



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO.1973 OF 2024

Syed Mujahed Alam S/o Syed Mukhtar Alam
Age : 36 years, Occu : Private Service,
R/o : Lane No.07, Asefiya Colony,
Aurangabad 431001.

.. Petitioner

VERSUS

The State of Maharashtra
Through Police Inspector,
City Chowk Police Station,
Aurangabad – 431001.

.. Respondent

...

Mr. Muhammad Aseem h/f Mr. Sayyed Tauseef Yaseen, Advocate for
the petitioner.
Mr. G. A. Kulkarni, APP for the respondent/State.

...

**CORAM : SMT. VIBHA KANKANWADI &
SANJAY A. DESHMUKH, JJ.**

DATE : 30 JANUARY 2025

ORDER :

. Heard learned Advocate for the petitioner and learned APP
for the respondent/State.

2. In view of the order dated 13.01.2025, the concerned
Judicial Magistrate First Class has submitted the report vide
letter dated 22.01.2025. It is to be noted that the present
petitioner, who is original informant has filed application

Exhibit-06 for further investigation under Section 173(8) of the Code of Criminal Procedure (hereinafter referred to as the “Cr.P.C”) on 25.10.2023 and now, the present petition has been filed for the prayer that the concerned Judicial Magistrate First Class be directed to decide the said application as expeditiously as possible preferably within a period of four weeks from the date of the order that would be passed by this Court.

3. Learned Judicial Magistrate First Class informs that earlier the said case i.e. R.C.C. No.1827 of 2023 was pending on the file of 3rd Judicial Magistrate First Class, Aurangabad and then the concerned Court had called the say of learned APP. Learned APP had not filed any say and, therefore, ‘No say’ order has been passed on 29.11.2023. The concerned Court had not decided the said application, but in the meantime, said file was transferred to 18th Judicial Magistrate First Class on 12.12.2023 and it was still with that Court till 22.02.2024. Then again that matter has been transferred to 7th Joint Civil Judge Junior Division and Judicial Magistrate First Class on 22.02.2024. According to learned Judicial Magistrate First Class, the matter is now pending for awaiting summons of accused and Exhibit-06. He states that the learned Advocate appearing for the informant appeared before

him on 20.08.2024 and had filed case details of four matters which are pending against the accused persons, but had not submitted his arguments on Exhibit-06. Thus, it appears that even the present petitioner's Advocate is also responsible for the delay in deciding the said application.

4. At the outset, it is to be noted that learned Judicial Magistrate First Class appears to be under some misconception as regards the legal position on procedure in Section 173(8) of Cr.P.C. Simultaneous procedure for securing presence of accused in R.C.C. No.1827 of 2023 may go on, but the presence of accused is absolutely not necessary for deciding application Exhibit-06 and, therefore, he need not wait till the presence of the accused persons in the matter. This position that the accused have no right to audience in application under Section 173(8) of the Code of Criminal Procedure was considered in **Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj Vs. State of A.P. and others, [(1999) 5 SCC 740]**, wherein it is observed that power of the police to conduct further investigation, after laying final report, is recognized under Section 173(8) Cr.P.C, even after the Court took cognizance of any offence on the strength of the police report first submitted, it is open to the

police to conduct further investigation. In such a situation the power of the Court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the Court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, the Magistrate cannot be burdened with such obligation. This settled principle is again reiterated in ***State Through Central Bureau of Investigation Vs. Hemendhra Reddy and Another Etc., [Criminal Appeal Nos.__ of 2023 (Arising out of SLP(CRL.) Nos.7628-7630 of 2017)]*** decided by the Hon'ble Supreme Court on 28.04.2023, wherein it has been observed thus :-

“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 Cr.P.C. after the final report submitted under

Section 173(2) of the Cr.P.C. has been accepted.

(ii) Prior to carrying out further investigation under Section 173(8) of the Cr.P.C. 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 Cr.P.C. to suggest that the Court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the Cr.P.C.”

5. We are of the opinion that such steps as regards the further investigation is concerned will have to be taken as early as possible so that ultimately the main matter can be put to trial collectively i.e. the earlier evidence as well as subsequent collected evidence, if any. Allowing the time to run against the informant or even the prosecution case may also result in disappearing of the evidence and, therefore, the Magistrates are required to consider such applications under Section 173(8) of

the Cr.P.C. and decide them on merits as early as possible. Unnecessary transfers of such matters from one Court to another Court consumes time, but at the same time the informant or in some cases, the prosecution who place such applications, should pursue the application rigorously. Unnecessary adjournments then should not be allowed. With these observations, we pass the following order :-

ORDER

- I) Criminal Writ Petition stands disposed of.
- II) The Principal District and Sessions Judge, Aurangabad should see that the said case i.e. R.C.C. No.1827 of 2023 is not transferred from the file of 7th Joint Civil Judge Junior Division and Judicial Magistrate First Class, Aurangabad in the near future.
- III) Learned Judicial Magistrate First Class is directed to decide application Exhibit-06 within a period of three months from today and he should take note of the above two decisions while deciding application Exhibit-06.

IV) Learned Advocate for the petitioner who is representing the petitioner before the learned Judicial Magistrate First Class should refrain himself from seeking adjournment on unnecessary grounds.

[SANJAY A. DESHMUKH]
JUDGE

[SMT. VIBHA KANKANWADI]
JUDGE

scm