76, 79 to 81 while examining the scope of Section 173(8) of the Code, did recall its observations in Manu Sharma v. State (NCT of Delhi), 2010(2) R.C.R.(Criminal) 692 : 2010(3) Recent Apex Judgments (R.A.J.) 1 : (2010) 6 SCC 1, 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. It 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. 65..... While emphasising that speedy trial is the essence of criminal justice and any delay constitutes denial thereof, it has been propounded therein, that any procedure which does not ensure a quick trial cannot be regarded as reasonable, fair or just and would fly in the face of such cherished constitutional promise. While observing that the right to speedy trial encompasses all the stages namely; investigation, inquiry, trial, appeal, revision and retrial, it was however noted in *P. Ramachandra Rao (supra)* that no guidelines for a speedy trial can be intended to be applied as hard rules or a straight jacket formula and that their application would depend on the fact situation of each case, which is difficult to foresee, so much so that no generalisation can be made. It was expounded as well in the *Sampat Lal (supra)* that in spite of the procedure laid down in the relevant provisions of the Criminal Procedure Code, a court, in a given case, if is satisfied that the statutory agency has not functioned in an effective way or that the circumstances are such that it may reasonably be presumed or inferred that it may not be able to conduct the investigation fairly or impartially, the court may reasonably consider to supplement the procedure. 67. While recalling its observation in *State of Bihar and another v. JAC Saldanha and others (1980) 1 SCC 554*, that on a cognizance of the offence being taken by the court, the police function of investigation comes to an end subject to the provision contained in Section 173 (8) of the Code and that the adjudicatory function of the

judiciary commences, thus delineating the well demarcated functions of crime detection and adjudication, this Court did recognise a residuary jurisdiction to give directions to the investigating agency, if satisfied that the requirements of law were not being complied with and that the investigation was not being conducted properly or with due haste and promptitude. It was reiterated in Babubhai (supra) that in exceptional circumstances, the court in order to prevent the miscarriage of criminal justice, may direct investigation de novo, if it is satisfied that non-interference would ultimately result in failure of justice. In such an eventuality endorsement of the investigation to an independent agency to make a fresh probe may be well merited. That not only fair trial but fair investigation is also a part of the constitutional rights guaranteed under Articles 20 & 21 of the Constitution of India and therefore investigation ought to be fair, transparent and judicious, was reemphasised. The expression "ordinarily" as used in Section 173(8) of the Code was noted again to rule that in exceptional circumstances however, in order to prevent miscarriage of criminal justice, a court may still direct investigation de novo. The above postulations being strikingly common in all these decisions, do pervade the fabric and the content thereof and thus dilation of individual facts has been avoided. 76. A "speedy trial", albeit the essence of the fundamental right to life entrenched in the Article 21 of the Constitution of India has a companion in concept in "fair trial", both being in alienable 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 analyzed 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. 79. 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. 80. Any criminal offence is one against the society at large casting an onerous responsibility on the state, as the guardian and purveyor of human rights and protector of law to discharge its sacrosanct role responsibly and committedly, always accountable to the law abiding citizenry for any lapse. The power of the constitutional courts to direct further investigation or reinvestigation is a dynamic component of its jurisdiction to exercise judicial review, a basic feature of the Constitution and though has to be exercised with due care and caution and informed with self imposed restraint, the plentitude

and content thereof can neither be enervated nor moderated by any legislation. 81. The expression "fair and proper investigation" in criminal jurisprudence was held by this Court in Vinay Tyagi v. Irshad Ali @ Deepak and others 2013(2) R.C.R.(Criminal) 197 : 2013(2)Recent Apex Judgments (R.A.J.) 69 : (2013)5 SCC 762 to encompass two imperatives; firstly the investigation must be unbiased, honest, just and in accordance with law and secondly, the entire emphasis has to be to bring out the truth of the case before the court of competent jurisdiction. Prior thereto, in the same vein, it was ruled in Samaj Parivartan Samudaya and others v. State of Karnataka and others 2012(3) R.C.R. (Criminal) 788 : 2012(3) Recent Apex Judgments (R.A.J.) 549 : (2012)7 SCC 407 that the basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation, in accordance with law and to ensure that the guilty are punished. It held further that the jurisdiction of a court to ensure fair and proper investigation in an adversarial system of criminal administration is of a higher degree than in an inquisitorial system and it has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders, escaping the punitive course of law. Any lapse, it was proclaimed, would result in error of jurisdiction."

