State Through Central Bureau Of ... vs Hemendhra Reddy Etc. Etc. on 28 April, 2023

Author: M.R. Shah

Bench: Surya Kant, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. OF 2023
(ARISING OUT OF SLP (CRL.) NOS. 7628-7630 OF 2017)

STATE THROUGH CENTRAL BUREAU OF INVESTIGATION .…. APPELLANT

VERSUS

HEMENDHRA REDDY & ANOTHER. ETC. ….. RESPONDENT(S)

JUDGMENT

J. B. PARDIWALA, J.:

1. Leave granted.

2. Since the issues raised in all the captioned appeals are the same those were taken up for hearing analogously and are being disposed of by this common judgment and order.

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?

FACTUAL MATRIX

4. The respondent No. 3 herein D. Dwarakanadha Reddy (Accused No. 1) joined the services of the Customs Department as a Preventive Officer in the year 1993.

5. In January, 2003, the respondent No. 3 was promoted as an Appraiser in Customs Department.

6. On 30.06.2006, the office of Superintendent of Police (CBI) was in receipt of the following information:

> (i) D. Dwarakanadha Reddy (A-1) was holding the post of Appraiser, Customs Department since 2004, and his main income was his salary.
>
> (ii) His wife D. Sujana Reddy (A-2) has no agricultural land in her name and does business in the name of M/s Sujana Engineers.
>
> (iii) That the couple had acquired assets worth Rs. 64, 41, 690.92 lakh between 01.04.2001 and 31.03.2005, however their combined income during the said period was Rs. 50, 95, 371.57/-, comprising of salary income of A-1, agricultural income of A-2, business income of A-2, bank interest, housing loan from the Andhra Bank, capital gain on sale of property, rewards given to A-

1 etc.

(iv) During the period between 01.04.2001 and 31.03.2005, they incurred expenditure of Rs. 12, 74, 347.16/-, leaving them with the savings of Rs. 38, 21, 024.41/-.

(v) Therefore, their total disproportionate assets were worth Rs. 26, 20, 666.51/- as on 31.03.2005.

In such circumstances referred to above, an FIR in RC MA 1 2006 A 0027 was registered by the CBI under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the 1988 Act') along with Section 109 of the Indian Penal Code, 1860 (for short, 'the IPC').

7. On 24.12.2008, the CBI/ACB filed an application before the Principal Special Judge for CBI Cases, Chennai, with a prayer to close the proceedings and return the documents for the purpose of regular departmental action against the accused No. 1 (respondent No. 3). The application stated inter alia as follows:

> "After completion of investigation it has come to light that the accused cannot be prosecuted. Hence, Final Report u/s. 173 Cr.PC is being filed which may be

accepted."

8. It was further prayed that the documents seized during the course of investigation be returned so that the same could be used in the regular departmental action that may be initiated against the accused No. 1.

9. The aforesaid application filed by the CBI was taken up by the Special Court and the following order dated 29.01.2009 came to be passed:

> "ORDER This petition is filed by the Petitioner/Complainant u/s. 173 Cr.PC praying to close the FIR and to retain the documents collected during the investigation to be used in the Regular Departmental Action against A1 .
>
> 1. Heard the learned Public Prosecutor. Perused the FIR, report and connected records. Reason stated in the report is convincing.

Hence Final Report is accepted and FIR is closed and permitted to retain the documents collected during the investigation to be used in the regular Departmental Action against A1.

Pronounced by me in the Open Court, this the 29th day of January 2009.

Principal Spl. Judge for CBI Cases"

10. On 24.02.2012, departmental proceedings were initiated against the accused No. 1.

11. It appears from the materials on record that at the end of the departmental proceedings, the possession of disproportionate assets could not be established. However, an administrative warning was issued to the accused No. 1 for the lapse on his part to intimate his department the fact of having obtained a loan of Rs. 3, 00, 000/- (Rupees Three Lakh) from the Andhra Bank jointly along with his wife. An administrative warning was also issued in regard to not intimating the correct expense incurred by the accused No. 1 towards the construction of the house.

