

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 859 of 2019

Syed Kawsar Ali

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Pratik Kumar Chatterjee,
Mr. Soumya Majumder.

For the State : Z. N. Khan,
Md. Kutubuddin.

For the Opposite Party No. 2 : Mr. Biswajit Hazra,
Mr. Archisman Sain.

Heard on : 02.02.2023

Judgment on : 23.02.2023

Shampa Dutt (Paul), J.:

The present revision has been preferred by the petitioners against the Judgment and Order dated 26.11.2018 passed by Learned Additional Sessions Judge, Fast Track Court, Durgapur, Dist.– Burdwan, in Criminal Revision No. 10/18 arising out of an Order dated 13.12.2017 passed by the Learned Additional Chief Judicial Magistrate, Durgapur, in connection with Kanksa Police Station Case No. 185/16 dated 01.06.2016 under Sections 379/341/352/506/120B of the Indian Penal Code in complaint reference M.P. Case No. 235/16 in G.R. Case No.941/2016.

The petitioner's case is that on 18th May, 2016 he filed a petition under Section 156(3) of the Code of Criminal Procedure before the Ld. A.C.J.M., Durgapur, being M.P. Case No. 235/2016 with the following fact :-

“That the petitioner owned and possessed the share of 2 annas in a pond namely “Ghat Bera” under Mouza – Debipur, J.L. No. 87, Plot No. 510 which the petitioner used to cultivate fishes since last few years with other co-sharers.

That on 8th April, 2016 at about 03.00 a.m. (03.00 O' clock at night) the petitioner woke up for attending the prayer of Namaj at Mosque and at that relevant point of time the petitioner saw the above named accused along with about 10 to 11 miscreants led by the above said

accused person were catching fishes from that pond.

That seeing the incident of catching fishes the miscreants the petitioner went to the spot i.e. bank of the pond and protested their unlawful acts but the above said accused person Khokan Dhibar and his antisocial associates threatened him with dire consequences.

That the accused persons and his associates used abusive and filthy languages towards the complainant.”

That being afraid of their threatening the petitioner came to his residence and informed the matter to the co-sharers and thereafter went to the kanksa Police Station for lodging complaint but Police refused to accept the Complaint rather the police advised the complainant to take other steps against the miscreants and the accused person.

On the basis of the direction of the Ld. A.C.J.M., Durgapur, Kanksa Police Station registered a case being Kanksa P.S. Case No. 185/2016 dated 01.06.2016 under Sections 379/341/352/506/120B of the Indian Penal Code.

The investigating officer of the aforesaid case after the investigation submitted Charge Sheet being Charge Sheet No. 158/16 dated 30.06.2016 under Sections 379/341/352/506/120B of the Code of Criminal Procedure.

Being dissatisfied with the investigation of the investigating officer the petitioner filed a petition under Section 173(8) of Cr.P.C. before the Ld. Additional Chief Judicial Magistrate at Durgapur praying for a direction upon the Officer in Charge, Kanksa Police Station to make further investigation in the case on the following grounds:-

That all the accused persons of the FIR have played an important and vital role in the case against the de facto complainant of the case.

The investigating officer of this case has deleted the names of the other accused persons of this case under political pressure prevailing at the time of submission of the Charge Sheet.

The investigating Officer of this case has done the investigation of this case in most perfunctory and biased manner so as to protect the culpability of other accused persons from the trial of this case.

The real truth of this case has not been brought before the Ld. Court by the submission of the Charge Sheet without the names of the other culprits which is biased and one sided.

That the real and actual truth of the case has been concealed by the investigating officer of this case so as to give relief to the other accused persons in this case.

