



Crl.R.C(MD)No.710 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.12.2025

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

CRL.R.C.(MD)No.710 of 2024

and

CrI.MP(MD)No.7384 of 2024

S.Nithiyananthan

... Petitioner

vs.

1.The Deputy Superintendent of Police,
Lalgudi.

2.The Inspector of Police,
Siruganur Police Station,
Trichy District,
Crime No.137 of 2023.

4.Arivalagan

5.Paulraj

6.Karthikeyan

7.Shanmugavel

8.Ilavarasan

9.Vasanthakumar

... Respondents



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PRAYER: Criminal Revision Petition is filed under Section 438 r/w 442 of BNSS, 2023, to call for the records and set aside the order of the learned 1st Additional District Court (PCR), Tiruchirappalli in S.R.No. 842 of 2024 in Spl.S.C.No.62 of 2023, dated 23.04.2024 and allow the revision petition and order further investigation in Crime No.137 of 2023 on the file of 2nd respondent by some other police wing.

For Petitioner : Mr.S.Muthukrishnan

For R-1 & R-2 : Mr.A.Thiruvadikumar
Additional Public Prosecutor

ORDER

Heard Mr.S.Muthukrishnan, learned Counsel for petitioner and Mr.A.ThiruvadiKumar, learned Additional Public Prosecutor for respondents 1 and 2.

2. Criminal Revision Petition has been filed to set aside the order of 1st Additional District Court (PCR), Tiruchirappalli in S.R.No.842 of 2024 in Spl.S.C.No.62 of 2023, dated 23.04.2024, whereby 1st Additional District Court (PCR), Tiruchirappalli rejected the petition filed by petitioner under Section 173(8) of Cr.P.C., on the premise that a petition

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under Section 173(8) of Cr.P.C can be maintained only by the Police/prosecution. Relevant portion of the order is extracted hereunder:

“The police/prosecution alone has been vested with the power to file petition u/s.173(8) Cr.P.C.

This petition being filed by the petitioner/complainant is not permissible u/s. 173(8) Cr.P.C.”

3. Before proceeding further, it may be relevant to refer to Section 173(8) of Cr.P.C which reads as under:

“Section 173(8) in The Code of Criminal Procedure, 1973

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (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)”.



4. It appears that Supreme Court initially in the case of ***Reeta Nag vs State of West Bengal***, reported in ***(2009) 9 SCC 129***, held that the Magistrate cannot *suo motu* direct further investigation under Section 173(8) of the Code or direct reinvestigation into a case on account of the bar contained in Section 167(2) of the Code.

5. Thereafter, Supreme Court in the case of ***Vinay Tyagi vs. Irshad Ali*** reported in ***(2013) 5 SCC 762*** found that the judgment in ***Reeta Nag's*** case runs counter to the earlier judgment of larger bench of three judges in the case of ***Bhagwant Singh vs. Commissioner of Police reported in (1985) 2 SCC 537***, and held that Magistrate before whom report is filed under Section 173(2) of Cr.P.C is empowered to direct further investigation and require the Police to submit a further or supplementary report. Relevant portion is extracted hereunder:

“37. In some judgments of this Court, a view has been advanced, [amongst others in Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] , Ram Naresh Prasad v. State of Jharkhand [Ram Naresh Prasad v. State of Jharkhand, (2009) 11 SCC 299 : (2009) 3 SCC (Cri) 1336. Ed. : Ram Naresh case, does No. seem to indicate that the Magistrate cannot suo motu direct further investigation : rather it seems to indicate that the Magistrate in fact can do so.] and Randhir Singh Rana



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v. State (Delhi Admn.) [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361]] that a Magistrate cannot suo motu direct further investigation under Section 173(8) of the Code or direct reinvestigation into a case on account of the bar contained in Section 167(2) of the Code, and that a Magistrate could direct filing of a charge-sheet where the police submits a report that no case had been made out for sending up an accused for trial. The gist of the view taken in these cases is that a Magistrate cannot direct reinvestigation and cannot suo motu direct further investigation.

38. However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct “further investigation” and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] has, in no uncertain terms, stated that principle, as aforenoticed.

39. The contrary views taken by the Court in Reeta Nag [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] and Randhir Singh [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] do not consider the view of this Court expressed in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] . The decision of the Court in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] in regard to the issue in hand cannot be termed as an obiter. The ambit and scope of the power of a Magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three-Judge Bench concluded as aforenoticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh [Bhagwant Singh v. Commr.