12. On 26.06.2013, the CBI filed the Crl. MP 3833/2013 in RC MA 1 2006 A0027 under Section 173(8) of the CrPC, seeking to reopen and undertake further investigation of the case, stating inter alia as follows:

> "...the prosecution had filed final report under Section 173 Cr.P.C. before this Hon'ble Court on 24.12.2008 with a prayer to close the FIR as a mistake of fact..." "... It is humbly submitted that now new evidences emerged to prove the allegation levelled against the above said accused persons and to substantiate the charge of possession of the disproportionate to the known sources of income of A-1 and A-2. Hence, it is just and necessary to re-open and further investigate the above case U/s. 173(8) Cr.P.C. in the interest of justice."

13. The Special Court allowed the aforesaid application vide order dated 28.06.2013, holding inter alia as under:

> "Heard. According to the prosecution, the prosecution is in possession of new evidences to substantiate the allegation of possession of disproportionate assets to the known sources of income against the accused persons. Hence, it is just and proper to order for re-opening of the case."

14. On 01.03.2014, the CBI issued a letter/summons No. RC 27/A/2006/ CBI/ACB/Chennai/0799 to the Deputy Commissioner of Customs, CIV-

Vigilance Customs House, Chennai, requiring the presence of the respondent No.3 D. Dwarakanadha Reddy in connection with the investigation in RC 27(A)/06.

15. On 13.03.2014, respondent No. 3 filed Crl. O.P. of No. 6371 of 2014 before the Madras High Court seeking quashing of the proceedings related to the summons dated 1.03.2014. The respondent No. 3 stated that he had attended the summons and during the interrogation he was asked to produce documents which were "either not in existence or not available with the petitioner or already available with CBI".

16. On 21.03.2014, the CBI filed its counter affidavit to the above referred petition filed by the respondent No. 3, stating specifically that:

> "3. It is submitted that in the year 2013 CBI received certain information/materials warranting the re-opening of the investigation of this closed case. Accordingly Shri G. Palaniappan, Inspector of Police, CBI/ACB, Chennai filed a petition in the Hon'ble Court of Principal Special Judge for CBI Cases, Chennai seeking the orders of the said court for re- opening of investigation and the Hon'ble Court of PSJ, Chennai had issued order dt. 28.06.2.013 ordering the re-opening investigation of this case."

17. The High Court vide its order dated 11.09.2014 rejected the Crl. O.P. No. 6371 of 2014, holding inter alia as under:

> (i) In the year 2013, the CBI came into possession of certain fresh materials warranting the re-opening of the investigation against the accused persons.
>
> (ii) Under 173(8) of the CrPC, a police officer can carry on further investigation even after a report under Section 173(2) of the CrPC is submitted, in view of Section 173(8) of the CrPC and held in Vinay Tyagi v. Irshad Ali alias Deepak and Others reported in (2013) 5 SCC 762, with the only rider being that the police should seek formal permission from the Court.
>
> (iii) Acceptance of the final report by the Magistrate does not debar him from taking cognizance if on further investigation, fresh material comes to light.

(iv) In the CBI counter, it is stated that fresh material was received in the year 2013 which warranted reopening of the investigation.

(v) The Magistrate's power to order further investigation under Section 156(3) of the CrPC does not conflict with the power of the police to investigate further in light of Section 173(8) of the CrPC, and therefore the Magistrate can order reopening of the investigation.

(vi) This can of course only be done when fresh material comes to the knowledge of the investigating officer which he did not have before as in the present case.

(vii) Since the CBI has collected fresh material connected with the case which were not available earlier, it cannot be said that the Special Court has acted beyond its jurisdiction in reopening the investigation.

18. On 17.12.2014, the CBI filed its detailed chargesheet against the respondent Nos. 1, 2 and 3 respectively alleging inter alia as follows:

(i) That the Respondent No.1, Hemendra Reddy, the brother-in-law of D. Sujana (A-2) was a farmer at Chenna Reddy Garu Palli, Chithoor Dist.

(ii)The Respondent No.3, was found to be in possession of assets/pecuniary resources in his name and in the names of his family members D. Sujana and Hemendra Reddy to the tune of Rs. 61, 11, 989/- as against their known sources of income of Rs. 59, 90, 135/-

during the period between 01.01.1998 and 30.06.2005.

