Chandra Babu @ Moses vs State Tr.Insp.Of Police & Ors on 7 July, 2015

Equivalent citations: AIR 2015 SUPREME COURT 3566, 2015 (8) SCC 774, 2015 AIR SCW 4976, AIR 2015 SC(CRI) 1682, (2015) 152 ALLINDCAS 187 (SC), (2015) 4 DLT(CRL) 244, (2016) 1 MADLW(CRI) 12, (2015) 3 MAD LJ(CRI) 597, (2015) 3 RECCRIR 606, (2015) 3 CRIMES 146, (2015) 3 CRILR(RAJ) 865, 2015 CRILR(SC MAH GUJ) 865, (2015) 3 JLJR 275, (2016) 2 MH LJ (CRI) 338, (2015) 91 ALLCRIC 259, 2015 CRILR(SC&MP) 865, (2015) 62 OCR 50, (2015) 3 PAT LJR 445, (2015) 4 RAJ LW 2844, (2015) 7 SCALE 529, (2015) 2 ALD(CRL) 825, (2015) 2 UC 1524, (2015) 4 ALLCRILR 369, 2016 CALCRILR 3 159, 2015 (3) SCC (CRI) 851

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Bench: V. Gopala Gowda, Dipak Misra

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.866 OF 2015
[Arising out of SLP (Crl.) No. 5702 of 2012]

CHANDRA BABU @ MOSES ... Appellant
Versus
STATE THROUGH INSPECTOR OF POLICE
& ORS. ... Respondents

J U D G M E N T

Dipak Misra, J.

Leave granted.

In this appeal, by special leave, the informant-appellant calls in question the defensibility of the order dated 13.12.2011 passed by the learned Single Judge of the High Court of Judicature of Madras at Madurai in Criminal Revision No. 790/2011 whereby he has annulled the order dated 2.9.2010 passed by the learned Chief Judicial Magistrate, Nagercoil directing further investigation in exercise of power under Section 173(8) of the Code of Criminal Procedure (CrPC) and also directing the investigation to be carried out by C.B.C.I.D.; on the foundation that in the obtaining fact situation there are no exceptional circumstances for ordering re-investigation.

As the facts would unfurl, the appellant filed an FIR with the Sub- Inspector of Police, Kulasekaram Police Station, upon which Crime No. 119/2007 was registered u/s 147, 148, 341, 324, 323 and 307 of Indian Penal Code (IPC). The informant had alleged that on 05.06.2007 about 2 p.m., Manikandan, Jegan, Murugan, Vijayan, Sunil and some others attacked him with 'Vettu Kathi', knife and iron rod and in the said attack he sustained multiple injuries. The motive behind the assault, as per the FIR, was due to business rivalry that existed between the appellant and Manikandan, as both are contractors. The Inspector of Police, Kulasekaram Police Station conducted the initial investigation and subsequently the case was transferred to the District Crime Branch Police, Kanyakumari and thereafter, the Inspector of Police, District Crime Branch filed a final report before the learned Judicial Magistrate, Padmanabhapuram stating that the case was a mistake of fact. The learned Judicial Magistrate on intimation to the informant accepted the final report. In the meantime, the appellant had filed a protest petition dated 5.1.2009 forming the subject matter of Crl. M.P. no. 1974/2009 on the file of the learned Judicial Magistrate praying therein to direct CBCID to re-open the case and file a fresh report. However, as the final report had already been accepted before disposing the protest petition, the appellant preferred Crl. O.P. no. 1727/2009 before the Madurai Bench of the Madras High Court. The High Court called for the report from the Magistrate's Court and, thereafter, set aside the order accepting the final report and directed the Magistrate to consider the final report along with the protest petition. The learned Magistrate vide order dated 29.07.2009 dismissed the protest petition. It took note of the decisions in Hasanbhai Valibhai Quareshi vs State of Gujarat and Ors.[1] and Hemant Dhasmana vs CBI and Anr.[2], and held that as the investigation officer had examined all the witnesses as averred by the informant and received the evidence and as no new witnesses were cited to be examined, there was no justification for directing reinvestigation of the case. It further directed that the protest petition to be treated as a separate private complaint.