8. In **"Bharati Tamang Vs. Union of India"**, 2014(3) R.C.R. (Criminal) 347, it was laid down:-

".... 37. From the various decisions relied upon by the petitioner counsel as well as by respondents

counsel, the following principles can be culled out. (a) The test of admissibility of evidence lies in its relevancy. (b) Unless there is an express or implied constitutional prohibition or other law, evidence placed as a result of even an illegal search or seizure is not liable to be shut out. (c) If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law. (d) It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice. (e) In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution. (f) While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the High Court or this Court can also monitor such investigation in order to ensure proper conduct of the prosecution. (g) In appropriate cases even if the chargesheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice. (h) In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers

necessary may direct for investigation de novo.”

9. In “***Karan Singh Vs. State of Haryana***”, 2013(4) R.C.R. (Criminal) 205, it was similarly observed:-

“.... 12. The investigation into a criminal offence must be free from any objectionable features or infirmities which may give rise to an apprehension in the mind of the complainant or the accused, that investigation was not fair and may have been carried out with some ulterior motive. The Investigating Officer must not indulge in any kind of mischief, or cause harassment either to the complainant or to the accused. His conduct must be entirely impartial and must dispel any suspicion regarding the genuineness of the investigation. The Investigating Officer, "is not merely present to strengthen the case of the prosecution with evidence that will enable the court to record a conviction, but to bring out the real unvarnished version of the truth." Ethical conduct on the part of the investigating agency is absolutely essential, and there must be no scope for any allegation of mala fides or bias. Words like 'personal liberty' contained in Article 21 of the Constitution of India provide for the widest amplitude, covering all kinds of rights particularly, the right to personal liberty of the citizens of India, and a person cannot be deprived of the same without following the procedure prescribed by law. In this way, the investigating agencies are the guardians of the liberty of innocent citizens. Therefore, a duty is cast upon the Investigating Officer to ensure that an innocent person should not suffer from unnecessarily harassment of false implication, however, at the same time, an accused person must not be given undue

leverage. An investigation cannot be interfered with or influenced even by the courts. Therefore, the investigating agency must avoid entirely any kind of extraneous influence, and investigation must be carried out with equal alacrity and fairness irrespective of the status of the accused or the complainant, as a tainted investigation definitely leads to the miscarriage of criminal justice, and thus deprives a man of his fundamental rights guaranteed under Article 21 of the Constitution. Thus, every investigation must be judicious, fair, transparent and expeditious to ensure compliance with the rules of law, as is required under Articles 19, 20 and 21 of the Constitution. (Vide: Babubhai v. State of Gujarat & Ors., 2010(4) R.C.R. (Criminal) 311 : 2010(5) Recent Apex Judgments (R.A.J.) 267 : (2010) 12 SCC 254)”

10. In the light of the above submissions and reliances placed on behalf of the petitioners, this Court is to consider whether the investigation carried out by the Police authorities discloses any visible impropriety which could have rendered the same to be regarded as 'unfair'. To this end, the material to consider would be whether any improper conduct has been reported to the Investigating Agency in the matter. In this regard, there is no overt suggestion from the petitioners' side of the Investigating Authority having acted in any "biased manner". On the other hand, the submission and assertion all through has been that the investigation was conducted hurriedly and under public/media mass pressure. It would be apt to observe here that the hype surrounding any so perceived '*sensational*' case in the Media at large is certainly likely to attract its own share of attention, public

curiosity, discussion and reaction. But that cannot *ipso facto* lead to any supposition that the Investigating Authorities have abdicated their responsibility of probing into the same fairly or objectively, and where such conduct is imputed, it is for the aggrieved party to make out a cogent and convincing case explaining how the investigation conducted has been improper or unfair.