19. On 2.06.2015, the respondent No. 2 herein filed Crl. O.P. No. 15873 of 2015 before the Madras High Court, seeking quashing of the chargesheet.

20. On 27.04.2015, the respondent No. 1 herein filed Crl. O.P. No. 11101 of 2015, seeking quashing of the chargesheet.

21. On 14.09.2015, the CBI filed its counter to all the aforesaid petitions.

22. On 15.12.2015, the High Court allowed the Crl. O.P. No. 11101 of 2015 and Crl. O.P. No. 15873 of 2015 respectively by a common order, holding inter alia as follows:

(i) That on receipt of a final report under Section 173 of the CrPC, the Magistrate has three options – either to accept the report and close the case, to disagree with the report and proceed with the case or to order further investigation under Section 156(3) of the CrPC.

(ii) That the Magistrate is only empowered to direct "further investigation" and not to direct a "re-investigation/ de-novo investigation".

(iii) In terms of the judgment in Vinay Tyagi (supra) no investigation agency is empowered to conduct a fresh, de-novo or reinvestigation once a report under Section 173(2) of the CrPC is filed.

(iv) The petition seeking "re-opening"/ "further investigation" was filed after a lapse of 4 years.

(v) In order to empower the Magistrate to permit further investigation, something should have been pending before the Magistrate, but no matter was pending as the investigation had already been closed.

(vi) The Special Court thus had no power to grant permission to conduct a further investigation.

(vii) The judgment of Vinay Tyagi (supra) had not been brought to the attention of the High Court at the time of deciding Crl. O.P. No. 6371 of 2014.

23. It appears that the respondent No. 3 herein also filed Crl. O.P. No. 411 of 2016, seeking quashing of the chargesheet. The High Court vide order dated 08.01.2016 allowed the Crl. O.P. No. 411 of 2016 filed by D. Dwarakanadha Reddy in terms of the order passed by it dated 15.12.2015, holding that the same principles and reasonings would apply to the petition filed by the D. Dwarakanadha Reddy too.

24. Thus, the High Court ultimately quashed the entire prosecution, essentially on the ground that the Special Court (CBI) had no jurisdiction/power to grant permission to the CBI to conduct further investigation. In other words, the High Court took the view that the chargesheet filed against the accused persons was the outcome of the materials collected during the course of the further investigation, which by itself was illegal and, therefore, the criminal proceedings would not be maintainable in the eye of law. It appears that the High Court was also cognizant of the fact that a Co- ordinate Bench had earlier set at rest all the issues vide order dated 11.09.2014 passed in the Crl. O.P. No. 6371 of 2014. However, the same was not looked into on the ground that the said order passed by the Co-ordinate Bench was per incuriam and, therefore, not binding to another Co-ordinate Bench.

25. In such circumstances referred to above, the CBI is herein before this Court with the present appeals.

SUBMISSIONS ON BEHALF OF THE CBI

26. Mr. Jayant K. Sud, the learned Additional Solicitor General of India, appearing for the CBI vehemently submitted that the High Court committed a serious error in passing the impugned

orders thereby leading to a serious miscarriage of justice.

27. The learned counsel further submitted that the law is well settled that further investigation can be undertaken under sub section (8) of Section 173 of the CrPC even after the closure report is filed and accepted by the court concerned. He would submit that new material/evidence surfaced and came in the hands of the CBI on the basis of which an appropriate application was filed before the Special Court, seeking permission to undertake the further investigation. He further submitted that the application filed by the CBI was duly considered and the Special Court permitted the CBI to re-open the case and undertake further investigation.

28. The learned counsel further submitted that the respondent No. 3 (Accused No. 1) had questioned the entire action on the part of the CBI in seeking to re-open the case and undertake further investigation before the High Court by filing Crl. O.P. No. 6371 of 2014 and the High Court by a detailed order had declined to interfere. According to the learned counsel, the order passed by a Co-ordinate Bench of the High Court in Crl. O.P. No. 6371 of 2014 was binding to another Co-ordinate Bench and same could not have been over-looked or ignored on the ground that while deciding Crl. O.P. No. 6371 of 2014, the attention of the High Court was not drawn to the decision of this Court in the case of Vinit Tyagi (supra). Mr. Sud further submitted that it is not that the decision of this Court in Vinit Tyagi (supra) was not considered in the earlier round of the litigation i.e., while deciding Crl. O.P. No. 6371 of 2014 as is evident from para 5 of the order passed by the High Court dated 11.09.2014 in Crl. O.P. No. 6371 of 2014.

