

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.4128 OF 2019

Ravindra Rajnarayan Pandey @ .. Petitioner
Dabba Pandey

Versus

The State of Maharashtra & Anr. .. Respondents

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Mr.Rishi Bhuta with B.P.Pande, A.R.Pande, Vikas Pande, Gaurav Pande, Pooja Pande, Ashish Dubey, Ankita Bamboli, Ujjwal Gandhi, Ridhima Mangaonkar and Vivek Pandey for the Petitioner.

Mr.Y.M.Nakhwa, A.P.P. for the State/Respondent.

Mr.Anson Thomas, Respondent No.1, in person.

A.C.P. Shalini Sanjay Sharma, Kotwali Division, Nagpur City, present.

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CORAM: BHARATI DANGRE, J.

RESERVED ON : 12th SEPTEMBER, 2023

PRONOUNCED ON : 08th JANUARY, 2024

JUDGMENT:-

1. The Petition filed on 13/08/2019. under Article 227 of the Constitution of India alongwith Section 482 of the Criminal Procedure Code (for short, “**the Cr.P.C.**”), raise a challenge to the registration of MECR No.05 of 2005 by the Metropolitan Magistrate, by order dated 02/01/2016. Pending of the final disposal of the Petition, it was prayed that the Respondents

shall not take any coercive steps against the Petitioner and enforce the impugned order.

The Petition came to be amended in the year 2019 and a relief was sought to quash and set aside Criminal Complaint No.1501303/PW/2019 registered pursuant to the order passed by the Metropolitan Magistrate, alongwith a charge-sheet and the supplementary charge-sheet filed by Respondent No.1 against the Petitioner, before the Metropolitan Magistrate, 15th Court, Sewree.

Proceedings of the Criminal Complaint were prayed to be stayed during the pendency of the Petition.

2. On 05/04/2023, the matter was listed before a Division Bench of this Court, when it passed the following order.

“1. The Order passed by Metropolitan Magistrate dated 2nd January 2016 is impugned as and by way of substantive relief. In view of the decision of Hon’ble Supreme Court in the case of RadheSham and another Vs. Chhabinath [(2015)5 SCC 423], present Petition under Article 226 of Constitution of India, is not maintainable and pertains to the assignment of learned Single Judge taking up petitions under Article 227 of Constitution of India.

2. In view thereof, Registry is directed to verify the Roster and place the petition before appropriate Bench.

3. Liberty to mention before appropriate Bench is granted.”

That is how, the Writ Petition is listed before me.

3. I have heard learned counsel Mr.Rishi Bhuta for the Petitioner and the learned A.P.P. Mr.Y.M.Nakhwa for the State.

The Complainant, at whose instance the proceedings are initiated i.e. Respondent No.2-Mr.Anson Thomas also appeared before me after the matter was heard and he advanced his

submissions of which, I have taken note of and have duly considered the same at the time of deciding the present Writ Petition.

4. The Petitioner is a resident of Nagpada locality, which comprise of 'Kamathipura locality', often referred to as 'red light area' and it is his claim that he was engaged in social services and was associated with various social organisations in Mumbai and, particularly, in Kamathipura locality. It was always his endeavour to assist the women working in brothels in the locality and enable in their rehabilitation.

The Petition has narrated the efforts of the Petitioner for upliftment of the women working in Kamathipura locality.

It is the specific case of the Petitioner that Respondent No.2, since the year 2004, was indulging himself into an activity of converting the women in his locality to Christianity and on taking note of the said act, he lodged a complaint with the then Chief Minister of Maharashtra on 13/03/2004, requesting a drastic action to be taken. Nagpada Police Station issued notice under Section 149 of the Cr.P.C. to Respondent No.2-Anson Thomas and the copies thereof are annexed to the Petition.

5. It is the case of the Petitioner that in order to revenge the action initiated against him at the behest of the Petitioner, he filed a criminal complaint against the Senior Inspector of Police and Police Inspector of Nagpada Police Station, namely, Mr.Kalandar Shaikh and Mr.Siraj Shaikh and also involved the

Petitioner, on 30/04/2005, based on the newspaper report of Indian Express dated 02/05/2004, making wild and false allegations of their involvement in the act of immoral trafficking and the complaint was filed before the Metropolitan Magistrate having jurisdiction over Nagpada area. The complaint was allotted C.C.No.151/MISC/2005.

Upon the complaint being filed, the Magistrate directed Nagpada Police Station to investigate the matter and on his directions, a case was registered as MECR No.05 of 2005, on 26/10/2005 under Sections 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 (hereinafter referred to as **“the PITA”**).

Nagpada Police Station, pursuant to the registration of the MECR, investigated the case and recorded the statements of various witnesses during the course of its inquiry under Section 156(3) of the Cr.P.C.

The statement of the Petitioner as well as the then Senior Inspector of Police and the Police Inspector (Crime), Nagpada Police Station, against whom the allegations are levelled are also recorded.

