REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.1171 OF 2016
(ARISING OUT OF S.L.P (CRIMINAL) NO.3338 OF 2015)

AMRUTBHAI SHAMBHUBHAI PATEL ....APPELLANT

VERSUS

SUMANBHAI KANTIBHAI PATEL & ORS. ....RESPONDENTS

J U D G M E N T

AMITAVA ROY, J.

The assail is of the verdict dated 10.04.2015 rendered by the High Court, setting at naught the order dated 27.5.2014 passed by the Chief Judicial Magistrate, Gandhinagar, whereby the Trial Court had allowed the application filed by the appellant, the original informant, under Section 173(8) of the Code of Criminal Procedure, 1973 (for short, hereinafter referred to as "the Code/1973 Code") for further investigation by the police.

2. We have heard Mr. Sanjay Hegde, learned senior counsel for the appellant and M/s. Zakir Hussain, Nitya Ramakrishan, and Shamik Sanjanwala, learned counsel for the respondent Nos. 1,2

and 3 respectively.

3. The facts indispensable for the present adjudication, portray that the appellant had lodged a First Information Report (for short hereafter referred to as "FIR") against the respondents under Sections 406, 420, 426, 467, 468, 471, 477B and 120B of the Indian Penal Code (for short also referred to as "IPC"). The materials offered in the FIR and the investigation by the police that followed, divulged that there was a dispute between the parties relating to agricultural land and that the appellant/informant had alleged forgery of the signatures and thumb impression of his as well as of his family members in the register maintained by the Notary (Public). After the charge-sheet was submitted, charge was framed against the respondents and they stood the trial accordingly, as they denied the imputations. As would be gleanable from the records, the oral evidence of the appellant/first informant was concluded on 03.07.2012 followed by that of the investigating officer of the case on 10.09.2013. Subsequent thereto, the statements of the respondents were recorded under Section 313 Cr.PC on 03.12.2013, whereafter an application was filed at the culminating stages of the trial by the appellant/informant seeking a direction under Section 173(8) from the Trial Court for further

investigation by the police and in particular to call for a report from the Forensic Science Laboratory as regards one particular page of the register of the Notary (Public), which according to the appellant/informant was of debatable authenticity, as it appeared to have been affixed/pasted with another page thereof. To be precise, this application was filed at a stage when the case was fixed for final arguments.

4. The Trial Court, however, by the order impeached before the High Court granted the prayer made and issued a direction to the police for further investigation. Significantly, prior thereto in Special Leave Petition being SLP (Crl.) No.9106 of 2010, this Court had directed expeditious disposal of the trial. It is also worthwhile to record that the application filed by the appellant/informant under Section 173(8) of Cr.PC had been opposed by the respondents herein, who being dissatisfied with the order of the Trial Court, thus impugned the same before the High Court.

5. The High Court, as the impugned decision would disclose exhaustively examined the purport of Section 173(8) in the particular context of the scope of further investigation by the police after it had submitted a charge sheet and the Trial Court had taken cognizance on the basis thereof and had proceeded with the trial,

following the appearance of the accused persons. It, amongst others took note of the 41st Report of the Law Commission of India which after reflecting on the oftly adopted view of the Courts that once a final report under Section 173 had been submitted by the police, the latter could not touch the case again and reopen the investigation, recommended that it ought to be made clear that under the said provision of the Code, it was still permissible for the police to examine any evidence even after the submission of the charge-sheet and to submit a report to the Magistrate. Thus, the Law Commission's emphasis was to obviate any hindrance in the way of the investigating agency, which in certain fact situations could be unfair to the prosecution as well as to the accused.

6. The High Court having regard to this recommendation and the incorporation of Section 173(8) as a sequitur thereof held that it was permissible for the investigating officer or the officer-in-charge of the police station to undertake a further investigation even after the filing of the charge sheet, but neither the informant nor the accused could claim as a matter of right, any direction from the Court directing such further investigation under the said provision after a charge-sheet was filed. The High Court traced the law as expounded by this Court from its renderings in ***Ram Lal Narang v.***

State (Delhi Administration), **(1979) 2 SCC 322** vis-à-vis the scope and purport of Section 173 of Cr.P.C. in particular, qua further investigation by the police after it had submitted charge-sheet in a case. The exposition by this Court in ***Ram Lal Narang*** **(supra)** that neither Sections 173 nor 190 of the Code of Criminal Procedure, 1898 did suggest exhaustion of the power of the police to further investigate even after the Magistrate had taken cognizance of the offence already on record and that the police could exercise such right as often as necessary when fresh information would come to light and it desired to make further investigation was noted. However, while doing so, it was observed that in deference to the Court, the police ought to ordinarily seek its formal permission to make further investigation. The High Court in this perspective, observed that a further investigation could in a given factual setting, sub-serve the interest of the prosecution and even of the defence.