29. In such circumstances as referred to above, the learned counsel prays that there being merit in all his appeals, those may be allowed and the impugned order be set aside.

SUBMISSIONS ON BEHALF OF THE ACCUSED PERSONS

30. On the other hand, all the appeals have been vehemently opposed by the learned counsel appearing for the accused persons, submitting that no error, much less an error of law could be said to have been committed by the High Court in passing the impugned orders. The learned counsel would submit that the acceptance of a closure report by the Special Court (CBI) would terminate the proceedings finally and the same would thereafter operate as a legal bar for the investigating agency to undertake any further investigation in connection with the alleged offence. The learned counsel laid much stress on the fact that for the purpose of granting permission to conduct further investigation, something must be pending before the court concerned in the primary report to enable to file a supplementary report. In the instant case, according to the learned counsel, nothing was pending at the time of passing the order under Section 173(8) of the CrPC. It was pointed out that the FIR was closed and all the evidence collected during the investigation was ordered to be returned to the CBI for the purpose of departmental proceedings. In such circumstances, according to the learned counsel, there was no scope for further investigation and even if further investigation is ordered then it is as good as re-investigation or fresh investigation or de novo investigation, which is otherwise not permissible in law.

31. The learned counsel submitted that further investigation cannot be ordered at any point of time. It was argued that in the case on hand, the further investigation was undertaken after a period of four years from the date of the closure report. If further investigation is permitted to be undertaken after an indefinite period of time, the same would result in delaying the trial thereby violating the Article 21 of the Constitution, i.e., the right of the accused to have a speedy trial.

32. The learned counsel further submitted that one additional issue arises in the present litigation relating to non-compliance of the mandatory requirement under Section 17(Second proviso) of the 1988 Act. According to the learned counsel the chargesheet in C.C.No.13 of 2015 on the file of the XIII Additional Special Judge for CBI Cases, Chennai, was filed by Mr. Syed Bazlullah ASP/CBI/ACB/Chennai. Upon perusal of the chargesheet which was served on the accused by the Magistrate under Section 207 of the CrPC, it was noticed that the same does not include the order passed by an officer not below the Rank of Superintendent of Police, as mandatorily required under Section 17(Second proviso) of the 1988 Act, conferring powers to Mr. Syed Bazlullah to investigate this case in RC MA 1 2006 A 0027 for an offence under Section 13(1)(e) of the 1988 Act, which thereon got culminated into the chargesheet in C.C.No.13 of 2015. It was argued that the non-compliance of Section 17(Second proviso) of the 1988 Act is an illegality that vitiates the entire trial.

33. In support of the aforesaid submissions, reliance has been placed on the following case law:

(i) Vinay Tyagi v. Irshad Ali alias Deepak and Others reported in (2013) 5 SCC 762;

(ii) Vinubhai Haribhai Malaviya v. State of Gujarat reported in (2019) 17 SCC 1; and

(iii) Luckose Zachariah alias Zak Nedumchira Luke and Others v. Joseph Joseph and Others reported in (2022) SCC Online SC 241.

ANALYSIS

34. Section 169 of the CrPC reads as under:

> "169. Release of accused when evidence deficient.— If, upon an investigation under this Chapter, it appears to the officer in charge of the police station that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate, such officer shall, if such person is in custody, release him on his executing a bond, with or without sureties, as such officer may direct, to appear, if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report, and to try the accused or commit him for trial."

35. The perusal of the aforesaid Section would reveal that the Investigating Officer is under an obligation to release such person, who is in custody on executing a bond with or without sureties, if evidence is not sufficient and/or there are no reasonable grounds of suspicion to forward such person to the Magistrate.

36. The plain reading of Section 169 of the CrPC, therefore, postulates that when the Investigating Officer reports his action to the learned Magistrate, it will not be a report, however it will be a report of his action either by the Investigating Officer or by the Officer in-charge of the police station.

