



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 278 OF 2024
WITH
CRIMINAL APPLICATION (APL) NO. 279 OF 2024

CRI.APPLN.(APL) NO.278/2024

Gita D/o. Bhaskar Shejwal, Aged about
42 years, Occ: Government Servant,
Presently R/o. Mangolia Apartment,
Savedi, Gulmohor Road, Ahmednagar-
414003.

Permanent R/o. Near Kirloskar Factory,
110, Revansiddheshwar Nagar, Hotgi
Road, Solapur South, Shivshahi-413224
Maharashtra.

.... APPLICANT.

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Bajaj Nagar Police Station, Nagpur.
2. Suhas S/o. Daulatrao Choudhary,
Through State of Maharashtra,
Crime Branch, Unit-1, Nagpur.

.... RESPONDENTS.

WITH

CRI.APPLN.(APL) NO.279/2024

Sanket S/o. Bharat Gaikwad, Aged about
33 years, Occ: Service, R/o. Near
Bibvewadi Post Office, F-401,
Ramya Nagari, Swami Vivekanand
Road, Bibewadi, Pune City, Market
Yard, Pune – 411 037.

.... APPLICANT.

// VERSUS //

1. The State of Maharashtra,
Through Police Station Officer,
Bajaj Nagar Police Station, Nagpur.
2. Suhas S/o. Daulatrao Choudhary,
Through State of Maharashtra,
Crime Branch, Unit-1, Nagpur.

.... RESPONDENTS.

Shri Shashank Manohar Adv. a/w S/s Adwait Manohar, Atharva Manohar, Sameer Sonwane, Amit Thakur & Ms Shiba Thakur, Advocates for Applicants.
Shri S.S.Doifode, A.P.P. for Respondent No.1/State.

CORAM : ANIL S. KILOR AND
PRAVIN S. PATIL, JJ.

DATE OF RESERVING THE JUDGMENT : 24/04/2025
DATE OF PRONOUNCING THE JUDGMENT : 13/08/2025

ORAL JUDGMENT : (Per : Anil S. Kilor, J.)

1. Heard.
2. **RULE.** Rule made returnable forthwith. Heard by consent of the learned counsel for the parties.
3. These are the two Criminal Applications seeking identical prayers for quashing and setting aside First Information Report No.07 of 2024, registered with Police Station, Bajaj Nagar, Nagpur on 12/01/2024 for the

offences punishable under Section 3/25 Arms Act, Sections 307 and 201 of the Indian Penal Code.

The brief facts of the present case are as under :

4. The applicant in Criminal Application No.279 of 2024 viz. Sanket Gaikwad (hereinafter referred to as “Sanket”) and the applicant in Criminal Application No.278 of 2024 (hereinafter referred to as “Gita”) are the government employees working as Motor Vehicle Inspectors.

5. It is the case of prosecution that on the date of the alleged incident i.e. 07/05/2022 taken place at the house of the applicant-Sanket, wherein while applicant-Sanket was getting ready to leave for duty, when he was inserting his revolver in the holster a rat went over his leg and the revolver fell down and it got fired on his both the legs. The applicant got admitted to the Hospital with the help of the applicant-Gita and other colleagues. The said case was registered as Medico Legal Case (MLC) and since the Hospital was under the jurisdiction of Dhantoli Police Station, Sanket’s statement was recorded by police in the hospital. Subsequently, the investigation was carried out by Bajaj Nagar Police Station as the incident took place within its jurisdiction. The statements of the applicant, doctor and witnesses were recorded. During the investigation expert’s opinion was also called and after

considering all the aspects and the material collected during the investigation no complaint of the accident was made and the File of MLC No.899 of 2022 was closed on 14/11/2022 after investigation.

6. After closure of the said MLC No.899 of 2022 the FIR in question came to be registered on 12/01/2024 after 20 months of the alleged incidence dated 07/05/2022. The FIR came to be registered initially against the applicant-Sanket and against one unknown person. After registration of the FIR on the same day notice under Section 41A of the Code of Criminal Procedure was issued to the applicant-Gita and subsequently she was arrayed as an accused in the said crime. It is alleged that the incidence dated 07/05/2022 was not an accident but the applicant-Sanket was shot by the applicant-Gita.

