

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2847 of 2014

**Central Bureau of Investigation
-Vs-
Samir Kumar Biswas**

For the Petitioner : Mr. Kallol Kumar Basu
Mr. Subrata Santra

For the Opposite Party : Mr. Karan Dudhawalla

Judgment on : 22.05.2026

Ananya Bandyopadhyay, J.:-

1. The revisional application has been instituted by the petitioner assailing the order dated 21st August, 2014 passed by the Learned Special Judge, Calcutta, 3rd Special Court (C.B.I. Court) in Special Case No.03 of 2014 arising out of C.B.I./S.P.E./A.C.B./Kolkata Case No.RC0102013A0022 dated 16th July, 2013 registered under Sections 120B, 466 and 511 read with Section 201 of the Indian Penal Code together with Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988, whereby the Learned Trial Court allowed the prayer of accused Samir Kumar Biswas for de-freezing Locker No.68 maintained jointly with his wife at Allahabad Bank,

Durganagar Branch, Kolkata, along with the savings bank account standing in his name.

2. The petitioner has projected that the prosecution originated from a written complaint lodged on 16th July, 2013 by Shri Piyush Saraf, Director of M/s Pushpak Freight Solutions Pvt. Ltd., alleging that the accused Samir Kumar Biswas, while serving as Superintendent of Customs (Preventive & Investigation), Kolkata, had demanded illegal gratification of Rs.3,00,000/- for shielding the complainant and his company from adverse implication in a matter concerning seizure of banned drugs. Acting upon such complaint, the C.B.I., Anti Corruption Branch, Kolkata, registered the aforesaid case and arranged a trap operation on the selfsame date.
3. According to the petitioner, the trap culminated in the apprehension of the accused along with co-accused Barun Raj and Amul Vivek Linda, both Inspectors of Customs (Preventive & Investigation), Kolkata, while engaging in the process of demand and acceptance of the tainted amount. The prosecution version further records that co-accused Barun Raj had received the bribe amount on the instructions of accused Samir Kumar Biswas and thereafter attempts were made to conceal the incriminating materials connected with the transaction. Investigation also disclosed the participation of another Customs Inspector, Vivek Anjum Toppo, in the alleged conspiracy and in the subsequent effort to suppress evidence pertaining to the offence. The tainted money together with other incriminating articles was seized in the presence of independent witnesses.

4. The petitioner has asserted that investigation yielded substantial materials revealing the complicity of all the accused persons in a concerted design involving demand and acceptance of illegal gratification coupled with measures intended to obliterate traces of the offence. On completion of investigation, charge-sheet dated 30th December, 2013 came to be filed against the accused persons under Sections 120B and 466 of the Indian Penal Code, Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 511 read with Section 201 of the Indian Penal Code in relation to the offences under the Prevention of Corruption Act. The Learned Special Judge thereafter took cognizance of the offences and the criminal proceeding remained pending for trial.
5. The petitioner has laid considerable emphasis upon the steps adopted during investigation under Section 102 of the Code of Criminal Procedure. It has been stated that the Investigating Officer had issued a communication dated 17th July, 2013 to the Assistant General Manager (Vigilance), Allahabad Bank, Kolkata, directing freezing of accounts, investments and lockers maintained by accused Samir Kumar Biswas and his family members at the Durganagar Branch. The petitioner has contended that the locker key could not be recovered during the searches conducted at the residential premises of the accused and no formal intimation regarding seizure of the locker or the savings bank account had been received from the bank authorities at the relevant point of time.
6. The petitioner has further stated that the accused thereafter filed an application before the Learned Special Judge on 4th July, 2014 seeking de-

freezing of the savings bank account and Locker No.68, besides release of documents and articles seized during search. In response thereto, the C.B.I. submitted a detailed reply before the Learned Trial Court pointing out that the contents of the locker could not be inspected during investigation since the locker particulars and access thereto had remained beyond the reach of the investigating agency. The prosecution maintained before the Learned Court that inspection of the locker had become necessary for ascertaining whether materials connected with the offence or proceeds arising therefrom had been stored therein.

7. The petitioner has contended that the prosecution specifically prayed before the Learned Special Judge for deferment of consideration of the accused's prayer till inspection of the locker was completed and an appropriate report was submitted before the Court. Prior intimation had also been furnished to the Learned Court regarding the intended inspection of Locker No.68 in view of the surrounding circumstances emerging from the investigation. The petitioner has further asserted that the investigating agency had sought cooperation from the accused for facilitating such inspection so that the evidentiary value of the contents of the locker could be examined in a lawful manner.
8. According to the petitioner, notwithstanding the aforesaid materials and the pending investigative requirement relating to inspection of the locker, the Learned Special Judge proceeded to allow the application of the accused by directing de-freezing of the locker and the bank account and by ordering release of the seized documents except the Nokia X-6 mobile phone relied

upon in the charge-sheet. The petitioner has assailed the said order as suffering from a manifestly erroneous appreciation of the factual matrix and the legal authority of the investigating agency.

9. The gravamen of the petitioner's challenge rests upon the assertion that filing of a charge-sheet does not extinguish the authority of the investigating agency to undertake further investigative measures in relation to materials or properties having nexus with the offence. The petitioner has contended that the Learned Trial Court proceeded on an incorrect legal premise that after submission of the charge-sheet the C.B.I. lacked jurisdiction to inspect or retain control over the locker for purposes connected with investigation. Such conclusion, according to the petitioner, has the effect of frustrating the legitimate course of criminal investigation in a corruption case involving allegations of illegal gratification by public servants functioning in positions of authority.
10. The petitioner has thus maintained that the impugned order, having been passed without proper scrutiny of the investigative necessities and without due regard to the surrounding circumstances emerging from the records of the case, calls for interference in exercise of revisional jurisdiction.
11. Learned Advocate appearing for the petitioner advanced elaborate submissions assailing the legality and propriety of the order dated 21st August, 2014 passed by the Learned Special Judge, Calcutta, 3rd Special Court (C.B.I. designated), in Special Case No.03 of 2014 arising out of C.B.I./S.P.E./A.C.B./Kolkata Case No.RC0102013A0022 dated 16th July, 2013. It was submitted that the impugned order directing de-freezing of

Savings Bank Account No.21380948715 and de-sealing of Locker No.68 maintained at Allahabad Bank, Durganagar Branch, Kolkata by accused Samir Kumar Biswas jointly with his wife, Smt. Lila Biswas, suffers from serious legal infirmity and proceeds upon a misconception regarding the statutory authority of the investigating agency to undertake further investigation after submission of charge-sheet.

