



W.P.No.798 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2025

PRONOUNCED ON : 23.01.2025

CORAM:

THE HON'BLE Mr. JUSTICE SHAMIM AHMED

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G.Saravanan

...Petitioner

Vs.

1. The Director,
Directorate of Vigilance and
Anti-Corruption,
Chennai.
2. The Superintendent of Police,
Western Range,
Vigilance and Anti-Corruption,
Chennai – 16.
3. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Salem District,
Chennai.

..Respondents

Prayer : Writ petition has been filed under Article 226 of the Constitution of India, praying to issue a writ of mandamus directing the respondents to consider the petitioner's representation dated 21.07.2024 and 03.10.2024 seeking to initiate investigation for misappropriation of funds allotted to the Periyur Village Panchayat, Salem District.



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For petitioner : Mr.R.Sathish Kumar
For Respondents : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER

1. This writ petition has been filed for a direction to the respondents to consider the petitioner's representation dated 21.07.2024 and 03.10.2024 seeking to initiate investigation for misappropriation of funds allotted to the Periyur Village Panchayat, Salem District.

The facts in brief enclosed in the affidavit of the writ petition are as follows:

2. The Petitioner is an active participant of Gram Sabha meeting in Periyeri Village, Salem District. There were several allegations against the Periyeri Village Panchayat authorities for not properly maintaining the Panchayat accounts and not furnishing the Panchayat accounts for perusal to the Villagers.



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3. On perusal of the vendor registration and status report of Periyeri Village, several payment vouchers were raised for the financial year 2023-2024 in the name of "Sai Electricals Gowsika" for a sum of Rs.20,25,108/-. The "Sai Electricals Gowsika" is in the name of one Mrs.Gowsika Navarathinaraj, the wife of Vice President of Periyeri Village Panchayat, Mr. Praveenkumar. The Vice President of Periyeri Village Panchayat, had transferred the funds of the said village to "Sai Electrical" by raising false vouchers in the guise of expenditures of said village.

4. Following this, several complaints were given to Government officials at various levels and finally surcharge proceedings dated 08.01.2024 was issued by the Assistant Director (Audit), Salem, stating that for the financial year 2022-2023, a sum of Rs.45,52,556/- was found to be misappropriated by the Village President, namely, Mr.Sekar. But subsequently no further steps were taken by the authorities against the village President.



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5. Mr.Pon.Perumal, a resident of the village had sent his representation dated 22.05.2024 to the 2nd Respondent about the misappropriation and financial frauds involved by the authorities of the village Panchayat. The 2nd Respondent, forwarded the said complaint to the Commissioner of Rural Development and Panchayat Raj Department also but no action was taken.

6. Thereafter, from the Audit Report of Periyeri village panchayat dated 29.09.2024, it is clear that proper accounts were not maintained for more than Rs.80,00,000/- under different heads. An amount of Rs.27,75,447/- had been transferred to above said Sai Electricals without bills. Further a sum of Rs.6,37,179/- had been transferred to the name of Mr. Praveen Kumar, the Vice President, without proper accounts. Therefore, more than Rs.34 lakhs had been misappropriated in the financial year 2023-24. Further, there were irregularities for the periods 2020-21, 2021-22 and the accounts were also not clear. According to the petitioner, the above misappropriation with the active connivance of the other Government officials has be done and hence, there is a necessity for a fair investigation for the purpose of



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bringing to light the role played by the authorities on this regard.

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Therefore, the petitioner sent a representation dated 21.07.2024, to the 2nd Respondent seeking to investigate the misappropriation of funds done by the Vice President of Periyur village and others connected authorities involved in the said malpractice. The 2nd Respondent on 29.07.2024 had forwarded the petitioner's representation to the Superintendent of Police, Salem District but no further action was taken.

7. While so, One Mr.Manimuthu, was the registered vendor of Periyeri village Panchayat and the GSTIN of the said person was cancelled on 01.01.2022. But more than Rs.47,00,000/- of the Panchayat funds were transferred to the said Manimuthu till date. For the said amount appropriate GST was also not paid, which had lead to huge financial loss to the Government. Hence, once again the petitioner sent a representation dated 03.10.2024 to the 2nd Respondent seeking to investigate the above misappropriation.