7. The above referred fact of closure of earlier investigation was not taken into consideration while registering the FIR in question as there is no mention of such investigation or closure of investigation.

8. Heard learned counsel for the respective parties.

9. Shri Shashank Manohar, learned counsel for the applicants argues that under the provisions of the Code of Criminal Procedure 'further investigation' is permissible and not the 're-investigation'. It is argued that once

the file was closed after a detailed inquiry on recording the statements of the witnesses and on calling the report of the experts, satisfying that no cognizable offence had taken place, registering a crime in question is nothing but re-investigation and it cannot be called as further investigation. It is therefore, argued that such course is not tenable in law. To substantiate his argument the learned counsel for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of *Mithabhai Pashabhai Patel ..vs.. State of Gujarat*, reported in (2009) 6 SCC 332.

10. It is submitted that on 16/01/2023 the applicant-Gita filed a complaint with the Transport Commissioner for sexual harassment against a Senior Regional Transport Officer, whereupon the FIR came to be registered against the said officer under the provisions of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the Indian Penal Code. In the said matter, the statements of both the applicants were recorded. It is argued that the present crime is the result of the said complaint as it is registered because of pressure of the said officer.

11. It is argued that no alleged offence attracts in the present matter. It is argued that as far as Section 307 of the Indian Penal Code is concerned, even if the allegations in the FIR are taken on its face value no *prima-facie* case is made out. It is argued that as far as Sections 3/25 of the Arms Act is

concerned, the same will not attract as the applicant-Sanket is having service revolver. To substantiate his arguments the learned counsel for the applicants has placed reliance on the following judgments of the Hon'ble Supreme Court of India :

- i) *Mithabhai Pashabhai Patel ..vs.. State of Gujarat*, reported in (2009) 6 SCC 332.
- ii) *Lalita Kumari ..vs.. State of U.P. & Oth.*, reported in 2014 (2) SCC 1.

12. Shri Doifode, learned APP argues that the investigation made prior to registration of the FIR in question was a preliminary inquiry for which there is no bar under the Code to make such enquiry before registering the offence. It is argued that it is not a re-investigation but it is further subsequent investigation as certain material aspects came to the fore which disclose commission of the offence by the applicants and therefore, the offence was rightly registered. To substantiate his arguments the learned APP has placed reliance on the following judgments of the Hon'ble Supreme Court of India:

- i) *The State of Uttar Pradesh ..vs.. Bhagwant Kishore Joshi*, reported in AIR 1964 SC 221;
- ii) *Rajinder Singh Katoch ..vs.. Chandigarh Admn.*, reported in (2007)10 SCC 69.
- iii) *State Thr. Central Bureau of Investigation..vs.. Hemendra Reddy & Anr.*, reported in (2023) ALL MR (Cri) 3489.

13. In light of the rival submissions we have perused the record of the investigation made available by the learned A.P.P.

14. It is evident from the record that in the alleged incidence dated 07/05/2022 the applicant-Sanket got injured, as it is the case of the applicant that while getting ready to leave for duty, when he was inserting his service revolver in the holster a rat went over his leg and the revolver fell down and it got fired on his leg. The photographs showing the marks of the injuries on the legs, if seen, it is evident that the injuries on the inner calf of both the legs caused above the ankle. Considering the location of the bullet injuries it can be said that such injuries are not possible by firing the pistol in a standing position or even in the sitting position.

15. There is no expert opinion in this regard that such injury and the place where it is caused, can be possible if it is fired by some other person. However, despite this anomaly, which creates doubt about the story of the prosecution that the applicant-Gita fired round because of the alleged quarrel in between both the applicants, appears to be highly improbable.

16. However, at this stage without going into the above referred aspect, we are of the opinion that to examine the question which arises in light of the rival submissions, namely whether the registration of the FIR in question

is a 're-investigation' or 'further investigation'. If the answer is that it is 're-investigation', as argued by the applicants, then the question is, whether re-investigation is permissible?

17. The Hon'ble Supreme Court of India in the case of *Mithabhai Pashabhai Patel* (supra) while considering the question of 'further investigation' and 're-investigation', has observed thus :

"23. In Rama Chaudhary v. State of Bihar it was held: (SCC p. 349, paras 15-18)

"15. The abovesaid provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited.

16. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police. Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.

17. From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of the police report under sub-section (2) on completion of the investigation, the police has a right to 'further' investigation under sub-section (8) of Section 173 but not 'fresh investigation' or 'reinvestigation'. The meaning of 'further' is additional, more, or supplemental. 'Further' investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether.

18. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a 'further' report and not a fresh report regarding the 'further' evidence obtained during such investigation."

18. The Hon'ble Supreme Court of India in the case of *Lalita Kumari (supra)*, while dealing with the provisions regarding 'Preliminary enquiry', has observed thus :

"87. The term "inquiry" as per Section 2(g) of the Code reads as under:

"2. (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court." Hence, it is clear that inquiry under the Code is relatable to a judicial act and not to the steps taken by the police which are either investigation after the stage of Section 154 of the Code or termed as "preliminary inquiry" and which are prior to the registration of FIR, even though, no entry in the General Diary/Station Diary/Daily Diary has been made.

88. ...

89. Besides, the learned Senior Counsel relied on the special procedures prescribed under the CBI Manual to be read into Section 154. It is true that the concept of "preliminary inquiry" is contained in Chapter IX of the Crime Manual of CBI. However, this Crime Manual is not a statute and has not been enacted by the legislature. It is a set of administrative orders issued for internal guidance of the CBI officers. It cannot supersede the Code. Moreover, in the absence of any indication to the contrary in the Code itself, the provisions of the CBI Crime Manual cannot be relied upon to import the concept of holding of preliminary inquiry in the scheme of the Code of Criminal Procedure. At this juncture, it is also pertinent to submit that CBI is constituted under a special Act, namely, the Delhi Special Police Establishment Act, 1946 and it derives its power to investigate from this Act."

II) The Hon'ble Supreme Court of India in the case of *Bhagwant Kishore Joshi (supra)*, has observed thus :

"18. ... Merely making some preliminary enquiries upon receipt of information from an anonymous source or a source of doubtful reliability for checking up the correctness of the information does not amount to collection of evidence and so cannot be regarded as investigation. ..."

III) The Hon'ble Supreme Court of India in the case of *Rajinder Singh Katoch* (supra) has observed thus :

"8. Although the officer in charge of a police station is legally bound to register a first information report in terms of Section 154 of the Code of Criminal Procedure, if the allegations made by them give rise to an offence which can be investigated without obtaining any permission from the Magistrate concerned, the same by itself, however, does not take away the right of the competent officer to make a preliminary enquiry, in a given case, in order to find out as to whether the first information sought to be lodged had any substance or not. In this case, the authorities had made investigations into the matter. In fact, the Superintendent of Police himself has, pursuant to the directions issued by the High Court, investigated into the matter and visited the spot in order to find out the truth in the complaint of the petitioner from the neighbours. It was found that the complaint made by the appellant was false and the same had been filed with an ulterior motive to take illegal possession of the first floor of the house.

11. We are not oblivious to the decision of this Court in Ramesh Kumari v. State (NCT of Delhi)¹ wherein such a statutory duty has been found in the police officer. But, as indicated hereinbefore, in an appropriate case, the police officers also have a duty to make a preliminary enquiry so as to find out as to whether allegations made had any substance or not."

IV) The Hon'ble Supreme Court of India in the case of *Hemendhra Reddy* (supra) has observed thus :

"57. In Ram Lal Narang v. State (Delhi Administration) reported in (1979) 2 SCC 322 : [1979 ALLMR ONLINE 11 (S.C.)], this Court held thus:

"21. As observed by us earlier, there was no provision in the CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on

discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.

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73. In the light of the aforesaid decision of the Supreme Court, it appears that though the order passed by the learned Magistrate accepting a final report under Section 173 is a judicial order, there is no requirement for recalling, reviewing or quashing the said order for carrying out further investigation under Section 173(8) of the CrPC. As held by this Court in the said decision, the provisions of Section 173(8) of the CrPC have been enacted to take care of such like situations also.

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76. Thus, a conspectus of the aforesaid decisions of this Court rendered in cases where final reports (closure reports) had already been submitted and accepted makes the position of law very clear that 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. It is also evident, that prior to carrying out a further investigation under Section 173(8) of the CrPC, it is not necessary for the Magistrate to review or recall the order accepting the final report.