12. Learned counsel for the petitioner submitted that the criminal proceeding originated from a written complaint dated 16th July, 2013 lodged by Shri Piyush Saraf, Director of M/s Pushpak Freight Solutions Pvt. Ltd., alleging demand of illegal gratification to the tune of Rs.3,00,000/- by accused Samir Kumar Biswas while functioning as Superintendent of Customs (Preventive & Investigation), Kolkata. Pursuant thereto, the C.B.I., Anti Corruption Branch, Kolkata, registered the aforesaid case under Sections 120B, 466 and 511 read with Section 201 of the Indian Penal Code together with Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.
13. The Learned Advocate submitted during the trap operation conducted on 16th July, 2013, the accused Samir Kumar Biswas was apprehended along with co-accused Barun Raj and Amul Vivek Linda, both Inspectors of Customs (Preventive & Investigation), Kolkata, in connection with the demand and acceptance of illegal gratification from the complainant. Investigation further disclosed participation of another Customs Inspector, Vivek Anjum Toppo, in the conspiracy and in the attempt to conceal incriminating materials relating to the offence. The tainted bribe amount

together with other incriminating articles were seized in presence of independent witnesses during the course of investigation.

14. It was contended that investigation culminated in submission of charge-sheet dated 30th December, 2013 against accused Samir Kumar Biswas under Sections 120B read with Section 466 of the Indian Penal Code, Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and Section 511 read with Section 201 of the Indian Penal Code in relation to offences under Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. Charge-sheet was also submitted against co-accused Barun Raj, Amul Vivek Linda and Vivek Anjum Toppo under the aforesaid penal provisions in relation to the alleged criminal conspiracy, demand and acceptance of illegal gratification and concealment of incriminating evidence. Learned counsel pointed out that cognizance had already been taken by the learned Special Court and the matter remained pending at the stage preceding framing of charge. It was further submitted that the next date had been fixed on 20th September, 2023 for hearing of the discharge application under Section 239 of the Code of Criminal Procedure.
15. The Learned Advocate for the petitioner thereafter invited attention to the measures adopted during investigation under Section 102 of the Code of Criminal Procedure. It was submitted that on 17th July, 2013 the Investigating Officer issued directions to the Assistant General Manager (Vigilance), Allahabad Bank, Kolkata, requesting freezing of all accounts, investments and lockers maintained by accused Samir Kumar Biswas and

his family members at Allahabad Bank, Durganagar Branch. In consequence thereof, the savings bank account and Locker No.68 came under freezing restraint. Learned counsel emphasized that the key of the locker could not be recovered during search at the residential premises of the accused and therefore physical inspection of the locker remained beyond the reach of the investigating agency during the original phase of investigation.

16. The petitioner's Learned Advocate submitted that no incriminating document was recovered during search at the residence of the opposite party and the investigating agency therefore entertained a reasonable apprehension that documents, valuables or articles bearing nexus with the offence might have been preserved inside the locker. It was further submitted that the locker had last been operated by the accused on 18th May, 2012, thereby heightening the necessity of conducting inspection before any order of de-sealing or de-freezing could be passed.

17. Attention of the Court was drawn to the circumstance that the opposite party filed an application on 4th July, 2014 before the Learned Special Judge praying for de-freezing of Savings Bank Account No.21380948715 and opening of Locker No.68 at Allahabad Bank, Durganagar Branch, Kolkata. A further application of the selfsame date was also filed seeking release of documents and articles seized from the residential premises of the accused during search.

18. Learned counsel submitted that upon receipt of the aforesaid application, the petitioner-C.B.I. filed detailed written objection before the Learned Special Court on 21st August, 2014 stating therein that inspection of the locker had

not been possible during investigation since the locker key could not be seized and the locker particulars had remained inaccessible at the relevant stage. The prosecution specifically prayed that hearing of the accused's application for de-freezing and de-sealing be adjourned till inspection of the locker was completed and an appropriate report was filed before the Court. It was also communicated before the Learned Court that inspection of the locker had become necessary to ascertain whether any evidence relating to the offence or proceeds arising from illegal gratification had been concealed therein.

19. The Learned Advocate for the petitioner contended that notwithstanding such specific objection and despite prior intimation furnished by the investigating agency regarding further investigation in respect of the locker, the Learned Trial Court by order dated 21st August, 2014 directed de-freezing of the savings bank account and de-sealing of Locker No.68. The Learned Court also directed release of all seized documents except one Nokia mobile phone relied upon by the prosecution in the charge-sheet. According to the petitioner, the Learned Trial Court proceeded upon an erroneous premise that after submission of the charge-sheet the C.B.I. possessed no authority to continue investigation in relation to the sealed locker.

20. It was argued with considerable emphasis that such interpretation runs contrary to the express statutory scheme embodied in Section 173(8) of the Code of Criminal Procedure. Learned counsel submitted that the power of "further investigation" remains preserved even after filing of the police report under Section 173(2) Cr.P.C., and supplementary charge-sheet may

legitimately be filed upon discovery of fresh evidence. The Learned Trial Court, according to the petitioner, failed to appreciate the distinction between “further investigation” and “fresh investigation” or “re-investigation”. Whereas fresh or de novo investigation may require judicial sanction, continuation of further investigation for collection of additional evidence does not stand extinguished upon submission of charge-sheet.

21. Learned counsel further submitted that if inspection of the locker and analysis of the bank account were permitted before de-freezing and de-sealing, fresh materials connected with the alleged offence might emerge, thereby enabling the Investigating Officer to place supplementary materials before the Learned Court in accordance with Section 173(8) Cr.P.C. It was contended that the Learned Special Judge failed to appreciate that immediate release of the locker created serious risk of removal or disappearance of valuable evidence connected with allegations of corruption involving public servants functioning in responsible governmental positions.
22. Reliance was placed upon the judgment of the Hon’ble Supreme Court in *State of Andhra Pradesh vs. A.S. Peter*, reported in (2008) 2 SCC 383, particularly paragraphs 9, 14, 16 and 18 thereof, in support of the proposition that further investigation and filing of supplementary charge-sheet remain permissible even after submission of the primary police report.
23. The Learned Advocate for the petitioner ultimately submitted that a strong prima facie case had already surfaced against the opposite party and co-accused persons inasmuch as the bribe money had been recovered during the trap operation in the presence of independent witnesses. Having regard

to the gravity of the accusations and the possibility of discovery of additional incriminating materials from Locker No.68 or from analysis of the bank transactions, the impugned order permitting de-freezing and de-sealing at that stage, according to the petitioner, deserved interference in revisional jurisdiction and was liable to be set aside.