The MECR was inquired and investigated for a period of two years and on completion of investigation, Nagpada Police Station arrived at the conclusion that there is no evidence available in the complaint of Respondent No.2 against the Petitioner as well as the two police personnel and, hence, it forwarded a report to the Public Prosecutor, who submitted the same before the Metropolitan Magistrate for categorizing the case as “A Summary”. The copy of the final report dated 17/04/2007 is placed on record at Exhibit G.

The said report, on referring to the evidence available and, in particular, in the wake of the fact that the victim girls could not be traced and in absence of their statements, no material was available to prove the accusations under the Immoral Traffic (Prevention) Act, 1956 and, since, the complaint was only based on the newspaper reporting, with no independent evidence being produced by the Complainant, investigation was prayed to be stayed by granting the summary. Nagpada Police Station opined that on the basis of the certificates issued by Nagpada Police Hospital as well as Forensic Department of J.J.Hospital, the girls were not minor and they were in the prostitution business, on account of poverty and their own will. No material was found to substantiate the accusation levelled by the Complainant that the Senior Inspector of Nagpada Police Station released those girls at his behest and the Petitioner was instrumental in releasing the minor girls and pushing them into flesh trade.

Upon the said Summary being presented, the Metropolitan Magistrate accepted the request of Nagpada Police Station and passed an order observing that the said case is a fit case, where "A" Summary is to be granted.

The order passed by the Magistrate is placed on record at Exhibit J.

6. It is the case of the Petitioner that though the case was listed by the Magistrate for say of Respondent No.2 i.e. the Complainant, he did not file any objection nor did he challenge the order of the Metropolitan Magistrate granting "A"

Summary, although after a period of eight years and to be precise on 15/10/2015, he filed an application in the MECR by way of protest petition under Section 173(8) of the Cr.P.C., seeking directions from the Metropolitan Magistrate to direct the CBI/CID or any other authority to initiate the inquiry in the fraud committed in MECR No.05 of 2005 and levelling serious accusations against the police personnel as well as the court staff, alleging that the documents were missing from the court record. He sought arrest of the Senior Police Inspector as well as the API and the two lady constables under the relevant provisions of the PITA and the IPC.

The protest petition made reference to the statements of the three victim girls, given to the Child Welfare Committee, wherein they had allegedly stated that they were trafficked and sold into the brothel and are forced into the prostitution. Reference is also made to the statement of a staff from Rescue Foundation given to the police, to the effect that the police officers from Nagpada Police Station were responsible for pushing the rescued victims back into prosecution with the help of Ravindra Pandey @ Dabba i.e. the present Petitioner, who has taken the girls from one place to other for age verification and also on the date when they were brought back from the Protection Home and sent to the brothel, handing them over to brothel keeper.

It is the contention of behalf of the Petitioner that no notice was issued to him when an application was filed with the caption 'Protest Petitoin under Section 173(8) of the Cr.P.C.'. Nor even the say of Nagpada Police Station was called for and abruptly the Magistrate, on 02/01/2016, passed an

order on the Application/Protest Petition filed by Respondent No.2 and rejected the "A" Summary report and directed the DCP, Zone III, Mumbai to carry out the further investigation in MECR No.05 of 2005 and file final report without delay.

The impugned order dated 02/01/2016 is premised on the ground that the offence complained of was serious in nature and it calls for further investigation, by higher authority of police.

7. This order is assailed in the Writ Petition and, since, during the pendency of the same, Respondent No.1 filed the charge-sheet and the supplementary charge-sheet before the Metropolitan Magistrate, Petition came to be amended to assail the charge-sheets, by submitting that the criminal case based on the charge-sheet and the supplementary charge-sheet, on the face of it, is not tenable, as there is no material available to implicate the Petitioner. It is in this background, the relief of quashing and setting aside the charge-sheet and the supplementary charge-sheet is sought by invoking Section 482 of the Cr.P.C..

8. The learned counsel Mr.Rishi Bhuta for the Petitioner would submit that the Magistrate has grossly erred in entertaining the Application filed under Section 178(3) of the Cr.P.C., requesting for further investigation at the instance of Respondent No.2, Mr.Thomas, as the provision could have been invoked only by the Investigating Officer.

In the alternative, Mr.Bhuta would submit that if at all the Magistrate received the Application, he could have treated it as complaint under Section 200 of the Cr.P.C. and only after examining any witness or the Respondent No.2, an order could have been passed.

It is the submission of Mr.Bhuta that almost after lapse of eight years, after the "A" Summary report was accepted, the Magistrate directed further investigation without any fresh material being brought to his notice, but only on the pretext that the crime reported is serious in nature.