37. Section 173 of the CrPC states about the steps to be taken by the Investigating Officer after the completion of the investigation. The Officer in- charge of the police station is required to forward the report under said Section to the Magistrate empowered to take cognizance of the offence in prescribed form.

38. Section 173 of the CrPC reads thus:

> "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 an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E 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, whether 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 sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E 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).” (Emphasis supplied)

39. Thus, Section 169 of the CrPC is silent in making report to the Magistrate, however the Investigating Officer is under an obligation to submit its report to the Magistrate under Section 173 of the CrPC. Thus, though Section 169 of the CrPC does not contemplate making a report, it contemplates of obtaining a bond with or without sureties from the accused to appear if and when so required before the Magistrate empowered to take cognizance of the offence on a police report and such report is contemplated under Section 173 of the CrPC. Clauses (d) and (f) of Section 173(2)(i) of

the CrPC read as under:

> "173(2)(i) xxx xxx
>
> (d) whether any offence appears to have been committed and, if so, by whom;
>
> xxx xxx xxx
>
> (f) whether he has been released on his bond and, if so, whether with or without sureties".

40. Section 173(8) of the CrPC deals with further investigation and supplementary report. In the Code of Criminal Procedure, 1898 (for short, 'the Old Code'), there was no identical provision to that of Section 173(8) of the CrPC. The same is a newly added provision in the CrPC. It was added on the recommendation of the Law Commission in its 41st Report that the right of the police to make further investigation should be statutorily affirmed.

41. In the Old Code, there was no provision prescribing the procedure to be followed by the police for fresh investigation, when fresh facts came to light, upon the submission of the police report and subsequent to taking cognizance by the Magistrate. There was, also, no express provision prohibiting further investigation by the police.

42. The said omission was sought to be supplied for the first time by a two- Judge Bench of the Madras High Court as early as in 1919 in Divakar Singh v. A. Ramamurthi Naidu reported in AIR 1919 Mad 751, where it was observed that:

> " Another contention is put forward that when a report of investigation has been sent in under Section 173 of the Cr PC, the police has no further powers of investigation, but this argument may be briefly met by the remark that the number of investigations into a crime is not limited by law and that when one has been completed another may be begun on further information received.".

43. After recognition of the right of the police to make repeated investigations under the Old Code in Divakar's case, a three-Judge Bench of this Court in H.N. Rishbud v. State of Delhi reported in AIR 1955 SC 196, held that:-

> "It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for. Such a course is not altogether outside the contemplation of the scheme of the Code as appears from Section 202 under which a Magistrate taking cognizance on a complaint can order investigation

> by the police. Nor can it be said that the adoption of such a course is outside the scope of the inherent powers of the Special Judge, who for purposes of procedure at the trial is virtually in the position of a Magistrate trying a warrant case."

44. Some High Courts were also of the view that with the submission of a chargesheet under Section 173, the power of the police to investigate into an offence comes to an end and the Magistrate's cognizance of the offence started. For instance, in State v. Mehar Singh and Ors. reported in 1974 Crl LJ 970, a Full Bench of the High Court of Punjab and Haryana held that the police became functus officio once the Court took cognizance of an offence on the filing of a chargesheet by the police and thereafter, further investigation by the police was not permissible.

45. It was, however, observed that in light of the decision in H.N. Rishbud (supra), it would be open to the Magistrate to 'suspend cognizance' and direct the police to make further investigation into the case and submit a report.

46. The said inconsistency and incongruity in the judicial decisions was recognized by the Law Commission in its 41st Report (under Clause 14.23) and it was recommended that the right of the police to make further investigation should be statutorily affirmed. Accordingly, in the CrPC, Section 173(8), came to be introduced, which statutorily empowered the police to undertake further investigation after submission of the final report under Section 173(2) of the CrPC. Conspicuously, it still did not confer such powers on the Magistrate to direct further and/or fresh investigation after submission of the final report by the Police.

47. Section 173(8) of the CrPC may be fragmented or dissected as under:

> (1) Further investigation can be done in respect of an offence wherein report under Section 173(2) has been forwarded to the Magistrate; and (2) During further investigation, the officer-in-charge has power
>
> (a) to obtain further evidence, oral or documentary,
>
> (b) to forward to the Magistrate, a further report or reports regarding such evidence in the form prescribed, (3) The provisions of sub sections (2) to (6) shall, as far as may be, apply in relation to such further report or reports.