24. Learned Advocate representing the opposite party advanced an elaborate challenge to the revisional application by first delineating the factual backdrop from which the proceeding had emerged. It was submitted that RC0102013A0022 dated 16th July, 2013 had been registered by the C.B.I. on the basis of source information received from Shri Piyush Saraf, Director of Pushpak Freight Solutions Pvt. Ltd., alleging commission of offences punishable under Section 7 of the Prevention of Corruption Act, 1988 against the opposite party while functioning as Superintendent of Customs (Preventive and Investigation), Kolkata. According to the complaint, the opposite party had allegedly demanded illegal gratification amounting to Rs.3,00,000/- for refraining from implicating the complainant and his company in a matter relating to seizure of banned drugs and the alleged payment was to be effected on 16th July, 2013 at the Customs House.

25. Learned counsel submitted that during the course of investigation, the Investigating Officer issued an order dated 17th July, 2013 under Section 102 of the Code of Criminal Procedure to the Assistant General Manager (Vigilance), Allahabad Bank, Kolkata, directing freezing of accounts, investments and lockers maintained in the name of the opposite party and his family members. Pursuant thereto, Savings Bank Account

No.21380949715 and Locker No.68 at Allahabad Bank, Durganagar Branch, Kolkata, were frozen and sealed respectively.

26. It was thereafter contended that the investigating agency completed the investigation and submitted Charge-sheet No.32 dated 30th December, 2013 against the opposite party and three other accused persons under Sections 120B, 466, 511 and 201 of the Indian Penal Code read with Sections 7, 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988. Learned counsel placed considerable emphasis upon the circumstance that the prosecution, despite filing a comprehensive charge-sheet, neither reserved liberty for supplementary investigation concerning the locker nor disclosed in the charge-sheet any inability to inspect the locker during investigation. According to the opposite party, the prosecution papers proceeded upon the footing that investigation stood completed in its entirety.
27. Learned counsel further submitted that after filing of the charge-sheet, Smt. Lila Biswas, wife of the opposite party and joint holder of the locker, instituted an application on 4th July, 2014 praying inter alia for de-freezing of the bank account and de-sealing of Locker No.68. The Learned Special Judge, 3rd Special Court (C.B.I.), Calcutta, upon hearing all concerned parties and upon examining the materials available on record, allowed the said application by order dated 21st August, 2014 directing de-freezing of the savings bank account and de-sealing of the locker.
28. The Learned Advocate for the opposite party at the very threshold questioned the maintainability of the revisional application. It was argued that the impugned order had been passed in favour of Smt. Lila Biswas, who was the

applicant before the Learned Trial Court and who had specifically sought release of the bank account and locker standing jointly in her name. Yet, despite the order operating directly in her favour, she had not been impleaded as a party in the present revisional proceeding. Learned counsel submitted that the present opposite party alone had been arrayed as respondent although he was not the applicant before the Learned Special Court in relation to the prayer for de-freezing and de-sealing. Such omission, according to the opposite party, constitutes a serious defect touching the maintainability of the proceeding itself and renders the revision vulnerable on the ground of nonjoinder and misdescription of necessary parties.

29. Proceeding further, Learned counsel submitted that the impugned order contained adequate reasons supported by judicial scrutiny of the facts, materials and prosecution records and therefore did not warrant interference in revisional jurisdiction. It was argued that while directing release of the bank account and locker, the Learned Special Judge had taken note of the circumstance that investigation had already culminated in filing of the charge-sheet and that no prayer had been advanced by the prosecution either for supplementary charge-sheet or for continuation of investigation in relation to the locker prior to the filing of the application by Smt. Lila Biswas.
30. According to the opposite party, the Learned Trial Court correctly appreciated that continuation of freezing and sealing measures after completion of investigation required cogent justification. Learned counsel argued that neither the bank account nor Locker No.68 had been shown as relied upon articles or relied upon documents in the prosecution papers

accompanying the charge-sheet. Such omission, according to the opposite party, clearly established that the investigating agency itself did not consider the said account or locker essential for proving the charges levelled against the accused persons during trial.

31. Learned counsel submitted that the Learned Special Judge had also considered the contention of the prosecution that inspection of the locker could not be carried out during investigation because the keys thereof could not be seized. The Learned Trial Court, however, found such plea intrinsically inconsistent with the conduct of the investigating agency itself. It was argued that despite allegedly being unable to inspect the locker, the C.B.I. nevertheless proceeded to complete investigation and file charge-sheet without any reference to such inability, without seeking extension of investigation, without reserving liberty to conduct further inquiry into the locker and without expressing any intention to submit supplementary charge-sheet upon inspection thereof at a later stage.

32. The Learned Advocate therefore contended that the prosecution's present assertion regarding necessity of further investigation into the locker bore the character of a subsequent improvisation introduced only after an application for de-freezing and de-sealing had been filed before the Learned Trial Court. Had the investigating agency genuinely regarded inspection of the locker as indispensable to the prosecution case, such circumstance would naturally have found place in the charge-sheet itself or in a contemporaneous application seeking leave for supplementary investigation.

33. Learned counsel further argued that the Learned Trial Court rightly appreciated the distinction between a legitimate exercise of further investigation under Section 173(8) of the Code of Criminal Procedure and an arbitrary prolongation of investigative restraint upon private property after completion of investigation. Though Section 173(8) of the Code of Criminal Procedure preserves the authority of the investigating agency to conduct further investigation after filing of chargesheet, such power, according to the opposite party, cannot be exercised mechanically or as a device to obstruct release of property indefinitely without concrete investigative foundation.
34. It was argued that the prosecution had already filed a complete charge-sheet after allegedly conducting full-fledged investigation into the accusations involving demand and acceptance of illegal gratification. In the absence of any reflection within the charge-sheet regarding necessity of locker inspection or anticipated supplementary materials arising therefrom, the subsequent stand of the prosecution lacked bona fide investigative basis. Learned counsel submitted that the Learned Special Judge therefore rightly concluded that there existed no compelling reason to continue freezing the bank account or sealing the locker.
35. The opposite party also highlighted the prejudice occasioned by continuation of such freezing and sealing measures. Learned counsel submitted that the locker and bank account belonged jointly to the opposite party and his wife and that indefinite deprivation of access thereto, despite completion of investigation and filing of chargesheet, imposed substantial hardship upon the family without corresponding prosecutorial necessity. Exercise of

investigative authority beyond permissible statutory contours, according to the opposite party, inevitably results in serious civil and financial consequences upon persons affected thereby.