By inviting my attention to paragraph 3 of the Protest Petition, Mr.Bhuta would submit that Respondent No.2 had stated that he had never signed the complaint, being MECR No.05 of 2005 and he refused to acknowledge his signature on the said complaint and according to him, it was forged by the police officers of Nagpada Police Station and he attribute it to Police Inspector, Arvind Sawant. He also went to the extent of denying his statement recorded on 26/10/2005, but without looking into this aspect, the learned Magistrate, assuming that the Complainant had a right to seek further investigation in the MECR, passed the impugned order, setting aside the "A Summary", without sufficient justification and against the settled position of law, when the Summary Report is already accepted. It is his specific submission that Nagpada Police Station never preferred an application for further investigation, but the Application was entertained under sub-section (8) of Section 173 of the Cr.P.C. and the DCP, Zone III, Mumbai was directed to investigate MECR No.05 of 2005.

Apart from this, before directing it to be done so, the Petitioner was not even noticed and, therefore, the order dated 02/01/2026, on the face of it, is not within the four corners of law, is null and void, as no power is vested in the Magistrate to direct re-investigation once the 'A Summary' report had been accepted and that too, after a lapse of eight years, at the instance of the Complainant.

9. By inviting my attention to the sequence of events, the learned counsel would submit that the MECR was investigated and the Petitioner came to be arrested on 06/07/2019, though he was able to secure his release on bail and Mr. Bhuta has taken me through the order releasing him on bail.

Drawing my attention to the subsequent charge-sheet and the supplementary charge-sheet filed by Respondent No.1 in the wake of the directions to carry out the investigation and inquiry under the orders of the Metropolitan Magistrate, he would specifically contend that Respondent No.1 had fully investigated the matter earlier i.e. in the year 2007 itself and submitted its final report. However, as moonshine, some further statements are recorded and compiled in the charge-sheet as well as in the supplementary charge-sheet, giving an impression that the case is made out against the Petitioner and he is sought to be tried for the offences under the PITA.

The counsel would contend that even on a minute reading of the charge-sheet and the supplementary charge-sheet, no case has been made out against the Petitioner establishing the charges levelled against him and thus,

continuation of the proceedings without any fresh material compiled in the charge-sheet and the supplementary charge-sheet, the exercise is nothing but an abuse of process of law and, therefore, Mr.Bhuta would seek quashing of the charge-sheet and the supplementary charge-sheet as well as Criminal Complaint No.1501303/PW/2019.

10. In support of his submissions, he has placed before me the position of law, which has emerged through the various authoritative pronouncements of the Apex Court and the precedents relied upon by him are to the following effect.

1. Reeta Nag Vs. State of W.B. & Ors.; (2009) 9 SCC 129
2. Amrtubhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel & Ors.; (2017) 4 SCC 177
3. Abhinandan Jha & Ors. Vs. Dinesh Mishra; AIR 1968 SC 117
4. Gangadhar Janardan Mhatre Vs. State of Maharashtra & Ors.; (2004) 7 SCC 768
5. State through Central Bureau of Investigation Vs. Hemendhra Reddy & Anr. Etc.; 2023 SCC OnLine 515
6. Bikash Ranjan Rout Vs. State through the Secretary (Home), Government of NCT of Delhi, New Delhi; 2019 Cri.L.J. 2787
7. Vishnu Kumar Tiwari Vs. State of Uttar Pradesh through Secretary Home, Civil Secretariat Lucknow and Anr.; (2019) 8 SCC 27
8. B.Chandrika Vs. Santosh & Anr.; (2014) 13 SCC 699

11. Perusal of the documents annexed with the present Petition filed under Section 482 of the Cr.P.C. reveal that a complaint was filed by Respondent No.2 before the Magistrate

and the accused persons i.e. Mr.Kalandar Shaikh, Senior Inspector of Nagpada Police Station, Mr.Siraj Shaikh and the Petitioner-Mr.Ravindra Pandey @ Dabba Singh, seeking their arrest under Sections 4, 5 and 6 of the Immoral Traffic (Prevention) Act, 1956 since an article appeared in the Indian Express, that three minor girls were released, without producing them in the Court and the policemen, who were accused of returning them to the brothel, should be brought to book and inquiry was prayed to be initiated against the senior police inspector of Nagpada Police Station and his juniors. The article also narrated that these three girls were located and dispatched for medical report, which revealed that they were minors.

Pertinent to note that though the complaint was based on the newspaper reporting and the Petitioner was not named in the article.

12. Upon the complaint being filed, MECR No.05 of 2005 was registered on 26/10/2005 under Section 4, 5 and 6 of the PITA, pursuant to a direction issued under Section 156(3) of the Cr.P.C. and against the two police personnel and the present Petitioner, which alleged that the three minor girls were rescued from the Observation Home and they were permitted to indulge in flesh trade and made their income as source of earning.