7. The High Court in its verdict also adverted to the decision of the Privy Council in ***King Emperor v. Khwaja Nazir Ahmad,*** AIR 1945 PC18 which stressed upon the restraint of the judiciary against interference with the police in matters which were within its province, holding that the roles of these two institutions were

complementary and not overlapping, subject however to the right of the Courts to intervene in an appropriate case for directions in the nature of *habeas corpus*.

8. The decision of this Court in ***Abhinandan Jha & Ors. v. Dinesh Mishra***, AIR 1968 SC 117 to the effect that the Magistrate could not direct the police the course of investigation or to submit a charge-sheet when it had already submitted a final report, was referred to as well. Reference to the explication of law laid down by this Court in ***Randhir Singh Rana v. State (Delhi Administration)***, (1997)1 SCC 361 on the powers available to a Magistrate at different stages of a case before him in the singular context of its competence to direct further investigation with reference thereto, was relied upon. It was noted as well that a Magistrate, of his own, could not order further investigation after an accused, pursuant to the process issued against him on the basis of the charge-sheet already submitted, had appeared in the case.

9. The pronouncement of this Court in ***Hasanbhai Valibhai Qureshi v. State of Gujarat and others***, (2004) 5 SCC 347 ruling that the police had the power to conduct further investigation de hors any direction from the Court even after it had taken cognizance was relied upon to reinforce its conclusion.

10. The enumeration of this Court in ***Reeta Nag v. State of West Bengal & Ors.***, (2009) 9 SCC 129 also to the same effect was adverted to. The High Court thus deduced on the basis of an in-depth survey of the state of law, as above, on the import and ambit of Section 173(8) Cr.P.C. that in absence of any application or prayer made by the investigating authority for further investigation in the case, the Trial Court had erred in allowing the application filed by the appellant/informant for the same.

11. Without prejudice to this finding, the High Court was further of the view that having regard to the sequence of events and the delay on the part of the informant to make such a prayer at the closing stages of the trial, it was not entertainable. In arriving at this determination, the High Court, amongst others marked that the evidence of the appellant/informant had been recorded in the year 2012 when he did have sufficient opportunity to scrutinise the document in question but for inexplicable reasons did wait for more than two years to register the prayer for further investigation. It was of the view that the attendant factual setting did not demonstrate any defective investigation which demanded curation through a further drill and that in any view of the matter, additional report from the Forensic Science Laboratory had not been called for. This

is more so, as in the view of the High Court, the entire register of the Notary (Public) had been seized by the investigating officer and that any unusual or suspicious feature therein would have been certainly examined by the FSL and findings in connection therewith recorded. The High Court thus interfered with the order of the Magistrate permitting further investigation by the police in the case and ordered for expeditious disposal of the trial.

12. Whereas the learned senior counsel for the appellant has strenuously urged that the impugned order is patently indefensible, inasmuch as, if maintained, it would result in travesty of justice and that not only the Trial Court was within its competence to order further investigation in the attendant facts and circumstances but also the same was essential to unravel the truth bearing on the charge levelled against the respondents-accused, the impugned order has been endorsed on behalf of the respondents pleading that the same has been in abidance of the consistent judicially pronounced postulations qua the scope and purport of Section 173(8) Cr.P.C. and that no interference therewith is warranted.

13. Having regard to the contentious assertions, expedient it would be to retrace the law propounded by this Court on the import and impact of Section 173 Cr.PC, with particular reference to

sub-Section (8) thereof. For immediate reference, the afore-stated provision is extracted in full as hereunder:

> "**173. Report of police officer on completion of investigation**.- (1) Every investigation under this Chapter shall be completed without unnecessary delay.
>
> (1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.
>
> (2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-
>
> (a) the names of the parties;
> (b) the nature of the information;
> (c) the names of the persons who appear to be acquainted with the circumstances of the case;
> (d) whether any offence appears to have been committed and, if so, by whom;
> (e) whether the accused has been arrested;
> (f) whether he has been released on his bond and, if so, weather with or without sureties;
> (g) whether he has been forwarded in custody under section 170;
> (h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C or 376D of the Indian Penal Code (45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report, shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation,

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject- matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the

statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

(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)**."

14. It would be appropriate at this juncture to set out as well the Section 173 of the Code of Criminal Procedure 1898.

"**Section 173. Report of police-officer**.-

(1) Every investigation under this Chapter shall be completed without unnecessary delay, and, as soon as it is completed, the officer in charge of the police-station shall-

(a) forward to a Magistrate empowered to take cognizance of the offence on a police-report a report, in the form prescribed by the State

Government, setting forth the names of the parties, the nature of the information and the names of the persons who appear to be acquainted with the circumstances of the case, and stating whether the accused (if arrested) has been forwarded in custody, or has been released on his bond, and, if so, whether with or without sureties, and

(b) communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(2) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police-station to make further investigation.