8. The learned counsel for the petitioner submitted that an important facet of the rule of law is that in criminal justice system,



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investigation into the crime should be fair, in accordance with law and should not be tainted. Therefore, if the investigating authority is not fairly and properly investigating into crime then this Court has power to issue appropriate directions under Article 226 of the Constitution of India. He further submitted that once the power is available to this Court, there is no need to invoke the powers of the concerned Magistrate under Section 175 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 (for brevity in short “B.N.S.S”) Hence, this writ petition.

9. Mr.A.Gopinath, learned Government Advocate (Crl. Side) submitted that the petitioner made his representations to the second respondent on 22.05.2024, 21.07.2024 and 03.10.2024 about the misappropriation and financial frauds involved by the authorities of the concerned village Panchayat. Thus the provision of B.N.S.S is applicable to the case of the petitioner and the Magistrate has the power under Section 175 (3) of the B.N.S.S to order for fair and proper investigation and, therefore, the petitioner should have approached the concerned Magistrate for redressal of his grievances. Thus, he submits



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that the present writ petition is nothing but an abuse of process of law and the same shall be liable to be dismissed.

10. Heard the learned counsel for the parties and perused the records.

11. The present writ petition has been filed by the petitioner praying for a direction to the concerned police authorities to decide the representation of the petitioner for proper and fair investigation in respect of the misappropriation and financial frauds committed by the authorities of the concerned village panchayat. Thus, the following questions of law which are involved in the writ petition:-

(a) Whether the petitioner is justified to file writ petition under Article 226 of the constitution of India without approaching the concerned Magistrate under Section 175 (3) of the Bharatiya Nagarik Suraksha Sanhita, 2023 for fair and proper investigation?

(b) Whether the jurisdictional Magistrate has power to direct the police authority concerned for fair and proper investigation?



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12. For consideration of the submission of the counsel for the parties, relevant provisions for the purposes of controversy involved in the present writ petition following Sections 2(1)(g), 2(1)(h), 2(1)(k), 2(1)(l), 2(1)(o), 30 and 175 B.N.S.S, are relevant, which are reproduced below:-

The above said provisions are nearly corresponds to Sections 2(c), 2(d), 2(g), 2(h), 2(l), 36 and 156 of Cr.P.C.

"Section 2(1)(g):- "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

Section 2(1)(h):- "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Sanhita, that some person, whether known or unknown, has committed an offence, but does not include a police report.

Section 2(1)(k):- "inquiry" means every inquiry, other than a trial, conducted under this Sanhita by a Magistrate or Court;

Section 2(1)(l):- "investigation" includes all the proceedings under this Sanhita for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.



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Section 2(1)(o):--"non-cognizable offence" means an offence for which, and "non- cognizable case" means a case in which, a police officer has no authority to arrest without warrant;

Section 30:- Powers of superior officers of police. Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

Section 175. Police officer's power to investigate cognizable case.-(1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIV.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 210 may, after considering the application supported by an affidavit made under sub-section (4) of section 173, and after making such inquiry as he thinks necessary and submission made in this regard by the police officer, order such an investigation as above-mentioned.

(4) Any Magistrate empowered under section 210, may, upon receiving a complaint against a public servant arising in course of the discharge of his official duties, order investigation, subject to-



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(a) receiving a report containing facts and circumstances of the incident from the officer superior to him; and

(b) after consideration of the assertions made by the public servant as to the situation that led to the incident so alleged.”

Procedure for Investigation:-

13. Section 176 of B.N.S.S deals regarding the procedure for investigation and it says:-

“176. Procedure for investigation. - (1) *If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under section 175 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender:*

Provided that-

(a) *when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;*

(b) *if it appears to the officer in charge of a police station that there is no sufficient ground for entering on*



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an investigation, he shall not investigate the case:

Provided further that in relation to an offence of rape, the recording of statement of the victim shall be conducted at the residence of the victim or in the place of her choice and as far as practicable by a woman police officer in the presence of her parents or guardian or near relatives or social worker of the locality and such statement may also be recorded through any audio video electronic means including mobile phone.