MECR No.05 of 2005 was taken for investigation and the statement of the Petitioner was recorded, who categorically stated that the complaint lodged against him was absolutely

false and he was not responsible for the act complained of nor he encouraged the girls to indulge into prostitution, but on the contrary, since the Complainant was forcibly converting Hindu girls/women into Christianity, he made complaint to the Chief Minister and the warning was issued to him under Section 149 and, therefore, he was falsely implicated. During the course of inquiry, several other statements were recorded and at the end of the investigation, a final report was filed, by referring to the inquiry conducted against PI Kalandar Shaikh, who had categorically stated that the girls were released at the instance of the Assistant Police Commissioner of Tardeo Division and who had also stated that since he had registered the complaint against Mr. Anson Thomas, he has mischievously involved him. The statement of Mr. Siraj Shaikh was also recorded, who was the Investigating Officer when a complaint was lodged against one Meera Sayla Tamang.

The report concluded that for the purpose of recording the statement of the three girls/women, the officials were deputed, but the attempt was unsuccessful, as the girls were not found on the address given. Nobody was able to furnish the current address of two of the girls and the third girl, who had her address in Nepal and, therefore, the police team was not sent there.

It was concluded that since the victim girls were not traceable and the accusations levelled against the three accused persons were without any substance, as the complaint was based on a newspaper article and no material was produced to establish their link to the victim girls, the same could not be said to be proved and till the concrete information

was obtained, and, hence, "A" Summary was prayed for, which was accepted by the Magistrate.

13. It is approximately after eight years, an application is filed before the Metropolitan Magistrate, under the caption "Protest Petition u/s 178(3) of Cr.P.C. in reply of documents provided by the Court".

The Application filed by Respondent No.2 stated that he had moved an application to the Court on 29/08/2015 for obtaining certified copies of the report and other documents filed with "A" Summary in MECR No.05 of 2005 and the copies of the MECR alongwith the documents filed in the Court were supplied to him, though they were not certified. When he inquired from the Court, why the certified copies are not furnished, he was told that since the copies given to him are not from the court record, the same could not be certified.

Respondent No.2 raised a strange plea by saying that FIR/MECR05/05 dated 26/10/2005 filed in his name, was not signed by him, but was under the signature of Police Inspector of Nagpada Police Station, Mr.Arvind Sawant. Apart from this, grievance was also raised that "A" Summary order passed by the Magistrate was not signed by him and, therefore, it was evident that Nagpada police had committed a fraud alongwith the court staff.

He also alleged that a notice dated 23/11/2005 was issued to him under the seal and signature of Nagpada Police to appear for examination with all available documents, but the acknowledgment on the said notice is not his signature, as

it was never received by him or his family and even it was forged.

Apart from this, the statement of the police that they had gone to the native of the victim girls and inquiry was made in the neighbourhood, was also alleged to be manipulated.

The Application made reference to some order dated 08/03/2004 in Sessions Case No.1513 of 1999, where the cognizance was taken of trafficking of women, being as a serious offence and some vague allegations are made in the Application.

A particular statement against the Petitioner is made to the following effect :-

“17. That the 3 victim girls in their statement to Child Welfare committee had clearly stated that they were trafficked and sold into the brothel and then forced into prostitution. They had clearly stated in their statement that they were forced and not willingly doing this and also mentioned that action should be taken against all those who were responsible for pushing them into prostitution despite they being rescued.

18. That the statement of the staff from Rescue Foundation to the Police had clearly stated that the police from Naagpada were responsible for pushing the rescued victim back into prostitution and that the help of Ravindra Pandey @ Dabba was taken by the Nagpada Police to take them from one place to another i.e. for the Age Verification and also the day when they were brought back from the protective Home and sent back to the brothel handing them over back to the brothel keeper.

...

21. That the victims were minors and the age verification was done and they were reported as minors despite that the victims were transported by people other than the police in collusion and nexus with the police to get another age verification done so that they would be shown as major and that they would continue living in the brothel.

22. That the victims has stated in the statement before Child Welfare Committee that the accused Meera had got food for the victims at the Police station and assured that she would release them from the Police custody. That at mid night 11.30-12 i.e. 13th march two lady Police from Nagpada went to the Home at Chembur

and got them to the police station by taxi. They were made to sit and latter a man i.e. Ravindra Pandey @ Dabba put them in a taxi and handed over the minor victim girls to the brothel keeper Meera and manager Annu.”

14. The Application had the following prayers :-

“1. This Hon’ble Court direct the CB CID or any proper authority for an enquiry against the fraud committed in MECR 05/05, court documents by PI Arvind Sawant from Nagpada Police Station and also other Police men involved and also ht court staff for their connivance in forgery and also the court documents missing from the court.

2. This court direct the arrest of Senior Inspector Kalander Sheikh, PI Siraj Sheikh, API Milind Bajirao Sonawane, two lady constables and Ravindra Pandey @ Dabba u/s of PITA and IPC.”

It is on this Application, the Magistrate passed an order on 02/01/2016, with reference to the “A” Summary report submitted earlier and the order reads thus :-

“ORDER BELOW EXH. 1

Perused application and the protest petition. Perused the 'A' summary filed by police. The police statements of police staff and the statement of the victim girls before Child Welfare Committee shows that the rescued girls were of minor age. The Station Diary entries produced also show the same. They show that the girls were rescued and after their medical examinations the girls were not produced before Child Welfare Committee.

