

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 4093 OF 2023

MADAN SINGH

VS

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Shibaji Kr. Das, Adv.
Ms. Deblina De, Adv.

For the Opposite

Party no. 2 : Mr. Sayan De, Adv.
Mr. Sayan Kanjilal, Adv.

For the State : Mr. Zareen N. Khan, Adv.
Mr. Arani Bhattacharya, Adv.

Last heard on : 10.12.2025

Judgement on : 18.02.2026

Uploaded on : 18.02.2026

CHAITALI CHATTERJEE DAS, J. :-

1. This application under Section 482, read with Section 401 of the Code of Criminal Procedure, 1973 has been filed by the petitioner against an order dated September 19, 2023 passed by the Learned Additional Chief Judicial

Magistrate (in-charge) Kalyani, in connection with Kalyani Police Station case no 642 of 2022 whereby refused the prayer for further investigation .

Brief Fact of the case

2. The facts leading to filing of this case is that the petitioner happens to be the Director of M/s. Bengal Surgical Limited .He lodged a written complaint on November 17, 2022, before the Inspector-in-charge, Kalyani Police Station against the present Opposite Party no.2 who used to work for gain as an accountant in his office from July 9, 2016 alleging misappropriating huge amount of money to the tune of ₹2, 35, 60, 509 by using net banking service which came to the knowledge of the complainant when the Opposite Party no. 2 withdrew the amount on various dates from IndusInd Bank. The Opposite Party no. 2, confessed his guilt before him and admitted to refund the entire amount to the company, but paid only ₹83, 79,000/-. On August 22, 2023, and August 23, 2023, the Opposite Party no. 2 had called the Director of the company at his residence to complete the entire embezzled amount, but threatened with the help of some local miscreants, to the Directors with serious consequences in future and will not pay a single penny. Hence the complaint had to be lodged. After that in connection with the said complaint, the Opposite Party no. 2 was served with a notice under Section 41A of the Code of Criminal Procedure, 1973, and after that charge-sheet was submitted on May 31, 2023, under Section 420/406 of the Indian Penal Code, 1860 only against the Opposite Party no. 2.
3. It is the case of the petitioner that from the charge-sheet it is glaringly visible that the amount was transferred to both the account of the Opposite Party no 2 and his mother but she was not made an accused in the charge-sheet. The

petition for further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 was filed inter-alia with a prayer for further investigation by a higher officer on the ground that the local Kalyani Police Station is not well equipped to conduct such investigation. On September 19, 2023, the said application was heard by the Learned Court and after perusing the materials of record without considering the materials on record passed the order of rejection on September 19, 2023, with an observation that further investigation is not required.

Submission

4. It is submitted by the learned Advocate, representing the petitioner that the observation of the learned Court that he took cognizance of the charge-sheet after being satisfied with the same in all aspect and hence further investigation cannot be directed, is not sustainable in the eye of law. The learned Advocate relied upon the decisions, **CEREF Finance Limited versus Shri Shanti homes (P.) Ltd. and Anr.**¹ where it is observed that the Cognizance is taken of the offence not against the offender. Another decision relied upon by the learned Advocate reported in **K. Vadivel versus K. Shanthi and others**² where the question arose for consideration, whether the High Court was, on the facts of the case, justified in ordering further investigation and the power of the magistrate to direct further investigation. The learned advocate put reliance on the judgement delivered by the coordinate bench of this court at circuit bench at Jalpaiguri in 2023: CHC-JP: 406, **Palat tak Ghosh versus**

¹ (2005) 7 SCC 467

² 2024 SCC online SC 2643

State of West Bengal³, , Shakti Pada Ghosh versus State of West Bengal Hassanbhai Vallabhai Qureshi versus State of Gujarat and others⁴.

5. The learned prosecution on the other hand submits candidly that there are procedural laches on the part of the investigating authority as nothing was seized from the bank and no statement of bank official was recorded.

Analysis

6. Heard the submission. The point falls for consideration whether the prayer for further investigation was rightly rejected by the learned Magistrate after considering the available materials before him or not. It is settled proposition that there must be some reasonable basis which should trigger the application for further investigation in order to arrive at a satisfaction by the court that ends of justice require the ordering/permitting of further investigation.

7. In the petition filed under Section 173 (8) of the Code of Criminal Procedure it was canvassed that the accused person was the accountant of. M/s Bengal surgical Limited, and during his working period, he misappropriated ₹2, 35, 60,509, crores from the bank account in various times. Without proper investigation of the bank account of the defacto complainant, the I.O. completed the investigation, which is illegal and hence made prayer for further investigation by higher official.

8. It is submitted by the learned Advocate that the observation by the learned Court about the collection of the bank documents by the I.O. in a case where the specific contention of the petitioner was not seizure of the required documents from the bank was not justified. It was the observation of the

³ 2015 SCC online 1515

⁴ (2004) 5 SCC 347

learned court that the Court can easily invoke Section 165 of the Evidence Act and Section 311 of the Code of Criminal Procedure for production of any further document from any authority or for examination of any person if so warrant. Alteration of charge can also be made if necessary, in course of evidence and court's hands are not tight for fair trial and for securing fair justice. It was said that since the cognizance has already taken against the accused, mere dissatisfaction of the defacto complainant with the investigation cannot be a ground for allowing his application for further investigation.