That there will be total failure of truth if the real and actual truth of the case is not brought before the Ld. Court before the trial of this case by giving direction for further investigation of this case”

The petition came up for hearing on 13.12.2017 before the learned Additional Chief Judicial Magistrate at Durgapur when the learned Magistrate passed the following order :-

“.....The Hon’ble Supreme Court in several cases reported in (2013) 2 C Cr LR (SC) 83, (2017) 2 C Cr LR (SC) 521 and (2009) 2 C Cr LR (SC) 820 has, in explaining the scope of Sections 156, 167, 173 and 319 of the Cr.P.C., observed that the further investigation or reinvestigation by the IO could be allowed on the prayer of the IO only for discovery of new facts over the same incident and such investigation cannot be directed on the prayer of the de facto complainant. In the case in hand, there is no discovery of new facts over the same incident.

Considering my foregoing discussions, I find no merit in the petition under Section 178 (8) of the Cr.P.C., filed on behalf of the de facto complainant and hence, the same is rejected without any order as to costs.

Let the case record be transferred to the Judicial Magistrate, 3rd Court for disposal.

Copies to be served upon the accused in the meantime.

To 22.03.2018 for appearance of the accused person before the Ld. Judicial Magistrate, 3rd Court, Durgapur.”

**Sd/-
A.C.J.M., Durgapur**

Challenging the said Order dated 13.12.2017 passed by the Ld. Additional Chief Judicial Magistrate at Durgapur, the petitioner being the de facto complainant filed a revisional application before the Court of Ld. Additional District & Sessions Judge, Fast Track Court, Durgapur.

The said revisional application came up for hearing before the Court of Ld. Additional District & Sessions Judge, Fast Track Court, Durgapur on 26.11.2018 and upon hearing the parties the Ld. Judge passed the following Judgment & Order dated 26.11.2018:-

“In view of the fact and having no legal provision supporting the prayer of the revisionist here, I do not find any merit in allowing the instant revisional application.

Accordingly, it is that the instant Criminal revision be and the same is dismissed on contest but without any order as to costs”.

It is thus submitted by the petitioner that both the Learned Courts ought to have considered that the investigating officer failed to conduct the investigation to the effect that respondent/accused person had been catching fish from the pond of the petitioner with the help of 10 to 11 other persons and as such the said 10 to 11 persons are also accused persons.

That both the Learned Courts ought to have considered that the investigating officer of the case, during the course of investigation did not examine the petitioner to record his statement u/s 161 of Cr.P.C.

The investigating officer of the case has submitted Charge Sheet without making investigation about the role of 10 to 11 other persons who were also involved in the commission of the offences against the petitioner.

Mr. Soumya Majumdar the learned counsel for the Petitioner has submitted that both the learned Courts ought to have considered that the investigating officer failed to conduct the investigation to the effect that respondent /accused person had been catching fish from the pond of the petitioner with the help of 10 to 11 other persons and as such the said 10 to 11 persons are also accused persons.

That the Learned Courts failed to consider that the investigating officer of the case has not collected any documents including the medical documents to collect evidence against the respondents/accused persons and as such further investigation is needed.

That the Learned Courts failed to consider that the investigating officer of the case has done perfunctory and one sided investigation into the case so as to give protection to the other accused persons and as such, further investigation is necessary.

Mr. Biswajit Hazra learned counsel for the Opposite Party No. 2 has submitted that the investigation in this case has been in accordance with law and as such the revision is liable to be dismissed.

Mr. Mohammed Kutubuddin counsel for the State has placed the Case Diary.

Heard the learned counsels for the petitioner and the Opposite Party including the State.

Perused the materials on record including the Case Diary. Considered.

The Petitioner's/Complainant's case against the Opposite Party No. 2/accused was initiated on an application under Section 156 (3) Cr.P.C. In the said petition only the present Opposite Party No. 2 has been named as an accused. In the body of the petition it has been stated that there were 10 to 11 more persons along with the accused who were illegally catching fish from the pond in which the petitioner/Complainant has two anna share. The petitioner then informed the matter to the other co-sharers, who have not filed any complaint.

The grievance of the petitioner is that the investigation does not show that there were 10 to 11 other persons also involved in the case. The petitioner could not name any of the 10 to 11 other persons who allegedly committed the crime along with the opposite party no. 2. There

is absolutely no material in the case diary including the statements recorded under Section 161 Cr.P.C. in the case diary to make out a prima facie case to show that there were other persons involved in the offence in this case.