Being aggrieved by the said order, the appellant preferred Criminal Revision Petition, i.e., Crl. R.C. No. 458 of 2009 in the High Court. Before the High Court, the appellant contended that the order of the Magistrate was based on the acceptance of the final report submitted by the police and the order did not reflect any application of mind on his part. It was further urged that the order was bereft of discussion of the evidence gathered by the Investigating Officer, and that apart there was total non-application of mind either for acceptance or rejection of the statements of the witnesses filed along with the final report. The High Court while setting aside the order of learned Magistrate observed that the lower court fell into error by neither discussing the material available, nor clearly spelling out the reasons and shirked its duty by merely permitting the petitioner, therein, to pursue his cause by way of private complaint. The learned Single Judge, accordingly, allowed the revision and concluded thus:-

> "This Court has resisted from entering upon a discussion on the merits of the case or on the materials before it so as to avoid prejudice to either side. With the aim is to avoid prejudice and alleged bias, as rightly submitted by the learned senior counsel, it would be better that the reconsideration of the final report and also the materials towards arriving at a finding of whether the case is one calling for further proceedings against the accused or otherwise, be left to the judicial discretion of another Court. Accordingly, the Judicial Magistrate, Padmanabhapuram, is directed to forward all

> records pertaining to Crime no. 119 of 2007 on the file of the respondent police to the Court of the Chief Judicial Magistrate, Nagercoil within a period of two weeks from the date of receipt of a copy of this order. The Chief Judicial Magistrate, Nagercoil is in turn directed to consider the 173 report as also the materials, hear both the public prosecutor and the de-facto complainant who has filed the protest petition and pass orders in accordance of law." After the remit, the Chief Judicial Magistrate, Nagercoil, took up the case for further enquiry. The Court after hearing both the appellant and the Assistant Public Prosecutor came to the conclusion that the investigation by the Inspector of Police, District Crime Branch had been conducted in a biased manner and the said authority had laboured hard to save the accused persons and hence, the final report submitted by the investigating officer was not acceptable. Thereafter, it took note of the judgments in Hemant Dhasmana (supra), Sonalai Soni vs State of Chattisgarh and Ors.[3], and Hasanbhai Valibhai Quareshi (supra), and came to hold that in terms of the said judgments there is power under S. 173 (8) of CrPC to forward the complaint for further investigation and resultantly by order dated 02.09.2010 directed the Additional Director General of Police, CBCID to confer the power on the Inspector, CBCID, Nagercoil to investigate the case in Crime no. 119/2007 and file a report.

Being aggrieved by the said order, one of the accused, Jegan, filed Criminal Revision No. 790 of 2011. The High Court, vide the impugned order, after discussing the evidence on record, came to hold that there were material discrepancies in the evidence brought on record and, therefore, in the present fact situation there were no exceptional circumstances for ordering re-investigation, and that apart, the scheme of Section 173(8) CrPC only enables the investigating officer to request for further investigation. The High Court, accordingly, set aside the order of the Chief Judicial Magistrate and further observed that as the learned Judicial Magistrate in his order dated 13.07.2009 had directed that the protest petition was to be treated as a private complaint, the de-facto complainant still had an opportunity for presenting the case before the Court and no prejudice was caused to him.