(2) In each of the cases mentioned in clauses (a) and (b) of the first proviso to sub-section (1), the officer in charge of the police station shall state in his report the reasons for not fully complying with the requirements of that sub-section by him, and, forward the daily diary report fortnightly to the Magistrate and in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by rules made by the State Government.

(3) On receipt of every information relating to the commission of an offence which is made punishable for seven years or more, the officer in charge of a police station shall, from such date, as may be notified within a period of five years by the State Government in this regard, cause the forensic expert to visit the crime scene to collect forensic evidence in the offence and also cause videography of the process on mobile phone or any other electronic device:

Provided that where forensic facility is not available in respect of any such offence, the State Government shall, until the facility in respect of that matter is developed or made in the State, notify the utilisation of such facility of any other State."



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Let us understand briefly the concept of Investigation:-

14. In order to study about the criminal investigation, we need to understand the term ‘investigation’,

“Investigation means to examine, study, or inquire into systematically, search or examine into the particulars of; examine in detail, or, to search out and examine the particulars of in an attempt to learn the facts about something hidden, unique, or complex, especially in an attempt to find a motive, cause, it is about finding things.”

According to the BNSS under section 2(1)(l),“ investigation includes all the proceedings under this Sanhita for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorized by a Magistrate in this behalf.

Investigation, under the BNSS includes:-

1. Proceeding to the spot of crime.
2. Ascertaining the facts and circumstances of the case.
3. Discovery and arrest of the suspected offenders.
4. Collection of evidence,
 - * examination of various persons including the accused and
5. recording their statements in writing.
 - * Search of places or seizures of things which are considered necessary.



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Criminal Investigation is an applied science that involves the study of facts, used to identify, locate and prove the guilt of a criminal. A complete criminal investigation can include searching, interviews, interrogations, evidence collection and preservation and various methods of investigation. Modern day criminal investigations commonly employ many modern scientific techniques known collectively as forensic science.

Application of science and technology in criminal investigation is also an important issue to be considered:-

15. The search for effective aids to interrogation is probably as old as man's need to obtain information from an uncooperative source and as persistent as his impatience to shortcut any tortuous path. In the annals of police investigation, physical coercion has at times been substituted for painstaking and time consuming inquiry in the belief that direct methods produce quick results. The use of technology in the service of criminal investigations, and the application of scientific techniques to detect and evaluate criminal evidence has advanced the investigation process criminal justice system throughout the country.



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According to Cowan in his article “Decision Theory in Law, Science, and Technology”,

“the aim of science, traditionally put, is to search out the ways in which truth may become known. Law aims at the just resolution of human conflict. Truth and justice, we might venture to say, having different aims, use different methods to achieve them. Unfortunately, this convenient account of law and science is itself neither true nor just. For law must know what the truth is within the context of the legal situation: and science finds itself ever engaged in resolving the conflicting claims of theorists putting forward their own competing brands of truth.”

This quote roughly means that the law needs to find the truth to resolve “human conflict” and one method of doing so is to use the field of science. Today’s society has improved upon the methods of the past to bring about more precise and accurate techniques. Forensic Science has expanded to Trauma Inducing Drugs and Psychotropic Substances. The application of science to matters of law has made great strides in recent years. Development of new tools of investigation has led to the emergence of scientific tools of interrogation. Before analysing these techniques it will be necessary and useful to frame and consider the question of law in this case.



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16. That while sitting in a Division Bench of Allahabad High Court as one of the member of the Bench, several writ petitions were filed before the Court with the prayer to direct the concerned police authorities for fair and proper investigation in criminal cases in which investigation is going on and criminal miscellaneous writ petition No. 15692 of 2020 (*Ajay Kumar pandey Vs.State of Uttar Pradesh and others*) was made the leading case and we decided the case *vide* judgement and order dated 27.01.2021. Observation and discussions made in the above case is almost similar and identical to the present case controversy which are being discussed hereunder.