A Three Judge Bench of the Supreme Court in **Vinubhai Haribhai Malaviya Vs The State of Gujarat on 16.10.2019 in Original Appeal 478-479 of 2017**, held:-

“Para 9. The question of law that therefore arises in this case is whether, after a charge-sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding.

Para 33. *We now come to the decision in **Vinay Tyagi v. Irshad Ali and Ors.** (2013) 5 SCC 762. This is another case that arose out of a CBI report to the Magistrate, which requested for closure of the case against the accused. The judgment of the Court first discussed in detail how the criminal investigative machinery is set into motion right until the stage at which the trial begins. The Court then held:*

“20. Having noticed the provisions and relevant part of the scheme of the Code, now we must examine the powers of the court to direct investigation. Investigation can be ordered in varied forms and at different stages. Right at the initial stage of receiving the FIR or a complaint, the court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Code. Investigation can be of the following kinds:

- (i) Initial investigation,
- (ii) Further investigation,
- (iii) Fresh or de novo or reinvestigation.”

Thereafter, the question with which we are faced was directly tackled as follows:

“**29.** Now, we come to the former question i.e. whether the Magistrate has jurisdiction under Section 173(8) to direct further investigation.

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32. In *Minu Kumari v. State of Bihar* [(2006) 4 SCC 359: (2006) 2 SCC (Cri) 310] (SCC pp. 363-64, para 11), this Court explained the powers that are vested in a Magistrate upon filing of a report in terms of Section 173(2)(i) and the kind of order that the court can pass. The Court held that when a report is filed before a Magistrate, he may either (i) accept the report and take cognizance of the offences and issue process; or (ii) may disagree with the report and drop the proceedings; or (iii) may direct further investigation under Section 156(3) and require the police to make a further report.

33. This judgment, thus, clearly shows that the Court of Magistrate has a clear power to direct further investigation when a report is filed under Section 173(2) and may also exercise such powers with the aid of Section 156(3) of the Code. The lurking doubt, if any, that remained in giving wider interpretation to Section 173(8) was removed and controversy put to an end by the judgment of this Court in *Hemant Dhasmana v. CBI* [(2001) 7 SCC 536: 2001 SCC (Cri) 1280] where the Court held that although the said section does not, in specific terms, mention

the power of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by the court, which has the jurisdiction to do so, then such order should not even be interfered with in exercise of a higher court's revisional jurisdiction. Such orders would normally be of an advantage to achieve the ends of justice. It was clarified, without ambiguity, that the Magistrate, in exercise of powers under Section 173(8) of the Code can direct CBI to further investigate the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the new report to be submitted by the investigating officer, would be governed by sub-section (2) to subsection (6) of Section 173 of the Code. There is no occasion for the Court to interpret Section 173(8) of the Code restrictively. After filing of the final report, the learned Magistrate can also take cognizance on the basis of the material placed on record by the investigating agency and it is permissible for him to direct further investigation. Conduct of proper and fair investigation is the hallmark of any criminal investigation.

34. *In support of these principles reference can be made to the judgments of this Court in UPSC v. S. Papaiah [(1997) 7 SCC 614: 1997 SCC (Cri) 1112], State of Orissa v. Mahima [(2007) 15 SCC 580: (2010) 3 SCC (Cri) 611: (2003) 5 Scale 566] , Kishan Lal v. Dharmendra Bafna [(2009) 7 SCC 685: (2009) 3 SCC (Cri) 611], State of Maharashtra*

v. Sharadchandra Vinayak Dongre [(1995) 1 SCC 42: 1995 SCC (Cri) 16].