We have heard Mr. K.V. Vishwanathan, learned senior counsel for the appellant and Mr. M. Yogesh Kanna, learned counsel for the State and Mr. S. Thananjayan, learned counsel for the respondent no.3. It is submitted by Mr. Vishwanathan, learned senior counsel that the High Court has absolutely flawed by entering into the merits of the case when the learned Chief Judicial Magistrate had only directed for reinvestigation by different investigating agency. It is urged by him that if the order passed by the Chief Judicial Magistrate is read in entirety, it would convey that he in actuality has directed for further investigation, but has used the expression "reinvestigation" as it was directing investigation to be carried out by another agency. It is his further submission that in view of the earlier order passed by the High Court, the order impugned in this appeal is wholly unsustainable.

Learned counsel for the private respondent no.3 in support of the decision of the High Court has submitted that the learned Magistrate has no power for directing reinvestigation, and hence, the order passed by the High Court is absolutely impregnable. It is also his submission that when a

protest petition is filed and it has been directed to be treated as a private complaint, the appellant, in no manner, is prejudiced and, therefore, there is no warrant for interference in this appeal. First, we shall dwell upon the issue whether the High Court, in exercise of the revisional jurisdiction, should have adverted to the merits of the case in extenso. As the factual matrix would reveal, the learned Single Judge has dwelled upon in great detail on the statements of the witnesses to arrive at the conclusion that there are remarkable discrepancies with regard to the facts and there is nothing wrong with the investigation. In fact, he has noted certain facts and deduced certain conclusions, which, as we find, are beyond the exercise of revisional jurisdiction. It is well settled in law that inherent as well as revisional jurisdiction should be exercised cautiously. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the Court. (see Amit Kapoor v. Ramesh Chander[4]).

Judging on the aforesaid premises, we have no shadow of doubt that the High Court has adverted to the facts not to see the perversity of approach, or to see that justice is done, but analysed it from an angle as if it is exercising the appellate jurisdiction. Therefore, the High Court's conclusion with regard to the factual score is unsustainable. Presently to the thrust of the matter, the controversy before the learned Single Judge was basically two-fold, namely, whether the learned Chief Judicial Magistrate could have directed for reinvestigation and secondly, whether it could have directed for reinvestigation by another investigating agency. To appreciate the said issues, it is necessary to analyse the scheme of Section 190 of the CrPC. The said provision reads as follows:-

> "190. Cognizance of offences by Magistrates. – (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence_
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> (a) upon receiving a complaint of facts which constitute such offence.

upon a police report of such facts;

upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try." In Uma Shankar Singh v. State of Bihar[5], a two-Judge Bench was considering the issue pertaining to the power of the Magistrate under Section 190(1)(b) of CrPC. The Court, scanning the anatomy of the provision, opined that the Magistrate is not bound to accept the final report filed by the investigating agency under Section 173(2) of the Code and is entitled to issue process against an accused even though exonerated by the said authorities. The principle stated by the two-Judge Bench reads as follows:-

"19. ... even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b) CrPC." The said principle was followed by another two-Judge Bench in Moti Lal Songara v. Prem Prakash[6].

15. In Dharam Pal v. State of Haryana[7], the Constitution Bench, while accepting the view in Kishun Singh v. State of Bihar[8], has held thus:-

"35. In our view, the Magistrate has a role to play while committing the case to the Court of Session upon taking cognizance on the police report submitted before him under Section 173(2) CrPC. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the persons named in column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.

36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court."

16. We have referred to the aforesaid authorities to reiterate the legal position that a Magistrate can disagree with the police report and take cognizance and issue process and summons to the accused. Thus, the Magistrate has the jurisdiction to ignore the opinion expressed by the investigating officer and independently apply his mind to the facts that have emerged from the investigation.

17. Having stated thus, we may presently proceed to deal with the facet of law where the Magistrate disagrees with the report and on applying his independent mind feels there has to be a further investigation and under that circumstance what he is precisely required to do. In this regard, we may usefully refer to a notable passage from a three-Judge Bench decision in Bhagwant Singh v. Commr. of Police[9], which is to the following effect:-

"4. Now, when the report forwarded by the officer in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in

such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process, or (2) he may disagree with the report and drop the proceeding, or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding, or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the first information report, the informant would certainly be prejudiced because the first information report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the first information report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the first information report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, 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 [pic]persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the first information report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason

> why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."
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> 18. Relying on the said paragraph, a two-Judge Bench in Vinay Tyagi v.