Sub section (1) of Section 173 of the CrPC provides that every investigation by the police shall be completed without unnecessary delay and sub section (2) of Section 173 of the CrPC provides that as soon as such investigation 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.

Under sub section (2) of the Section 173 of the CrPC, a police report (chargesheet or Challan) is filed by the police after investigation is complete.

Sub section (8) of Section 173 of the CrPC, states that nothing in the section shall be deemed to preclude any further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate.

Thus, even where chargesheet or Challan has been filed by the police under sub section (2) of Section 173 of the CrPC, the police can undertake further investigation in respect of an offence under sub section (8) of Section 173 of the CrPC. (Reference: Article titled "Different Aspects of Section 173(8) of the CrPC" by D. Nageswara Rao, Prl.JCJ, Manthani.) What is the meaning of the term "Further Investigation"?

48. In Rama Chaudhary Vs. State of Bihar reported in (2009) 6 SCC 346, this Court held that, "further investigation within the meaning of provision of Section 173(8) CrPC is additional; more; or supplemental. "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." What are the alternatives before a Magistrate when a "Final Report" is filed?

49. Wherever a final report forwarded by the Investigating Officer to a Magistrate under Section 173(2)(i) of the CrPC is placed before him, several situations may arise. The report may conclude that an offence appears to have been committed by a particular person and persons, and in such a case the Magistrate may either:

> (1) accept the report and take cognizance of offence and issue process, (2) may disagree with the report and drop the proceeding or may take cognizance on the basis of report/material submitted by the investigation officer, (3) may direct further investigation under Section 156(3) and require police to make a report as per Section 173(8) of the CrPC.
>
> (4) may treat the protest complaint as a complaint, and proceed under Sections 200 and 202 of the CrPC.

What is the prime consideration for "Further Investigation"?

50. As observed in Hasanbhai Valibhai Qureshi v. State of Gujarat and Others reported in (2004) 5 SCC 347, the prime consideration for further investigation is to arrive at the truth and do real and substantial justice. The hands of investigating agency for further investigation should not be tied down on the ground of mere delay. In other words, 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 and effective justice.

Difference between "Further Investigation" and "Re-investigation"

51. There is no doubt that "further investigation" and "re-investigation" stand altogether on a different footing. In Ramchandran v. R. Udhayakumar and Others reported in (2008) 5 SCC 413, this Court has explained the fine distinction between the two relying on its earlier decision in K.

Chandrasekhar v. State of Kerala and Others reported in (1998) 5 SCC 223. We quote paras 7 and 8 as under:

> "7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation. This was highlighted by this Court in K. Chandrasekhar v. State of Kerala [(1998) 5 SCC 223 : 1998 SCC (Cri) 1291] . It was, inter alia, observed as follows : (SCC p. 237, para 24) "24. The dictionary meaning of 'further' (when used as an adjective) is 'additional; more; supplemental'. '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. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports—and not fresh report or reports—regarding the 'further' evidence obtained during such investigation."
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> 8. In view of the position of law as indicated above, the directions of the High Court for reinvestigation or fresh investigation are clearly indefensible. We, therefore, direct that instead of fresh investigation there can be further investigation if required under Section 173(8) of the Code. The same can be done by CB CID as directed by the High Court." Position of Law on the subject of "Further Investigation"

52. In King-Emperor v. Khwaja Nazir Ahmad, Vol. LXXI Indian Appeals, 203 the Privy Council delineated the powers of the police to investigate. It was held thus:

> "Just as it is essential that every one accused of a crime should have free access to a Court of justice, so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rules by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Courts to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of Habeas Corpus."

> 53. In Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P. and Others reported in (1999) 5 SCC 740, it was held in paras 10 and 11:
>
> "10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322 : 1979 SCC (Cri) 479 : AIR 1979 SC 1791] . The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.

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 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."