11. Consequently, this Court during the course of hearing, pointedly asked Ms. Mehak Sawhney, Advocate, Ld. Counsel appearing for the petitioners, to specify what are those improper aspects of the investigation conducted in the present case, which have apparently caused prejudice to her clients. She, in answer to the Court's query, has specifically mentioned the following improprieties:-

- (I) That first of all, during investigation, the Police did not check the Call Detail Records of the family members of the deceased;
- (II) That essentially the Police have simply gone by whatever stories have been circulated in the Media;
- (III) That the Police did not wait even for the Forensic Examination Reports pertaining to the alleged weapon of offence recovered from the spot, or the other Scientific Investigations got conducted during investigation;
- (IV) That the Challan/Final report was submitted in an undue haste within eleven days, although the Police comfortably had at least ninety days to keep the petitioners so arrested in custody before submitting the Final Report; and lastly,
- (V) That the petitioners are as much entitled to the right of a fair

investigation as would be the complainant/victim in any criminal case, and so where the investigation has not been so conducted fairly, the Ld. Magistrate concerned, ought to have allowed the application for further investigation (Annexure P-5).

12. In support of the above mentioned contentions, certain documents were separately placed on record from the petitioners' side on 14.01.2021. These include the copy of their Revision Petition which was dismissed by the Ld. Additional District & Sessions Judge, Faridabad, vide the impugned order dated 20.11.2020 (Annexure P-6), copy of the Final Report dated 08.01.2019, submitted by the Police in connection with previous FIR No.77 dated 03.08.2018, lodged by Mool Chand, father of the deceased Nikita Tomar in the same Police Station against the petitioner Tohsif under Section 365 of the IPC (Annexure P-11), copy of the FIR No.0680 dated 01.11.2020 lodged by one Sudeep, in which violence imputed to several members of the public, including 28 specifically named accused persons therein with allegations pertaining to commission of offences punishable under Sections 147, 148, 149, 152, 332, 353, 186, 188, 269, 270, 283, 341, 427 and 435 of the IPC, Section 8B of the National Highway Act No.48 of 1956 and Section 51 of the National Disaster Act No.53 of 2005 were made out (Annexure P-12), as also the separate statements of witnesses Tarun, Aashu and complainant Naveen Tomar (Annexures P-7, P-8 and P-9 respectively), as well as a copy of the *rukka* (Annexure P-10), which are all otherwise part of the Challan Papers.

13. In opposing the petition, the State from its side had sent up a summary of the factual background and a synopsis of certain material

evidences collected during investigation, apart from a Pen-drive containing a Video Recording of the CCTV Footage, which apparently depicts the occurrence as it took place in explicit detail.

14. Ld. Counsel for the complainant has separately opposed the petition by emphatically contending that after the Final Report/Charge-sheet by the Investigating Agency already having been submitted, there is no justification to direct any further investigation, and that in any case, even in the rare and exceptional cases, where a Constitutional Court might exercise its power to direct such further investigation, still it is not for the side of the accused to seek such remedy. To support this contention, Ld. Counsel for the complainant has from his side relied upon four decisions of the Apex Court, which are being noted in the succeeding paragraphs.