Fair Investigation - Rule of Law:

17. The criminal justice system mandates that any investigation into the crime should be fair, in accordance with law and should not be tainted. It is equally important that interested or influential persons are not able to misdirect or hijack the investigation, so as to throttle a fair investigation resulting in the offenders escaping punitive course of law. These are important facets of the rule of law. Breach of rule of law



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amounts to negation of equality under Article 14 of the Constitution of India. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must be right, just and fair and not arbitrary, fanciful or oppressive, *vide Menka Gandhi vs. Union of India 1(para-7) and Vinubhai Haribhai Malviya and others vs. State of Gujrat and another (paras-16 and 17) and Subramanian Swamy vs. C.B.I.(para-86)*. Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is the first imperative of the dispensation of justice, *vide Commissioner of Police, Delhi vs. Registrar, Delhi High Court, New Delhi (para-16)*. The ultimate aim of all investigation and inquiry whether by the police or by the Magistrate is to ensure that those who have actually committed a crime, are correctly booked and those who have not, are not arraigned to stand trial. This is the minimal and fundamental requirement of Article 21 of the Constitution of India. Interpretation of provisions of Cr.P.C. needs to be made so as to ensure that Article 21 is followed both in letter and in spirit. "A speedy trial" is the essence of companion in concept in "fair trial".



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Both being inalienable jurisprudentially, the guarantee under Article 21 of the Constitution of India embraces both life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and, therefore, cannot be alienated from each other. A fair trial includes fair investigation as reflected from Articles 20 and 21 of the Constitution of India. If the investigation is neither effective nor purposeful nor objective nor fair, the courts may if considered necessary, may order fair investigation, further investigation or reinvestigation as the case may be to discover the truth so as to prevent miscarriage of justice. However, no hard and fast rules as such can be prescribed by way of uniform and universal invocation and decision shall depend upon facts and circumstances of each case.

18. Fair and proper investigation is the primary duty of the investigating officer. In every civilized society, the police force is invested with powers of investigation of a crime to secure punishment for the criminal and it is in the interest of the society that the investigating agency must act honestly and fairly and not resort to fabricating false evidence or creating false clues only with a view to secure conviction



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because such acts shake the confidence of the common man not only in the investigating agency but in the ultimate analysis in the system of dispensation of criminal justice. Proper result must be obtained by recourse to proper means, otherwise it would be an invitation to anarchy, *vide Rampal Pithwa Rahidas vs. State of Maharastra (para-37)*. Investigation must be fair and effective and must proceed in the right direction in consonance with the ingredients of the offence and not in a haphazard manner more so in serious case. Proper and fair investigation on the part of the investigating officer is the backbone of rule of law *vide Sasi Thomas vs. State (para-15 and 18)*.

19. No investigating agency can take unduly long time in completing investigation. There is implicit right under Article 21 of the Constitution of India for speedy trial which in turn encompasses speedy investigation, inquiry, appeal, revision and retrial. There is clear need for timeline in completing investigation for having in-house oversight mechanism wherein accountability for adhering to lay down timeline, can be fixed at different levels in the hierarchy, *vide Dilawar vs. State of Haryana (paras-4 to 8), Menka Gandhi (supra), Hussainara Khatoon*



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**(I) vs. State of Bihar , Abdul Rehman Antulay vs. R.S. Nayak and P.
Ramchandra Rao vs. State of Karnatka.**

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20. For the purposes of investigation, offences are divided into two categories "cognizable" and "non-cognizable". When information of a cognizable offence is received or such commission is suspected, the proper police officer has the authority to enter in the investigation of the same but where the information relates to a non-cognizable offence, he shall not investigate it without the order of the competent Magistrate. Investigation includes all the proceedings under the B.N.S.S. for the collection of evidence conducted by a police officer or by any person other than a Magistrate (who is authorised by a Magistrate in his behalf). Investigation consists of steps, namely (i) proceeding to spot, (ii) ascertainment of the facts and circumstances of the case, (iii) discovery and arrest of the suspected offender, (iv) collection of evidence relating to the commission of the offence and (v) formation of opinion as to whether on the material collected therein to place the accused before a Magistrate for trial and if so to take necessary steps for the same by filing a report under Section 193 B.N.S.S.