36. Learned counsel therefore maintained that the Learned Special Judge had acted within the parameters of law and judicial propriety while directing release of the account and locker. The impugned order, according to the opposite party, reflects careful balancing of investigative requirements with the rights of individuals against indefinite restraint over property. It was contended that the Learned Trial Court had applied judicial mind to every relevant circumstance, including the stage of the proceeding, contents of the charge-sheet, absence of any proposal for supplementary investigation and the fact that neither the account nor the locker formed part of the prosecution's relied upon materials.

37. The opposite party thus urged no case whatsoever had been established by the petitioner warranting interference by this Hon'ble Court in exercise of revisional jurisdiction. According to Learned counsel, the order dated 21st August, 2014 passed by the Learned Special Judge, 3rd Special Court (C.B.I.), Calcutta, directing defreezing of Savings Bank Account No.21380949715 and de-sealing of Locker No.68 at Allahabad Bank, Durganagar Branch, Kolkata, stands firmly rooted in legal principle, factual scrutiny and judicial discretion and therefore merits affirmance rather than disturbance.

38. The revisional application calls for examination of the extent of authority preserved in favour of an investigating agency after submission of a police

report under Section 173(2) of the Code of Criminal Procedure and the degree to which such authority may operate in relation to properties frozen during investigation under Section 102 of the Code of Criminal Procedure.

39. The prosecution case traces its origin to RC0102013A0022 dated 16th July, 2013 registered by the C.B.I., Anti Corruption Branch, Kolkata, on the basis of a complaint lodged by Shri Piyush Saraf, Director of Pushpak Freight Solutions Pvt. Ltd. The complaint alleged that accused Samir Kumar Biswas, while serving as Superintendent of Customs (Preventive and Investigation), Kolkata, demanded illegal gratification of Rs.3,00,000/- for refraining from implicating the complainant and his company in a matter relating to seizure of banned drugs. Pursuant thereto, a trap operation was arranged and the accused, along with certain Customs officials, came within the fold of investigation relating to offences punishable under Sections 120B, 466, 511 and 201 of the Indian Penal Code read with Sections 7 and 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.
40. Records placed before this Court reveal that during investigation, the Investigating Officer invoked powers under Section 102 of the Code of Criminal Procedure and issued communication dated 17th July, 2013 to the Assistant General Manager (Vigilance), Allahabad Bank, Kolkata, directing freezing of accounts, investments and lockers maintained by the accused and his family members. In consequence thereof, Savings Bank Account No.21380949715 and Locker No.68 at Allahabad Bank, Durganagar Branch, Kolkata, came under freezing and sealing measures.

41. The prosecution thereafter submitted Charge-sheet No.32 dated 30th December, 2013 against the accused persons. Cognizance stood taken by the Learned Special Judge and the proceeding remained pending at the stage preceding framing of charge. Subsequent thereto, Smt. Lila Biswas, wife of the accused and joint holder of the locker, instituted an application before the Learned Trial Court seeking de-freezing of the bank account and de-sealing of the locker. By order dated 21st August, 2014, the Learned Special Judge allowed the said prayer principally upon recording that charge-sheet had already been submitted and that the investigating agency lacked authority to continue investigative exercise in relation to the sealed locker thereafter.
42. The petitioner has assailed the aforesaid conclusion by placing reliance upon Section 173(8) of the Code of Criminal Procedure and by contending that submission of charge-sheet does not bring investigative authority to a state of extinction. According to the petitioner, inspection of the locker could not be conducted during investigation since the key thereof could not be recovered and therefore further investigation in relation to the locker remained necessary for ascertaining existence of additional incriminating materials.
43. The opposite party, on the other hand, contended the investigating agency, despite completion of investigation and filing of charge-sheet, never disclosed in the police report that inspection of the locker remained pending, nor did it reserve liberty for supplementary investigation or supplementary charge-sheet. It had further been contended that neither the locker nor the bank

account formed part of relied upon prosecution materials and therefore continuation of freezing and sealing measures lacked lawful basis.

44. The controversy therefore rests substantially upon interpretation of Section 173 of the Code of Criminal Procedure and the legal incidents flowing from submission of a police report under sub-section (2) thereof.

45. Section 173(2) of the Code of Criminal Procedure contemplates submission of a final report upon completion of investigation. Such report signifies culmination of the investigation then carried out and furnishes to the Magistrate or Special Court the materials collected by the investigating agency. Yet, the legislative architecture of Section 173 of the Code of Criminal Procedure does not treat submission of such report as an impregnable barrier against collection of further evidence. Sub-section (8) expressly preserves the authority of the investigating agency to conduct “further investigation” even after forwarding of the report contemplated under Section 173(2) of the Code of Criminal Procedure. The statutory language therefore creates a clear distinction between completion of one stage of investigation and the statutory competence to continue investigative exercise upon discovery of fresh materials or investigative necessity.

46. The legislative object behind Section 173(8) of the Code of Criminal Procedure rests upon the recognition that criminal investigation does not always move within predictable contours. Discovery of additional facts, emergence of fresh evidence, tracing of concealed properties or revelation of further conspiratorial links may arise even after submission of charge-sheet.

Criminal procedure therefore preserves elasticity within the investigative process so that the search for truth does not suffer premature foreclosure.

47. At the same time, the authority preserved under Section 173(8) of the Code of Criminal Procedure cannot assume the character of a limitless reservoir permitting indefinite restraint upon personal liberty or private property without demonstrable necessity. The power of further investigation carries within itself a corresponding obligation of fairness, procedural discipline and transparency before the Court supervising the criminal proceeding.

48. Section 173 of the Code of Criminal Procedure forms the legislative culmination of the investigative chapter within the Code. Sub-section (2) contemplates submission of a final report upon completion of investigation. Yet, sub-section (8) expressly preserves the authority of the investigating agency to undertake “further investigation” even after forwarding of the report under Section 173(2) of the Code of Criminal Procedure. The statutory language reads:

“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...”

49. The legislative expression “nothing in this section shall be deemed to preclude” carries considerable significance. The provision does not confer a newly created authority; rather, it preserves and protects continuation of investigative competence even after submission of the police report. The statutory design therefore rejects any interpretation suggesting that filing of

a charge-sheet creates a jurisdictional embargo against collection of further evidence.