(3) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(4) After forwarding a report under this section, the officer in charge of the police-station shall, before the commencement of the inquiry or trial, furnish or cause to be furnished to the accused, free of cost, a copy of the report forwarded under sub-section (1) and of the first information report recorded under section 154 and of all other documents or relevant extracts thereof, on which the prosecution proposes to rely, including the statements and confessions, if any recorded under section 164 and the statements

recorded under sub-section (3) of section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(5) Notwithstanding anything contained in sub-section (4), if the police-officer is of opinion that any part of any statement recorded under sub-section (3) of section 161 is not relevant to the subject-matter of the inquiry or trial of that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interests, he shall exclude such part from the copy of the statement furnished to the accused and in such a cause, he shall make a report to the Magistrate stating his reasons for excluding such part.

Provided that at the commencement of the inquiry or trial, the Magistrate, shall after perusing the part so excluded and considering the report of the police-officer, pass such orders as he thinks fit and if he so directs, a copy of the part so excluded or such portion thereof, as he thinks proper, shall be furnished to the accused.

15. A plain comparison of these two provisions would amply demonstrate that though these relate to the report of a police officer on completion of investigation and the steps to ensue pursuant thereto, outlining as well the duties of the officer in-charge of the concerned police station, amongst others to communicate, the action taken by him to the person, if any, by whom the information relating to the commission of offence was first given, it is explicit

that the recast provision of the 1973 Code did incorporate sub-clause 8 as a significant addition to the earlier provision.

16. The Forty-first Report of the Law Commission of India (for short, hereinafter to be referred to as "the Commission") on the Code of Criminal Procedure, 1898 dealt with the aspect of reopening of investigation in the context of the existing Section 173 of the Code 1898 and recommended in the following terms:

> "**14.23**: A report under section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the magistrate concerned. It appears, however, that courts have sometimes taken the narrow view that once a final report under section 173 has been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in section 173 that the competent police officer can examine such evidence and send a report to the magistrate. Copies concerning the fresh material must of course be furnished to the accused."

17. The Commission in the above perspective proposed a revision of Section 173 of Code 1898 in the following terms:

"**14.24:** We propose that section 173 should be revised as follows:-

I73. (1) Every investigation under this Chapter shall be completed without unnecessary delay.

(2) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a po1ice-report a report, in the form prescribed by the State Government, stating-

(a) the names of the parties;

(b) the nature of the information;

(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) *whether any offence appears to have been committed, and if so, by whom*;

(e) *whether the accused has been arrested*;

(f) *whether he has been released on his bond under section 169, and, if so, whether with or without sureties,*-

(g) whether he has been forwarded in custody under section 170.

The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any cases in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct that officer in

charge of the police-station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

(5) *When such report is in respect of a case to which section 170 applies, the police-officer shall forward to the Magistrate along with the report-*

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely *other than those already sent to the Magistrate during investigation*; and

(b) the statements recorded under.....section 161 of all persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any *such statement* is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall *indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.*

(7) **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. 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 (5) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report under sub-section (2)**."

18. The Bill to consolidate and amend the law relating to criminal procedure followed and was circulated in the Gazette of India, Extraordinary, Part II, published on December 10, 1970 proposing, the Code of Criminal Procedure, 1970. The Statement of Objects and Reasons clearly disclosed that the recommendations of the Commission to overhaul the Code 1898 as made were accepted and vis-a-vis Section 173, which corresponded to Section 176 in the aforementioned report, the amendment proposed was to facilitate collection of evidence by the police after filing the charge-sheet and production thereof before the Court, subject to the accused being given usual facilities for copies. The remodelled Section 173 was identical in form and substance to the one, as proposed by the Commission in chime with its recommendation as contained in the Report. Sub-clause (7) of the new Section 173, as proposed by the Commission and integrated in the Bill, however eventually appeared as sub-clause (8) to the Section under Code 1973.

19. The newly added sub-section (8), as its text evinces,

permits further investigation by the concerned officer in-charge of the police station in respect of an offence after a report under sub-section 2 had been forwarded to the Magistrate and also to lay before the Magistrate a further report, in the form prescribed, whereafter such investigation, he obtains further evidence, oral or documentary. It is further ordained that on submission of such further report, the essentialities engrafted in sub-sections 2 to 6 would apply also in relation to all such report or reports.