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84. In the aforesaid context, we may only say that the general rule of criminal justice is that "a crime never dies". The principle is reflected in the well-known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). It is settled law that the criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of law would not by itself afford a ground for dismissing the case. Though it may be a relevant circumstance in reaching a final verdict. (See: **Japani Sahoo v. Chandra Sekhar Mohanty** reported in (2007) 7 SCC 394.: [2007 ALL SCR 2032].)"

19. Thus, from a conspectus of the aforesaid decisions, it is evident that further investigation is permissible; however, for reviving or re-investigating any crime, an order from the Magistrate or the Court is mandatory.

20. In the teeth of the above referred well settled law, we now revert back to the facts of the present case.

21. In the present case, after the applicant-Sanket got injured because of the bullet injuries on his both the legs, he was taken to hospital by the applicant-Gita and his other colleagues. Thereupon, MLC was registered and the statement of the applicant-Sanket was recorded by the police in the hospital. The said statement was recorded by Dhantoli Police Station as the hospital was within the jurisdiction of the said Police Station. However, further investigation was made by Bajaj Nagar Police Station as the incidence took place in the jurisdiction of the said Police Station.

22. In the said MLC No. 899 of 2022 the police made enquiry. During the same, the statement of the applicant-Sanket and witnesses were recorded, including the statement of the doctor. The opinion of the expert about the possibility of firing of the pistol in a situation as stated by the applicant-Sanket, was also obtained which does not completely overrule such possibility.

23. Thus, considering the material collected, as referred above, the police reached to the conclusion that there was no cognizable offence and accordingly the file was closed on 14/11/2022. The closure report discloses the investigation made on registration of the MLC No. 899 of 2022.

24. In the case of *Bhagwant Kishore Joshi* (supra) the Supreme Court has described the procedure for investigation and also observed that merely making some preliminary inquiries upon receipt of information from an anonymous source or a source of doubtful reliability for checking up the correctness of the information does not amount to collection of the evidence and so cannot be regarded as investigation.

25. It is observed that the investigation in substance means collection of evidence relating to commission of the offence. For this purpose, the Investigation Officer is entitled to question the persons, who in his opinion, are able to throw light on the offence which has been committed and is likewise entitled to question the suspect and is entitled to reduce the statements of persons questioned by him to writing. He is also entitled to search the place of the offence and to search other places with object of seizing articles connected with the offence. The main object of investigation being to bring home the offence to the offender and to collect all the material necessary for establishing the accusation against the offender.

26. If the closure report in the present matter is seen, it is evident that all this process has been followed namely visiting the spot, collecting material, recording statements of the witnesses, calling report of the expert and formation of the opinion as to whether on the material collected there is a case which can place the accused before the Magistrate for trial.

27. Having held that the steps required to be followed while investigating the crime, have been followed in this case, we do not find favour with the arguments made by the learned APP that it was not the investigation but preliminary inquiry. Whereas, we find substance in the submission of the learned counsel for the applicant that it was the investigation made by the police and on collection of the material the closure report was the formation of the opinion on the basis of such collected material, whether there is a case to place the accused before the Magistrate.

28. As it is a well settled law that further investigation is permissible but not the re-investigation unless there is such a direction by the Court, in the present matter, the re-investigation was made not on the direction of the Court but, on the direction of some higher officer without disclosing the reason for such re-investigation. Such course of action is not permissible and thus, we find substance in the submission of the learned counsel for the applicants that the registration of the offence in question is nothing but a colourable exercise of power and the same is without any authority under the law.

29. Having held so, we pass the following order :

- i) Both the Criminal Applications are **allowed**.
- ii) The First Information Report No.7 of 2024 dated 12/01/2024, registered with Police Station, Bajaj Nagar, Nagpur for the offences punishable under Sections 3/25 Arms Act, Sections 307 and 201 of the Indian Penal Code, is hereby quashed and set aside.

Rule is made absolute accordingly.

The Criminal Application(s), pending, if any, shall stand **disposed of**.

(PRAVIN S. PATIL, J)

(ANIL S. KILOR, J)

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