50. The Supreme Court in *Vinay Tyagi v. Irshad Ali*¹ undertook an elaborate examination of the distinction between “further investigation”, “fresh investigation” and “re-investigation”. The Court observed that further investigation is supplementary in character and intended to collect additional evidence so that the Court may ultimately arrive at the truth through a complete evidentiary picture. The decision emphasised that criminal investigation remains a dynamic process directed towards discovery of truth and not a ritual brought to rigidity by filing of a police report. Further investigation supplements the earlier investigation and proceeds upon the foundation already laid in the original charge-sheet. Fresh or de novo investigation, by contrast, effaces the earlier investigative exercise and recommences the process from its inception. Judicial sanction assumes greater significance in relation to the latter category since it disturbs the existing investigative structure itself. Further investigation, however, remains statutorily preserved under Section 173(8) of the Code of Criminal Procedure, though fairness demands disclosure before the Court where the proceeding already stands instituted.

51. The factual foundation of the prosecution case has already been delineated in detail. The allegations concern demand and acceptance of illegal gratification by accused Samir Kumar Biswas while functioning as Superintendent of Customs (Preventive and Investigation), Kolkata. The

¹ (2013) 5 SCC 762

prosecution case records a successful trap operation, seizure of tainted money, allegations of criminal conspiracy involving Customs officials and subsequent measures directed towards concealment of incriminating evidence. During investigation, the Investigating Officer invoked powers under Section 102 of the Code of Criminal Procedure and directed freezing of accounts and lockers maintained by the accused and his family members at Allahabad Bank, Durganagar Branch, Kolkata.

52. The prosecution has consistently maintained that although searches were conducted, the key of Locker No.68 could not be recovered and therefore inspection of the contents thereof remained incomplete. It is this circumstance which compelled the investigating agency to seek continuance of sealing measures till inspection of the locker and scrutiny of the account could be undertaken.
53. The Learned Trial Court, however, while directing de-freezing and de-sealing, recorded that once charge-sheet had been submitted, the C.B.I. lacked authority to continue investigation relating to the locker. Such interpretation requires careful examination against the statutory scheme governing criminal investigation.
54. The principle assumes particular relevance in corruption prosecutions where concealment of assets, destruction of records and diversion of incriminating materials frequently surface after the initial stage of investigation. Investigative authority under Section 173(8) of the Code of Criminal Procedure therefore constitutes an essential statutory instrument for preservation of prosecutorial efficacy.

55. In *Hasanbhai Valibhai Qureshi v. State of Gujarat*², the Supreme Court observed that where fresh facts come to light after submission of the report, the investigating agency is not powerless to collect further evidence merely because charge-sheet has already been filed. The Court held that the primary duty of the investigating agency is discovery of truth and if further evidence becomes available, the agency would fail in its obligation were it restrained from conducting further investigation.
56. Likewise, in *State of Andhra Pradesh v. A.S. Peter*³, relied upon by the petitioner, the Supreme Court recognised that supplementary charge-sheet may validly follow further investigation undertaken after submission of the original report. The decision clarified that permission of the Court becomes indispensable in cases involving fresh investigation or re-investigation, whereas further investigation remains statutorily permissible under Section 173(8) of the Code of Criminal Procedure.
57. The distinction between these concepts bears substantial legal significance. Further investigation supplements the earlier investigation and continues upon the existing prosecutorial foundation. Re-investigation or fresh investigation, on the other hand, effaces the earlier investigation and commences anew. The latter affects the integrity of the earlier investigative process itself and therefore demands judicial supervision of a different order.
58. The Learned Trial Court appears to have treated submission of charge-sheet as a terminal point beyond which investigative authority ceased entirely.

² (2004) 5 SCC 347

³ (2008) 2 SCC 383

Such interpretation, with respect, narrows Section 173(8) of the Code of Criminal Procedure into practical insignificance. Criminal procedure does not contemplate such inflexibility. Discovery of hidden documents, tracing of concealed assets, forensic examination of subsequently recovered materials and analysis of financial transactions frequently occur after filing of the initial report. The legislature consciously preserved investigative elasticity precisely to address such eventualities. Submission of a charge-sheet marks completion of the investigation then available; it does not erect a jurisdictional embargo against further collection of evidence.

59. The present case illustrates the importance of that statutory preservation.

The prosecution specifically informed the Learned Trial Court that inspection of the locker could not be completed during investigation because the locker key had not been recovered. The prosecution further prayed that the application for de-freezing be deferred till inspection could be conducted and a report submitted before the Court. Therefore, the investigative necessity was neither clandestine nor speculative. Prior intimation had been furnished before the Court itself.

60. The argument advanced by the opposite party that the investigating agency failed to mention such circumstance in the original charge-sheet undoubtedly merits consideration. Yet omission within the original charge-sheet cannot, by itself, extinguish the authority expressly preserved under Section 173(8) of the Code of Criminal Procedure. The statute itself contemplates that further evidence may emerge subsequent to submission of the police report. If every omission within an earlier charge-sheet were

treated as fatal to further investigation, the legislative purpose underlying Section 173(8) of the Code of Criminal Procedure would stand substantially diluted.

61. Reference may also be made to *Ram Lal Narang v. State (Delhi Administration)*⁴, wherein the Supreme Court recognised that discovery of fresh materials after filing of the police report may legitimately require continuation of investigation and submission of supplementary reports. The Court observed that criminal justice cannot be reduced to technical finality at the expense of truth and that investigative powers must remain sufficiently flexible to respond to subsequent discovery of relevant evidence.

62. Further, in *Nirmal Singh Kahlon v. State of Punjab*⁵, the Supreme Court reiterated that fair investigation forms an inseparable component of criminal justice administration and that the Court must ensure that investigation reaches its logical conclusion through lawful collection of all relevant materials.

63. The aforesaid citations have been embarked upon for reliance in the following subsequent decisions to establish the legal efficacy of the propositions as enumerated therein:-

i. The Hon'ble Supreme Court has held the following in ***K. VADIVEL VS***

K. SHANTHI⁶:-

“32. Ultimately, the contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or reinvestigation to unravel the

⁴ (1979) 2 SCC 322

⁵ (2009) 1 SCC 441

⁶ 2024 INSC 746

truth and mete out justice to the parties (see *Pooja Pal vs. Union of India & Ors.* (2016) 3 SCC 135, para 83). As noticed in *Ram Lal Narang vs. State (Delhi Administration)* (1979) 2 SCC 322, (para 20) where fresh materials come to light which would implicate persons not previously accused or absolve persons already accused or where it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, it may be the duty of the investigating agency to investigate the genuineness of the same and submit a report to the court.

33. However, the further investigation cannot be permitted to do a fishing and roving enquiry when the police had already filed a charge-sheet and the very applicant for further investigation, in this case respondent no. 1, has not whispered about anything new in her evidence as is now sought to be averred in the application. There must be some reasonable basis which should trigger the application for further investigation so that the court is able to arrive at a satisfaction that ends of justice require the ordering/permitting of further investigation. In *Hasanbhai Valibhai Qureshi vs. State of Gujarat & Ors.*, (2004) 5 SCC 347, this Court held as under:-

“13. In *Ram Lal Narang v. State (Delhi Admn.)* [1979] 2 SCC 322] it was observed by this Court that further investigation is not altogether ruled out merely because cognisance 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 would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case.”