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Remedy for Proper Investigation:-

21. Section 175 (1) B.N.S.S. confers power upon any officer in-charge of a police station to investigate any cognizable case. Section 175 (3) provides for a cheque by the Magistrate on the police performing its duties under Chapter XIII, B.N.S.S. In cases where the Magistrate finds that police has not done its duty of investigating the case at all or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly and can monitor the same.

22. In ***Sakiri Vasu vs. State of U.P. and others (paras-11 to 18 and 27 to 30)*** Hon'ble Supreme Court considered Section 156(3), Cr.P.C. and after referring to its earlier decisions in ***Mohd. Yousuf vs. Smt. Afaaq Jahan (para-11)***, ***Dilawar Singh vs. State of Delhi (para-17)***, ***State of Bihar vs. J.A.C. Saldana (para-19)*** and also referring to its judgements on the point of "doctrine of implied powers", in ***Union of India vs. Paras Laminates (P) Ltd.16***, ***I.T.O. vs. Mohd. Kunhi, Reserve Bank of India vs. Peerless General Finance and Investment Company Ltd, Chief Executive Officer & Vice Chairman Gujarat Maritime***



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Board vs. Haji Daud Haji Harun Abu, J.K. Synthetics Ltd. vs.

Collector of Central Excise, State of Karnataka vs. Vishwabharati

House Building Co-op Society , was pleased to observe as under:

"11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12. Thus in Mohd. Yousuf vs. Smt. Afaq Jahan & Anr.this Court observed: (SCC p.631 para 11) "11. The clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all



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registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigating under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."

*13. The same view was taken by this Court in **Dilawar Singh vs. State of Delhi (2007) 12 SCC 641 (JT vide para 17)**. This Court would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.*

14. Section 156 (3) states:

"156(3) Any Magistrate empowered under Section 190 may order such an investigation as above mentioned."

The words "as above mentioned" obviously refer to Section 156 (1), which contemplates investigation by the officer in charge of the Police Station."



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15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order re-opening of the investigation even after the police submits the final report, vide **State of Bihar vs. J.A.C. Saldanna (1980) 1 SCC 554 (SCC: para 19)**.

17. This Court is of the opinion that Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant,



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even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

27. As already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.

*29. In **Union of India vs. Prakash P. Hinduja and another (2003) 6 SCC 195 (SCC vide para 13)**, it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the*



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Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate)."

23. The principles laid down in the case of ***Sakiri Vasu (supra)*** has been reiterated by Hon'ble Supreme Court in ***Sudhir Bhaskar Rao Tambe vs. Hemant Yaswant Dhage (paras-2, 3 and 4) and Vinay Tyagi vs. Irshad Ali (paras-40 to 40.6, 43, 44, 45, 46, 47, 48)***. In the case of ***Vinay Tyagi (supra)***, Hon'ble Supreme Court was pleased to observe as under:

"43. At this stage, we may also state another well-settled canon of criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct 'further investigation', 'fresh' or 'de novo' and even 'reinvestigation'. 'Fresh', 'de novo', and 'reinvestigation' are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.



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44. *We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of Magistrate under Section 228 of the Code. Wherever a charge sheet has been submitted to the Court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgements of this Court in the case of **Disha v. State of Gujarat & Ors.**[(2011) 13 SCC 337].**Vineet Narain v. Union of India** [(1998) 1 SCC 226], **Union of India v. Sushil Kumar Modi** [1996 (6) SCC 500] and **Rubabbuddin Sheikh v. State of Gujarat** [(2010) 2 SCC 200].*

48. *What ultimately is the aim or significance of the expression 'fair and proper investigation' in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases*



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of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons."

24. In the case of ***Vinubhai Haribhai Malviya and others vs. State of Gujrat and another (para-23)***, Hon'ble Supreme Court was pleased to observe as under:

"23. It is thus clear that the Magistrate's power under Section 156(3) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the "investigation" referred to in Section 156(1) of the CrPC would, as per the definition of "investigation" under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the CrPC."



