



Crl. O.P. (MD) No.14252/2022

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BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 28.03.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. (MD) NO.14252 OF 2022

AND

CRL. M.P. (MD) NO.11173 OF 2022

P.Ravi

.. Petitioner

- Vs -

1.The Addl. Director General of Police (CB-CID)  
Crime Branch CID No.3  
SIDCO Electronic Complex  
I Floor, Guindy, Chennai 600 032.

2.The Dy. Inspector of Police (CB-CID)  
SIDCO Electronics Complex  
Block No.3, 1<sup>st</sup>& 3<sup>rd</sup> Floors  
Guindy Industrial Estate, Chennai – 32.

3.The Dy. Superintendent of Police-II (CB-CID)  
No.83, III Cross Street  
Visalakshipuram, Madurai 625 014.

4.The Inspector of Police  
CB-CID – South  
Madurai Rural.

.. Respondents



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**WEB COPY** Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying this Court to call for the records in PRC No.149 of 2009 on the file of the learned Judicial Magistrate No.IV, Madurai, which is renumbered as S.C. No.223 of 2022 on the file of the learned Sessions Judge, Mahila Court, Madurai.

For Petitioner : Mr. T.Lajapathi Roy, SC, for  
M/s. S.Rajasekar

For Respondents : Mr. B.Nambiselvan, APP

Amicus Curiae : Mr. Palanivel Rajan, SC  
Mr. R.Anand

### **ORDER**

The whole matrix of the case, as could be ascertained from the facts, which have been placed before this Court by the respective parties, articulate a question of seminal importance with regard to the power of the court of original jurisdiction to take cognizance of an offence and issue process for committal of the case and, therefore, this Court, in the interest of justice was inclined to list the matter for further hearing, though an order was initially dictated but when the matter was typed and placed for signature, the



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intricacies of the issue involved in the present case having come to the attention of this Court, which were not properly addressed when the Court initially dictated the order, this Court had listed the matter and appointed Mr. Palanivel Rajan, Sr. Counsel and Mr. R.Anand, learned counsel as Amicus to assist this Court with regard to the issue involved and also requested all the other members of the Bar to extend their expertise on the issue so as to render complete justice.

2. Before embarking upon detailing the questions, which had cropped up for consideration of this Court in the present case, the sequence of events leading to the filing of the present petition requires to be set forth.

3. The present petition is filed seeking quashment of the order of the learned Judicial Magistrate No.IV, Madurai, in PRC No.149 of 2009, in and by which the learned Judicial Magistrate, upon taking cognizance of the final report, had altered the offence from one u/s 304 (2) IPC to an offence u/s 302 IPC, and upon committal, the same has been taken on board in S.C. No.223 of 2022 by the learned Sessions Judge, Mahila Court, Madurai.



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4. The facts in the present case are that the petitioner herein is the defacto complainant in Crime No.3 of 2017 on the file of the 4<sup>th</sup> respondent. The genesis of the said complaint was the missing of his daughter, a 3 ½ year old child, who was found missing when playing in front of his house.

5. It is the further case of the petitioner that after frantic search throughout the night of 8.7.2008, the body of the girl child was found by the brother of the defacto complainant and one Malaichamy in the Vannarmadaicanal with injuries on her head and neck and that her ear rings, anklets were missing. Therefore, a complaint was lodged by the complainant with Othakadai Police Station, which was registered in Crime No.266 of 2008 u/s 174 Cr.P.C.

6. It is the further case of the petitioner that after two months, on the basis of the statement of one Alagammal to the effect that the neighbour of the petitioner, also named Ravi, had kidnapped the child and murdered her by hitting her head on the rocks for the purpose of giving human sacrifice and had thrown the ear rings and anklets in the nearby canal, the said Ravi was arrested. The petitioner, not being satisfied with the said investigation, on the



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ground that the statement of Alagammal was given two months later, though she is stated to have noticed the kidnapping of the girl by the said Ravi, inspite of the fact that she had interacted with the defacto complainant, but had not whispered anything about the same, entertaining suspicion in the investigation, the petitioner filed W.P. (MD) No.10976/2013 seeking transfer of investigation to CB-CID.

7. Pending the said petition before this Court, the police officials laid charge sheet against the said Ravi u/s 364, 302 and 201 IPC before the Judicial Magistrate, Melur and the same was taken on file in PRC No.43/2016. However, on 14.3.2017, this Court, in W.P. (MD) No.10976/2013, passed an order of "*further investigation*" by transferring the investigation to the file of CB-CID, not being satisfied with the investigation conducted by the investigating authorities.

8. It is the further averment of the petitioner that on transfer of investigation to CB-CID, investigation was taken up, during which time witnesses were examined, who have spoken different versions about seeing the child prior to its disappearance and subsequent finding as a corpse. The



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contradictions in the statements of the witnesses, though was privy to the investigating agency, viz., the 4<sup>th</sup> respondent, however, no pertinent steps were taken to conduct the investigation in a proper manner and ultimately concluding the investigation, by holding that the child had died in the accident at the hands of one Ravi, which had been suppressed for his benefit and charge sheet was laid in PRC No.43 of 2016 against the accused Ravi u/s 304 (2), 379 and 201 IPC, thereby enabling the real accused to go scot-free.

9. It is the averment of the petitioner that initially the said Ravi was implicated by Alagammal and against the said implication, the petitioner had filed W.P. (MD) No.10976/2013 seeking transfer of investigation to CB-CID and this Court had passed orders transferring the investigation vide its order on 14.3.2017. However, without conducting any proper investigation, relying upon the deposition of a single witness, though the other witnesses contradicted each other, the 4<sup>th</sup> respondent had laid the charge sheet against the very same person, against whom initial charge sheet was laid, which clearly shows that no proper investigation had been taken up leading.



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10. Pending the present petition seeking reinvestigation into the matter in view of the aforesaid lapses in the investigation, the learned Judicial Magistrate No.IV, Madurai, accepted the final report filed by the 4<sup>th</sup> respondent and committed the case to the Court of Sessions, however, curiously, by altering the section of offence from one u/s 304 (2) IPC to one u/s 302 IPC.

11. Since the investigation had not been properly conducted inspite of the transfer of investigation to CB-CID by the orders of this Court and the initial report filed by the law enforcing agency has been bundled in a fresh package by the CB-CID and filed before the Magistrate under the guise of a final report, which has been taken cognizance of by the Magistrate, the present petition has been filed seeking reinvestigation of the case by quashing the committal proceedings, which has led to the numbering of the case in S.C. No.223/2022.

12. Learned senior counsel appearing for the petitioner submits that the package presented by the 4<sup>th</sup> respondent in the form of final report by filing charge sheet in PRC No.43 of 2016 is nothing but old wine in a new



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bottle, as nothing worthwhile had been investigated, but the very same accused, who was initially alleged to have committed the offence by the law enforcing agency is shown as accused in the present charge sheet as well. It is the further submission of the learned senior counsel that the first round of litigation in W.P. (MD) No.10976/2013, which led to the transfer of investigation to the file of CB-CID on the orders passed by this Court was on the basis of defective investigation, which pointed finger on the very same alleged accused Ravi on the basis of the statement of one Alagammal, which statement was not believed by this Court, prompting the transfer of investigation. That being the case, it is the submission of the learned senior counsel that though the 4<sup>th</sup> respondent claims to have taken up investigation and examined witnesses, however, the very same accused has once again been shown as the accused, inspite of the fact that the statements of the various witnesses, who are alleged to have been examined, bristles with contradictions and their statements in no way expose the real culprit and only for the purpose of closing the case, the very same accused has once been shown to have committed the offence in the charge sheet.



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13. It is the further submission of the learned senior counsel that the the investigation ought to have been conducted on the “Last Seen Theory”, according to which one Nijandhan @ Karthikeyan had given a statement that he had taken the child in his bike and later her dropped her in front of his house. Therefore, the person, who is last seen with the deceased is bound to explain as to what happened to the deceased and merely because statement has been given by a witness implicating a particular individual cannot form the basis to mulct the said individual with responsibility to explain, when the statement of the said witness was not believed by this Court.

14. It is the further submission of the learned senior counsel that the very same person, who had registered the FIR has been examined as a witness and his statement recorded, which statement implicates the accused Ravi, who was earlier implicated as the person who committed the offence. When this Court has disbelieved the said evidence prompting reinvestigation, the fastening of liability on the very same individual for the cause of death of deceased in the reinvestigation, without any new material being unearthed, clearly shows that no reinvestigation worth the piece of paper on which the charges have been written has been done by the 4<sup>th</sup> respondent.



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15. Further, it is the submission of the learned counsel that the length of time between the death of the deceased and the laying of the charge sheet would have no impact on the conduct of reinvestigation, as the conduct of reinvestigation is only for the purpose of unearthing the truth behind the death of the deceased. When even the second investigation conducted by the 4<sup>th</sup> respondent is merely a farce, to find out the truth, necessarily, this Court has to order reinvestigation.

16. It is the further submission of the learned senior counsel that the 4<sup>th</sup> respondent had laid the final report against one Ravi for the alleged offence u/s 304 (2), 379 and 201 IPC, however, while taking cognizance, the Magistrate, curiously, had taken cognizance against the said Ravi for the aforesaid offences, but had gone on to take cognizance against LW17, viz., Nijandhan @ Karthikeyan for the very same offence u/s 302 IPC. However, no connecting link has been established between the said Ravi and Nijandhan @ Karthikeyan for taking cognizance against two individuals for the very same offence. The above appreciation of the materials by the Magistrate clearly shows that there are more questions than answers in the evidence placed



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before the Court in the form of statement of witnesses, which had prevailed upon the Magistrate to take cognizance, which, while within the jurisdiction of the Magistrate to take cognizance, yet is flawed, as the said cognizance against two individuals is in the absence of any conspiracy between the two. However, the appreciation of the materials by the Magistrate clearly shows that all is not well with the investigation conducted by the respondents and, therefore, necessarily, reinvestigation requires to be ordered in the interest of justice.

