

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2778 of 2019

Majafor Seikh.

Vs

The State of West Bengal & Ors.

For the Petitioner : Mr. Pratip Kumar Chatterjee.

For the State : Mr. Sudip Ghosh,
Mr. Bitasok Banerji.

For the Opposite Party : Mr. Mayukh Mukherjee,
Mr. Abhijit Singh,
Mr. Sarthak Mondal.

Heard on : 10.02.2023

Judgment on : 13.03.2023

Shampa Dutt (Paul), J.:

The present revision is against an Order dated 29.07.2019 passed by the Ld. Additional Chief Judicial Magistrate, Katwa, Burdwan, in M.P. 218 of 2019 (C.I.S.No.169/2019) (Mojoffafar Sk Versus Lovely Khatoon and four Ors) whereby prayer of the complainant was rejected and the aforesaid case has been dropped.

The petitioner's case is that the petitioner is a Graduate and works as Tiles Mason at Mumbai and when the incident occurred on 22.06.2019, he was at B.M.C School near Gurudwara, Vilaroli – (E), Mumbai.

The marriage between the petitioner and the opposite party No.2 herein was solemnized as per the Muslim's rites and customs and till date the said marriage exists. After marriage the petitioner and opposite party No. 2 were living their conjugal life and due to the wedlock two male children were born. The petitioner herein due to his work resided outside the West Bengal and as & when got leave came to his house and stayed there for two or three days. The opposite party no. 2 herein sometimes resided in the residential house of the petitioner and sometimes she resided in her parent's house. When this was/is going on at that time on 22.06.2019 the petitioner got a telephonic call from his elder son who told him that his mother will kill him and also asked

him to come. On getting the said telephonic call the petitioner came to his house and got an information from there that on that date the opposite party no. 2 herein beat her elder son mercilessly. The accused persons also beat his mother and also broke his elder sister's hand. Thereafter, the opposite party no. 2 herein against the will of his elder son forcibly by beating him took him to her parental house. On that day the opposite party no. 2 over phone told the petitioner herein that her elder son was not found anywhere.

Thereafter from the village of the opposite party no. 2, one person informed over phone to the petitioner herein that his elder son has drowned. The petitioner then came to know that on date day the opposite party no. 2 had mercilessly beaten his elder son and thereafter by throwing acid burnt his face, forehead and hand and when he was in dying condition then to be sure of his death drowned him in the pond and murdered him. On that day the post-mortem was done at Katwa S.D. Hospital which has been registered as Ketugram Police Station under U.D. Case No. 31/2019 dated 22.06.2019. That it is the strong belief of the petitioner that the opposite party no. 2 with the help of other opposite parties killed his son. The petitioner informed the said facts with a registered letter to the Inspector in-charge, Ketugram Police Station and Superintendent of Police, Purba Burdwan but they have not taken any steps and for that the delay has also occurred.

That as the Inspector in Charge, Ketugram Police Station and Superintendent of Police, Purba Burdwan have not taken any steps about the complaint lodged by the petitioner, the petitioner herein filed an application under Section 156(3) Cr.P.C. on 19.07.2019 before the Court of learned Additional Chief Judicial Magistrate, Katwa, Burdwan stating the aforesaid facts which has been registered as M.P. Case No. 218 of 2019 (C.I.S. No. 169 of 2019) against the opposite party nos. 2 to 6 herein.

On 19.07.2019 the learned Additional chief Judicial Magistrate, Katwa, Burdwan was pleased to pass the following order:-

“Complainant Mojoffafar Sk has preferred the instant petition of complaint accusing Lovely Khatoon and 4 others of the commission of offence u/s 302, 120B, 34 I.P.C and has prayed for a direction upon the I/C of Ketugram P.S. for registration of the same as F.I.R and for investigation. Complaint has also filed an affidavit swearing therein of non registration of any case on the self-same allegation as on this date.

Having considered the nature of allegation in the complaint, this court views it expedient to obtain initial enquiry report from the P.S. concerned before passing any further order.

Accordingly, the I/C of Ketugram is hereby directed to hold an initial enquiry touching the point as to whether or not, any cognizable case has made out, and also as to whether or not, any case on the self same identical allegation has already been registered before his or any other P.S. The report be placed before this Court on or within 29.07.2019”.

That your petitioner states that thereafter the aforesaid matter came up for hearing on 29th July, 2019 before the Ld. Additional Chief Judicial Magistrate, Katwa, Burdwan when the ld. Additional chief Judicial Magistrate, Katwa, Burdwan rejected the petition filed by the petitioner and dropped the case No. M.P. 218/2019 with the following order:-

“This day has been scheduled for receipt of initial enquiry report from Ketugram P/s. received a report along with enclosures from Ketugram P/s. Perused the petition of complaint, the documents enclosed in the record and the initial enquiry report comprising of PM report, enquiry notice, inquest report and the case documents relating to Ketugram P/s U.D. case no. 31/19 dt. 22.06.19.