35. *We may also notice here that in S. Papaiah [(1997) 7 SCC 614: 1997 SCC (Cri) 1112], the Magistrate had rejected an application for reinvestigation filed by the applicant primarily on the ground that it had no power to review the order passed earlier. This Court held that it was not a case of review of an order, but was a case of further investigation as contemplated under Section 173 of the Code. It permitted further investigation and directed the report to be filed.*

36. *Interestingly and more particularly for answering the question of legal academia that we are dealing with, it may be noticed that this Court, while pronouncing its judgment in Hemant Dhasmana v. CBI [(2001) 7 SCC 536 : 2001 SCC (Cri) 1280] has specifically referred to the judgments S. Papaiah [(1997) 7 SCC 614: 1997 SCC (Cri) 1112] and Bhagwant Singh v. Commr. of Police [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267] . While relying upon the three-Judge Bench judgment of Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267] , which appears to be a foundational view for development of law in relation to Section 173 of the Code, the Court held that the Magistrate could pass an order for further investigation. The principal question in that case was whether the Magistrate could drop the proceedings after filing of a report under Section 173(2), without notice to the complainant, but in para 4 of the judgment, the threeJudge Bench*

dealt with the powers of the Magistrate as enshrined in Section 173 of the Code...

“37. *In some judgments of this Court, a view has been advanced, [amongst others in Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] , Ram Naresh Prasad v. State of Jharkhand [Ram Naresh Prasad v. State of Jharkhand, (2009) 11 SCC 299 : (2009) 3 SCC (Cri) 1336. **Ed.**: Ram Naresh case does not seem to indicate that the Magistrate cannot suo motu direct further investigation: rather it seems to indicate that the Magistrate in fact can do so.] and Randhir Singh Rana v. State (Delhi Admn.) [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361]] that a Magistrate cannot suo motu direct further investigation under Section 173(8) of the Code or direct reinvestigation into a case on account of the bar contained in Section 167(2) of the Code, and that a Magistrate could direct filing of a charge-sheet where the police submits a report that no case had been made out for sending up an accused for trial. The gist of the view taken in these cases is that a Magistrate cannot direct reinvestigation and cannot suo motu direct further investigation.*

38. *However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct “further investigation” and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] has,*

in no uncertain terms, stated that principle, as aforenoticed.

39. *The contrary view taken by the Court in Reeta Nag [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] and Randhir Singh [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] do not consider the view of this Court expressed in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] . The decision of the Court in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] in regard to the issue in hand cannot be termed as an obiter. The ambit and scope of the power of a Magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three-Judge Bench concluded as aforenoticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] , are thus squarely in line with the doctrine of precedent. To some extent, the view expressed in Reeta Nag [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] , Ram Naresh [Ram Naresh Prasad v. State of Jharkhand, (2009) 11 SCC 299 : (2009) 3 SCC (Cri) 1336. **Ed.:** Ram Naresh case does not seem to indicate that the Magistrate cannot suo motu direct further investigation: rather it seems to indicate that the Magistrate in fact can do so.] and Randhir Singh [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] , besides being different on facts, would have to be examined in light of the principle of stare decisis.*

40. Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

40.1. The Magistrate has no power to direct “reinvestigation” or “fresh investigation” (de novo) in the case initiated on the basis of a police report.

40.2. A Magistrate has the power to direct “further investigation” after filing of a police report in terms of Section 173(6) of the Code.

40.3. The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three-Judge Bench and thus in conformity with the doctrine of precedent.

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6. *It has been a procedure of propriety that the police has to seek permission of the court to continue “further investigation” and file supplementary charge- sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case.”*

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48. *What ultimately is the aim or significance of the expression “fair and proper investigation” in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.*

49. *Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct “further investigation” or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts*

to conduct “further investigation” and file “supplementary report” with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct “further investigation” and/or to file a “supplementary report” will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of *contemporanea expositio* will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.

50. Such a view can be supported from two different points of view: firstly, through the doctrine of precedent, as aforementioned, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of *contemporanea expositio*. Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused.

51. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct “further investigation” on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is

*the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct "further investigation" to clear its doubt and to order the investigating agency to further substantiate its charge-sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this Court in *Sivanmoorthy v. State* [(2010) 12 SCC 29; (2011) 1 SCC (Cri) 295]."*

Para 36. *Despite the aforesaid judgments, some discordant notes were sounded in three recent judgments. In **Amrutbhai Shambubhai Patel v. Sumanbhai Kantibai Patel** (2017) 4 SCC 177, on the facts in that case, the*

*Appellant/Informant therein sought a direction under Section 173(8) from the Trial Court for further investigation by the police long after charges were framed against the Respondents at the culminating stages of the trial. The Court in its ultimate conclusion was correct, in that, once the trial begins with the framing of charges, the stage of investigation or inquiry into the offence is over, as a result of which no further investigation into the offence should be ordered. But instead of resting its judgment on this simple fact, this Court from paragraphs 29 to 34 resuscitated some of the earlier judgments of this Court, in which a view was taken that no further investigation could be ordered by the Magistrate in cases where, after cognizance is taken, the accused had appeared in pursuance of process being issued. In particular, **Devarapalli Lakshminarayana Reddy** (supra) was strongly relied upon by the Court. We have already seen how this judgment was rendered without adverting to the definition of “investigation” in Section 2(h) of the CrPC, and cannot therefore be relied upon as laying down the law on this aspect correctly. The Court therefore concluded:*

“49. On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and the accused has entered appearance in response

thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant can direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.

50. The unamended and the amended sub-section (8) of Section 173 of the Code if read in juxtaposition, would overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorised to conduct further investigation without limiting the stage of the proceedings relatable thereto. This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings. The recommendation of the Law Commission in its 41st Report which manifestly heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.

51. In contradistinction, Sections 156, 190, 200, 202 and 204 CrPC clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears

pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by CrPC to order further investigation even after the cognizance is taken, the accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of CrPC adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) CrPC would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] , the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter

though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/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, it would even otherwise render the provisions of Sections 311 and 319 CrPC, whereunder any witness can be summoned by a court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court.”

Para 37. This judgment was followed in a recent Division Bench judgment of this Court in **Athul Rao v. State of Karnataka and Anr.** (2018) 14 SCC 298 at paragraph 8. In **Bikash Ranjan Rout v. State through the Secretary (Home), Government of NCT of Delhi** (2019) 5 SCC 542, after referring to a number of decisions this Court concluded as follows:

“7. Considering the law laid down by this Court in the aforesaid decisions

and even considering the relevant provisions of CrPC, namely, Sections 167(2), 173, 227 and 228 CrPC, what is emerging is that after the investigation is concluded and the report is forwarded by the police to the Magistrate under Section 173(2)(i) CrPC, the learned Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceedings, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. If the Magistrate disagrees with the report and drops the proceedings, the informant is required to be given an opportunity to submit the protest application and thereafter, after giving an opportunity to the informant, the Magistrate may take a further decision whether to drop the proceedings against the accused or not. If the learned Magistrate accepts the objections, in that case, he may issue process and/or even frame the charges against the accused. As observed hereinabove, having not been satisfied with the investigation on considering the report forwarded by the police under Section 173(2)(i) CrPC, the Magistrate may, at that stage, direct further investigation and require the police to make a further report. However, it is required to be noted that all the aforesaid is required to be done at the pre-cognizance stage. Once the learned Magistrate takes the cognizance and, considering the materials on record submitted along with the report forwarded by the police under Section 173(2)(i) CrPC, the learned Magistrate in exercise of the powers

under Section 227 CrPC discharges the accused, thereafter, it will not be open for the Magistrate to suo motu order for further investigation and direct the investigating officer to submit the report. Such an order after discharging the accused can be said to be made at the post-cognizance stage. There is a distinction and/or difference between the pre-cognizance stage and post-cognizance stage and the powers to be exercised by the Magistrate for further investigation at the pre-cognizance stage and post-cognizance stage. The power to order further investigation which may be available to the Magistrate at the pre-cognizance stage may not be available to the Magistrate at the post-cognizance stage, more particularly, when the accused is discharged by him. As observed hereinabove, if the Magistrate was not satisfied with the investigation carried out by the investigating officer and the report submitted by the investigating officer under Section 173(2)(i) CrPC, as observed by this Court in a catena of decisions and as observed hereinabove, it was always open/missible for the Magistrate to direct the investigating agency for further investigation and may postpone even the framing of the charge and/or taking any final decision on the report at that stage. However, once the learned Magistrate, on the basis of the report and the materials placed along with the report, discharges the accused, we are afraid that thereafter the Magistrate can suo motu order further investigation by the investigating agency. Once the order of discharge is passed, thereafter the Magistrate