17. It is the further submission of the learned senior counsel that this Court, inspite of the fact that there is enormous delay between the actual offence and an order for reinvestigation now, could very well order reinvestigation as apprehending the offender for the offence committed for a criminal offence is a wrong against the State and society and the delay in launching the prosecution or delay in investigation cannot be a ground to throw out the prosecution.

18. Learned Addl. Public Prosecutor appearing for the respondent submits that pursuant to the order of further investigation granted by this



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Court, on the petition in W.P. (MD) No.10976/2013, filed by the defacto complainant, this Court, vide its order dated 14.3.2017, notwithstanding the fact that a charge sheet has been filed against one Ravi, S/o Sreenivasan, for the offence u/s 364, 302 and 201 IPC and the same was taken on file in PRC No.43/2016 on 5.12.2016 and was committed to the Court of Principal District Judge, Madurai on 27.01.2017 and assigned S.C. No.140/2015, directing further investigation by the respondent, the respondent took up investigation by registering a case in Crime No.3/2017 on the file of the CB-CID South, Madurai Rural PS.

19. It is the further submission of the learned Addl. Public Prosecutor that inspite of the fact that many witnesses were examined and inspite of the order of further investigation, to render a complete investigation, the respondent had examined the witnesses afresh and not taken the earlier statements recorded by the Othakadai Police in Crime No.266/2008. In this regard, learned Addl. Public Prosecutor pointed out that 85 witnesses were examined afresh and their statements recorded u/s 161 (3) Cr.P.C. were filed before the court below. Further, the statements of certain witnesses were recorded u/s 164 Cr.P.C. In fact, the genuineness of the investigation,



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according to the learned Addl. Public Prosecutor, would be evident from the various tests, including the dummy test and lie detector tests performed to find out the real culprit in the incident.

20. It is the further submission of the learned Addl. Public Prosecutor that the evidence of the witnesses having pointed to the finger on the said Ravi, S/o Sreenivasan coupled with the fact that the cause of death as revealed through the post-mortem certificate and the opinion of the doctor relating to the injuries found on the body of the child, which, according to the doctor, could have been caused in the manner as alleged by the prosecution, the 4<sup>th</sup> respondent had filed the charge sheet before the court below.

21. It is the further submission of the learned Addl. Public Prosecutor that pending taking of cognizance by the court below, the defacto complainant filed Crl. M.P. No.1816/2019 seeking further investigation in the crime, on the basis of the final report in FR 2/2018 in FIR No.3/2017 filed by the 4<sup>th</sup> respondent against the said Ravi, S/o Sreenivasan for the offence u/s 304 (2), 379 and 201 IPC in which the learned Magistrate had taken



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cognizance as against Ravi for the aforesaid offences but had also against one Nijandhan @ Karthikeyan u/s 302 IPC on the ground of 'last seen theory'.

22. It is the further submission of the learned Addl. Public Prosecutor that the averment that trial has commenced with the examination of witnesses is wholly imaginary and even if so, the power of this Court to direct further investigation would not stand curtailed u/s 482 Cr.P.C. However, it is submitted by the learned Addl. Public Prosecutor that trial has not commenced and no witnesses were examined yet. Further, it is submitted that the plea of the petitioner for further investigation/reinvestigation/fresh investigation has not been made out as no infirmity in the investigation of the 4<sup>th</sup> respondent has been pointed out by the petitioner. Merely because the very same person, who was initially charged with the offence, is alleged to have committed the offence by the 4<sup>th</sup> respondent as well, would not render the investigation a farce.

23. It is the further submission of the learned Addl. Public Prosecutor that the claim of the petitioner for further investigation stems from the cognizance taken by the Court below against Nijandhan @ Karthikeyan, who is



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shown as LW.17 in the charge sheet. The court below has taken cognizance on the last seen theory, but it cannot be applied selectively to implicate anyone and the claim of the petitioner that further investigation has to be ordered so that the said LW 17, who has been implicated by the court would not escape from the clutches of law is an imaginary plea and cannot form the basis for ordering further investigation. Rightly appreciating the same, the court below had negatived the plea for further investigation as the plea for further investigation by the petitioner is only a cloak to delay the legal proceedings wantonly. Therefore, it is prayed that no interference is warranted with the order passed by the court below and accordingly, the petition may be dismissed.

24. A quirk and piquant situation has arisen in the present case, wherein, while a charge sheet was laid by the 4<sup>th</sup> respondent before the Magistrate Court for the purpose of taking cognizance u/s 167 (2) Cr.P.C., against one Ravi, S/o Sreenivasan, the Magistrate, while took cognizance against the said individual for the offence u/s 304 (2), 379 and 201 IPC, in addition thereto, based on the materials placed by the 4<sup>th</sup> respondent, had



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also taken cognizance against LW 17, viz., Nijandhan @ Karthikeyan, S/o Senthilmurugan, u/s 302 IPC by applying the last seen theory.

25. In effect, there are two persons, against whom cognizance had been taken by the Magistrate, viz., against one person for the offence u/s 304 (2), 379 and 201 IPC and against the other for the offence u/s 302 IPC, without there being any connecting link between the two accused. What transpires therefrom is that, for a single murder, two persons have been charged separately, there being no conspiracy involved and one is for culpable homicide not amounting to murder, while the other is for murder.

26. Further, it is to be pointed out that both of the persons, against whom cognizance has been taken and against whom committal proceedings have culminated in S.C. No.223/2022 have not come before this Court, but in respect of the dismissal of the protest petition filed by the defacto complainant u/s 173 (8) Cr.P.C. seeking further investigation, which has ended in dismissal, the present petition is filed by the defacto complainant, once over, alleging that the investigation and subsequent filing of the final report by the 4<sup>th</sup> respondent has not been properly done and it has been mechanically



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copied from the earlier report and, therefore, the rejection of the prayer for further investigation u/s 173 (8) Cr.P.C., by the Magistrate, requires interference and further investigation has to be ordered.

27. In view of the nature of issue involved in the present petition in which cognizance has been taken against two persons, but without any connecting link between the two, thereby, a murder is alleged to have been committed by two individuals without any meeting of minds and any conspiracy or common intention, this Court put the issue across to the members of the Bar to give their valuable inputs so that an order could be passed, which would be within the four corners of law. To this end, this Court appointed Mr.Palanivel Rajan, Sr. Counsel and Mr.R.Anand, learned counsel, as Amicus Curiae to assist this Court.

28. Learned Amicus, furtherance to their appointment, took this Court through the various provisions of law, more particularly, Section 167 (2), 190, 193, 204, 209 and 223 of the Code, which are the provisions of law, through which the case traverses, thereby landing finally with the Court of Session. Learned Amicus also relying upon various decisions, which have been brought



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to the notice of this Court, submitted that though this Court's power u/s 482 of the Code are vast, however, it should be used sparingly, but equally, the hands of this Court are not tied, when it comes to rendering substantial justice. However, the Amicus pointed out that the mistake committed by the Magistrate, could be cured by this Court exercising its inherent jurisdiction and setting aside the cognizance taken by the Magistrate and remanding the matter to the Magistrate to take cognizance afresh on the basis of the materials and proper application of the provisions of the Code.

29. Learned counsel on either side as also the Amicus placed reliance upon the following decisions to enlighten this Court on the various trajectories in which the relevant provisions have law have been analysed :-

- i)Nupur Talwar – VS – CBI &Anr. (2012 (11) SCC 465);*
- ii)Dr. Mrs. Nupur Talwar – Vs – SBI &Anr. (Crl. A. No.68/2012 – Dated – 06.01.2012);*
- iii)Popular Muthiah – Vs – State. Rep. By Inspector of Police (2006 (7) SCC 296);*
- iv)Dharam Pal &Ors. – Vs – State of Haryana &Ors. (2014 (3) SCC 306);*
- v)Rajinder Prasad – Vs – Bashir &Ors. (2001 (8) SCC 522);*
- vi)Vinay Tyagi – Vs – Irshad Ali (2013 (5) SCC 762);*
- vii)A.K.Roy – Vs – State of WB (1961 SCC OnLine Cal 185);*
- viii)Sivanmoorthy – Vs – State (2010 (12) SCC 29);*



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- ix) Jagannath Verma – Vs – State of UP (2014 (3) MWN (Cr.) 161 (FB – ALL.);  
x) Vinubhai Haribhai Malaviya \_ Vs – State of Gujarat (2019 (17) SCC 1);  
xi) State of Gujarat – Vs – Afroz Mohammed Hasanfatta (2019 (20) SCC 539);  
xii) State – Vs – Hemendhra Reddy (2023 SCC OnLine SC 515);  
xiii) Ramakant Singh & Ors. – Vs – State of Jharkhand & Anr. (2023 SCC OnLine SC 1467);  
xiv) Luckose Zachariah @ Zak & Ors. – Vs – Joseph Joseph & Ors. (2022 Live Law (SC) 230);  
xv) Devendra Nath Singh – Vs – State of Bihar & Ors. (2023 (1) SCC 48); and  
xvi) Bandi Kotayya – Vs – The State & Ors. (1965 SCC OnLine AP 101)

30. From the aforesaid facts and circumstances, the questions that fall for consideration in the present case are :-

*i) Whether the Magistrate is empowered to order further investigation of a case in which already an order for further investigation has been passed by this Court.*

*(ii) Whether the Magistrate could take cognizance against a person, who is not shown as an accused in the charge sheet, for another offence, when the said another person is in no way connected with the chargesheeted accused.*

*(iii) Whether the Magistrate could take cognizance against two persons separately for a solitary murder, more so, when the chargesheeted accused is charged for*



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*the offence u/s 304 (2) IPC, while LW 17, against whom cognizance has been taken, has been charged for the offence u/s 302 IPC.*

*(iv) Whether the power of this Court u/s 482 Cr.P.C. could be invoked in the present case and if so, in what manner could the said inherent power be used so that fair and complete justice is meted out to all the parties.*

31. Before proceeding to analyse the various legal questions that have fallen for consideration, it becomes imperative for this Court to refer to the various provisions of the Criminal Procedure Code (for short 'the Code') to ascertain the powers with regard to taking cognizance, issuing process/summons, trial, further investigation/reinvestigation/fresh investigation, etc., which have a direct bearing on the issues under consideration.