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25. In the case of ***Sudhir Bhaskar Rao Tambe (supra) (paras- 2, 3 and 4)***, Hon'ble Supreme Court following the judgement in the case of ***Sakiri Vasu (supra)*** was pleased to observe that if a person has a grievance that his FIR has not been registered by the police or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India but to approach the Magistrate concerned under Section 156(3), Cr.P.C. If such an application under Section 156(3) Cr.P.C. is made and the Magistrate is *prima facie*, satisfied, he can direct the FIR to be registered or if it has already been registered, he can direct proper investigation to be done which includes in his discretion if he deems it necessary recommending change of the investigating officer so that a proper investigation is done in the matter. Thus, the law laid down by Hon'ble Supreme Court is that after registration of the First Information Report if proper investigation is not being done by the investigating officer, then informant may approach the Magistrate concerned under Section 156(3), Cr.P.C. so that proper investigation is done. A three judges bench of Hon'ble Supreme Court in



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the case of ***M. Subramaniam and others vs. S. Janki and others*** (***Criminal Appeal No.102 of 2011 decided on 20.03.2020***) quoted with approval, the law laid down by two judges bench in the case of ***Sakiri Vasu (supra) and Sudhir Bhaskar (supra)*** and thus, it affirmed the principles laid down in those judgements that even if a first information report has already been registered, on an application under Section 156(3) Cr.P.C., the Magistrate can direct proper investigation and writ petition for this purpose should not generally be entertained by the High Court in view of the remedy available before the Magistrate under Section 156(3), Cr.P.C.

26. In ***Criminal Misc. Writ Petition No.16288 of 2020 (Ram Shila Gupta vs. State of U.P. and 3 others)***, a Division Bench of Allahabad High Court *vide* judgement and order dated 08.01.2024 was pleased to observe as under:

"In the case of M. Subramanian and another Vs. Janki and another (Criminal Appeal No.102 of 2011) decided on 20.03.2020, the Hon'ble Supreme Court observed that if FIR has already been registered then the Magistrate can direct proper investigation to be done which includes his discretion, if he deems it necessary, recommending



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*change of the investigation officer, so that a proper investigation is done in the matter. The High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation and if the High Courts entertain such writ petitions then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hon'ble Supreme Court further held that the complainant must avail of his alternative remedy to approach the Magistrate concerned under Section 156(3) Cr.P.C and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also recommend to the Senior Superintendent of Police/ Superintendent of Police concerned a change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate. The observations made by the Hon'ble Supreme Court are also in reiteration of the principle laid down by the Hon'ble Supreme Court in the case of **SUDHIR BHASKARRAO TAMBE VS. HEMANT YASHWANT DHAGE AND OTHERS; 2016(6) SCC 277** and in the case of **SAKIRI VASU VS. STATE OF UTTAR PRADESH AND OTHERS, 2008(2) SCC 409.***

In view of the aforesaid, this Court do not find any good reason to entertain the present writ petition.

Consequently, considering the submissions of the learned counsel for the parties, this writ petition is dismissed leaving it open to the petitioner to avail such remedy as may be available to him under law."



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27. In view of the discussions made above, this Court holds that if an informant/ petitioner is aggrieved that proper/ fair investigation is not being done by the investigating officer, then he may approach the concerned Magistrate by moving an application under Section 175 (3) of the BNSS, 2023 for appropriate orders instead of invoking writ jurisdiction under Article 226 of the Constitution of India.

28. For all the reasons aforesated, this writ petition is dismissed leaving it open to the petitioner to approach the Magistrate concerned under Section 175 (3) of the BNSS, 2023 for fair and proper investigation as the case may be.

29. Accordingly, the present writ petition is dismissed. No order as to cost.

23.01.2025

vca

Internet : Yes/No

Citation : Yes/No



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SHAMIM AHMED,J.

vca

To,

1. The Director,
Directorate of Vigilance and
Anti-Corruption,
Chennai.
2. The Superintendent of Police,
Western Range,
Vigilance and Anti-Corruption,
Chennai – 16.
3. The Deputy Superintendent of Police,
Vigilance and Anti-Corruption,
Salem District, Chennai.

Pre-Delivery Order in
W.P.No.798 of 2025

23.01.2025