54. In Hemant Dhasmana v. Central Bureau of Investigation and Another reported in (2001) 7 SCC 536, it was held:

> "15. When the report is filed under the sub-section the Magistrate (in this case the Special Judge) has to deal with it by bestowing his judicial consideration. If the report is to the effect that the allegations in the original complaint were found true in the investigation, or that some other accused and/or some other offences were also detected, the court has to decide whether cognizance of the offences should be taken or not on the strength of that report. We do not think that it is necessary for us to vex our mind, in this case, regarding that aspect when the report points to the offences committed by some persons. But when the report is against the allegations contained in the complaint and concluded that no offence has been committed by any person, it is open to the court to accept the report after hearing the complainant at whose behest the investigation had commenced. If the court feels on a perusal of such a report that the alleged offences have in fact been committed by some persons the court has the power to ignore the contrary conclusions made by the investigating officer in the final report. Then it is open to the court to independently apply its mind to the facts emerging therefrom and it can even take cognizance of the offences which appear to it to have been committed, in exercise of its power under Section 190(1)(b) of the Code. The third option is the one adumbrated in Section 173(8) of the Code. ...
>
> 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 the further investigation would only be for the ends of justice. ..."

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.".

56. This Court in Hasanbhai (supra) held thus:

> "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. "

57. In Ram Lal Narang v. State (Delhi Administration) reported in (1979) 2 SCC 322, this Court held thus:

> "21. As observed by us earlier, there was no provision in the CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate.

Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation."

58. In State of Andhra Pradesh v. A.S. Peter reported in (2008) 2 SCC 383, this Court held thus:

"9. Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police. A distinction also exists between further investigation and reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not."

59. In Nirmal Singh Kahlon v. State of Punjab and Others reported in (2009) 1 SCC 441, this Court held as follows:

"68. An order of further investigation in terms of Section 173(8) of the Code by the State in exercise of its jurisdiction under Section 36 thereof stands on a different footing. The power of the investigating officer to make further investigation in exercise of its statutory jurisdiction under Section 173(8) of the Code and at the instance of the State having regard to Section 36 thereof read with Section 3 of the Police Act, 1861 should be considered in different contexts. Section 173(8) of the Code is an enabling provision. Only when cognizance of an offence is taken, the learned Magistrate may have some say. But, the restriction imposed by judicial legislation is merely for the purpose of upholding the independence and impartiality of the judiciary. It is one thing to say that the court will have supervisory jurisdiction to ensure a fair investigation, as has been observed by a Bench of this Court in Sakiri Vasu v. State of U.P. [(2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] , correctness whereof is open to question, but it is another thing to say that the investigating officer will have no jurisdiction whatsoever to make any further investigation without the express permission of the Magistrate."

60. In Vinay Tyagi (supra), it was held that "further investigation" in terms of Section 173(8) of the CrPC can be made in a situation where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the Court. The report on such further investigation under Section 173(8) of the CrPC can be termed as a supplementary report.

61. In Vinay Tyagi (supra), it was held that:

> "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.
>
> Xxx xxx xxx 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. 40.6. It has been a procedure of propriety that the police has to seek permission of the court to continue "further investigation" and file supplementary charge-sheet. ..."

62. In Vinubhai (supra); a three-Judge Bench of this Court has endeavoured to lay at rest the controversy enveloping the evasive issue of further investigation directed by the Magistrate. This Court, speaking through Justice R.F. Nariman, has laid down at Para 38 that:

> " To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law." It was also clarified that, "The "investigation" spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun.".

63. Thus, this Court, in conclusion, observed that, "when Section 156(3) states that a Magistrate empowered under Section 190 may order "such an investigation", such Magistrate may also order further investigation under Section 173(8), regard being had to the definition of "investigation" contained in Section 2(h)."

64. Thus, in view of the law laid down by this Court in the various decisions cited hereinabove, it is well settled that sub section (8) of Section 173 of the CrPC permits further investigation, and even dehors any direction from the court, it is open to the police to conduct proper investigation, even after the court takes cognizance of any offence on the strength of a police report earlier submitted.

65. However, the question before this Court is whether sub section (8) of Section 173 of the CrPC permits further investigation after the Magistrate has accepted a final report (closure report) under sub section (2) of Section 173 of the CrPC. The contention raised on behalf of the accused persons is that acceptance of a closure report would terminate the proceedings finally so as to bar the investigating agency from carrying out any further investigation in connection with the offence.