32. Section 173 of the Code stipulates the acts, which is to be done on completion of investigation by the investigating officer, and the same is quoted hereunder :-



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***“173. Report of police officer on completion of investigation.***

*(1) Every investigation under this Chapter shall be completed without unnecessary delay.*

*(2)(i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-*

*(a) the names of the parties;*

*(b) the nature of the information;*

*(c) the names of the persons who appear to be acquainted with the circumstances of the case;*

*(d) whether any offence appears to have been committed and, if so, by whom ;*

*(e) whether the accused has been arrested;*

*(f) whether he has been released on his bond and, if so, whether with or without sureties;*

*(g) whether he has been forwarded in custody under section 170.*

*(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.*

*(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the*



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*orders of the Magistrate, direct the officer in charge of the police station to make further investigation.*

*(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.*

*(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report-*

*(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;*

*(b) the statements-recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.*

*(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.*

*(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).*



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*(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under subsection (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed ; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."*

33. From a careful consideration of Section 173, more particularly, sub-section (2), which is material for the present case, it is evident that upon completion of investigation, the investigation officer shall forward to the Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. The further procedures to be performed by the police authority are prescribed under sub-sections (3) to (7). Sub-section (8), which is again material for consideration in the present case, relates to further investigation by the police authority.



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34. Sub-section (8) of Section 173 provides the investigation officer with power to continue further investigation, on receipt of further evidence, notwithstanding the fact that a report under sub-section (2) has been forwarded to the Magistrate, and, thereafter, shall forward to the Magistrate a further report regarding such evidence with compliance of sub-sections (2) to (6).

35. From the above, it is clear that the police authority, irrespective of the fact that a report has been filed before the Magistrate, may take up further investigation, if further evidences surface and such further investigation shall also be filed before the Magistrate in the form of further report/reports. Therefore, the Magistrate taking cognizance of the offence would not be a bar for the police officer to take up further investigation.

36. Taking cognizance of offence by the Magistrate falls u/s 190 of the Code, and the same is quoted hereunder :-

***“190.Cognizance of offences by Magistrates.***

*(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second*



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*class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-*

*(a) upon receiving a complaint of facts which constitute such offence ;*

*(b) upon a police report of such facts;*

*(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*

*(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.”*

37. Cognizance, as provided for u/s 190 of the Code, could be taken by the Magistrate upon receiving a complaint of facts, which constitute such offence or upon a police report of such facts or upon information received from any person other than a police officer or upon his own knowledge that such offence has been committed.

38. Upon taking cognizance by the Magistrate, the next step in the said course is the issue of process, which is provided for u/s 204 of the Code. Upon completion of investigation and filing of final report/charge sheet by the



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investigating agency, the case is committed subject to its triability, either before the Magistrate or Court of Session, which is provided for u/s 209, which reads as under :-

***“209. Commitment of case to Court of Session when offence is triable exclusively by it.***

*When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-*

*(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;]*

*(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial ;*

*(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence ;*

*(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.”*



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39. There could be no quarrel about the fact that the case on hand is exclusively triable by the Session Court and, therefore, the matter has to be committed to the Session Court. Rightly so, the committal is made to the Session Court. But the question relates to the said committal by the Magistrate, as the cognizance and committal by the Magistrate, according to the petitioner, is incorrect, as the offences against the two individuals, who are arrayed as accused, the offences charged against both runs diametrically opposite to each other and one offence is improbable in the presence of the other offence, viz., 304 (2) and 302 IPC.

40. In the aforesaid backdrop of the provisions as is envisioned in the Code, cognizance has been taken by the Magistrate and the case is committed to Session in S.C. No.223/2022.

41. Now this Court would proceed to analyse the various questions framed in the light of the provisions of law, which have been extracted above.

**ISSUE NO.1 :**



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***Whether the Magistrate is empowered to order further investigation of a case in which already an order for further investigation has been passed by this Court.***

42. The defacto complainant, viz., the petitioner herein, had moved the Magistrate by filing a protest petition in Crl. M.P. No.1816/2019, seeking further investigation, alleging that not only the charge sheet is mechanically copied from the previous charge sheet laid by the earlier investigation officer, but the evidence has not been properly appreciated and LW 17, who has given evidence that he took the child in his bike and later dropper her, which has been spoken to by one Sakthivel, has not been properly enquired into on the basis of the last seen theory and, therefore, further investigation is necessary to find out the actual culprit, who committed the offence, including LW-17.

43. The Magistrate, while entertaining the petition, had gone on to hold as under :-

*“4. This Court has to consider the prima facie materials available before the Court in order to decide whether to accept the final report of the investigation officer or to order further investigation. The final report, the documents filed along with it and the statements recorded under 164 Cr.P.C.*



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are all perused. The petitioner and witnesses statements were perused. From the statement of the witnesses it prima facie appears that no one had witnessed the things happened to the petitioner's daughter Gopika directly, which had resulted in the death of her.

5. The witnesses examined before this Court have stated that one Sakthivel had informed the earlier investigation officer that the petitioner's daughter Gopika was seen along with one Nijandhan @ Karthikeyan near SeenikonarThoppu and that the said Nijandhan had taken the petitioner's daughter in his bike at about 6.00 p.m., in the evening. In such case the last seen theory will be applicable to the case on hand. The respondent police have enquired the said Nijandhan @ Karthikeyan as witness and recorded his statement and filed it along with the final report. However in the final report the respondent had mentioned the name of Nijandhan as Karthikeyan alone. The final report does not reveal any reason for the investigation officer to ignore the statement of witnesses stating that the deceased Gopika was lastly seen with the said Nijandhan @ Karthikeyan.

6. The incident is said to have occurred on 08.07.2008, a decade had lapsed. Though the initial final report filed by Othakadai Police had reached the stage of assigning Sessions Case number, the respondent was ordered to investigate afresh. Even then the case had not taken off. The statements of the witnesses raising serious suspicion against Nijandhan @ Karthikeyan cannot be brushed aside at the very initial stage.



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*The same has to be considered only after trial. Further in his statement Nijandhan @ Karthikeyan had himself had stated that he had taken the petitioner's daughter in his bike on the date of occurrence at about 5.30 p.m. though he had claimed that he had took the petitioner's daughter to Balamohan's house and he was talking with him for about 10 minutes and came back and dropped her near his house, the said Nijandhan @ Karthikeyan had not stated as if he had took Gopika with the permission of her parents and as if he had dropped the said Gopika in the presence of her parents or any responsible person, to take care of her.*

*7. As discussed the investigation Officer had not given any reason for accepting the statement of LW 17 Nijandhan @ Karthikeyan as absolute truth. The investigation officer ought to have applied last seen theory and arrayed the said Nijandhan @ Karthikeyan also as an accused in the above crime number.*

*8. In view of the discussion made above this court is of the considered view that prima facie case is made out for offence under Section 302 IPC against LW 17 Nijandhan @ Karthikeyan son of Senthilmurugan residing at 2/32, Vishwanathapuram Colony, PuthuThamaraipatti, Othakadai, Madurai, in addition to the final report filed by the respondent investigation officer. Further this Court is of the opinion that the material records available before this Court would suffice to take cognizance for offence under Section 302 IPC against*



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*LW 17 Nijandhan @ Karthikeyan and no further investigation is required to be ordered.*

*9. Hence it is order that the final report in FR 2 of 2018 in FIR No.3 of 2017 CB-CID South Madurai Rural is taken on file for offences under Sections 304 (2), 379, 201 IPC against the accused Ravi son of Seenivasan and for offence under Section 302 IPC against LW 17 Nijandhan @ Karthikeyan son of Senthilmurugan residing at 2/32, Vishwanathapuram Colony, PuthuThamaraipatti, Othakadai, Madurai."*

44. The power of the investigating agency to take up further investigation notwithstanding filing of final report before the Magistrate, is secured u/s 173 (8) of the Code. The said provision, which has been extracted supra, provides the investigating agency with power to take up further investigation in respect of the offence, on the basis of further evidence and such evidence and documents shall be forwarded along with a further report to the Magistrate. Therefore, inspite of the filing of charge sheet and the same being taken cognizance of by the Magistrate, the investigating officer is entitled to conduct further investigation. In this regard, the power of the Magistrate to order further investigation has been dealt with by the Apex Court in a series of decisions, one of which is in the case of **Dr. Mrs. Nupur**