20. The integration of sub-section 8 is axiomatically subsequent to the 41st Report of the Law Commission Report of India conveying its recommendation that after the submission of a final report under Section 173, a competent police officer, in the event of availability of evidence bearing on the guilt or innocence of the accused ought to be permitted to examine the same and submit a further report to the Magistrate concerned. This assumes significance, having regard to the language consciously applied to design Section 173(8) in the 1973 Code. Noticeably, though the officer in-charge of a police station, in categorical terms, has been empowered thereby to conduct further investigation and to lay a supplementary report assimilating the evidence, oral or documentary, obtained in course of the said pursuit, no such authorization has been extended to the Magistrate as the Court is seisin of the proceedings. It is, however no longer res integra that a Magistrate, if exigent to do so, to espouse the cause of justice, can trigger further investigation even after a final report is submitted under Section 173(8). Whether such a power is available suo motu or on the prayer made by the informant, in absence of request by the investigating agency after cognizance

has been taken and the trial is in progress after the accused has appeared in response to the process issued is the issue seeking scrutiny herein.

21. Though noticeably the High Court, in the decision impugned, has aptly referred to and relied upon the relevant pronouncements of this Court on the issue involved, the authorities cited at the Bar in course of the arguments demand recapitulation.

22. In ***Bhagwant Singh v. Commissioner of Police & Anr.***, (1985) 2 SCC 537, a three Judge Bench of this Court was seized with the poser as to whether in a case where the First Information Report is lodged and after completion of the investigation initiated on the basis thereof, the police submits a report that no offence has been committed, the Magistrate if is inclined to accept the same, can drop the proceeding without issuing notice to the first informant or to the injured or in case where the incident has resulted in death, to the relatives of the deceased. This Court in its adjudicative pursuit, embarked upon a scrutiny of the provisions of Chapter XII of the Cr.P.C., dealt with Sections 154, 156, 157 thereof before eluding to Section 173 of the Code. It noticed that under sub-Section (1) of Section 154, every information relating to the commission of a cognizable offence, if given orally to an officer in-charge of a police station has to be reduced into writing by him or under his direction and is to be read over to the informant and every such information whether given in writing or reduced to writing, shall be signed by the person giving it and that a copy thereof shall be given forthwith to the informant, free of cost. It noticed that under Section 156(1), the officer in-charge of a police

station is vested with the power to investigate any cognizable case without the order of the Magistrate and that sub-Section (3) authorized the Magistrate empowered under Section 190 Cr.P.C. to order an investigation, as mentioned in sub-Section (1). The prescription under Section 157(1) requiring the officer in-charge of a police station to forthwith send a report of the information to a Magistrate empowered to take cognizance of such offence upon a police report, in case he has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, was taken note of. The mandate of Section 157(2) for the police officer to notify the informant, in case he was of the view that no sufficient ground for entering on an investigation had been made out, was also referred to.

23. It noted as well that under Section 173(2)(i), the officer in-charge, as soon as the investigation is completed, is required to forward to the Magistrate empowered, a report in the prescribed form so as to enable the Court to take cognizance of the offence based thereon. This Court also adverted to Section 190 enumerating the modes of taking cognizance of an offence by a Magistrate, as specified therein, either upon receiving a

complaint of facts which constituted such offence or upon a police report of such facts or upon information received from any person other than a police officer or upon his own knowledge that such offence had been committed.

24. In the conspectus of the provisions of Cr.P.C. traversed, this Court held the view that an informant who lodges the first information report does not fade away therewith and is very much concerned with the action initiated by the officer in-charge of the police station pursuant thereto, so much so, that not only a copy of the said report is to be supplied to him free of cost and in case, no investigation is intended, he has to be notified of such decision. The reason, in the contemplation of this Court, for the officer in-charge of a police station to communicate the action taken by him to the informant and a report to the Magistrate under Section 173(2) Cr.P.C. was that the informant, who sets the machinery of investigation into motion, was required to know what was the result of the exercise initiated on the basis thereof, as he would be vitally interested therein and hence, the obligations cast by law on the officer in-charge.

25. This Court assayed the courses open to the Magistrate on receipt of a report by the police on the completion of the investigation. It was enunciated that if the report submitted by the police divulged that no offence had been committed, there again, the Magistrate would be left at liberty to adopt one of the three courses, namely; he could accept the report and drop the proceeding, or he could disagree with the report and taking the view that there was sufficient ground for proceeding further, take cognizance of the offence and issue process or he could direct further investigation to be made by the police under sub-Section (3) of Section 156. Noticeably, these three courses referred to hereinabove are at the pre-cognizance stage and can be opted for by the Magistrate depending on his satisfaction on an assessment of the materials then on record.

26. Be that as it may, this Court held that whereas neither the informant nor the injured nor the relative of the deceased in case of death, would be prejudicially affected in case the Magistrate decides to take cognizance of the offence and to issue a process, they would certainly be prejudiced in case, the Court holds the view that there is no sufficient ground for proceeding further and is inclined to drop the proceeding. Having regard to the scheme of Sections 154, 157 and 173 in particular of the Cr.P.C and the pattern of consequences to follow in the two contingencies referred to herein above, this Court propounded that in case the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. Qua the requirement of issuance of such notice to the injured person or to a relative of the deceased, in case of death, who is/are not the informant(s) who had lodged the first information report, it was elucidated that it would be open for the Magistrate in the exercise of his discretion, if he thinks fit, to give such notice. However, the locus standi of the injured person or any relative

of the deceased, though not entitled to notice on the Magistrate to apply for the Court at the time of consideration of the report, if he/they otherwise come to know of such stage of the proceeding, was recognized, so much so that in case he/they would want to advance any submission with regard to the report, the Magistrate would be bound to hear him/them as the case may be.