It appears as per the 'A' summary the only ground for not filing the final report is stated that the victim girls of minor age are from Nepal and they are not found to record their police statements again and no sufficient evidence to show that the person taking back to the brothel is social worker Ravindra Pandey and the girls are not available to identify his photo.

It appears that there are police statements of superintendent of Rescue Foundation and there are statements of victim girls given before CWC and there are statements of police staff clearly stating that the three minor girls were taken from Navjeevan Mahila Vasatigruha and brought back to Nagpada Police Station and the directions were given by P.I. Shaikh to release the girls and the alleged person Ravindra @ Dabba Pandey has allegedly taken the girls from police station back to the brothel. Therefore there

appears no reasonable ground showing that the investigation against all alleged accused is required to be kept pending. It appears that 'A' summary is filed in the year 2007 and yet police machinery has failed to file the final report. The two alleged accused are the Police Officers therefore it is not probable that they will not be found.

As per section 370 of IPC whoever for the purpose of exploitation, transport, transfer any person by abuse of power then he is said to have committed offence of trafficking and trafficking of more than one person is punishable under section 370(3) and trafficking of minor is punishable U/s 370(5) of IPC. As per all allegation in this matter the three final girls were brought from Nepal or West Bengal by deceiving them by some persons and sold to brothel and such girls were rescued by police and it is further alleged that PI Shaikh again ordered release of such girls in the hand of person from that brothel. Hence it appears that alleged offence is very serious. It appears the alleged accused are police officer of PI rank and name of ACP Chougale also taken by alleged accused as alleged offender. Hence proper that further investigation to be done by higher authority of police. Hence following order:

ORDER

- i] A summary report is rejected.*
- ii] DCP zone (iii) Mumbai is directed to do further investigation in MECR 5/05 of Nagpada Police Station and filed final report immediately without delay.*
- iii] Application stands disposed-of.*
- iv] Inform CP Mumbai."*

15. The question that arise for consideration is, whether the Application could have been entertained at the instance of the Complainant, as what is contemplated under sub-section (8) of Section 173 is further investigation, but the accepted position is that it is only upon the application made by the Investigating Officer, the power under sub-section (8) of Section 173 can be exercised.

In ***Reeta Nag*** (supra), it is categorically held that filing of charge-sheet does not preclude an Investigating Officer from carrying out further investigation in terms of Section 173(8)

of the Code and merely because the charge-sheet has been filed, the prayer for conduct of further investigation is not taken away and further investigation is permissible even if cognizance has been taken by the Magistrate. The relevant observation from the authoritative pronouncement is of significance and, hence, deserves a reproduction :-

“19. What emerges from the above-mentioned decisions of this Court is that once a charge-sheet is filed under Section 173(2), Cr.P.C. and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173(8). The Magistrate cannot suo moto direct a further investigation under Section 173(8) Cr.P.C. or direct a re-investigation into a case on account of the bar of Section 167(2) of the Code.

20. In the instant case, the investigating authorities did not apply for further investigation and it was only upon the application filed by the *de facto* complainant under Section 173(8), was a direction given by the learned Magistrate to re-investigate the matter. As we have already indicated above, such a course of action was beyond the jurisdictional competence of the Magistrate. Not only was the Magistrate wrong in directing a re-investigation on the application made by the *de facto* complainant, but he also exceeded his jurisdiction in entertaining the said application filed by the *de facto* complainant.

21. Since no application had been made by the investigating authorities for conducting further investigation as permitted under Section 173(8) Cr.P.C., the other course of action open to the Magistrate as indicated by the High Court was to take recourse to the provisions of Section 319 of the Code at the stage of trial.”

16. Sub-Section (8) of Section 173 clearly evinces further investigation by the concerned officer in-charge of the police station in respect of an offence after a report under sub-section (2) had been forwarded to the Magistrate and also to lay before the Magistrate a further report, in the form prescribed, whereafter such investigation, he obtains further evidence,

oral or documentary. It is further ordained that on submission of such further report, the essentialities engrafted in sub-sections (2) to (6) of Section 173 would apply also in relation to all such report or reports.

The aforesaid provision assumes significance, when despite submitting a report, a competent police officer, in the event of availability of evidence bearing on the guilt or innocence of the accused ought to be permitted to examine the same and submit a further report to the Magistrate concerned. Noticeably, though the officer in-charge of a police station has been empowered to conduct further investigation and to lay a supplementary report assimilating the evidence, oral or documentary, obtained in course of the said pursuit, no such authorization has been extended to the Magistrate as the Court is seisin of the proceedings.

17. The issue whether such a power is available suo motu or on the prayer made by the informant, in absence of request by the investigating agency after the cognizance has been taken and the trial is in progress after the accused has appeared in response to the process issued, was considered extensively by the Apex Court in the case of *Amrutbhai Patel* (supra) and the conclusion reached, on referring to the cleavage of opinion, is to the following effect :-

“47. 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 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 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.