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**Talwar – Vs – CBI, Delhi &Anr. (CRL. A. NO. 68/2012 – Dated 06.01.2012),**

wherein the Supreme Court, adverting to various decisions with regard to the power of the Magistrate, has held thus :-

*“17. Now the question is what should be the extent of judicial interference by this Court inconnection with an order of taking cognizance by a Magistrate while exercising his jurisdiction under Section 190 of the Code.*

*18. Section 190 of the Code lays down the conditions which are requisite for the initiationof a criminal proceeding.*

*19. At this stage the Magistrate is required to exercise sound judicial discretion and apply hismind to the facts and materials before him. In doing so, the Magistrate is not bound by theopinion of the investigating officer and he is competent to exercise his discretion irrespective of the views expressed by the Police in its report and may prima facie find out whether an offence has been made out or not.*

*20. The taking of cognizance means the point in time when a Court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence which appears to have been committed.*

*21. At the stage of taking of cognizance of offence, the Court has only to see whether prima facie there are reasons for issuing the process and whether the ingredients of the offence are there on record.*

*22. The principles relating to taking of cognizance in a criminal matter has been verylucidly explained by this Court in*



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**S.K. Sinha, Chief Enforcement Officer Vs.Videocon International Ltd. and Ors.** – (2008) 2 SCC 492, the relevant observations are set out:

*“19. The expression “cognizance” has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means “become aware of” and when used with reference to a court or a Judge, it connotes “to take notice of judicially”. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.”*

*20. “Taking Cognizance” does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence. Cognizance is taken prior to commencement of criminal proceedings. Taking of cognizance is thus a sine qua non or condition precedent for holding a valid trial. Cognizance is taken of an offence and not of an offender. Whether or not a Magistrate has taken cognizance of an offence depends on the facts and circumstances of each case and no rule of universal application can be laid down as to when a Magistrate can be said to have taken cognizance.”*

*(para nos. 19 and 20 at page 499 of the report)*



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23. *The correctness of the order whereby cognizance of the offence has been taken by the Magistrate, unless it is perverse or based on no material, should be sparingly interfered with. In the instant case, anyone reading the order of the Magistrate taking cognizance, will come to the conclusion that there has been due application of mind by the Magistrate and it is a well reasoned order. The order of the High Court passed on a Criminal Revision under Sections 379 and 401 of the code (not under Section 482) at the instance of Dr. Mrs. Nupur Talwar would also show that there has been a proper application of mind and a detailed speaking order has been passed.”*

45. From the above, it is evident that at the time of taking cognizance of an offence, the Court has to only see whether *prima facie* reasons exist for issuing process and whether the ingredients of the offence are there on record.

46. As held by the Apex Court in *Videocon case (supra)*, cognizance is taken of an offence and not of the offender. In the case on hand, the report reveals that an offence has been committed in which a girl child of about 3 ½ years has been found to be mysteriously dead and the resultant act is that



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there exists a *prima facie* material to infer from the post mortem report that the child had been murdered and, therefore, the offence being cognizable in nature, cognizance is taken by the Magistrate. To that extent there is no infirmity in the act of the Magistrate.

47. Initially, investigation was taken up by Othakadai Police resulting in the filing of a final report u/s 173 (2), which was taken cognizance of by the Magistrate and the case was committed to the Court of Session in S.C. No. 140/2017 on 13.03.2017. However, before charges could be framed, in view of the order passed by this Court in W.P. (MD) No.10976/2013, the investigation of the case was transferred to CB-CID, vide order dated 14.03.2017, wherein learned single Judge of this Court has passed the following order :-

*"13. In this background, I had seen the original case diary pursuant to Cr.No.266 of 2008 on the file of the 5th respondent therein. On such perusal, it is noticed that the statements of witnesses viz., Usha, Ravi, Siva @ Sivakumar, Malaisamy, Jayakumar, Sathi @ Sathinayar, Nilavu @ Jayakumar had clearly stated that the accused had faith and belief in human sacrifice rituals. They had also stated that the accused was earlier working for PKS quarry in a responsible*



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*position and that, he is now handling one of the quarries, which was leased out by PKS Quarry from "IyyarMaami". Many of the witnesses had stated that the accused was last seen with the child. It is not in dispute that the child was killed in the quarry site. As per the final report dated 07.10.2015, the accused Ravi, who was not directly involved in the quarry operation, had committed human sacrifice for the purpose of development of "quarry business". The 5<sup>th</sup> respondent, during his investigation, had not gone into this aspect at all and had not ruled out the possibility of the involvement of the quarry owner. Under such circumstances, I am of the view that "further investigation" into the matter can be ordered, to rule out of the possibility of involvement of such other person, who could have been benefited in the so-called human sacrifice. Hence I deem it fit that further investigation in addition to the earlier final report dated 07.10.2015 filed by the 5<sup>th</sup> respondent, should be conducted by a responsible officer attached to the 4<sup>th</sup> respondent.*

*14. For the foregoing reasons, the writ petition stands allowed. The 4<sup>th</sup> respondent viz., Superintendent of Police CBCID, B.B.Kulam, Narimedu, Madurai District, is directed to appoint an officer not less than the rank of the Inspector of Police for the purpose of conducting "further investigation" in Cr.No.266 of 2008 on the file of the 5<sup>th</sup> respondent herein(now pending as PRC.No.43/2016) before the learned Judicial Magistrate, (\*)**No.IV, Madurai**) and file a report before the learned Judicial Magistrate, (\*)**No.IV, Madurai**. Such a*



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*report shall be filed within a period of three months. Till the investigation report by the CBCID is filed, the learned Judicial Magistrate, (\*)No.IV, Madurai shall stay his proceedings in PRC.No.43/2016. A copy of this order is directed to be furnished to the learned Judicial Magistrate, (\*)No.IV, Madurai, as well as to the 4th respondent.”*

48. From the order passed by this Court, it transpires that learned single Judge, while ordering transfer of investigation, has recorded his reasons for so doing, mainly pointing out the fact the fallacies in the investigation and the necessity for ordering transfer of investigation. However, curiously, when transfer of investigation had been ordered to CB-CID, inadvertently, the direction had been given as if *further investigation* is directed to be taken up. Though in actuality, once an investigation is transferred from one agency to another, necessarily, the investigation so ordered is a *de novo* investigation, which would start afresh and it would not be further investigation within the meaning of Section 173 (8), as further investigation, if ordered, it would not only be by the very same agency, but the earlier final report would also have to be taken into consideration along with the further report that may be filed after further investigation. In this regard, the decision of the Apex Court in



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**State through CBI – Vs – Hemendhra Reddy &Anr. (2023 Live Law (SC)**

**635)**would be an apt reference and the relevant portion of the said decision is quoted hereunder :-

*“77. We may summarise our final conclusion as under:*

*(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.*

*(iv) 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.*

*(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.”*



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49. It is to be pointed out that in the earlier round of litigation, further investigation u/s 173 (8) of the Code was not ordered and it was transfer of investigation to another agency, in which case, the investigation, for all purposes, would be a fresh investigation starting from scratch. The investigation having been transferred from the police authorities to CB-CID, viz., the 4<sup>th</sup> respondent herein, the investigation would be a fresh investigation for all purposes and the final report filed by the 4<sup>th</sup> respondent would not be a further report in addition to the report already filed by the Othakadai Police in Crime No.266/2008.

50. Rightly so, the 4<sup>th</sup> respondent, inspite of the fact that inadvertently further investigation had been ordered upon transfer of investigation, had taken up fresh investigation and had examined the witnesses, resulting in the filing of the final report in Crime No.3/2017.

51. In the aftermath of the final report filed by the 4<sup>th</sup> respondent, the petition had been filed by the defacto complainant seeking further investigation by filing the protest petition, which has been dismissed by the



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Magistrate by taking cognizance of the offence against two persons, as aforestated and committing the case to the Session Court for Trial.

52. It is to be pointed out that upon transfer of investigation, the 4<sup>th</sup> respondent had conducted the investigation by following the procedures prescribed under the Code and had filed the final report u/s 173 (2). Once the final report is laid under sub-section (2) to Section 173, there would be no impediment for the investigation officer to conduct further investigation, upon any fresh evidence being noticed under sub-section (8) to Section 173 and till the Trial Court frames charges and commences trial. When the investigation officer is clothed with power to proceed with further investigation notwithstanding the fact that an initial final report had been filed, necessarily, the Magistrate, sitting on a higher pedestal, is also empowered to order further investigation by invoking the provision u/s 173 (8) of the Code. The above position has been clarified by the Apex Court in ***Luckose Zachariah @ Zak – Vs – Joseph Joseph&Ors. (2022 Live Law (SC) 230)***, wherein, the Apex Court, relying upon the decision in ***Vinay Tyagi – Vs – Irshad Alia @ Deepak (2013 (5) SCC 762)***, held as under :-



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*“13. The decision in Vinay Tyagi (supra) was noticed together with other decisions of this Court in the judgment of a three-Judge Bench in VinubhaiHaribhai Malaviya v. State of Gujarat MANU/SC/1427/2019 : (2019) 17 SCC 1. This Court held:*