Irshad Ali[10], has opined thus:-

> "37. In some judgments of this Court, a view has been advanced, [amongst others in Reeta Nag v. State of W.B[11], Ram Naresh Prasad v. State of Jharkhand[12] and Randhir Singh Rana v. State (Delhi Admn.)[13]] that a Magistrate cannot suo motu direct further investigation under Section 173(8) of the Code or direct reinvestigation into a case on account of the bar contained in Section 167(2) of the Code, and that a Magistrate could direct filing of a charge-sheet where the police submits a report that no case had been made out for sending up an accused for trial. The gist of the view taken in these cases is that a Magistrate cannot direct reinvestigation and cannot suo motu direct further investigation.
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> 38. However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct "further investigation" and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in Bhagwant Singh has, in no uncertain terms, stated that principle, as aforenoticed. [pic]
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> 39. The contrary view taken by the Court in Reeta Nag and Randhir Singh do not consider the view of this Court expressed in Bhagwant Singh. The decision of the Court in Bhagwant Singh in regard to the issue in hand cannot be termed as an obiter. The ambit and scope of the power of a Magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three-Judge Bench concluded as aforenoticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh, are thus squarely in line with the doctrine of precedent.

To some extent, the view expressed in Reeta Nag, Ram Naresh and Randhir Singh, besides being different on facts, would have to be examined in light of the principle of stare decisis." And eventually the Division Bench ruled:-

> "40. Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

40.1. The Magistrate has no power to direct “reinvestigation” or “fresh investigation” (de novo) in the case initiated on the basis of a police report.

40.2. A Magistrate has the power to direct “further investigation” after filing of a police report in terms of Section 173(6) of the Code.

40.3. The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case by a three-Judge Bench and thus in conformity with the doctrine of precedent.

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.”

19. We have reproduced the conclusion in extenso as we are disposed to think that the High Court has fallen into error in its appreciation of the order passed by the learned Chief Judicial Magistrate. It has to be construed in the light of the eventual direction. The order, in fact, as we perceive, presents that the learned Chief Judicial Magistrate was really inclined to direct further investigation but because he had chosen another agency, he has used the word “reinvestigation”. Needless to say, the power of the Magistrate to direct for further investigation has to be cautiously used. In Vinay Tyagi (supra) it has been held:

“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.”

20. In the said case, the question arose, whether the Magistrate can direct for reinvestigation. The Court, while dealing with the said issue, has ruled that:-

"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." And again:-

"Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation."

21. We respectfully concur with the said view. As we have already indicated, the learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another agency. Therefore, that part of the order deserves to be lancinated and accordingly it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the concerned Superintendent of Police. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with law. We may hasten to add that we have not expressed any opinion relating to any of the factual aspects of the case.

22. In view of the aforesaid analysis and conclusion, the order passed by the High Court is set aside except where it has held that the learned Magistrate could not have allowed another agency to investigate. We have clarified the position in the preceding paragraph.

23. The appeal stands disposed of accordingly.

.....J. [Dipak Misra] .....J. [V. Gopala Gowda] New Delhi July 7, 2015

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[1] (2004) 5 SCC 347
[2] (2001) 7 SCC536
[3] 2005 Crl.L.J. 4461 (Chattishgarh)
[4] (2012) 9 SCC 460
[5] (2010) 9 SCC 479
[6] (2013) 9 SCC 199
[7] (2014) 3 SCC 306
[8] (1993) 2 SCC 16
[9] (1985) 2 SCC 537
[10] (2013) 5 SCC 762
[11] (2009) 9 SCC 129
[12] (2009) 11 SCC 299
[13] (1997) 1 SCC 361
