

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD**

911 CRIMINAL WRIT PETITION NO.105 OF 2022

SHARDABAI W/O. POSHATTI GOPATWAD  
VERSUS  
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Kale Gopal D.  
APP for Respondent : Mr. P G Borade

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CORAM : SHRIKANT D. KULKARNI, J.  
Dated : August 19, 2022

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**PER COURT :-**

1. The prayer for seeking directions to the Investigating officer for further investigation under section 173(8) of the Criminal Procedure Code moved by the present petitioner was rejected by the Judicial Magistrate First Class, Bhokar vide order dated 27.11.2018. That order was challenged before the Sessions Division at Bhokar vide Criminal Revision no.16 of 2019. The learned Additional Sessions Judge, Bhokar vide judgment and order dated 8.12.2021 was pleased to dismiss the revision and upheld the order passed by the Judicial Magistrate First Class, Bhokar.

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The petitioner has assailed both the orders by way of this writ petition.

2. Heard Mr. Kale, learned counsel for the petitioner and Mr. Borade, learned APP for the State.

3. Mr. Kale, learned counsel submitted that the complainant had moved an application through learned APP before the Judicial Magistrate First Class, Bhokar and sought directions to the investigating officer to conduct further investigation in the light of medical papers by taking help of section 173 (8) of Cr.P.C. That application was rejected by the Judicial Magistrate First Class by giving erroneous reasons. The Judicial Magistrate First Class is empowered to issue such directions under section 173(8) of the Cr.P.C. to the concerned investigating officer, even after filing of the charge-sheet. He submitted that said order was challenged before the Additional Sessions Judge, Bhokar. The learned Additional Sessions Judge, Bhokar has even not considered that aspect and rejected the revision application.

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4. Mr. Kale submitted that the Magistrate is empowered to issue such directions to the investigating officer for further investigation after filing of the charge-sheet in view of section 173 (8) of Cr.P.C. Mr. Kale has place his reliance in case of **Pradeep Ram Vs. State of Jharkhand and another reported in (2019) 17 Supreme Court Cases 326** in support of his submissions.

5. Mr. Borade, learned APP for the state submitted that the Magistrate has no such powers to issue directions to the investigating officer to conduct further part of the investigation under section 173 (8) of Cr.P.C. He submitted that it is for the investigating officer to conduct further part of the investigation, if necessary in view of section 173 (8) of Cr.P.C.

6. Having regard to the submissions of both sides, I have gone through the impugned order passed by the J.M.F.C. Bhokar below exh. 26 in RCC no.36 of 2017 as well as the judgment and order passed in criminal revision no.16 of 2019 by the Additional Sessions Judge, Bhokar. I have also gone through the provisions of  
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section 173 (8) of Cr.P.C. On careful study of section 173 (8) of Cr.P.C., it is quite clear that after forwarding charge-sheet to the Magistrate, in view of sub-section (2) of section 173 (8) of Cr.P.C, the police officer is empowered to conduct further investigation and collect evidence oral or documentary and forward the same to the Magistrate with a report. Section 173 (8) of Cr.P.C. nowhere speaks that Magistrate is empowered to issue directions to the Investigating Officer to conduct further investigation.

7. I have also gone through the citation relied upon by Mr. Kale, in case of **Pradeep Ram Vs. State of Jharkhand and another reported in (2019) 17 Supreme Court Cases 326** (supra) more particularly, paragraph no.46. Relevant observations of the Hon'ble Supreme Court in paragraph no.46 reads thus :-

“46. As far as the submissions of the learned counsel for the appellant that NIA cannot conduct any investigation or submit any report, since investigation was already completed and charge sheet was submitted, the charge sheet was submitted on 16.03.2016 and charges were framed on 19.09.2016 by which date offences under [Unlawful Activities \(Prevention\) Act, 1967](#) were not even added, since for the first time the offences under [Unlawful Activities \(Prevention\) Act, 1967](#) were added on 09.04.2017. The Scheme as delineated by [Section 173](#) Cr.P.C. itself indicates that even after report under [Section 173\(2\)](#) is submitted, it is always open for the police authorities to conduct further investigation and collect both

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documentary and oral evidence and submit a report under [Section 173\(8\)](#). In this context, reference is made to judgment of this Court in Vinay Tyagi Vs. Irshad Ali alias Deepak and Others, (2013) 5 SCC 762, in which case after examining the provisions and elaborating the scheme as delineated by [Section 173](#) Cr.P.C., following was laid down by this Court in paragraph No.15:-

“15. A very wide power is vested in the investigating agency to conduct further investigation after it has filed the report in terms of [Section 173\(2\)](#). The legislature has specifically used the expression “nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under [Section 173\(2\)](#) has been forwarded to the Magistrate”, which unambiguously indicates the legislative intent that even after filing of a report before the court of competent jurisdiction, the investigating officer can still conduct further investigation and where, upon such investigation, the officer in charge of a police station gets further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the prescribed form. In other words, the investigating agency is competent to file a supplementary report to its primary report in terms of [Section 173\(8\)](#). The supplementary report has to be treated by the court in continuation of the primary report and the same provisions of law i.e. sub-section (2) to sub-section (6) of [Section 173](#) shall apply when the court deals with such report.”

The scheme as defined by Section 173 (8) of Cr.P.C. itself indicates that even after report u/s 173 (2) is submitted, it is always open for the police authorities to conduct further investigation and collect documentary and oral evidence and submit a report under section 173 (8) of Cr.P.C.

8. Having regard to the legal position made clear by the Hon'ble Supreme Court, I do not find any merit in the submissions of Mr. Kale, learned counsel for the

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petitioner. No interference is called for in both the orders.

**O R D E R**

Writ Petition stands dismissed.

**(SHRIKANT D. KULKARNI, J.)**

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