*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 [Sakiri Vasu v. State of U.P., MANU/SC/8179/2007 : (2008) 2 SCC 409 : (2008) 1 SCC (Cri.) 440], Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, MANU/SC/0425/2012 : (2012) 7 SCC 407 : (2012) 3 SCC (Cri.) 365], Vinay Tyagi [Vinay Tyagi v. Irshad Ali, MANU/SC/1101/2012 : (2013) 5 SCC 762 : (2013) 4 SCC (Cri.) 557], and Hardeep Singh [Hardeep Singh v. State of Punjab, MANU/SC/0025/2014 : (2014) 3 SCC 92 : (2014) 2 SCC (Cri.) 86] 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*



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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 midway 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) Code of Criminal Procedure, 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



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*inculpating 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 HasanbhaiValibhai Qureshi [HasanbhaiValibhai Qureshi v. State of Gujarat, MANU/SC/0302/2004 : (2004) 5 SCC 347 : 2004 SCC (Cri.) 1603]. Therefore, to the extent that the judgments in AmrutbhaiShambhubhai Patel [AmrutbhaiShambhubhai Patel v. SumanbhaiKantibhai Patel, MANU/SC/0104/2017 : (2017) 4 SCC 177 : (2017) 2 SCC (Cri.) 331], Athul Rao [Athul Rao v. State of Karnataka, MANU/SC/1017/2017 : (2018) 14 SCC 298 : (2019) 1 SCC (Cri.) 594] and Bikash Ranjan Rout [Bikash Ranjan Rout v. State (NCT of Delhi), MANU/SC/0552/2019 : (2019) 5 SCC 542 : (2019) 2 SCC (Cri.) 613] have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Admn.) [Randhir Singh Rana v. State (Delhi Admn.), MANU/SC/0161/1997 : (1997) 1 SCC 361] and Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., MANU/SC/1486/2009 : (2009) 9 SCC 129 : (2009) 3 SCC (Cri.) 1051] also stand overruled.”*

*(Emphasis Supplied)*



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53. The above decision of the Apex Court directly answers the issue, which has been framed, wherein, in clear and unambiguous terms, the Apex Court had held that the power of the Magistrate u/s 173 (8) would be available at all stages of the progress of a criminal case before the trial actually commences. In the case on hand, as submitted by the learned Addl. Public Prosecutor, which is not disputed, as it is a matter of record, that trial has not yet commenced and the case has been listed on 3.5.2024 for framing charges. In such a scenario, the power of the Magistrate for ordering further investigation is preserved.

***54. Accordingly, on Issue No.1 this Court holds that the Magistrate taking cognizance is empowered to order further investigation of the case, notwithstanding the fact that this Court, exercising its inherent jurisdiction had transferred the investigation and resultantly a fresh investigation had taken place for the reason that the final report is filed u/s 173 (2) and the further investigation provided for u/s 173 (8) stands saved and could be exercised both by the investigating agency as also the Magistrate. Issue No. 1 is answered in the above terms.***



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55. However, it is to be noted that upon the protest petition, the Magistrate had rejected the protest petition and taken cognizance of the offence and had committed the case to the Court of Session by charging the charge-sheeted accused as well as LW 17 u/s 304 (2) and 302 IPC respectively, which, according to the petitioner is improbable as both the offences run diametrically opposite to each other and, therefore, could not be maintained, and, therefore, there is no application of mind by the Magistrate, which requires further investigation to be taken up to find the complicity of the accused, which has necessitated this Court to frame issue Nos. 2 and 3.

56. While considering the aforesaid contentions in the light of issue Nos.2 and 3 framed above, the power of this Court u/s 482 to order further investigation/reinvestigation mainly crops up in the present petition towards which issue No.4 has been framed and, therefore, it is necessary that issue Nos.2, 3 and 4 be considered together holistically, as they are interconnected, relating to the power of the Court of Session to look into the committal made by the Magistrate vis-a-vis the power of this Court to order reinvestigation/further investigation on the improbability of the charge.



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WEB COPY **ISSUE NOS.2, 3&4 :**

*(ii) Whether the Magistrate could take cognizance against a person, who is not shown as an accused in the charge sheet, for another offence, when the said another person is in no way connected with the chargesheeted accused.*

*(iii) Whether the Magistrate could take cognizance against two persons separately for a solitary murder, moreso, when the chargesheeted accused is charged for the offence u/s 304 (2) IPC, while LW 17, against whom cognizance has been taken, has been charged for the offence u/s 302 IPC.*

*(iv) Whether the power of this Court u/s 482 Cr.P.C. could be invoked in the present case and if so, in what manner could the said inherent power be used so that fair and complete justice is meted out to all the parties.*

57. Since issue Nos. 2 and 3 are interconnected, they are taken up together for adjudication.



**WEB COPY** 58. It can be stated without any iota of contradiction that cognizance taken of the charge-sheeted accused and LW 17 and who have been committed to the Court of Session, the Magistrate has not attributed any nexus between them. In fact, cognizance had been taken against the charge-sheeted accused u/s 304 (2), 379 and 201 IPC, while cognizance has been taken against LW 17 u/s 302 IPC and both the accused have been committed to the Session with regard to a single incident of murder.

59. Section 304 IPC pertains to punishment for “*culpable homicide not amounting to murder*” while Section 302 IPC pertains to “*Punishment for Murder*”. This Court is at a loss to understand as to how both the charges against the respective accused could co-exist, when one would not amount to murder, while the other is murder simpliciter.

60. If more than one person has to be roped into an offence, necessarily a nexus has to be made out between them by bringing in an element of common intention or a criminal conspiracy. Without taking cognizance against the accused with regard to common intention or criminal conspiracy, two persons cannot be stated to have committed a single offence,



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moreso, under two different provisions of the IPC, which relates to a single murder. To appreciate the aforesaid fact and also where persons could be charged jointly, Section 223 of the Code assumes significance, which, for better understanding, is extracted hereunder :-

***“223.What persons may be charged jointly.***

*The following persons may be charged and tried together, namely:-*

*(a) persons accused of the same offence committed in the course same transaction ;*

*(b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence ;*

*(c) person accused of more than one offence of the same kind within the meaning of section 219 committed by them jointly within the period of twelve months;*

*(d) persons accused of different offences committed in the course of the same transaction;*

*(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named persons, or of abetment of or attempting to commit any such last-named offence;*

*(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860). or either of those*



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*sections in respect of stolen property the possession of which has been transferred by one offence;*

*(g) persons accused of any offence under Chapter XII of the Indian Penal Code relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:*

*Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the Magistrate may, if such persons by an application in writing, so desire, and if he is satisfied that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.”*

61. Section 223, as quoted above, deals with scenarios where persons may be charged jointly. It details the instances where such joint charge could be raised against persons. The instances are that where the persons are accused of the same offence committed in the course of the same transaction; persons accused of an offence and persons accused of abetment of or attempt to commit such offence; persons accused for more than one offence of the same kind within the meaning of Section 219 committed by them jointly



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within the period of twelve months; *persons accused of different offences committed in the course of the same transaction*, etc. Therefore, once the Magistrate comes to the conclusion that there exists a *prima facie* case for committing the case to the Session, taking cognizance of the offence, the Magistrate is bound to commit the case to the Court of Session, as provided for u/s 209 of the Code, which is quoted hereunder :-

***“209. Commitment of case to Court of Session when offence is triable exclusively by it.***

*When in a case instituted on a police report or otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall-*

*(a) commit, after complying with the provisions of section 207 or section 208, as the case may be, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made;]*

*(b) subject to the provisions of this Code relating to bail, remand the accused to custody during, and until the conclusion of, the trial ;*

*(c) send to that Court the record of the case and the documents and articles, if any, which are to be produced in evidence ;*



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(d) notify the Public Prosecutor of the commitment of the case to the Court of Session.”

62. Upon filing of the final report u/s 173 (2) or for that matter, the further report under sub-section (8) of Section 173 of the Code, cognizance is taken by the Magistrate u/s 190 (1)(b) during which time, it is open to the Magistrate to either accept the report of the police and commit the case to Session or invoking 190 (1)(c), take cognizance against any other persons, for reasons so recorded. In this regard, the decision in *Nupur Talwar case (supra)*, wherein, the Supreme Court referencing its earlier order in ***M/s.India Carat Pvt. Ltd. – State of Karnataka &Anr. (1989 (2) SCC 132)***, held as under :-

“26. Reference in this connection may be made to a three Judge Bench decision of this Court in the case of ***M/s. India Carat Private Ltd. Vs. State of Karnataka &Anr. (1989) 2 SCC 132***. Explaining the relevant principles in paragraphs 16, Justice Natarajan, speaking for the unanimous three Judge Bench, explained the position so succinctly that we would rather quote the observation: as under:-

“The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against

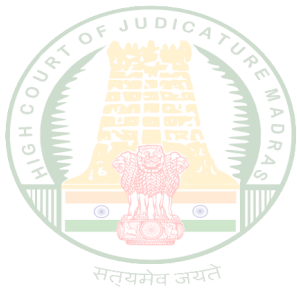


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*the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by 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, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused...”*

*27. These well settled principles still hold good. Considering these propositions of law, we are of the view that we should not interfere with the concurrent order of the Magistrate which is affirmed by the High Court.*

*28. We are deliberately not going into various factual aspects of the case which have been raised before us so that in the trial the accused persons may not be prejudiced. We, therefore, dismiss this appeal with the observation that in the trial which the accused persons will face, they should not be prejudiced by any observation made by us in this order or in the order of the High Court or those made in the Magistrate’s order while taking cognizance. The accused must be given all*



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*opportunities in the trial they are to face. We, however, observe that the trial should be expeditiously held.”*

63. The Constitution Bench in ***Dharam Pal &Ors. – Vs – State of Haryana &Ors. (2014 (3) SCC 306)***, while delineating the power of the Magistrate with regard to cognizance and committal of a case, held thus :-

*“24. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(3) Code of Criminal Procedure. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column No. 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.”*

64. Exercising judicial discretion and applying the provisions of law enunciated in the various decisions of this Court and the Apex Court, the



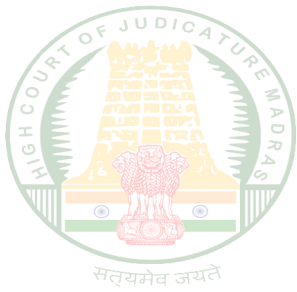
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Magistrate, while accepting the report of the 4<sup>th</sup> respondent had taken cognizance against the charge-sheeted accused for the offence u/s 304 (2), 379 and 201 IPC, curiously had also taken cognizance against LW 17 under the premise of “*last seen theory*” for the offence u/s 302 IPC.