27. This verdict in re the issue presently involved is significant, so far as it outlines the different modes of taking cognizance of an offence by a Magistrate and also the procedures and powers available to him on the submission of a police report following the completion of investigation. This decision is pellucid in its statement that the Magistrate, on receipt of the report, at that stage before taking cognizance of the offence alleged, may direct further investigation under sub-Section (3) of Section 156 Cr.P.C. and require the police to make further report and that such power can be exercised suo motu, contingent on its satisfaction of the necessity thereof to espouse the cause of justice.

28. The question that fell for appraisal in ***Randhir Singh Rana*** **(supra)** was as to whether a judicial Magistrate, after

taking cognizance of an offence, on the basis of a police report and after appearance of the accused in pursuance of the process issued, can order of its own, further investigation in the case. The significantly additional feature of this query is the stage of the proceedings for directing further investigation in the case i.e. after the appearance of the accused in pursuance of the process already issued. This Court reiterated that such power was available to the police, after submission of the charge-sheet as was evident from Section 173(8) in Chapter XII of the Code, 1973. That it was not in dispute as well that before taking cognizance of the offence under Section 190 of Chapter XIV, the Magistrate could himself order investigation as contemplated by Section 156(3) of the Code was noted as well. This Court also noticed the power under Section 311 under Chapter XXIV to summon any person as a witness at any stage of an inquiry/trial or other proceedings, if the same appeared to be essential to the just decision of the case.

29. It recalled its earlier rendering in ***Tula Ram and others v. Kishore Singh***, (1977) 4 SCC 459 to the effect that the Magistrate could order investigation under Section 156(3) only

at the pre-cognizance stage under Sections 190, 200 and 204 Cr.P.C and that after he decides to take cognizance under the provisions of Chapter XIV, he would not be entitled in law to order any investigation under Section 156(3), and further though in cases not falling within the proviso to Section 202, he could order such investigation by the police, the same would be in the nature of an inquiry only as contemplated by Section 202.

30. This Court also recounted its observations in ***Ram Lal Narang (supra)*** to the effect that on the Magistrate taking cognizance upon a police report, the right of the police to further investigate even under the 1898 Code was not exhausted and it could exercise such right often as necessary, when fresh information would come to light. That this proposition was integrated in explicit terms in sub-Section (8) of Section 173 of the new Code, was noticed. The desirability of the police to ordinarily inform the Court and seek its formal permission to make further investigation, when fresh facts come to light, was stressed upon to maintain the independence of the judiciary, the interest of the purity of administration of criminal justice and the interest of the comity of the various

agencies and institutions entrusted with different stages of such dispensation.

31. The pronouncement of this Court in ***Devarapalli Lakshminarayana Reddy and others v. V. Narayana Reddy and others**,* (1976) 3 SCC 252 emphasizing on the distinction in the power to order police investigation under Section 156(3) and under Section 202(1) of the Cr.P.C, was referred to. It was ruled that the two powers operate in separate distinct spheres at different stages, the former being exercisable at the pre-cognizance stage and the latter at the post-cognizance stage when the Magistrate is in seisin of the case. It was underlined that in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) could be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a), but once such cognizance is taken and he embarks upon the procedure embodied in Chapter XV, he would not be competent to revert to the pre-cognizance stage and avail Section 156(3). On the other hand, it was observed that Section 202 would be invocable at a stage when some evidence has been collected by the Magistrate in the proceedings under Chapter XV, but is deemed to be insufficient to take a decision as to the next step and in such an event, the Magistrate would be empowered under Section

202 to direct, within the limits circumscribed by that provision, an investigation for the purpose of deciding whether or not, there is sufficient ground for proceeding. It was thus exposited that the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing the proceedings already instituted upon a complaint before him. It was thus concluded on an appraisal of the curial postulations above referred to, that the Magistrate of his own, cannot order further investigation after the accused had entered appearance pursuant to a process issued to him subsequent to the taking of the cognizance by him.