34. In *Vinay Tyagi vs. Irshad Ali alias Deepak & Ors.*, (2013) 5 SCC 762, this Court dealing with the aspect of the power of Magistrate to direct further investigation had the following to say:

“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 Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.”

35. It is essential to note that this Court emphasized that though power to order further investigation is a significant power it has to be exercised sparingly and in exceptional cases and to achieve the ends of justice (see Devendra Nath Singh vs. State of Bihar & Ors., (2023) 1 SCC 48, para 45). Whether further investigation should or should not be ordered is within the discretion of the Magistrate and the said 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 reinvestigation. This Court reiterated the principle that even under Section 482 Cr.P.C. the wide powers are to be exercised fairly with circumspection and in exceptional cases.”

ii. The Hon’ble Supreme Court has held the following in **VINUBHAI**

HARIBHAI MALAVIYA VS THE STATE OF GUJARAT⁷:-

“29. HasanbhaiValibhai Qureshi v. State of Gujarat and Ors. (2004) 5 SCC 347 is an important judgment which deals with the necessity for further investigation being balanced with the delaying of a criminal proceeding. If there is a necessity for further investigation when fresh facts come to light, then the interest of justice is paramount and trumps the need to avoid any delay being caused to the proceeding. The Court therefore held:

“11. Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the court should

⁷AIR 2019 SC 5233

not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.

12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognisance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.

13. In *Ram Lal Narang v. State (Delhi Admn.)* [(1979) 2 SCC 322: 1979 SCC (Cri) 479 : AIR 1979 SC 1791] it was observed by this Court that further investigation is not altogether ruled out merely because cognisance 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 would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case.”

30. In *Hemant Dhasmana v. CBI and Anr.* (2007) 1 SCC 536, this Court followed *Papaiah* (supra) and held:

“16. Although the said sub-section does not, in specific terms, mention about the powers of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by a court which has the jurisdiction to do so, it would not be a proper exercise of revisional powers to interfere therewith because further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such

extended investigation, the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back on that track. If they come to the same conclusion, it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the Special Judge's direction would be of advantage for the ends of justice. It is too premature for the High Court to predict that the investigating officer would not be able to collect any further material at all. That is an area which should have been left to the investigating officer to survey and recheck."

- iii. The Hon'ble Supreme Court has held the following in **DEVENDRA NATH SINGH VS THE STATE OF BIHAR**⁸:-

"12. As noticed, the present case carries its unique features that the learned Magistrate had not exercised any such powers in terms of Section 156(3) or Section 173(8) or Section 190(1)(c) CrPC but, the High Court has, while dealing with a petition under Section 482 CrPC, directed him to direct the police to investigate further, particularly as regards the role of the appellant; and such exercise of power by the High Court is in question. In this regard, we may usefully refer to the relevant of the decisions cited by the learned counsel for the parties. 12.1. In the case of Vinay Tyagi (supra), this Court dealt with the wide range of issues relating to the powers of the High Court under Section 482 CrPC as also the powers of the Magistrate under Section 173 CrPC; and different vistas of the processes of conducting 'fresh investigation' and/or 'further investigation'. This Court observed and held as under: -

"43. At this stage, we may also state another well-settled canon of the 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.”

iv. The Hon’ble Supreme Court, in the case of **STATE THROUGH CENTRAL BUREAU OF INVESTIGATION VS HEMENDHRA REDDY ETC⁹**, held the following:-

“3. The principal question of law that falls for the consideration of this Court in the present litigation is whether the High Court was justified in quashing the entire prosecution instituted by the CBI against the accused persons for the alleged offences on the ground that the CBI could not have undertaken further investigation under sub section (8) of Section 173 of the Code of Criminal Procedure, 1973 (for short, ‘the CrPC’) and filed a chargesheet having once already submitted a final report under sub section (2) of the Section 173 of the CrPC (closure report)? In other words, whether the High Court was right in taking the view that the Special Court could not have taken cognizance upon the chargesheet filed by the CBI based on further investigation having once already filed a closure report in the past and the same having been accepted by the court concerned at the relevant point of time?

...

55. In Union Public Service Commission v. S. Papaiah and Others reported in (1997) 7 SCC 614, it was held in Para 13:

“The Magistrate could, thus in exercise of the powers under Section 173(8) CrPC direct the CBI to “further investigate” the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the “new” report to be submitted by the investigating officer would be governed by sub-sections (2) to (6) of Section 173 CrPC.”.

...

78. While recording the facts in the earlier part of our judgment, we have made reference of the order passed by a Co-ordinate Bench of the High Court dated 11.09.2014 in Crl. O.P. No. 6371 of 2014. All legal issues which we have discussed in the present judgment were looked into by the High Court and by a reasoned order, the High Court took the view that it was permissible for the CBI to undertake

⁹ 2023 INSC 460

further investigation and the objections raised on behalf of the accused were not sustainable in law. We quote some of the relevant observations made by the High Court in its order dated 11.09.2014:

“5. In my opinion, on the facts and circumstances of the instant case, the above said decisions are of no help to the petitioner. In the aforesaid decisions, the well settled principle is restated that Section 173(8) of Cr.P.C enables an officer in charge of a Police Station/CBI to carry on further investigation even after a report under Section 173(2) of Cr.P.C is submitted to the court. The power to further investigation, after filing of final report in court and even after the Magistrate has taken cognizance, is available to the Police in view of the Section 173(8) of Cr.P.C. 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. This is well settled in the decision of the Hon'ble Supreme Court reported in 2013-5-SCC-762 (Tyagi Vs. Irshad Ali). The only rider is provided is that it would be desirable that the Police should inform the Court and seek formal permission to make further investigation as observed in Bhagwan Samardha Sreepada Vallabha Venkata Vishwadaha Maharaj Vs. State of AP (AIR-1999-SC-2332).”

v. The Hon'ble Supreme Court, in the case of **RAMACHANDRAIAH VS**

M. MANJULA¹⁰, held the following:-

“11. It has been settled in catena of decisions that the High Court or the Supreme Court being Constitutional Court is vested with extraordinary power to direct CBI investigation depending upon the facts and circumstances of the case. The Constitutional Courts are expectantly and reverently entrusted with the duty to serve justice being a sovereign and premiere constitutional institution. In “Vinay Tyagi vs. Irshad Ali”², this Court has held that the power to direct for CBI investigation is to be exercised sparingly and in exceptional circumstances, but, when the facts so demand, it is extremely necessary to exercise the said power to provide credibility and instil confidence in order to do complete justice and for enforcing the fundamental rights. The following principle has been laid down by this Court in paragraphs 33, 43, 44 & 45:

¹⁰ 2025 INSC 556

“33. This judgment, thus, clearly shows that the Court of Magistrate has a clear power to direct further investigation when a report is filed under Section 173(2) and may also exercise such powers with the aid of Section 156(3) of the Code. The lurking doubt, if any, that remained in giving wider interpretation to Section 173(8) was removed and controversy put to an end by the judgment of this Court in *Hemant Dhasmana v. CBI* [(2001) 7 SCC 536 : 2001 SCC (Cri) 1280] where the Court held that although the said section does not, in specific terms, mention the power of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by the court, which has the jurisdiction to do so, then such order should not even be interfered with in exercise of a higher court's revisional jurisdiction. Such orders would normally be of an advantage to achieve the ends of justice. It was clarified, without ambiguity, that the Magistrate, in exercise of powers under Section 173(8) of the Code can direct CBI to further investigate the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the new report to be submitted by the investigating officer, would be governed by sub-section (2) (2013) 5 SCC 762 to sub-section (6) of Section 173 of the Code. There is no occasion for the Court to interpret Section 173(8) of the Code restrictively. After filing of the final report, the learned Magistrate can also take cognizance on the basis of the material placed on record by the investigating agency and it is permissible for him to direct further investigation.

43. At this stage, we may also state another well-settled canon of the 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.

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 the 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 judgments of this Court in *Disha v. State of Gujarat* [(2011) 13 SCC 337 : (2012) 2 SCC (Cri) 628] , *Vineet Narain v. Union of India* [(1998) 1 SCC 226 : 1998 SCC (Cri) 307] , *Union of India v. Sushil Kumar Modi* [(1996) 6 SCC 500] and *Rubabbuddin Sheikh v. State of Gujarat* [(2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006]”

12. Yet again in “*Pooja Pal vs. Union of India & Ors.*”, this Court has held thus in paras 75, 79 & 80 :

“75. That the extraordinary power of the constitutional courts under Articles 32 and 226 of the Constitution of India qua the issuance of direction to CBI to conduct investigation must be exercised with great caution, was underlined in *Committee for Protection of Democratic Rights [State of W.B. v. Committee for Protection of Democratic Rights]*, (2010) 3 SCC 571 : (2010) 2 SCC (Cri) 401] as adverted to hereinabove. Observing that although no inflexible guidelines can be laid down in this regard, it was highlighted that such an order cannot be passed as a matter of routine or merely because the party has levelled some allegations against the local police and can be invoked in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigation or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and for enforcing the fundamental rights. ...”

...

15. The principle laid down in *W.N. Chadha* (supra) has been reiterated in *Satish Kumar Nyalchand Shah vs. State of Gujarat & Ors.*, wherein the following has been held in para 10:

“10.It is required to be noted that, as such, even the proposed accused *Shri Bhaumik* shall not have any say at this stage in an application under Section 173(8) CrPC for further investigation, as observed by this Court in *W.N. Chadha [Union of India v. W.N. Chadha]*, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] ; *Narender G. Goel [Narender G. Goel v. State of Maharashtra]*, (2009) 6 SCC 65

: (2009) 2 SCC (Cri) 933] and *Dinubhai Baghabhai Solanki* [*Dinubhai Baghabhai Solanki v. State of Gujarat*, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] . In *Dinubhai Baghabhai Solanki* [*Dinubhai Baghabhai Solanki v. State of Gujarat*, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] after considering another decision of this Court in *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.* [*Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.*, (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] , it is observed and held that there is nothing in Section 173(8) CrPC to suggest that the court is obliged to hear the accused before any direction for further investigation is made. In *Sri Bhagwan Samardha* [*Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.*, (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] , this Court in para 11 held as under : (*Sri Bhagwan Samardha* case [*Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.*, (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] , SCC p. 743)

“11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of (2020) 4 SCC 22 any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation.”

17. At this stage, it is profitable to refer to the observation made by this Court in the matter of *Mandakini Diwan & Anr. vs. High Court of Chhattisgarh & Ors.*⁶, wherein this Court directed for investigation by the CBI in a matter, like the present one, where at an earlier stage the police had filed a closure report treating it to be a case of suicide. The following has been held by this Court in paras 8, 20 & 21:

“8. According to the appellants, the police filed the closure report treating it to be a case of suicide. The appellants repeatedly continued to represent to the authorities for a fair investigation after registering first information report. All the complaints made by the appellants to the authorities did not result in the registering of FIR against Respondent 7. All the complaints though were inquired into but were ultimately closed as a result of the influence exerted by Respondent 7. Till date, neither FIR has been registered on the

several complaints made by the appellants nor a fair investigation has been carried out in order to find out the truth.”

20. *In Awungshi Chirmayo v. State (NCT of Delhi), this Court directed CBI to hold enquiry in the criminal matter related to murder of two cousins due to certain puzzling facts including inconclusive post-mortem report. It held as follows: (SCC pp. 572-73, paras 14-18)*

“14. In a seminal judgment reported as State of W.B. v. Committee for Protection of Democratic Rights, this Court has discussed in detail inter alia the circumstances under which the constitutional courts would be empowered to issue directions for CBI enquiry to be made. This Court noted that the power to transfer investigation should be used sparingly, however, it could be used for doing complete justice and ensuring there is no violation of fundamental rights. This is what the Court said in para 70: (SCC p. 602)

‘70. ... Insofar as the question of issuing a direction to CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights.”

vi. The Hon’ble Supreme Court, in the case of **Y. BALAJI VS KARTHIK**

DESARI¹¹, held the following:-

“28. While dealing with the First Question, this Court pointed out that investigation can be of three kinds namely, (i) initial investigation; (ii) further investigation; and (iii) fresh or de novo or reinvestigation. After exploring the meaning of “initial investigation” in paragraph 21 and the meaning of “further investigation” in paragraph 22, this Court recorded in paragraph 23, what a fresh

¹¹ 2023 INSC 542

investigation/reinvestigation/de novo investigation is and the circumstances under which the same can be ordered. Paragraph 23 of the decision reads as follows:-

“23. However, in the case of a “fresh investigation”, “reinvestigation” or “de novo investigation” there has to be a definite order of the court. The order of the court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the investigating agency nor the Magistrate has any power to order or conduct “fresh investigation”. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of “fresh”/“de novo” investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of the rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the court, the court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a “fresh investigation”.