65. While with great alacrity and to render justice, cognizance had been taken by the Magistrate against the aforesaid accused for the offence shown supra, however, citing improbability of maintaining the offence against both the accused, further investigation has been sought for by the petitioner to unravel the conflict and to find out the person who committed the offence.

66. There could be no second thought that the offence charged against the two accused are diametrically opposed to each other. To say, both cannot survive together. However, the duty of the Magistrate is for mere committal of the offence, where the offence is exclusively triable by the Session and appreciating the materials, the Magistrate has committed the offence. Resolution of improbabilities in the charges against the accused would not be within the realm of the Magistrate and the duty of the Magistrate is only to



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form an opinion on the basis of the materials placed before him and take cognizance of the offence and commit the case.

67. Once a case is committed to the Court of Session, cognizance could be taken by the Court of Session, as provided for u/s 193, which is quoted hereunder :-

***"193. Cognizance of offences by Courts of Session.***

*Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code."*

68. The Constitution Bench of the Apex Court in the case of *Dharam Palcase (supra)*, while interpreting the power of the Court of Session to take cognizance of any other person in respect of a matter committed to it, held as under :-

*"26. Questions 4, 5 and 6 are more or less interlinked. The answer to question 4 must be in the affirmative, namely, that the Session Judge was entitled to issue summons under Section 193 Code of Criminal Procedure upon the case being committed to him by the learned Magistrate. Section 193 of*



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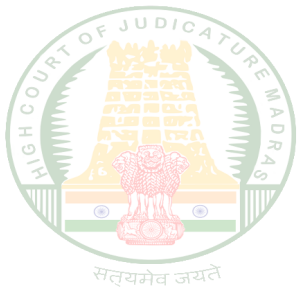
*the Code speaks of cognizance of offences by Court of Session and provides as follows:*

*193. Cognizance of offences by Courts of Session. -*

*Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.*

*The key words in the Section are that "no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code." The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr. Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said Section.*

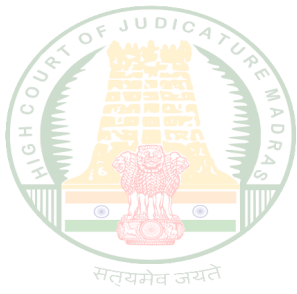
*27. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only*



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*be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter, proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Session Judge.*

*28. In that view of the matter, we have no hesitation in agreeing with the views expressed in Kishun Singh's case (supra) that the Session Courts has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Session Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein."*

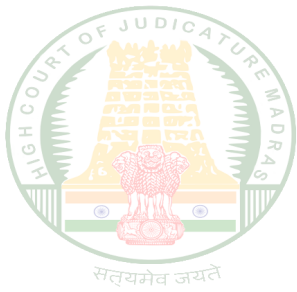


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69. As aforesaid, the Magistrate, invoking the power of cognizance and committal has committed the matter to the Court of Session as the charges against the accused are exclusively triable by the Session. The act of the Magistrate in committing the offence cannot be found fault with, though, as pointed out by the petitioner, there is a semblance of improbability therein, which requires to be resolved.

70. The resolution with regard to the improbability would not lie with the Magistrate once the matter is committed to the Court of Session, as it is for the Court of Session to frame the charge against the accused u/s 228. However, even prior to the framing of charge, a duty is cast upon the Court of Session to hear the accused and the prosecution on the basis of the record of the case and documents submitted therewith. At that point, the accused has all the right to put forth his case, so also the prosecution whereinafter the Court of Session may pass appropriate order as per the provisions of the Code. For better appreciation, Section 228 is quoted hereunder :-

***“228. Framing of charge.***



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(1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which-

*(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report ;*

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

*(2) Where the Judge frames any charge under clause (b) of subsection (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."*

*(Emphasis Supplied)*

71. Such being the legal position, mere fact that an improbable situation has arisen on the committal of the case cannot be a ground to order further investigation/reinvestigation of the case, moreso, taking into account the fact that no aspersions are cast on the 4<sup>th</sup> respondent with regard to the investigation conducted. It is only on the basis of the committal, the present petition has been filed by the petitioner, but for which, there was no grievance expressed by the petitioner with regard to the investigation. That



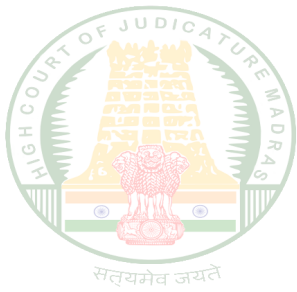
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being the case, mere cognizance by the Magistrate would not be a case to once again order reinvestigation or further investigation, moreso, considering the passage of time from the date of occurrence.

72. Turning back to the decision in *Dharam Pal case (supra)*, the Supreme Court had categorically, without any ambiguity, held that the Court of Session, after a committal of a case, could take cognizance of an offence against any person named in the report against whom the Magistrate had not taken cognizance, as the Session Court assumes original jurisdiction.

73. This Court has looked into the various provisions, such as 193, 209 and 228 so as to holistically consider the import of Section 223 relating to the persons who may be charged jointly. Section 223 of the Code has already been extracted above, which prescribes the persons, who could be tried jointly. Though the offence alleged against the two persons is mutually destructive and diametrically opposed to each other, could this Court go ahead and order further investigation/reinvestigation invoking its inherent jurisdiction under Section 482 of the Code.



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**WEB COPY** 74. The answer to this question lies in Section 228 above, which relates to framing of charges against the accused by the Court of Session. There could be no dispute on the proposition of law that the power of this Court u/s 482 is vast and wide and this Court can spread its arms far and wide so as to render substantial justice, provided the situation warrants and that there is no other provision with which justice could be meted out to the affected parties.

75. The power of the High Court to exercise its inherent jurisdiction flows from Section 482 of the Code. Though the said powers are vast and wide, however, unlimited or untrammelled, but essentially they are to be used for rendering real and substantial justice. Time and again, the Apex Court had cautioned the High Courts to be careful and circumspect while using the said power.

76. In ***Popular Muthiah – Vs - State rep. By Inspector of Police 2006 (7) SCC 296***, the Apex Court, culling out the places where the inherent powers of this Court u/s 482 can be used and the extent to which it can be used, held as under :-



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*"26. Section 386 of the Code of Criminal Procedure provides for the power of the appellate court. Indisputably, stricto sensu in terms thereof the appellate court cannot direct a person to stand trial. Its jurisdiction is specified thereunder.*

*27. While exercising its appellate power, the jurisdiction of the High Court although is limited but, in our opinion, there exists a distinction but a significant one being that the High Court can exercise its revisional jurisdiction and/or inherent jurisdiction not only when an application therefore is filed but also suo motu. It is not in dispute that suo motu power can be exercised by the High Court while exercising its revisional jurisdiction. There may not, therefore, be an embargo for the High Court to exercise its extraordinary inherent jurisdiction while exercising other jurisdictions in the matter. Keeping in view the intention of the Parliament, while making the new law the emphasis of the Parliament being 'a case before the court' in contradistinction from 'a person who is arrayed as an accused before it' when the High Court is seized with the entire case although would exercise a limited jurisdiction in terms of Section 386 of the Code of Criminal Procedure, the same, in our considered view, cannot be held to limit its other powers and in particular that of Section 482 of the Code of Criminal Procedure in relation to the matter which is not before it.*

*28. In certain situations, the court exercises a wider jurisdiction, e.g., it may pass adverse remarks against an investigator or a prosecutor or a judicial officer, although they*



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are not before it. Expunction of such remarks may also be directed by the High Court at a later stage even suo motu or at the instance of the person aggrieved.

29. The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.

30. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that

(i) power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefore.

(iii) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.

