

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL WRIT PETITION NO. 5105 OF 2022
WITH
INTERIM APPLICATION (STAMP) NO.14773 OF 2023
IN
CRIMINAL WRIT PETITION NO. 5105 OF 2022**

K.K. Dhanasekar & Ors.

.....Petitioners

Vs.

The State Of Maharashtra & Ors.

.....Respondents

Mr. Mihir Desai, Sr. Advocate a/w. Ms. Rebecca Gonsalves, Adv. P. Paul, Adv. Arati Ranade i/by Ms. Veena Gowda for the Petitioners.
Mr. Harshad Nambalkar a/w. Adv. Abhishek Arote i/b. Satyam Nimbalkar for the Intervenor in IA
Smt. M. M. Deshmukh, APP, for the Respondent-State

**CORAM : NITIN W. SAMBRE &
N. R. BORKAR, JJ**

DATED : 18th OCTOBER, 2023

P.C.:

1. We have heard Mr. Desai, learned Senior Counsel for the Petitioners in support of following prayer.

(a) For a writ of mandamus or a writ, order or direction in the nature of Mandamus directing the Respondent No. 1 to set up a Special Investigation Team consisting of senior police officers of appropriate rank to conduct further investigation into FIR No. 380/2022 of Khed Police Station;

(a1) That this Hon'ble Court monitor the further investigation conducted by the Special Investigation Team;

(b) For a writ of Mandamus, or a writ, order or direction in the nature of Mandamus directing the Special Investigation

Team so appointed to complete the investigation in FIR No. 380/2022 of Khed Police Station expeditiously and in a time bound manner; and

(b1) That pending the hearing and final disposal of the petition, that Respondent No. 1 be directed to set up a Special Investigation Team consisting of senior police officers of appropriate rank to conduct further investigation into FIR No. 380/2022 of Khed Police Station;

(b2). For ad-interim and interim relief in terms of prayer clause (b1)."

2. Having noticed that it is open for the Petitioners to approach the Magistrate in exercise of powers under sub-section (8) of Section 173 of the Cr.P.C., Mr. Desai, learned Senior Counsel for the Petitioners would invite our attention to the judgment delivered by the Apex Court in the matter of **Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel & Ors.** reported in **(2017) 4 SCC 177** so also **Vinubhai Haribhai Malaviya and Others vs. State of Gujarat and Another** reported in **(2019) 17 SCC 1** and submits that there is a scope with the Magistrate to non-suit the Petitioners.

3. According to him, since **Amrutbhai** judgment still holding the field, the Magistrate might non-suit the Petitioners for the said remedy, to which Petitioners intend to take recourse to.

4. We have considered the said submissions in light of the

observations made by the Apex Court in the matter of **Vinubhai** (Supra) particularly paragraph 42, which reads as under:

"42. 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 Samaj Parivartan Samudaya, Vinay Tyagi, and Hardeep Singh, Hardeep Singh 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. Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel, Athul Rao and Bikash Ranjan Rout have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) and Reeta Nag v. State of W.B. also stand overruled."

5. Upon plain reading of the paragraph 42, the fact remains that it is open for the Investigating Officer till the commencement of the trial i.e framing of charges to continue with the investigation.

6. In such eventuality, we are of the view that the aforesaid observation gives liberty to the Petitioners to approach before the Magistrate or to the police authority with additional evidence which is available with them.

7. In that view of the matter, we deem it appropriate to dispose of the Petition with liberty to Petitioners to approach the Magistrate in view of the observations made by the Apex Court in paragraph 42 of the **Vinubhai** judgment cited supra.

8. The pending Application also stands disposed of.

9. Having regard to the issue involved in the proceedings, we deem it appropriate to request the Magistrate to deal with the

proceedings, if so taken out by the Petitioners expeditiously.

(N. R. BORKAR, J)

(NITIN W. SAMBRE, J.)