The instant complaint has been filed by the father of the deceased child against the mother and her relatives.

The initial enquiry report has not approved the allegation to be true.

Taking all such aspects into consideration, this Court fails to find sufficient ground to allow the petition u/s 156(3) Cr.P.C.

Hence, the prayer of the complainant is rejected and the instant petition being no.MP 218/2019 is hereby dropped”.

Mr. Pratip Kumar Chatterjee, learned counsel for the petitioner has submitted that it is evident from the impugned order dated 29.07.2019 passed by the Ld. Additional chief Judicial Magistrate, Katwa, Burdwan that only on the basis of initial enquiry report the petition under Section 156(3) of the Criminal Procedure Code

of the petitioner has been rejected. It is evident from the complaint petition of the petitioner that the allegation made by the petitioner is so serious in nature that a thorough enquiry report is required. But in the instant case only on the basis of initial enquiry report the complaint petition of the petitioner has been rejected and the impugned proceeding being M.P. 218 of 2019 (CIS 169 of 2019) has been dropped which is not only illegal but also bad in law and as such the interference of the Hon'ble Court is very much necessary.

The petitioner states that it is evident from the report of the Inspector in Charge, Ketugram Police Station that in the post-mortem report the cause of death has been shown due to the effect of drowning and anti-mortem in nature. It is further stated that the allegation made by the petitioner in his complaint is that before drowning of his child, acid was thrown on him but that has not been considered properly. As a result the petitioner herein is seriously prejudiced.

That the impugned order dated 29.07.2019 is a non speaking and non reasoned order.

By the impugned order dated 29.07.2019 the petitioner is being denied a chance to file a protest petition (naraji petition) about the investigation of the aforesaid case.

That until and unless Your Lordship set aside and/ or quash the impugned order dated 29.07.2019 passed in MP 218/2019 (C.I.S 169 of

2019) and after set aside and/or quashing the same directed the concerned authority to investigate into the case by registering into the case, the petitioner will not get proper justice.

Mr. Mayukh Mukherjee, learned counsel for the opposite party nos. 2 to 6 has submitted that the opposite party no. 2 is the mother of the victim. The sad incident occurred when the child was playing with other children and the child died of drowning by falling in the pond accidentally. There is no foul play and the same has been proved by the fair investigation conducted in this case.

The complainant is the father who lived away for work. It is very tragic for parents to face such situation. A mother is equally traumatized so much so that out of fear she has sent the second son to the complainant/father.

It is further submitted that the order of the learned Magistrate is in accordance with law and needs no interference.

Mr. Sudip Ghosh, learned counsel for the State has placed the U.D. Case Diary.

On going through the total materials in the case diary including the post mortem report, it is seen that the Doctor has clearly mentioned in the report that**no external injuries noted**. And that the

.....**Death was due to the effects of drowning as noted above.**

There is also no witness nor any materials to support the contention of the complainant.

In Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). 2060 of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022), the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be*

quashed. In para 7 of the judgment, the following has been stated :

'7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the

proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

‘102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.’ Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :*

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to

give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and

with a view to spite him due to private and personal grudge.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.***

The facts/circumstances in this case and the materials on record fall in category no. 5 and 7 of paragraph 102 of **Bhajan Lal and Ors. vs. State of Haryana (Supra)**.

The said judgment was referred to by the Supreme Court in **Vinubhai Haribhai Malaviya Vs The State of Gujarat on 16.10.2019 in Original Appeal 478-479 of 2017**, wherein a **Three Judge Bench** 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.

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.

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 aforenoticed, 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 34. A Bench of 5 learned Judges of this Court in ***Hardeep Singh v. State of Punjab and Ors.*** (2014) 3 SCC 92 was faced with a question regarding the circumstances under which the power under Section 319 of the Code could be exercised to add a person as being accused of a criminal offence. In the course of a learned judgment answering the aforesaid question, this Court first adverted to the constitutional mandate under Article 21 of the Constitution as follows:

“8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the

same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished.”

*In paragraph 34, this Court adverted to **Common Cause v. Union of India** (1996) 6 SCC 775, and dealt with when trials before the Sessions Court; trials of warrant-cases; and trials of summons-cases by Magistrates can be said to commence, as follows:*

*“34. In **Common Cause v. Union of India** [(1996) 6 SCC 775 : 1997 SCC (Cri) 42 : AIR 1997 SC 1539], this Court while dealing with the issue held: (SCC p. 776, para 1)*

“1. II (i) In cases of trials before the Sessions Court the trials shall be treated to have commenced when charges are framed under Section 228 of the Code of Criminal Procedure, 1973 in the cases concerned.

(ii) In cases of trials of warrant cases by Magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under Section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by Magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the accused concerned under Section 246 of the Code of Criminal Procedure, 1973.