31. This Court in *Dinesh Dutt Joshi v. State of Rajasthan and Anr.* MANU/SC/0642/2001 : 2001CriLJ4697 while dealing



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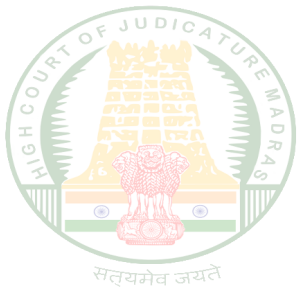
with the inherent powers of the High Court held:

*“The principle embodied in the section is based upon the maxim: quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsa esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavailable. The section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the section. As lacunae are sometimes found in procedural law, the section has been embodied to cover such lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this section are however required to be reserved, as far as possible, for extraordinary cases.”*

*32. The decisions of this Court emphasised the fact that there exists a distinction between two classes of cases, viz., (i) where application of Section 482 is specifically excluded and (ii) where there is no specific provision but limitation of the power which is sought to be exercised has specifically been stated.”*

*(Emphasis Supplied)*

77. The aforesaid view of the Apex Court has also found favour in the decision of the Apex Court in **Devendra Nath Singh – Vs – State of Bihar & Ors. (2023 (1) SCC 48)**, wherein the Apex Court held as under :-



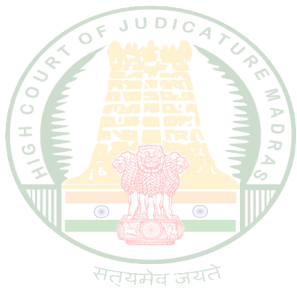
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*“However, this Court in Divine Retreat Centre did not approve the order so passed by the High Court and in that context, while observing that no unlimited and arbitrary jurisdiction was conferred on the High Court Under Section 482 Code of Criminal Procedure, 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 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*



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*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*



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*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 non-compliance 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)*

78. In the aforesaid decisions, the Apex Court had eruditely expounded the law on the subject, by clearly highlighting that where there exists a provision, which could be resorted to for the purpose of rendering substantial justice, then the High Court would be slow and circumspect in exercising its inherent jurisdiction. However, where there is no provision to render substantial justice, the power u/s 482 can be exercised by the High Court to render substantial justice.

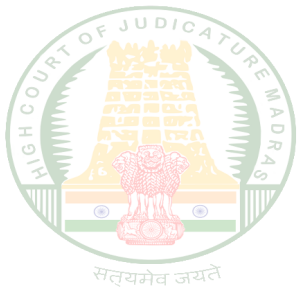
**79. Therefore, as held in *Popular Muthiah and Devendra Nath case (supra)*, when there is a provision in the Code wherein the Court could very**



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**well exercise its jurisdiction upon perusing the records and documents submitted before it upon committal by the Magistrate before proceeding to frame charges against the accused, necessarily this Court should restrict giving any relief or direction to the Court of Session in exercise of its inherent power when the situation does not warrant.**

80. Keeping the proposition of law, as exposted by the Apex Court above, it is seen that the Court of Session, on assuming original jurisdiction upon committal of the case to it by the Magistrate, the Magistrate becoming passive from thereon, the next process is for the Court of Session to hear the accused and the prosecution with regard to framing of charges, which is provided for u/s 228. In this regard, Section 228 of the Code, which has been extracted supra, deals with the framing of charges, upon perusing the documents on record as also hearing the accused and the prosecution and upon recording its satisfaction with regard to the culpability of the accused, could proceed to frame the charge. Therefore, it is evident that before framing of charges u/s 228 of the Code, a duty is cast on the Court of Session to consider the record of the case and the documents submitted therewith and after hearing the submissions of the accused and the prosecution in this



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behalf, only upon finding that there exists material to proceed with the framing of charge, the Court of Session could frame the charge. Therefore, the accused and the prosecution is provided with sufficient safeguards in the form of the Court of Session giving an opportunity to present their case and upon perusing the documents and record of the case, could proceed to form an opinion to frame the charge.

81. Section 228 relating to framing of charge, therefore makes it very clear, beyond a pale of doubt that before charges are framed against the accused, the Court of Session shall hear the accused and the prosecution, based on the record of the case and documents submitted before it and shall form an opinion whether to proceed against the accused or not and if it considers that there is no case against the accused, shall proceed in accordance with the provisions of the Code.

82. Therefore, when there is a clear provision in the Code with regard to the manner in which the Court of Session has to proceed upon committal of the case and there is a safeguard given to the persons, who are accused and whose case have been committed by the Magistrate to the Court of Session,



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before charges are framed, this Court should refrain itself from stretching his arms wide with regard to the committal made by the Magistrate. There being clear provisions available in the Code safeguarding the interests of either party, the improbability in the charges against the accused put in issue could very well be dealt with by the Court of Session to give the necessary relief to the parties and this Court shall not exercise its inherent jurisdiction, when the Court of Session could very well deal with the same. In the same breath, it is to be stated that the improbability in the charges cannot be the basis for this Court to order reinvestigation/further investigation.

83. In the aforesaid backdrop, the question that befalls for consideration is with regard to the prayer sought for by the petitioner relating to ordering of further investigation/fresh investigation.

84. The basis on which further investigation/reinvestigation is sought for is that the Magistrate while taking cognizance of the matter has made reference to the offence alleged to have been committed by the charge-sheeted accused as also LW 17. For the purpose of taking cognizance, recourse to be made to Section 190 (1) (b) if it is upon a police report to which



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the Magistrate has adverted to and taken cognizance against Ravi for the offence u/s 304 (2), 379 and 201 IPC. However, while taking cognizance against the said Ravi, scrolling through the evidence of the various witnesses, whose statements have been placed before the Magistrate, placing reliance upon the evidence of LW 17 and one Sakthivel, the Magistrate had taken cognizance against LW 17 as well, however, curiously for the offence u/s 302 IPC under the last seen theory.

85. Though the learned senior counsel for the petitioner points out that both the offences cannot co-exist, notwithstanding the said fact, when the Magistrate has exercised his powers and taken cognizance, which exercise of power is not claimed to be perverse or arbitrary, the mere fact that erroneous cognizance is alleged to have been taken cannot be a ground for this Court to interfere with the said cognizance.

86. For this Court to exercise its jurisdiction to order further investigation/reinvestigation, the infirmities in the conduct of the earlier investigation has to be put before this Court to holistically consider that all was not well with the investigation, thereby, prompting this Court to invoke its



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inherent jurisdiction to order fresh investigation/de novo investigation.

However, the whole case of the petitioner seeking reinvestigation/further investigation is premised on the ground that not only the charge sheet had been mechanically copied by the 4<sup>th</sup> respondent, but the 4<sup>th</sup> respondent had not taken into consideration the last seen theory, which had formed the basis for the Magistrate to take cognizance against LW 17 and, therefore, on the aforesaid aspect of the matter, further investigation is necessary to find out the truth in the murder of the child.

87. It is to be pointed out that the Magistrate, invoking his power u/s 190 (1)(c) had taken cognizance against LW 17, while also taking cognizance against the charge sheeted accused. The said power exercised by the Magistrate is within the bounds of the Code and cannot be said to be erroneous, but for the cognizance taken against the charge sheeted accused and LW 17, according to the petitioner cannot co-exist. However, as already discussed above, the Court of Session is vested with jurisdiction and power under Section 227 and 228 to look into the charges on which committal has been made and in the absence of the accused, whose case have been committed to the Court of Session, the petitioner coming before this Court

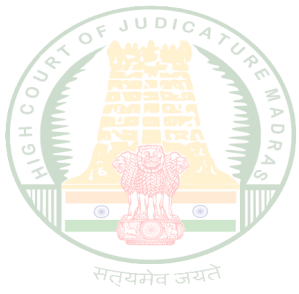


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with a prayer for further investigation/reinvestigation premising his case on the improbability of the charge co-existing cannot be a ground for this Court to accede to prayer of the petitioner.

88. The manner in which the earlier investigation had been conducted should form the basis for the Court to invoke its inherent power u/s 482 and so long as mala fides are not attributed and the investigation has not been attacked on any other ground, other than some discrepancies on the basis of the cognizance taken by the Magistrate cannot be a ground to order reinvestigation/further investigation. For taking cognizance, formation of opinion on the basis of the documents placed before the Magistrate alone is suffice and the adherence of the same finds reflection in the cognizance taken by the Magistrate. When such is the case, this Court cannot substitute its views to the cognizance taken by the Magistrate so as to order reinvestigation/further investigation merely on the ground that there is an element of improbability in the charge. The element of incongruity in the charges levelled against the accused, as discussed above, could very well be dealt with by the Court of Session, which would be in the interest of both the



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accused and the prosecution and that improbability cannot be the basis for this Court to order fresh investigation/reinvestigation.

89. It is to be taken note of that the incident had happened in the year 2008. Initially, investigation was taken up by Othakadai Police by registering Crime No.266/2008 u/s 174 Cr.P.C., which was later altered to one u/s 379 and 302 IPC on 22.7.2008 by arresting one Ravi, S/o Srinivasan. At that juncture, Crl. O.P. (MD) No.10771/2008 was filed by the defacto complainant seeking transfer of investigation. In the said petition, this Court, vide order dated 8.3.2010, had directed the Superintendent of Police, Madurai to monitor the investigation being conducted by the Inspector of Othakadai Police Station, who was directed to file the final report in accordance with law. Thereafter, the defacto complainant/petitioner filed Crl. O.P. No.1614/2011 seeking a direction to the Othakadai Police to file final report in which this Court, vide order dated 9.2.2011, directed the Inspector of Police, Othakadai to file final report within a period of one month from the date of receipt of the order. Thereafter, contempt petition in Cont. Ptn. No.406/2011 was filed by the defacto complainant and, thereafter, on 7.10.2015, charge sheet was laid



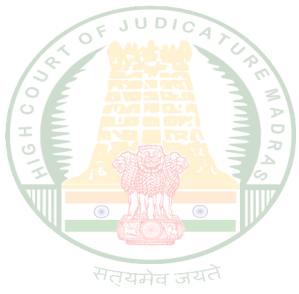
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against the accused Ravi, S/o Sreenivasan, u/s 364, 302 and 201 IPC before the Judicial Magistrate, Melur.