32. The scope of the judicial audit in ***Reeta Nag (supra),*** to reiterate, was whether, after the charge-sheet had been filed by the investigating agency under Section 173(2) Cr.P.C, and charge had been framed against some of the accused persons on the basis thereof, and other co-accused had been discharged, the Magistrate could direct the investigating agency to conduct a re-investigation or further investigation under sub-Section (8) of Section 173. The recorded facts revealed that the Magistrate had in the contextual facts directed for re-investigation and to submit a report, though prior thereto, he had taken cognizance of the offences involved against six of the original sixteen accused persons, discharging the rest. The informant had thereafter filed an application for re-investigation of the case and the prayer was acceded to. This Court referred to its earlier decisions in ***Sankatha Singh and others v. State of Uttar Pradesh***, AIR 1962 SC 1208 and ***Master Construction Company (P) Ltd. v. State of Orissa and another***, AIR 1966 SC 1047 to the effect that after the Magistrate had passed a final order framing charge against some of the accused persons, it was no longer within his competence or jurisdiction to direct a re-investigation into the

case. The decision in ***Randhir Singh Rana*** **(supra),** which propounded as well that after taking cognizance of an offence on the basis of a police report and after the appearance of the accused, a Magistrate cannot of its own order further investigation, though such an order could be passed on the application of the investigating authority, was recorded. It was reiterated with reference to the earlier determination of this Court in ***Dinesh Dalmia v. CBI**,* (2007) 8 SCC 770 that the power of the investigating officer to make a prayer for conducting further investigation in terms of Section 173(8) of the Code was not taken away only because a charge-sheet had been filed under Section 173(2) and a further investigation was permissible even if cognizance had been taken by the Magistrate. This Court, therefore summed up by enouncing that once a charge-sheet was filed under Section 173(2) Cr.P.C and either charges have been framed or the accused have been discharged, the Magistrate may on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authority, permit further investigation under Section 173(8), but he cannot suo motu direct a further investigation or order a re-investigation into a

case on account of the bar of Section 167(2) of the Code. It was thus held that as the investigating authority did not apply for further investigation and an application to that effect had been filed by the defacto complainant under Section 173(8), the order acceding to the said prayer was beyond the jurisdictional competence of the Magistrate. It was, however observed, that a Magistrate could, if deemed necessary, take recourse to the provisions of Section 319 Cr.P.C at the stage of trial.

33. This decision reinforces the view that after cognizance is taken by the Magistrate on the basis of a report submitted by the police on the completion of the investigation, no direction for further investigation can be made by the Magistrate suo motu and it would be permissible only if such a request is made by the investigating authority on the detection of fresh facts having bearing on the case and necessitating further exploration thereof in the interest of complete and fair trial.

34. The query in ***Vinay Tyagi v. Irshad Ali @ Deepak & Ors.***, (2013) 5 SCC 762 was whether in exercise of powers under Section 173 Cr.P.C, the Trial Court has the jurisdiction to ignore any of the police reports, where there was more than one, whether by the same or different investigating agencies submitted in furtherance of the orders of a Court. The respondents therein were sought to be prosecuted by filing a First Information Report under Sections 120B, 121 and 122 of the IPC read with Section 25 of the Arms Act and Sections 4 and 5 of Explosives Substance Act, 1908. The FIR was filed by the Special Cell of Delhi Police, which the respondents alleged had been lodged to falsely implicate them. Being aggrieved, the respondents challenged this action before the High Court and inter alia prayed that the investigation in the case be transferred to the CBI. As the High Court did not, though it had issued notice in the writ petition, stay the investigation, eventually the Special Cell of Delhi Police did file a charge-sheet before the Trial Court. The High Court finally, while disposing of the writ petition and being satisfied, directed the CBI to undertake an inquiry into the matter and submit a report. Subsequent thereto the CBI filed its report indicating in

substance that the recoveries, amongst others made from the respondents in course of the inquisition made by the Special Cell of Delhi Police did not inspire confidence and that further investigation was needed.

35. The CBI, after detailed investigation, submitted a closure report, whereafter one of the respondents filed an application before the Trial Court seeking discharge. This prayer was declined by the Trial Court as pre-matured, observing that no definite conclusion could be drawn at that stage to ascertain the truthfulness of the version of the two different agencies. The High Court, being approached under Section 482 of the Cr.P.C by one of the respondents, seeking to quash the First Information Report, it disposed of the same by holding that once the report had been filed by the CBI, it ought to be construed as a investigating agency, and thus its closure report should be considered by the Trial Court and thus remanded the case by observing that in undertaking the exercise, as directed, the Trial Court should not be influenced by the report of the Special Cell of Delhi Police. This order formed the subject matter of challenge before this Court.