(iii) In cases of trials of summons cases by Magistrates the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked

under Section 251 whether they plead guilty or have any defence to make.”

(emphasis supplied)

The Court then concluded:

“38. In view of the above, the law can be summarised to the effect that as “trial” means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the “trial” commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken.”

Para 35. Paragraph 39 of the judgment then referred to the “inquiry” stage of a criminal case as follows:

“39. Section 2(g) CrPC and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under CrPC by the Magistrate or the court. The word “inquiry” is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial.”

A clear distinction between “inquiry” and “trial” was thereafter set out in paragraph 54 as follows:

“54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has

not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC.”

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 advertent 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/permissible 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."*

By a Judgment dated 12.10.2022 the Supreme Court in Criminal Appeal No. 1768 of 2022 (Devendra Nath Singh Vs State of

Bihar & Ors) relying upon several precedents including **Vinubhai, Hari bhai, Malaviya (Supra)** held:-

*“12.5. The case of **Divine Retreat Centre** (supra) has had the peculiarity of its own. Therein, the Criminal Case bearing No. 381 of 2005 had been registered at Koratty Police Station on the allegations made by a female remand prisoner that while taking shelter in the appellant-Centre, she was subjected to molestation and exploitation and she became pregnant; and thereafter, when she came out of the Centre to attend her sister’s marriage, she was implicated in a false theft case and lodged in jail. Parallel to these proceedings, an anonymous petition as also other petitions were received in the High Court, which were registered as a suo motu criminal case. In that case, the High Court, while exercising powers under Section 482 CrPC, directed that the said Criminal Case No. 381 of 2005 be taken away from the investigating officer and be entrusted to the Special Investigating Team (‘SIT’). The High Court also directed the said SIT to investigate/inquire into other allegations levelled in the anonymous petition filed against the appellant-Centre. However, this Court did not approve the order so passed by the High Court and in that context, while observing that no unlimited and arbitrary jurisdiction was conferred on the High Court under Section 482 CrPC, explained the circumstances under which the inherent jurisdiction may be exercised as also the responsibilities of the investigating officers, inter alia, in the following words: -*

“27. In our view, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 of the Code. The power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the section itself. It is well settled that Section 482 does not confer any new power on the High Court but only

saves the inherent power which the Court possessed before the enactment of the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order 29 under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice.

39. *The sum and substance of the above deliberation and analysis of the law cited leads us to an irresistible conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. However, we may hasten to add that unfettered discretion does not mean any unaccountable or unlimited discretion and act according to one's own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by the Code itself.*

40. *In our view, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither are the accused nor the complainant or informant entitled to choose their own investigating agency to investigate a crime in which they may be interested.*

41. *It is altogether a different matter that the High Court in exercise of its power*

under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and noncompliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code."

(emphasis supplied)

12.6. In the case of **Madan Mohan** (supra), this Court, of course, reiterated the settled principles that no superior Court could issue a direction/mandamus to any subordinate Court commanding them to pass a particular order but, the questioned directions had been as regards dealing with a bail application, which were not approved by this Court while observing, inter alia, as under: -

"15. In our considered opinion, the High Court had no jurisdiction to direct the Sessions Judge to "allow" the application for grant of bail. Indeed, once such direction had been issued by the High Court then what was left for the Sessions Judge to decide except to follow the directions of the High Court and grant bail to Respondents 2 and 3. In other words, in compliance to the mandatory directions issued by the High Court, the Sessions Judge had no jurisdiction to reject the bail application but to allow it.

16. No superior court in hierarchical jurisdiction can issue such direction/mandamus to any subordinate

court commanding them to pass a particular order on any application filed by any party. The judicial independence of every court in passing the orders in cases is well settled. It cannot be interfered with by any court including superior court.”

*12.7. In the case of **Neetu Kumar Nagaich** (supra), this Court issued directions for de novo investigation in regard to the unnatural death of a law student. We need not elaborate on the said decision for the fact that such directions were issued under the writ jurisdiction of this Court.”*

Thus keeping with the view of the **Supreme Court in Vinubhai Haribhai Malaviya Vs The State of Gujarat (Supra), Devendra Nath Singh Vs State of Bihar & Ors. (Supra)**, and considering that there is neither any materials nor any evidence on record to substantiate the contents in the written complaint, the prayer for further investigation cannot be allowed.

In the present case this court finds that the materials on record vis a vis the final report proves that the investigation has been conducted in a fair manner and is prima facie not malafide and thus the final report filed is in accordance with law.

There is thus no scope for interference in respect of the order under revision. Any further indulgence shown to the petitioner/complainant would clearly amount to an abuse of the process of court and law and also be against the interest of justice.

The order dated 29.07.2019 in M.P. 218 of 2019 (C.I.S. No. 169/2019) passed by the learned Additional Chief Judicial Magistrate, Katwa, Burdwan, is in accordance with law and thus requires no interference by this Court.

CRR 2778 of 2019 is 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.)