

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

970 CRIMINAL WRIT PETITION NO.1530 OF 2022

XYZ
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Kishor R. Doke
APP for Respondents: Mr. S.P. Deshmukh.

CORAM : S.G. CHAPALGAONKAR, J.

DATE : 29th AUGUST, 2023

ORDER :-

The petitioner original complainant impugns the order dated 5.4.2022 passed by the Additional Sessions Judge, Bhoom below Exh.42 in Special Case [POCSO] No. 19 of 2019 by which the prayer of the petitioner seeking further investigation under Section 173(8) of Cr.P.C. in Crime No. 68 of 2019 came to be rejected.

2. Mr. Kishor Doke, learned advocate appearing for the petitioner invited attention of this court to the impugned order dated 16.9.2020 passed below Exh. 42 and further order passed thereon dated 5.4.2022. He would submit that the trial court rejected the prayer of the petitioner seeking further investigation under Section 173(8) of Cr.P.C. relying upon the law laid down in judgment of the Supreme Court of India in the matter of *“Atul Vs. State of Karnataka” reported in AIR 2017 SC 4021.*

3. He would further submit that the law laid down by the

Supreme Court in the matter of Atul (supra) has been specifically overruled by the subsequent judgment of the Supreme Court in the case of ***Vinubhai Haribhai Malaviya and others Vs. State of Gujarat and another 2020 Cr.L.J. 472***. He would further invite attention of this Court to the question of law that was framed for consideration in the case of Vinubhai (supra) referred in para.9 of the said judgment which reads thus :-

“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.”

4. The question so framed has been answered in para.38 which reads thus :-

“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..”

5. Learned Advocate for petitioner would, therefore, submit that the very foundation of the impugned order dated 16.9.2020 as well as 5.4.2022 passed below Exh.42 has been taken away by the judgment of the larger Bench of the Supreme Court. He would, therefore, submit that by setting aside the impugned orders, the application Exh.42 can be directed to be reconsidered in view of the law laid down by the Supreme Court in the matter of *Vinubhai* (supra)

6. Learned APP fairly submits that in view of the subsequent development of law, the prayers in application below Exh.42 can be reconsidered.

7. Having considered the submissions advanced, it would be appropriate to set aside the impugned orders and direct the Special Court to re-consider the prayers in application Exh.42 on its own merits in the light of the law laid down by the Supreme Court of India in the judgment of *Vinubhai* (supra). It is made clear that this Court has not

delved into the factual matrix of the matter and not expressed opinion on merit of the case. It would be open for the trial court to take decision on merit looking to the stage of trial and other attending circumstances. Hence, the following order :-

O R D E R

[I] Writ petition is partly allowed;

[ii] The impugned order dated 5.4.2022 passed by the Additional Sessions Judge, Bhoom in Special Case No. 19 of 2019 is hereby quashed and set aside ;

[iii] The Special Court shall re-consider Exh.42 in the light of the decision of the Supreme Court of India in the matter of ***Vinubhai Haribhai Malaviya and others vs. State of Gujarat and another*** referred to above, after hearing the parties.

[iv] Writ petition is disposed of.

[S.G. CHAPALGAONKAR]
JUDGE

grt/-