15. In “K.V. Rajendran Vs. Superintendent of Police, CBCID”, **2013(4) RCR (Cr.) 745**, it was observed, *inter alia*:-

“6. The issue involved herein, is no more res integra. This Court has time and again dealt with the issue under what circumstances the investigation can be transferred from the State investigating agency to any other independent investigating agency like CBI. It has been held that the power of transferring such investigation must be in rare and exceptional cases where the court finds it necessary in order to do justice between the parties and to instil confidence in the public mind, or where investigation by the State police lacks credibility and it is necessary for having "a fair, honest and complete investigation", and particularly, when it is imperative to retain public confidence in the impartial working of the State agencies. Where the

investigation has already been completed and charge sheet has been filed, ordinarily superior courts should not reopen the investigation and it should be left open to the court, where the charge sheet has been filed, to proceed with the matter in accordance with law. Under no circumstances, should the court make any expression of its opinion on merit relating to any accusation against any individual."

16. In **"Sudipta Lenka Vs. State of Odisha"**, 2014(2) RCR (Cr.) 346, it was held:-

"8. On the question whether a criminal case in which a charge sheet has been filed by the local/state investigating agency can/should be referred to Central Bureau of Investigation for further investigation there is near unanimity of judicial opinion. In Gudalure M.J. Cherian v. Union of India, (1992)1 SCC 397 and Punjab & Haryana High Court Bar Association v. State of Punjab, 1994(1) R.C.R.(Criminal) 205 : (1994) 1 SCC 616, it has held that after the chargesheet is filed the power to direct further investigation by Central Bureau of Investigation should not be normally resorted to by the Constitutional Courts unless exceptional circumstances exist either to doubt the fairness of the investigation or there are compulsive reasons founded on high public interest to do so. Rubabbuddin Sheikh v. State of Gujarat, 2010(1) R.C.R.(Criminal) 738 : (2010)2 SCC 200, really, carries forward the law laid down in Gudalure M.J. Cherian and Punjab & Haryana High Court Bar Association (supra) which position finds reflection in para 60 of the report which is in the following terms : ".....Therefore, it can safely be concluded that in an

appropriate case when the court feels that the investigation by the police authorities is not in the proper direction and in order to do complete justice in the case and as the high police officials are involved in the said crime, it was always open to the court to hand over the investigation to the independent agency like CBI. It cannot be said that after the charge-sheet is submitted, the court is not empowered, in an appropriate case, to hand over the investigation to an independent agency like CBI."

9. The position has also been succinctly summed up in Disha (supra) to which one of us (the learned Chief Justice) was a party by holding that transfer of the investigation to the Central Bureau of Investigation or any other specialised agency, notwithstanding the filing of the chargesheet, would be justified only when the Court is satisfied that on account of the accused being powerful and influential the investigation has not proceeded in a proper direction or it has been biased. Further investigation of a criminal case after the charge-sheet has been filed in a competent court may affect the jurisdiction of the said Court under Section 173 (8) of the Code of Criminal Procedure. Hence it is imperative that the said power, which, though, will always vest in a Constitutional Court, should be exercised only in situations befitting, judged on the touchstone of high public interest and the need to maintain the Rule of Law."

17. In **"Vinay Tyagi vs. Irshad Ali @ Deepak and Others"**, 2013 (2) RCR (Cr.) 197, it was laid down:-

"15. 'Further investigation' is where the Investigating Officer obtains further oral or

documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation.

16. However, in the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation' there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct 'fresh

investigation'. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a 'fresh investigation'."

18. In **"Narender G.Goel Vs. State of Maharashtra", 2010(5) R.C.R. (Criminal) 616**, it was similarly observed:-

".... 11. It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the

*prosecution case. In **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj Vs. State of A.P. (1999) 5 SCC 740** this Court observed,*

11 “There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard.”

12. The accused can certainly avail himself of an opportunity to cross examine and/or otherwise controvert the authenticity, admissibility or legal significance of material evidence gathered in course of further investigations. Further in light of the view expressed by the investigating officer in his affidavit before the High Court, it is apparent that the investigating authorities would inevitably have conducted further investigation with the aid of CFS under Section 173(8) of the Code.”