has no jurisdiction to suo motu direct the investigating officer for further investigation and submit the report. In such a situation, only two remedies are available: (i) a revision application can be filed against the discharge or (ii) the Court has to wait till the stage of Section 319 CrPC. However, at the same time, considering the provisions of Section 173(8) CrPC, it is always open for the investigating agency to file an application for further investigation and thereafter to submit the fresh report and the Court may, on the application submitted by the investigating agency, permit further investigation and permit the investigating officer to file a fresh report and the same may be considered by the learned Magistrate thereafter in accordance with law. The Magistrate cannot suo motu direct for further investigation under Section 173(8) CrPC or direct reinvestigation into a case at the post-cognizance stage, more particularly when, in exercise of powers under Section 227 CrPC, the Magistrate discharges the accused. However, Section 173(8) CrPC confers power upon the officer in charge of the police station to further investigate and submit evidence, oral or documentary, after forwarding the report under sub-section (2) of Section 173 CrPC. Therefore, it is always open for the investigating officer to apply for further investigation, even after forwarding the report under sub-section (2) of Section 173 and even after the discharge of the accused. However, the aforesaid shall be at the instance of the investigating officer/police officer in charge and the Magistrate has no jurisdiction to suo motu pass an order for further

investigation/reinvestigation after he discharges the accused.”

Realising the difficulty in concluding thus, the Court went on to hold:

“10. However, considering the observations made by the learned Magistrate and the deficiency in the investigation pointed out by the learned Magistrate and the ultimate goal is to book and/or punish the real culprit, it will be open for the investigating officer to submit a proper application before the learned Magistrate for further investigation and conduct fresh investigation and submit the further report in exercise of powers under Section 173(8) CrPC and thereafter the learned Magistrate to consider the same in accordance with law and on its own merits.”

Para 38. *There is no good reason given by the Court in these decisions as to why a Magistrate’s powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, **Sakiri** (supra), **Samaj Parivartan Samudaya** (supra), **Vinay Tyagi** (supra), and **Hardeep Singh** (supra); **Hardeep Singh** (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate’s nod under Section 173(8) to*

*further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in **Hasanbhai Valibhai Qureshi** (supra). Therefore, to the extent that the judgments in **Amrutbhai Shambubhai Patel** (supra), **Athul Rao** (supra) and **Bikash Ranjan Rout** (supra) have held to the contrary, they stand overruled. Needless to add, **Randhir Singh Rana v. State (Delhi Administration)** (1997) 1 SCC 361 and **Reeta Nag v. State of West Bengal and Ors.** (2009) 9 SCC 129 also stand overruled.”*

On perusal of the order dated 13.12.2017 of the Learned Magistrate, it is found that the order disposing of the application under

Section 173(8) of Cr. P.C. is reasoned and in accordance with law. The observation of the Learned Sessions Judge in the judgment under revision is not in accordance with judgment of the Supreme Court in **Vinubhai Haribhai Malaviya vs The State of Gujarat (Supra)** though the Sessions Judge has affirmed the order of the Learned Magistrate.

Considering all these facts, it is seen that the investigation conducted and the Charge Sheet submitted is in accordance with law. The investigating agency has conducted the investigation to the best of their ability and collected all evidence as available. Thus there is no laches on the part of the investigating agency in this case.

Accordingly the Judgment and Order under revision being in accordance with law, this is not a fit case for exercising the inherent powers of this court and accordingly the criminal revision being **CRR 859 of 2019 stands dismissed.**

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)