36. After referring to Section 156(3) in particular and Section 190 Cr.P.C, this Court reverted to Section 173 and ruled that a very wide power was vested in the investigating agency to conduct further investigation after it had filed its report in terms of sub-Section (2) thereof. It held on an elucidation of the contents of Section 173(8) that the investigating agency was thus competent to file a report supplementary to its primary report and that the former was to be treated by the Court in continuation of the latter, and that on an examination thereof and following the application of mind, it ought to proceed to hear the case in the manner prescribed. It was elaborated that after taking cognizance of the offence, the next step was to frame charge in terms of Section 228 of the Code unless the Court found, upon consideration of the record of the case and the documents submitted therewith, that there did exist no sufficient ground to proceed against the accused, in which case it would discharge him on reasons to be recorded in terms of Section 227 of the Code. Alluding to the text of Section 228 of the Code which is to the effect that if a Judge is of the opinion that there is ground for presuming that the accused had committed an offence, he could frame a charge and try him,

this Court propounded that the word “presuming” did imply that the opinion was to be formed on the basis of the records of the case and the documents submitted therewith along with the plea of the defence to a limited extent, if offered at that stage. The view of this Court in ***Amit Kapoor v. Ramesh Chander and another***, (2012) 9 SCC 460 underlining the obligation of the Court to consider the record of the case and the documents submitted therewith to form an opinion as to whether there did exist or not any sufficient ground to proceed against an accused was underlined. This aspect was dilated upon logically to respond to the query in the contextual facts as to whether both the reports submitted by the Special Cell of the Delhi Police and the CBI were required to be taken note of by the Trial Court.

37. Additionally, this Court also dwelt upon the three facets of investigation in succession i.e. (i) initial investigation (ii) further investigation and (iii) fresh or de novo or reinvestigation. Whereas initial investigation was alluded to be one conducted in furtherance of registration of an FIR leading to a final report under Section 173(2) of the Code, further investigation was a phenomenon where the investigating officer would obtain further oral or documentary evidence after the final report had already been submitted, so much so that the report on the basis of the subsequent disclosures/discoveries by way of such evidence would be in consolidation and in continuation of the previous investigation and the report yielded thereby. "Fresh investigation" "reinvestigation" "de novo investigation", however is an exercise, which it was held, could neither be undertaken by the investigating agency suo motu nor could be ordered by the Magistrate and that it was essentially within the domain of the higher judiciary to direct the same and that too under limited compelling circumstances warranting such probe to ensure a just and fair investigation and trial. Adverting to Section 173 of the Code again, this Court recalled its observations in ***State of Punjab v. CBI and others***, (2011) 9

SCC 182 that not only the police had the power to conduct further investigation in terms of Section 173(8) of the Code, even the Trial Court could direct further investigation in contradistinction to fresh investigation even where the report had been filed.

38. The decisions in ***Minu Kumari and another v. State of Bihar and others***, (2006) 4 SCC 359 and ***Hemant Dhasmana v. CBI and another***, (2001) 7 SCC 536 to the effect that a Court could order further investigation under Section 173(8) of the Code even after a report had been submitted under Section 173 (2) thereof, was adverted to.

39. Noticeably, none of these decisions, however pertain to a situation where after the final report had been submitted, cognizance had been taken, accused had appeared and trial is underway, the Court either suo motu or on the prayer of the informant had directed further investigation under Section 173(8) in absence of a request to that effect made by the concerned investigating officer.

40. The rendition in ***Bhagwant Singh*** **(supra)** was also relied upon. It was eventually held, by drawing sustenance from the pronouncement in ***Bhagwant Singh*** **(supra)** that a Magistrate

before whom a report under Section 173(2) of the Code had been filed, was empowered in law to direct further investigation and require the police to submit a further or a supplementary report. To reiterate, in ***Bhagwant Singh*** **(supra)**, this Court had in particular dealt with the courses open to a Magistrate, once a charge-sheet or a closure report is submitted on the completion of investigation under Section 173(2) of the Code and thus did essentially concentrate at the pre-cognizance stage of the proceedings.

41. From the issues sought to be answered in this decision and having regard to the overall text thereof, it is not possible to discern that the power of the Magistrate, even at the post cognizance stage or after the accused had appeared in response to the process issued, the suo motu power of the Magistrate to direct further investigation was intended to be expounded thereby. Significantly, the adjudication was essentially related to the pre-cognizance stage.

42. In ***Chandra Babu alias Moses v. State through Inspector of Police and others***, (2015) 8 SCC 774, the appellant had filed a FIR with the Kulasckaram Police Station against the respondents-accused alleging unlawful assembly

and assault resulting in multiple injuries. After the initial investigation, the same was transferred to the District Crime Branch Police, Kanyakumari which eventually filed a final report in favour of the respondents-accused, which was accepted by the learned Magistrate. Meanwhile, however the appellant/informant filed a protest petition before the Magistrate praying for a direction to the CBCID to reopen the case and file a fresh report. As before any decision on this protest petition, the final report filed by the police had already been accepted, the appellant approached the High Court, which called for the report from the learned Magistrate and finally interfered with the order accepting the final report and directed the Magistrate to consider the same along with the protest petition. The Magistrate next held that there was no justification for ordering reinvestigation of the case and directed that the protest petition be treated as a separate private complaint.