19. It may now be observed that in none of the decisions relied upon by the petitioners, as noted in Paragraphs No.6 to 9 earlier, any further investigation was ordered at the *instance of the accused persons*. In the case of **Pooja Pal (supra)**, such further investigation had been allowed at the instance of the victim/complainant's side as the Court was satisfied in the case that the investigation conducted by the State Police was motivated and tainted with a view to screen the incriminating evidence collected during investigation as would be clear on reading the following material observations recorded in the aforesaid judgment:-

“.... 91. Pledged imputations of the appellant include deliberate, uncalled for and mysterious replacement of the earlier sets of personal security officers/gunners of the deceased, presence of high police officials near the place of occurrence, indifference on the part of the state police to act with alacrity, hasty conduct of the post mortem of the dead body and cremation thereof without handing over the same to the appellant or any of his relatives, political pressure on the investigating agency to distort the course of the probe and to screen the incriminating evidence collected etc. One of the Investigating Officers in his writ petition, questioning his suspension had also pleaded on oath about the unexpected and unwarranted interference of the higher ups in the department to withhold evidence gathered in course of the investigation underway. Though nothing decisively turn on these accusations, the same having been refuted by the respondents, the fact remains that the appellant’s husband had been mercilessly killed by a group of gun wielding assailants in a public place, in the open view of all concerned. Such a daring and desperate act did have a terrorizing impact on the society sending shock waves amongst all cross sections of the community and received wide coverage by the media. The incident understandably is not one to be lightly glossed over or trivialized.”

20. Similarly in the case of **Bharati Tamang (supra)**, the Apex Court transferred the investigation from the State Police to the CBI at the instance of the complainant/widow of the victim after having noted, *inter alia*:-

“.... 40. Having noted the various relevant features, we find force in the submission of learned counsel for the petitioner that the proceeding of the case by the prosecution either by the State Police or by the CID and after it was taken over by CBI was not carried out in a satisfactory manner. The very fact that after the occurrence took place on 21.05.2001 there was serious lapse in apprehending many of the accused and the absconding of the prime accused Nicol Tamang and Dinesh Subba till this date disclose that there was total lack of seriousness by the prosecution agency in carrying out the investigation. The circumstances pointed out on behalf of the petitioner, namely, the absconding of many of the accused between May, 2010 and February, 2013 was a very relevant circumstance which gives room for suspicion in the mind of this Court as to the genuineness with which the case of the prosecution was being carried out. The submission that the murder took place due to political rivalry cannot be a ground for anyone, much less, the investigation agency to display any slackness or lethargic attitude in the process of investigation. Whether it be due to political rivalry or personal vengeance or for that matter for any other motive a murder takes place, it is the responsibility of the police to come up to the expectation of the public at large and display that no stone will remain unturned to book the culprits and bring them for trial for being dealt with under the provisions of the criminal law of prosecution. Any slackness displayed in that process will not be in the interest of public at large and therefore as has been pointed out by this Court in the various decisions, which we have referred to in the earlier paragraphs, we

find that it is our responsibility to ensure that the prosecution agency is reminded of its responsibility and duties in the discharge of its functions effectively and efficiently and ensure that the criminal prosecution is carried on effectively and the perpetrators of crime are duly punished by the appropriate Court of law.

41. In as much as the petitioner only seeks for handling of the case of murder of her deceased husband by the prosecuting agency, namely, the CBI here with utmost earnestness against all the accused who were involved in the crime, we feel that by issuing appropriate directions in this writ petition and by monitoring the same the grievances expressed by the petitioner can be duly redressed and the interest of the public at large can be duly safeguarded.”