9. On perusal of the charge-sheet submitted before the learned Court, nothing could be found to be shown as seized in the final form of charge-sheet from the bank and the I. O was of the opinion that the accused person has committed the offence under section 420/406 IPC .It is further found that the amount alleged to be misappropriated is withdrawn by the accused on various dates from IndusInd Bank and the amount was transferred from bank to the account number of the accused and his mother and further returned ₹83, 79, 000/- through bank transaction to the complainant. In the case of **Sameer Samdhin vs CBI 2025⁵** it has held.

‘Another Bench of this Court, consisting of three Hon’ble Judges, in its decision in the case of Arjun Panditrao Khotkar, in paragraph 55, reiterated the law laid down in the case of R.S.Pai¹. Paragraphs 55 and 56 of the said decision read thus:

“55. In a criminal trial, it is assumed that the investigation is completed and the prosecution has, as such, concretised

⁵ live law (SC) 627

its case against an accused before commencement of the trial. It is further settled law that the prosecution ought not to be allowed to fill up any lacunae during As recognised by this Court in *CBI v. R.S. Pai* [*CBI v. R.S. Pai*, (2002) 5 SCC 82:2002 SCC (Cri) 950], the only exception to this general rule is if the prosecution had “mistakenly” not filed a document, the said document can be allowed to be placed on record. The Court held as follows : (SCC p.85, para 7),

“7. From the aforesaid sub- sections, it is apparent that normally, the investigating officer is required to produce all the relevant documents at the time of submitting the charge-sheet. At the same time, as there is no specific prohibition, it cannot be held that the additional documents cannot be produced subsequently. If some mistake is committed in not producing the relevant documents at the time of submitting the report or the charge-sheet, it is always open to the investigating officer to produce the same with the permission of the court.”

10. It is a fact that the alleged offence was committed by using net banking service and though the charge sheet is submitted against the accused person the I.O. did not make any effort to record any statement from the concerned bank official. The complainant produces the bank statements but, not by way of seizure or collection from the appropriate place. In the case of **K. Vadivel (supra)** the Hon’ble Supreme Court took note of the decision of **Vinay Tyagi versus Irshad Ali alias Deepak** ⁶where in paragraph 41, it was held

⁶ (2013) 5 SCC 762

regarding the aspect of the power of magistrate to direct further investigation is as follows:

41: *“The power of the magistrate to direct further investigation is a significant power, which has to be exercised, sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Section 173(3) two 173 (6) would be applicable to such reports in terms of Section 173.(8) of the Code.”*

11. In the said decision, the Hon'ble Supreme Court was of the view that *‘whether further investigation should or should not be ordered is within the discretion of the magistrate and the discretion is to be exercised on the facts of each case in accordance with law. This Court also held that in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 Cr.P.C could be exercised to direct further investigation or even re-investigation. The scheme of Criminal Procedure Code 1973 is to ensure fair trial and that would commence only after a fair investigation. The fair investigation is a part of constitutional right guaranteed under Article 20 and 21 of the Constitution.’*

12. It is a fact that if the further investigation would cause delay in concluding the trial it cannot be permitted to do fishing and roving enquiry when the police had already filed a charge-sheet and the very applicant for further investigation. In the present case the application was taken out at the initiation of the proceeding since date was fixed for supply of copies to the accused and for further proceeding, so trial has not commenced.

13. In the case of ***Hasanbhai Valibhai Qureshi versus State of Gujarat and others (supra)*** taking note of the case of ***Ramlal Narayan versus State (Delhi Admin)***⁷ , the Hon'ble Supreme Court observed that further investigation is not altogether ruled out merely because cognizance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It was held that effective trial for real or actual offences found, during course of proper investigation is as much relevant or desirable and necessary as an expeditious disposal of the matter by the courts.

14. In this case, the charge-sheet has been submitted under Section 420/406 of the Indian Penal Code against the Opposite Party no. 2. In course of investigation the I.O. did not record the statement of any of the Bank Official, not seized any document in connection with the transaction, which was otherwise found to be done through online transaction and that the amounts were transferred not only to the account of the accused /Opposite Party but to his mother .

15. The observation made by the learned Court regarding the power of court to call for the documents or for further examination of the witnesses cannot be

⁷ (1979) 2 SCC 322

denied, but at the same time this court cannot be oblivious of the fact that the investigating authority did not record the statement of any of the Bank officials nor seized any documents from the bank and or the other person in whose account the amount was transferred and any deficiency in the investigation would certainly have a negative impact in the trial .That apart the trial has not been commenced, none of the parties will be prejudiced if the order of further investigation is allowed at this stage in order to strengthen the case where the charge-sheet has been submitted against the accused person and involves huge amount of money. Hence this court thinks it apt to invoke the inherent power under Section 482 Cr.P.C to secure ends of justice.

Conclusion

- 16.** Hence this revisional application stands allowed.
- 17.** The order passed by the Learned Magistrate on 19.9.23 is hereby set aside. Further investigation to be conducted by an officer other than the officer submitted the Final Report and to submit the report as expeditiously as possible after taking all appropriate measure to collect evidence to justify the charges.
- 18.** Let a copy of the order be forwarded to the concerned Court for taking appropriate steps.
- 19.** Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]