48. The un-amended 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 authorized 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 manifesting heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.”

It is categorically held that though the Magistrate has 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 Cr.P.C., while dealing with a complaint, is held to be at a post-cognizance stage, in the nature of an inquiry to derive satisfaction as to whether proceedings initiated ought to be furthered or not, but it is categorically held that, such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the code.

Pertinent observations in the said decision is crystal clear that it is only the Investigating Officer, who can seek further investigation and he cannot suo motu embark upon such a journey, on a request made by the complainant/informant and the relevant observation deserves a reproduction :-

“Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) of the Cr.P.C 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*** (supra), 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 Cr.P.C., 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.

18. It is thus clear from the above exposition of law by the Apex Court that the Magistrate is not empowered to suo motu pass an order for further investigation and direct the investigating officer to further investigate and submit the report and such an exercise is held to be beyond the jurisdictional competence of the Magistrate. It is only on the application made by the Investigating Officer before the Magistrate, further investigation can be conducted and a further report be placed before the Court under sub-section (8) of Section 173.

19. The scope of sub-section (8) of Section 173 is further pronounced upon by the Apex Court in the case of ***Hemendhra Reddy*** (supra), when principal question fell for consideration was whether the High Court was justified in quashing the entire prosecution instituted by the CBI against the accused persons for the alleged offences on the ground that the CBI could not have undertaken further investigation under sub-section (8) of Section 173 of the Cr.P.C. and filed a charge-sheet having once already submitted final report under sub-section (2) of Section 173. In other words, whether the High Court was right in taking the view that the Special Court could not have taken cognizance upon the charge-sheet filed by the CBI based on further investigation having once already filed a closure report in the past and the same having been accepted by the concerned Court.

By specifically recording the facts where CBI/ACB has filed an application before the Principal Special Judge, with a prayer to close the proceedings and return the documents for the purpose of regular departmental action against the accused, it was noted that the application clearly stated that the accused cannot be prosecuted, on completion of investigation. Hence, final report under Section 173 of Cr.P.C. is being filed, which may be accepted. Pursuant to the same, the final report was accepted and it was directed that the FIR is closed.

At a subsequent point of time, the CBI filed the application under sub-section (8) of Section 173, seeking to reopen and undertake further investigation on the ground that now new evidence has emerged to prove the allegations

against the accused and to substantiate the charge of possession of disproportionate assets and, therefore, it was necessary to reopen and further investigate the case under Section 173(8) of the Cr.P.C. in the interest of justice.

In the background of the aforesaid fact, the High Court recorded as under :-

“(i) That on receipt of a final report under Section 173 of the CrPC, the Magistrate has three options- either to accept the report and close the case, to disagree with the report and proceed with the case or to order further investigation under Section 156(3) of the CrPC.

“(ii) That the Magistrate is only empowered to direct “further investigation” and not to direct a “re-investigation/ de-novo investigation”.

*“(iii) In terms of the judgment in **Vinay Tyagi** (supra) no investigation agency is empowered to conduct a fresh, de-novo or reinvestigation once a report under Section 173(2) of the CrPC is filed.*

“(iv) The petition seeking “re-opening”/ “further investigation” was filed after a lapse of 4 years.

“(v) In order to empower the Magistrate to permit further investigation, something should have been pending before the Magistrate, but no matter was pending as the investigation had already been closed.

“(vi) The Special Court thus had no power to grant permission to conduct a further investigation.

*“(vii) The judgment of **Vinay Tyagi** (supra) had not been brought to the attention of the High Court at the time of deciding Crl.O.P.No.6371 of 2014.”*

As a result, the High Court quashed the entire prosecution essentially on the ground that the Special Court (CBI) has no jurisdiction/power to grant permission to the CBI to conduct further investigation.

The above order being assailed, the CBI advanced the submission that by seeking permission from the Court, the further investigation is always permissible, since further evidence is now made available to book the accused.

Referring to the position of law on the subject “further investigation”, the earlier decision in the case of **Vinay Tyagi**

Vs. Irshad Ali alias Deepak & Ors.¹ was specifically reproduced, apart from it's decision in the case of ***Vinubhai Haribhai Malaviya Vs. State of Gujarat***² and the question was determined, whether on acceptance of a closure report, the proceedings stand terminated finally, so as to bar the investigating agency from carrying out further investigation in connection with the offence and the specific reference to the precedents, which have the conspectus of the final reports(closure reports), having already been submitted and accepted, it was clarified that even after the final report is allowed and accepted by the Magistrate, it is permissible for the investigating agency to carry out further investigation and there is no bar in conducting such investigation and it is not necessary for the Magistrate to review or recall the order accepting the final report.

The conclusions were summarized by the Apex Court in the following words :-

“(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.

(ii) Prior to carrying out further investigation under Section 173(8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.

(iii) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.

1 (2013) 5 SCC 762

2 (2019) 17 SCC 1

(v) There is nothing in the CrPC to suggest that the Court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the CrPC.”