21. A careful reading of the decision in **Vinubhai Haribhai Malaviya (supra)** would also go to show that no further investigation *at the instance of the accused* was allowed by the Apex Court. On the contrary, the orders of the Ld. Magistrate and the Ld. Lower Courts to the effect that the case put forward by that appellant, who was the accused person in the previous FIR lodged against him by one Nitinbhai Mangubhai Patel, essentially was in the nature of a defence to be put up in the trial to follow, after submission of Charge-sheet in the said case was upheld. However, the prayer for investigation actually allowed in the case by the Hon'ble Apex Court was in relation to a subsequent FIR lodged at the instance of the same person, who was accused in the first FIR, in a situation where no separate investigation was conducted in the second FIR. As such, even in this case, the investigation directed by the Apex Court was in relation to an FIR in

which the appellant was actually the complainant, and not in his capacity as an accused in the previous FIR, and the Final Report/Charge-sheet already submitted in the first FIR after the completion of investigation was neither set aside nor disturbed by the Apex Court.

22. The decision in *Karan Singh (supra)* is altogether unhelpful to the petitioners' side in the present case. The facts in the said case are that the appeal was preferred at the instance of the accused himself who had been convicted of the offence punishable under Section 302 of the IPC. It was not only dismissed by the Apex Court, but it also directed the State Government to examine the case and take appropriate action against the Investigating Officer, who had apparently conducted improper investigation with a view to shield the appellant, notwithstanding that he was in any case found guilty by the Ld. Courts concerned, right up to the Apex Court.

23. None of the reliances placed on behalf of the petitioners, therefore, having any effect of postulating that the extra-ordinary power to order further investigation is available to the accused person as against the actual victim/complainant's side.

24. Further, as rightly noted by both the Ld. Courts below, there is no illegality in submitting the Final Report by the Investigating Authorities within 11 days after the date of occurrence, since no minimum time to do so has been prescribed in the Statute. It is purely for the Investigating Agency to take a call as to whether or not it has been able to collect proper and sufficient evidence to substantiate the final result of its investigation, and academically, even if there be any infirmity remaining therein, benefit of the same would only go to the accuseds' side, who cannot possibly be

prejudiced in the circumstances, and would stand to be benefitted by such speedy investigation. The reference to Section 173(8) of the Cr.P.C. by the Ld. Additional Sessions Judge, Faridabad, in the impugned order (Annexure P-4) is also rightly called for in the given circumstances, since the said provision specifically provides that the hands of the Investigating Authorities do not become tied for the purpose of submitting any further Report or Reports even after the Final Report under Section 173(2 to 6) of the Cr.P.C. has already been submitted. The contention of the petitioners' side to the effect that the Final Report has been submitted without awaiting for the Forensic/Scientific Examination Reports would, therefore, appear to be inconsequential at this stage, since it is settled law that the Investigating Authorities are not prevented from submitting any Supplementary Charge-sheet or further evidence, so collected, even after having initially submitted a Final Report on the basis of their investigation as laid down in **Criminal Appeal No.94 of 2015** titled as "**Narendra Kumar Amin Vs. CBI and another**", decided on **15.01.2015**, wherein Hon'ble the Apex Court had noted:-

"In this regard he squarely relied on the three Judge Bench judgment of this Court in Central Bureau of Investigation Vs. R.S. Pai & Anr. [6] wherein at para 7, regarding relevant documents to be submitted at the time of charge sheet, it is held as under:-

"7. From the aforesaid sub-sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held

that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court. In our view, considering the preliminary stage of prosecution and the context in which the police officer is required to forward to the Magistrate all the documents or the relevant extracts thereof on which the prosecution proposes to rely, the word “shall” used in sub-section (5) cannot be interpreted as mandatory, but as directory. Normally, the documents gathered during the investigation upon which the prosecution wants to rely are required to be forwarded to the Magistrate, but if there is some omission, it would not mean that the remaining documents cannot be produced subsequently. Analogous provision under Section 173 (4) of the Code of Criminal Procedure, 1898 was considered by this Court in *Narayan Rao v. State of A.P.* (SCR at p. 293) and it was held that the word “shall” occurring in sub-section (4) of Section 173 and sub-section (3) of Section 207-A is not mandatory but only directory. Further, the scheme of sub-section (8) of Section 173 also makes it abundantly clear that even after the charge-sheet is submitted, further investigation, if called for, is not precluded. If further investigation is not precluded then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation. In such cases, there cannot be any prejudice to the accused. Hence, the impugned order passed by the Special Court cannot be sustained.”