29. In paragraphs 43 and 45, this Court held that the power to order de novo investigation vests only with superior courts and that the same has to be exercised sparingly in exceptional cases. In paragraph 46, this Court pointed out that while ordering de novo investigation, there are two options open to the superior court namely, (i) to direct the report already prepared or the investigation so far conducted, not to form part of the records of the case; or (ii) to direct the report already prepared or the investigation so far conducted to form part of the record. If the superior court is silent on this aspect, the report already prepared or the investigation so far conducted will form part of the record. In other words, if the superior

court intended that the investigation so far conducted and the report already filed should not form part of the record, it should specifically say so.”

64. The allegations in the present matter concern corruption by public servants functioning within the Customs Department. Such offences frequently involve concealment of records, use of intermediary channels and diversion of financial materials. The locker and bank account in question were frozen during investigation itself under powers traceable to Section 102 of the Code of Criminal Procedure. The prosecution asserts that no incriminating materials were recovered from the residence of the accused and that the possibility of concealment within the locker necessitated inspection thereof. The locker had allegedly last been operated on 18th May, 2012. These circumstances cannot be brushed aside as legally irrelevant.
65. At the same time, the Court must maintain equilibrium between investigative necessity and proprietary rights of citizens. Section 102 of the Code of Criminal Procedure does not sanction indefinite freezing of property divorced from investigative purpose. Continuation of restraint must bear reasonable nexus with the requirements of investigation. Judicial scrutiny therefore becomes essential to prevent investigative powers from degenerating into instruments of disproportionate hardship.
66. The opposite party has correctly contended that neither the bank account nor the locker formed part of relied upon prosecution documents in the original charge-sheet. That circumstance weakens the prosecution's position to some extent. Yet it does not wholly extinguish the investigative necessity asserted by the prosecution, particularly when the investigating agency had

already intimated the Court regarding incomplete inspection and contemplated further inquiry into the locker before disposal of the application for de-freezing.

67. The legal infirmity in the impugned order therefore lies in the conclusion that filing of charge-sheet altogether deprived the C.B.I. of competence to pursue further investigation. Such proposition does not align with the legislative intent embodied in Section 173(8) of the Code of Criminal Procedure nor with the judicial exposition rendered in the decisions referred to hereinabove.

68. The correct legal position may therefore be summarised thus:

- (i) submission of a police report under Section 173(2) of the Code of Criminal Procedure marks completion of the investigation then carried out;
- (ii) Section 173(8) of the Code of Criminal Procedure expressly preserves authority of the investigating agency to conduct further investigation after submission of such report;
- (iii) further investigation supplements the earlier investigation and may culminate in supplementary charge-sheet;
- (iv) fresh investigation or re-investigation stands upon a different basis and ordinarily requires judicial sanction;
- (v) continuation of freezing or sealing measures under Section 102 of the Code of Criminal Procedure must bear reasonable nexus with genuine investigative necessity and remain subject to judicial supervision.

69. Yet, the matter does not rest solely upon the statutory competence of the investigating agency. The Court must also examine whether continuation of freezing and sealing measures bears reasonable nexus with the requirements of investigation.
70. In the present case, the prosecution had asserted that no incriminating documents could be recovered during search at the residence of the accused and that the locker had last been operated on 18th May, 2012. The possibility of concealment of documents, valuables or articles bearing nexus with the alleged offence therefore formed the basis for seeking inspection of the locker before permitting de-sealing thereof. The allegations concern corruption by public servants functioning within the Customs Department and involve accusations of illegal gratification accompanied by allegations relating to concealment of evidence. Such allegations possess serious prosecutorial implications.
71. At the same time, the Court cannot overlook that the locker stood jointly maintained with Smt. Lila Biswas and that prolonged deprivation of access to personal banking facilities carries financial and civil consequences extending beyond the accused alone. The power under Section 102 of the Code of Criminal Procedure, though broad in amplitude, remains subject to judicial scrutiny regarding proportionality and duration of restraint.
72. The Learned Special Judge rightly noticed that neither the bank account nor the locker had been shown as relied upon documents or articles in the charge-sheet. Yet, absence of such description does not by itself extinguish the authority of further investigation where the investigating agency has

already disclosed before the Court that inspection thereof remained incomplete. A charge-sheet does not become immutable merely because every possible evidentiary source had not yet been exhausted. Section 173(8) of the Code of Criminal Procedure precisely exists to address such situations.

73. The legal infirmity within the impugned order therefore lies not in the ultimate concern for protecting proprietary rights of the account holder and locker holder, but in the legal conclusion that submission of charge-sheet entirely deprived the investigating agency of competence to pursue further investigation relating to the locker. Such proposition does not harmonise with the text, structure and purpose of Section 173(8) of the Code of Criminal Procedure.

74. Nevertheless, continuation of freezing and sealing measures cannot persist indefinitely without procedural safeguards. Fair balance between investigative necessity and proprietary rights requires that inspection of the locker be conducted within a defined period under judicial supervision and in the presence of the concerned account holders or their authorised representatives. Upon completion of such inspection and submission of a supplementary report, the Learned Trial Court shall proceed in accordance with law regarding continuance or withdrawal of freezing measures.

75. Accordingly, the impugned order dated 21st August, 2014 passed by the Learned Special Judge, 3rd Special Court (C.B.I.), Calcutta, stands modified to the extent that the investigating agency shall be permitted to conduct inspection of Locker No.68 and scrutiny of the connected bank account

strictly for purposes of further investigation contemplated under Section 173(8) of the Code of Criminal Procedure. Such exercise shall be completed within a stipulated period to be fixed by the Learned Trial Court, in presence of the concerned account holders or their authorised representatives and an inventory shall be prepared contemporaneously. Upon completion thereof, the investigating agency shall submit a supplementary report before the Learned Trial Court indicating whether any material connected with the prosecution case has been recovered. After submission of the report arising from such inspection, the Learned Trial Court shall reconsider the question of de-sealing and de-freezing upon evaluation of the materials collected and the necessity, if any, for continued restraint over the said properties.

76. Thereafter, the Learned Trial Court shall reconsider continuance or withdrawal of freezing and sealing measures in accordance with law and upon assessment of the supplementary materials, if any, collected during such exercise.

77. The revisional application accordingly succeeds in part with the aforesaid directions.

78. Accordingly, CRR 2847 of 2014 stands disposed of. Connected application, if any, also stands disposed of.

79. There is no order as to costs.

80. Case Diary, if any, to be returned forthwith.

81. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

82. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)