90. On 27.01.2017, the said report was taken on file in PRC No.43/2016 and on 13.03.2017, the Judicial Magistrate, Melur, committed the case to the 1<sup>st</sup> Addl. Sessions Court, Madurai in S.C. No.140/2017. Pending the filing of the final report itself, the defacto complainant had filed W.P. (MD) No. 10976/2013 seeking transfer of investigation. Upon the said petition, this Court, vide order dated 14.3.2017, had transferred the investigation to the 4<sup>th</sup> respondent herein, leading to the FIR being registered in Madurai CB-CID Crime No.03/2017 u/s 174 Cr.P.C. After investigation and examining various witnesses, the section of offence was altered from 174 Cr.P.C. to one u/s 304 (ii), 379 and 201 IPC on 28.11.2018 and on 28.12.2018, charge sheet was filed before the Judicial Magistrate No.IV, Madurai, u/s 304 (2), 379 and 201 IPC.

91. Upon filing of the final report, the Magistrate, as stated above, had taken cognizance against two persons, viz., the charge-sheeted accused and LW 17 for the offence u/s 304 (2), 379 and 201 IPC and u/s 302 IPC. The case



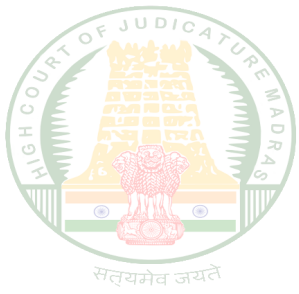
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has been committed to the Court of Session and taken on file as S.C. No. 223/2022.

92. The incongruous nature of the charge does not always warrant interference of this Court by exercising its inherent jurisdiction, as the Court of Session, before framing charges against the accused, could very well go through the records of the case and documents and upon hearing the accused and the prosecution, either proceed with framing the charge u/s 228 or discharge the accused u/s 227 of the Code.

93. The only issue which has to be considered by this Court is the necessity for ordering fresh investigation/further investigation. As pointed out above, the occurrence had taken place in the year 2008 and after a series of litigation, including transfer of investigation, at the behest of the petitioner, the case has not come to the stage of framing charge against the accused. While the investigating agency had filed final report against one Ravi for the offence u/s 304 (2), 379 and 201 IPC and the Magistrate had taken cognizance by invoking his power u/s 190 (1)(b), incidentally, by invoking the power u/s 190 (1)(c), the Magistrate has also taken cognizance against LW 17. In fact,

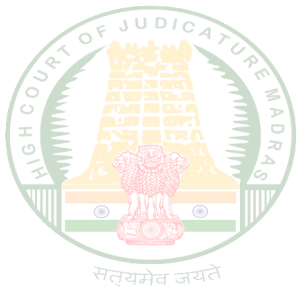


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exercising his discretion and appreciating the materials, the Magistrate had negated the plea of the petitioner for further investigation. Moreso, the Magistrate had kept in mind that the delay in the prosecution and the passage of more than a decade of the commission of the offence and appreciating the protest petition as well, had taken cognizance of the matter.

94. When the petitioner has not attributed any mala fides and his whole case is based on certain inferences which have been drawn by the witnesses, who were examined, on the basis of which the present petition as also the protest petition was filed, that cannot form the basis for seeking further investigation/reinvestigation. The said aspect has been clearly appreciated by the Magistrate, while rejecting the prayer for further investigation/reinvestigation.

95. It is to be pointed out that the closure of the door for the petitioner seeking further investigation/reinvestigation does not always seal the case and it is always open to the Court of Session to invoke its power to take cognizance u/s 319. Section 319 provides power to the Court of Session to



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proceed against other persons appearing to be guilty of the offence and the said provision, for better appreciation, is quoted hereunder :-

***“319. Power to proceed against other persons appearing to be guilty of offence.***

*(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*

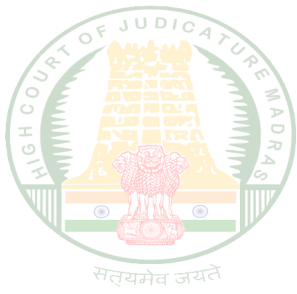
*(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.*

*(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.*

*(4) Where the Court proceeds against any person under subsection (1), then-*

*(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;*

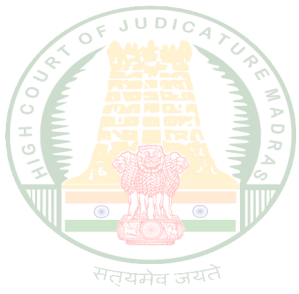
*(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”*



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96. Sub-section (1) of Section 319 of the Code empowers the Court of Session, upon enquiry into or trial of an offence, take cognizance against any person not being the accused, if it appears from the evidence that such person has committed the offence for which such person could be tried together with the accused and in such case, the Court of Session may proceed against such person for the offence, which he appears to have committed. From the above, it is clear that the Court of Session is given wider amplitude when conducting the enquiry and the trial and upon appreciation of evidence, is empowered to rope any person, who is found guilty to have committed the offence to be tried jointly by invoking Section 223. Therefore, the stand of the petitioner that if further investigation/reinvestigation is not taken up, the truth would not come out, is nothing but the apprehension of the petitioner, which could be settled even before the Court of Session and by the Court of Session.

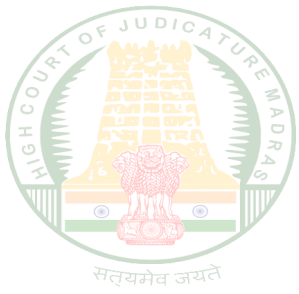
97. Further, it is to be pointed out that the petitioner is not left without any avenue if further investigation/reinvestigation is not ordered. All through the trial, the petitioner could voice his grievance if the prosecution is not being taken up properly and the Code provides him all the opportunities and



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safeguards to have the trial and enquiry conducted in a proper manner. Such being the case, it would not be in the interest of either party to delay the proceeding any further, as the further delay would only lead to weakening of the evidence due to efflux of time and memory.

98. Further, merely because there are certain discrepancies, that alone cannot be the basis for this Court to order further investigation/reinvestigation. As has been held by the Apex Court, time and again, invocation of the inherent jurisdiction should be used sparingly and not on mere *ipsi dixit* of one party or the other. Considering the passage of time from the commission of the offence and on the basis of the final report, the Magistrate had formed an opinion and the matter has been committed to the Court of Session and none of the two persons, who have been accused of the offence have come before this Court and in such a state of the matter, this Court is not inclined to order further investigation/reinvestigation by exercising its inherent jurisdiction when an exhaustive investigation has been conducted resulting in the filing of the final report.



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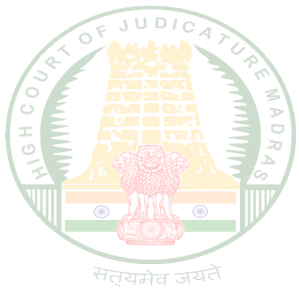
99. In the aforesaid backdrop, this Court answers issue Nos.2, 3 and 4 in

the following manner :-

*(i) On issue No.2, the cognizance taken by the Magistrate against LW 17 is well within the powers of the Magistrate, even if the said person is not linked in any way with the primary charge-sheeted accused, as the Magistrate is vested with power u/s 190 (1)(c) of the Code;*

*(ii) On issue No.3, which is an extension of Issue No.2, this Court holds that though the Magistrate is empowered to take cognizance against two persons, however, the improbability of the said cognizance could very well be appreciated by the Court of Session before framing charges u/s 228 and on the basis of the records of the case and the documents and upon hearing the accused and the prosecution before forming an opinion with regard to framing charge against the accused. Therefore, the non-application of mind of the Magistrate in the committal of two persons for under different Sections of the Code would not in any way strike at the root of the matter as the Court of Session is vested with jurisdiction to appreciate the same and pass orders.*

*(iii) On Issue No.4, which is interconnected with issue No.3, this Court holds that though this Court could very well exercise its inherent jurisdiction u/s 482 of the Code with regard to further investigation/reinvestigation, however, the*



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***present case is not one where any further investigation/reinvestigation is required. However, in view of the improbability in the charges as alleged, the Court of Session having assumed original jurisdiction upon committal of the case and vested with power to inquire the accused and the prosecution on the basis of the records and documents available before it, it is for the Court of Session to consider the issue in the light of the provisions of the Code and pass appropriate orders in the manner known to law.***

100. For the reasons aforesaid, the prayer sought for in the present petition cannot be granted and, accordingly, the criminal original petition stands disposed of with the aforesaid observations and directions. Consequently, connected miscellaneous petition is closed.

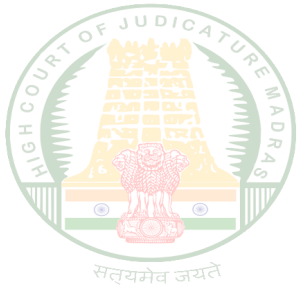
**28 .03.2024**

Index : Yes / No

GLN/RR

To

1)The Presiding Officer  
Mahila Court  
Madurai.

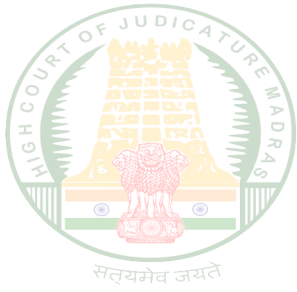


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2)The Judicial Magistrate No.IV  
Madurai.

3)The Addl. Public Prosecutor  
Madurai Bench of Madras High Court  
Madurai.



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**M.DHANDAPANI, J.**

**GLN/RR**

**PRE-DELIVERY ORDER IN  
CRL. O.P. (MD) NO.14252 OF 2022**

**Pronounced on  
28 .03.2024**