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of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] , are thus squarely in line with the doctrine of precedent. To some extent, the view expressed in Reeta Nag [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] , Ram Naresh [Ram Naresh Prasad v. State of Jharkhand, (2009) 11 SCC 299 : (2009) 3 SCC (Cri) 1336. Ed. : Ram Naresh case, does No. seem to indicate that the Magistrate cannot suo motu direct further investigation : rather it seems to indicate that the Magistrate in fact can do so.] and Randhir Singh [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] , besides being different on facts, would have to be examined in light of the principle of stare decisis.”

(emphasis supplied)

6. It is brought to the notice of this Court that considering the scope of section 173(8) of Cr.P.C., the Supreme Court in the case of ***Vinubhai Haribhai Malaviya and Others vs State of Gujarat and another reported in (2019) 17 SCC 1***, held that power can be exercised *suo motu* by the Magistrate himself, depending on the facts of each case. The submission that power to make further investigation would vest exclusively with the police and the power of Magistrate to order further investigation would cease upon process being issued, was rejected by the Supreme Court finding that such narrow and restricted construction of the power of the Magistrate is not warranted, and judgment in *Reeta Nag's* case was overruled. Relevant portion is extracted hereunder:



“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., (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] , Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365] , Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , and Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] ; Hardeep Singh [Hardeep Singh v. State of Punjab, (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 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) CrPC, 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 inculpatory or exculpatory certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in



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concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603] . Therefore, to the extent that the judgments in Amrutbhai Shambhubhai Patel [Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, (2017) 4 SCC 177 : (2017) 2 SCC (Cri) 331] , Athul Rao [Athul Rao v. State of Karnataka, (2018) 14 SCC 298 : (2019) 1 SCC (Cri) 594] and Bikash Ranjan Rout [Bikash Ranjan Rout v. State (NCT of Delhi), (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.), (1997) 1 SCC 361] and Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] also stand overruled.”

(emphasis supplied)

7. Once it is found that Section 173(8) of the Cr.P.C. enables the Magistrate to exercise *suo motu* power for further investigation, it may be permissible for the Magistrate to treat the petition as information and exercise such *suo motu* power, provided that he is satisfied that



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information contained in the petition so warrants. In this regard, one can draw inspiration from the procedure approved by the Supreme Court under the Contempt of Courts Act, which provides, if the law officer grants permission, a petition which is filed can be listed on the judicial side and where the law officer declines consent, the matter can still be placed before the Court not as a petition on the judicial side, but only as information for possible *suo motu* cognizance by the Court¹.

8. Before parting, the above construction, I would think would be in consonance and advance the object of trial under any criminal law which is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities. In this regard, it may be relevant to refer to recent judgment of the Supreme Court in the case of ***Sovaran Singh Prajapati Vs. State of Uttar Pradesh*** reported in **2025 SCC OnLine SC 351**, wherein, it has been held as under:

“Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or

¹ *Bal Thackrey Vs Harish Pimpalkhute & Ors. Reported in 2005 (1) SCC 254*



prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.

...

Since the object is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities, and must be conducted under such rules as will protect the innocent, and punish the guilty.”

9. In the present case, the petition filed by the victim was rejected on the premise that Section 173(8) of Cr.P.C would only enable the police to investigate. The above reasoning is contrary to the view expressed by the Supreme Court¹ as could be seen from the discussion supra, wherein it was held that the power to make further investigation is not confined to the police officer, but also enables the Magistrate to *suo motu* exercise its power to direct further investigation. In the light of the above discussion, the petition filed by the victim ought to be treated as information and Magistrate shall examine if the information contained in the petition warrants *suo motu* exercise of power under Section 173(8) of Cr.P.C for directing further investigation.

¹ *Vinubhai Haribhai Malaviya and Others vs State of Gujarat and another* reported in (2019) 17 SCC 1



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10. In view thereof, the impugned order dated 23.04.2024 passed by 1st Additional District Court (PCR), Tiruchirappalli in S.R.No.842 of 2024 in Spl.S.C.No.62 of 2023, is set aside and the matter is remanded to 1st Additional District Court (PCR), Tiruchirappalli to examine the petition/application filed by the petitioner, as information warranting *suo motu* exercise of power by the Magistrate under Section 173(8) of Cr.P.C. It is made clear that this Court has not expressed any view on merits and the entire discussion is only with regard to maintainability of the petition filed by the victim under Section 173(8) of Cr.P.C.

11. In the result, this Criminal Revision Petition is **disposed of** on the above terms. Consequently, connected miscellaneous petition is closed.

Index :Yes / No
Internet :Yes / No
NCC :Yes / No
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- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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MOHAMMED SHAFFIQ, J.

Nsr

Order made in
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