43. This order being challenged again before the High Court, the matter was remanded to the learned Magistrate with a direction to consider the final report and the other materials on record and pass appropriate orders after hearing both the public prosecutor and the de facto complainant. This time, the learned

Magistrate returned a finding that the investigation by the District Crime Branch was a biased one and that the final report was not acceptable and consequently forwarded the complaint for further investigation by the CBCID, which was a different investigating agency. The matter was taken to the High Court by one of the respondents/accused, whereupon it annulled the direction of the learned Magistrate for reinvestigation, holding that not only there were material discrepancies in the evidence brought on record, but also there was no exceptional circumstance for such a course to be adopted by the Magistrate. It was also of the view, having regard to the scheme of the Section 173(8) of the Code that the investigating officer only could request for further investigation.

44. While disapproving the approach of the High Court in reappreciating the facts in the exercise of its revisional jurisdiction, this Court adverting, amongst others to the three Judge Bench exposition in ***Bhagwant Singh*** **(supra)** reiterated that a Magistrate could disagree with the police report and take cognizance and issue process and summon the accused, if satisfied as deemed fit in the attendant facts and circumstances. The rendition in ***Vinay Tyagi*** **(supra)** was also alluded to. It

was ultimately expounded that the learned Magistrate had really intended to direct further investigation, but as a different investigating agency had been chosen, the word re-investigation had been used. This Court thus construed the direction for investigation by the CBI to be one for further investigation and upheld the same, but nullified the selection of a new investigating agency therefor. As a corollary, the investigating agency that had investigated the case earlier and had submitted the final report, was directed by this Court to undertake further investigation to be supervised by the Superintendent of Police and to submit a report before the learned Chief Judicial Magistrate to be dealt with in accordance with law.

45. This decision too was concerned with a fact situation, pertaining to the pre-cognizance stage of the proceedings before the learned Magistrate and therefore, does not, in our comprehension, further the case of the appellant.

46. As adumbrated hereinabove, Chapter XIV of the Code delineates the conditions requisite for initiation of proceedings before a Magistrate. Section 190, which deals with cognizance of offences by Magistrate, sets out that any Magistrate of the first Class and any Magistrate of the second class specially empowered, as contemplated, may take cognizance of any offence either upon receiving a complaint of facts which constitute such offence or upon a police report of such facts or upon information received from any person other than the police officer, or upon his own knowledge that such offence had been committed. Section 156, which equips a police officer with the power to investigate a cognizable case mandates vide sub-section 3 thereof that any Magistrate empowered under Section 190 may order such an investigation. The procedure for dealing with complaints to Magistrate is lodged under Chapter XV of the Code. Section 202 appearing therein predicates that any Magistrate on receipt of a complaint of an offence of which he is authorized to take cognizance or which had been made over to him under Section 192, may, if he thinks fit and shall in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of

process against the accused and either enquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. The contents of this text of Section 202(1) of the Code unmistakeably attest that the investigation that can be directed by the Magistrate, to be undertaken by a police officer would essentially be in the form of an enquiry for the singular purpose of enabling him to decide whether or another there is sufficient ground for proceeding with the complaint of an offence, of which he is authorised to take cognizance. This irrefutably is at the pre-cognizance stage and thus logically before the issuance of process to the accused and his attendance in response thereto. As adverted to hereinabove, whereas Section 311 of the Code empowers a Court at any stage of any inquiry, trial or other proceeding, to summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine any person already examined, if construed to be essential to be just decision of the case, Section 319 authorizes a Court to proceed against any person, who though not made an accused

appears, in course of the inquiry or trial, to have committed the same and can be tried together. These two provisions of the Code explicitly accoutre a Court to summon a material witness or examine a person present at any stage of any inquiry, trial or other proceeding, if it considers it to be essential to the just decision of the case and even proceed against any person, though not an accused in such enquiry or trial, if it appears from the evidence available that he had committed an offence and that he can be tried together with the other accused persons.

47. On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the Court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu

nor on an application filed by the complainant/informant direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.

48. The un-amended and the amended sub-Section (8) of Section 173 of the Code if read in juxtaposition, would overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorized to conduct further investigation without limiting the stage of the proceedings relatable thereto. This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings. The recommendation of the Law Commission in its 41st Report which manifesting heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.

49. In contradistinction, Sections 156, 190, 200, 202 and 204 of the Cr.P.C clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by the Cr.P.C to order further investigation even after the cognizance is taken, accused persons appear and charge is framed, is acknowledged or approved, the same would be

discordant with the state of law, as enunciated by this Court and also the relevant layout of the Cr.P.C. adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) of the Cr.P.C would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in ***Bhagwant Singh*** (supra), the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is

discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 Cr.P.C., whereunder any witness can be summoned by a Court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court.

50. In the result, the appeal, being devoid of any merit, fails and is dismissed.

..J.
(DIPAK MISRA)

..J.
(AMITAVA ROY)

NEW DELHI;
FEBRUARY 02, 2017.