20. The question that still remains for consideration and which has been put to rest by the decision in the case of the ***Athul Rao*** (supra) was, whether it is open to the Magistrate to direct further investigation either suo motu or on an application filed by the complainant/informant and the same was answered as under :-

“8. The question as to whether, after framing of charges and taking cognizance, it is open to the Magistrate to direct further investigation either suo motu or on an application filed by the complainant/informant is no more *res integra*. In a recent decision of this Court (to which one us, Justice Dipak Misra was party) in the case of ***Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel & Ors.***, after analysing earlier decisions on the point, it has been held that neither the Magistrate *suo motu* nor on an application filed by the complainant/informant can direct further investigation. Further investigation in a given case may be ordered only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only secure fair investigation and trial, the life purpose of the adjudication in hand.

The observations of the Apex Court in the case of ***Amrutbhai Patel*** (supra) and in particular paragraphs 48 to 51 were reproduced and the following conclusion was drawn.

“9. The respondent No.2 is not the complainant. The complaint in question was instituted by the mother of respondent no.2. She was not the applicant. In any case, at the instance of respondent no.2, it was not open to the Court to direct further investigation as the Trial Court had already framed charges and taken cognizance of the case against the appellant who had appeared before it in the said proceedings. The prayer for further investigation was not at the instance of the investigating agency nor on the ground of detection of material evidence.”

21. Further, another decision in the case of ***Bikash Ranjan Rout*** (supra), has once again reiterated the position of law as

regards the exercise of power by the Magistrate under Section 173(8) in the following words :-

“7.1 In the instant case, the investigating authority did not apply for further investigation and that the learned Magistrate suo motu passed an order for further investigation and directed the investigating officer to further investigate and submit the report, which is impermissible under the law. Such a course of action is beyond the jurisdictional competence of the Magistrate. Therefore, that part of the order passed by the learned Magistrate ordering further investigation after he discharges the accused, cannot be sustained and the same deserves to be quashed and set aside. Consequently, the impugned judgment and order passed by the High Court confirming such an order passed by the learned Magistrate also deserves to be quashed and set aside. At the same time, it will always be open for the investigating officer to file an appropriate application for further investigation and undertake further investigation and submit a further report in exercise of powers under Section 173(8) of the CrPC.”

From the aforesaid facts, it is evident that the Magistrate can direct further investigation only upon the say of the Investigating Officer and he is debarred from exercising the power either suo motu or on an application filed by the complainant.

22. Once the final report is accepted, the option left open to the complainant is to file a protest petition.

In the present case, the final report is accepted by the Magistrate and almost eight years thereafter, the Complainant filed a protest petition-cum-an application under Section 173(8), seeking further investigation and this application is allowed by the impugned order. It is a settled position of law that when the complaint is filed and sent to the police under Section 156(3) for investigation and subsequently a protest petition is filed, the Magistrate after accepting the final report

of police under Section 173 and despite discharge of the accused, has power to deal with the protest petition. However, the protest petition must necessarily satisfy ingredients of complaint before Magistrate takes cognizance under Section 190(1)(a) of the Cr.P.C. The Magistrate is not debarred from taking cognizance of the complaint merely on the ground that earlier he has declined to take cognizance of the police report. Mr.Bhuta has rightly relied upon the decision of the Apex Court in the case of ***B.Chandrika*** (supra), where the observations of the Apex Court are to the above effect. The Magistrate is, therefore, competent to take cognizance upon a protest petition being filed, under Section 191(1)(b) of the Cr.P.C. and necessarily must follow the procedure prescribed thereunder, but for the said purpose, he must take into account the statements of witnesses by police during examination and take cognizance of the offence complained of and issue process to the accused. It is open to the Magistrate to ignore the conclusion of the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise his powers under Section 190(1)(b) and direct issuance of process to the accused though the Magistrate may not be bound to follow the procedure laid down in Sections 200 and 202 for taking cognizance, but it is open for him to act under Section 200 or Section 202 also. When the facts of the present case are perused, it is evident that the Metropolitan Magistrate had passed an order recording that it is a fit case where “A” Summary is to be granted and this transpired in the year 2004. It is only on 15/10/2015, the Complainant/ Respondent

No.2 filed an application by way of protest petition under Section 173(8) of the Cr.P.C. and the Magistrate directed further investigation in MECR No.05 of 2005 by order dated 02/01/2016 with a direction to file final report. The Petitioner was released on bail, on being arrested and on 05/09/2019 and 03/10/2019, the charge-sheet and the supplementary charge-sheet is filed, which are also assailed in the present Petition, as the first exercise of directing the further investigation was found to be erroneous and faulty and even on the ground that the material in the charge-sheets is not sufficient to indict the Petitioner.

23. I have perused the charge-sheet and the supplementary charge-sheet filed, pursuant to the impugned order, being issued to carry out further investigation. The material which is collected at a subsequent stage are some statements, which are recorded in the year 2019, but none of the statement indict the present Petitioner for the offences punishable under the PITA.