In the said decision it is held that if some mistake is committed in not producing the relevant documents at the time of submitting the report, it is always open to the investigating officer to produce the same with the permission of the court. The Bench proceeded further to observe that if further investigation is not precluded, then there is no question of not permitting the prosecution to produce additional documents which were gathered prior to or subsequent to the investigation and the word “shall” used in sub-section (5) cannot be interpreted as mandatory, but as directory. Therefore, it is contended that the High Court is justified in refusing to grant Default Bail in favour of the appellant.”

25. Regarding the apparent contradictions sought to be highlighted by the petitioners in the statements of the complainant and other witnesses (Annexures P-7 to P-9), it must be mentioned that the evidentiary value of the same is actually to be assessed only at the stage of trial, and in its extraordinary jurisdiction under Section 482 of the Cr.P.C., no Court is ever expected to conduct some kind of a 'mini trial' to determine whether the evidence so collected is reliable or not. In any event, from their side, the Police have relied upon the short CCTV Footage Recording, already referred to in Para No.13 earlier, which apparently depicts the occurrence as it took place in explicit detail. Ld. State Counsel has submitted that this particular Video Recording of less than 4 minutes duration essentially encapsulates the sum and substance of the result of investigation, on account of which, any detailed or prolonged enquiries at any other level were not called for, since the offending weapon/country made pistol and one

fired cartridge of .315 bore pistol, as seen in the Video Recording, as also the car bearing No. DL-8C-CAM 2028, in which the culprits are seen to be fleeing away immediately after shooting the victim at the spot, have also been recovered. Hence, according to Ld. State Counsel, no rocket science is now called for to conduct any further investigation, more particularly, at the instance of the accused persons, since the Police had no reason to disbelieve the complainant's version and statement of the eye-witnesses, most of whom are also seen to be present at the spot or near the spot when the alleged murder took place.

26. In such a situation, when from the very beginning, the petitioner No.1 was specifically named as one of the offenders involved in the alleged occurrence, this Court is also of the opinion that in the circumstances, there is no reason to hold at this stage that the investigation conducted by the Police Authorities is wrong or improper simply because they did not collect the Call Detail Records of the family members of the deceased, when the petitioners/accused persons from their side have not given any hint as to why those family members would themselves be involved in killing her, after she had already came back to her parental house almost two years ago, when the previous FIR lodged by her father against petitioner No.1 had been cancelled long back on 08.01.2019, vide the Final Report (Annexure P-11). It might have been a little different position if the petitioners had sought to make out any such case to substantiate the suggestion, which they have discreetly tried to raise, to the effect that conduct of the family members in the murder of the victim was suspicious, or even if they could have raised any suggestion of something in

the nature of an *alibi* to satisfy any of the Ld. Courts below that the Video Clipping relied upon by the Investigating Agency has nothing to do with the petitioners. On the contrary, while seeking to make too much out of apparently minor and very innocuous differences in the statements of the eye-witnesses, the petitioners have carefully and studiously avoided any mention, even indirectly, about the contents and relative merits of the CCTV Footage to be used against them, either in the present petition, or the application filed under Section 173(8) read with Section 156(3) and 2(H) of the Cr.P.C. before the Ld. JMIC, Faridabad (Annexure P-5) or even in the Revision Petition filed before the Ld. Additional District & Sessions Judge, Faridabad (Annexure P-6), to substantiate that the Final Report submitted against them is improper or unfair.

27. For the aforesaid reasons, this Court finds no impropriety or infirmity of such nature in the Final Report submitted by the Police in the present case, as to direct holding of any further investigation at the instance of the accused persons.

28. Dismissed.

01.02.2021

Apurva

**(SUDIP AHLUWALIA)
JUDGE**

1. Whether speaking/reasoned: Yes

2. Whether reportable: Yes