In the statement recorded on 10/05/2019, API Milind Sonawane stated while he was discharging his duty as Police Sub-Inspector in Nagpada Police Station, he was summoned in the chamber by Sr.P.I.Kalandar Shaikh, where P.I. Patil and Mr.Balkrishna Acharya from Rescue Foundation were present. He informed that minor girls are confined in Kamathipura, 13th Lane and they are forced into prostitution. But, when he reached the spot and gathered information alongwith Mr.Acharya, three women aged 25 years were found and they disclosed that they were into the flesh trade on their own

volition and, therefore, they were not taken into custody. While returning back, the girls were noticed at Behran Naka, Mumbai and, since, they were wandering, inquiries were made with them and for the purpose of avoiding any unforeseen situation, they were taken into custody. The girls disclosed that two of them were from Bengal and one of them was from Nepal. They were produced before P.I. Shaikh for ensuring their security and after conducting their medical examination, they were forwarded to Navjeevan Mahila Sudhargruha, Chembur. An entry to that effect was taken in the police diary. The girls were directed to be produced before Child Welfare Committee and for further orders, the appropriate application were moved through Police Ammaldar Karkoon Mr.Sakharam Jadhav. However, he gathered knowledge that the girls were not produced before the Child Welfare Committee. On 13/03/2004, he was called by Mr.Shaikh and was directed to release the girls and he gained knowledge that these instructions were received from the superior officer of Tardeo Division. When he expressed his hesitancy in releasing the girls, without being produced before the Child Welfare Committee, he was directed to act as per orders. Accordingly, the girls were produced before P.I. Shaikh and necessary entries were taken.

He has stated that he did not seen any relatives of girls nor did he verify their medical papers.

Mr.Milind Sonawane, however, does not even make reference to the present petitioner.

24. Another statement of one Roopchand Chajlani, Addl. Police Superintendent is also recorded as Mr.Milind Sonawane has stated that it was at his instructions, the girls were released, but Mr.Chajlani also denied of giving any such directions.

25. Statement of one Smt.Arati Dhatrak, who was working as Police Constable, is also recorded during the further investigation, as she was present when the girls were produced in the cabin of P.I. Kalandar Shaikh. When specifically asked, she stated that she is acquainted with Ravindra Panday (Petitioner), who used to visit the police station, whenever there used to be raids on the brothel and he was in contact with Senior Inspector Mr.Kalander Shaikh. However, his involvement in the present case, in particular has not surfaced through her statement, except to the effect that she has seen him in the police station.

One more statement of Sou.Haseena Rai is also recorded, but it has no bearing upon the involvement of the present Petitioner.

26. The charge-sheet has compiled some old statements recorded in the year 2004 and this include the statements of the three girls, who are alleged to be minor, as per their medical verification report, but since these girls were not traceable for the purpose of further investigation, on an earlier occasion, "A" Summary was filed.

When the statements of these girls were recorded, they had referred to some huge person, who came to brothel and

took them to J.J.Hospital and where their medical examination is carried out). However, as these girls are not available to identify the Petitioner, the said statements recorded in the year 2004, are of no consequence.

27. In further investigation, the supplementary statement of one Kavita Sanghavi is recorded, but this statement does not, in any way, indict that the Petitioner was the part of sex trade.

When the entire charge-sheet is perused minutely, including the statements of various witnesses, the crux and focus is on the statements of the victim girls, but the involvement of the Petitioner is not clearly surfacing. The three girls/women, who were alleged to be involved in flesh trade, have stated in their statements that they would be able to identify the person, who have taken them for medical examination, but since they are not traceable, "C" Summary Report was filed.

The charge-sheet is filed under Sections 370, 366, 366-A, 372, 373, 34 of the Indian Penal Code alongwith Sections 4, 5 and 6 of the PITA. The material in the charge-sheet falls short of the accusations levelled against the present Petitioner, and since I am of the view that the exercise undertaken by the Magistrate by the impugned order is itself unsustainable, rendering further proceedings illegal, which include the collection of evidence and it's compilation into the charge-sheet and the supplementary charge-sheet. Apart from this, the charge-sheet also fail to collate any material sufficient enough to try the Petitioner for the offences under the Immoral Traffic (Prevention) Act and continuation of the

proceedings would be nothing but an abuse of process of law and, therefore, I do not think that the proceedings should continue against the Petitioner.

For the reasons recorded above, the impugned order dated 02/01/2016 passed by the Metropolitan Magistrate and also Criminal Complaint No.1501303/PW/2019 alongwith the charge-sheet and supplementary charge-sheet, filed by Respondent No.1 against the Petitioner, pending before the Metropolitan Magistrate, 15th Court, Sewree, Mazgaon, Mumbai are set aside.

The Writ Petition is allowed in the aforesaid terms.

No order as to costs.

(SMT. BHARATI DANGRE, J.)