66. The learned counsel appearing for the accused persons submitted that an order accepting the closure report under Section 190(1)(c) of the CrPC is a judicial order and not an administrative order. Relying on the decision of this Court in Kamlapati Trivedi v. State of West Bengal reported in 1980 (2) SCC 91, it was submitted that when a final report of the police is submitted to the Magistrate and the Magistrate passes an order (a) agreeing with the report of the police and filing proceedings; or (b) not agreeing with the police report and holding that the evidence is sufficient to justify the forwarding of the accused to the Magistrate and takes cognizance of the offence complained of, such order is a judicial order.

67. We are at one with the aforesaid submission canvassed on behalf of the accused persons. However, this is not going to make any difference. What is necessary to be examined is as to whether an order passed under Section 190(1) of the CrPC accepting a final report being a judicial order would bar further investigation by the police or the CBI as in the present case, in exercise of the statutory powers under chapter XII of the CrPC?

68. In State of Rajasthan v. Aruna Devi and Others reported in (1995) 1 SCC 1, a complaint was filed in the Court of Munsif and Judicial Magistrate, First Class, Bilara, against the respondents under various sections of the IPC. The gravamen of the allegation was that the respondents had, in pursuance of a conspiracy, transferred some land on the strength of a special power of attorney bearing forged signature. The Magistrate, after perusal of the complaint, directed an investigation to be made as contemplated by Section 156(3) of the CrPC. A case was registered thereafter, by the police and a final report was submitted on 18.07.1981 stating that complaint was false. The report came to be accepted by the Magistrate on 23.09.1981. It, however, so happened that the Superintendent of Police had independently ordered further investigation on 24.09.1981 and a challan came to be filed by police against the respondents, inter alia, under Sections 420 and 467 of the IPC. The Magistrate took cognizance on 25.06.1984. A challenge was made to this act of the Magistrate before Sessions Judge, Jodhpur, who dismissed the revision. On further approach to the High Court, the revision was allowed and the order of cognizance was set aside. The State came in

appeal under Article 136 of the Constitution.

69. This Court observed in paras 3 and 4 respectively as under:

> 3. A perusal of the impugned judgment of the High Court shows that it took the view that the Magistrate had no jurisdiction to take cognizance after the final report submitted by police had been once accepted. Shri Gupta, appearing for the appellant, contends that this view is erroneous in law inasmuch as Section 173(8) of the Code permits further investigation in respect of an offence after a report under sub-section (2) has been submitted.

Sub-section (8) also visualises forwarding of another report to the Magistrate. Further investigation had thus legal sanction and if after such further investigation a report is submitted that an offence was committed, it would be open to the Magistrate to take cognizance of the same on his being satisfied in this regard.

4. Shri Francis for the respondents, however, contends that the order of the Magistrate taking cognizance pursuant to filing of further report amounted to entertaining second complaint which is not permissible in law. To substantiate the legal submission, we have been first referred to Pramatha Nath Taluqdar v. Saroj Ranjan Sarkar [1962 Supp (2) SCR 297 : AIR 1962 SC 876 :

> (1962) 1 Cri LJ 770] , in which a three-Judge Bench of this Court dealt with this aspect. A perusal of the judgment of the majority shows that it took the view that dismissal of a complaint under Section 203 of the Code is no bar to the entertainment of a second complaint on the same facts; but the same could be done only in exceptional circumstances some of which have been illustrated in the judgment. Further observation in this regard is that a fresh complaint can be entertained, inter alia, when fresh evidence comes forward. In the present case, this is precisely what had happened, as on further investigation being made, fresh materials came to light which led to the filing of further report stating that a case had been made out.

The aforesaid decision of this Court has been rightly referred to and relied upon by the High Court in its first order dated 11.09.2014.

70. This Court in K. Chandrasekhar (supra) was considering a case, where on the complaint of a Police Inspector, a case was registered by the Kerala Police against the appellants therein for the offences punishable under Sections 3 and 4 respectively of the Official Secrets Act, 1923 read with Section 34 IPC on the allegation that in collusion with some Indians and foreigners they had committed acts prejudicial to the safety and sovereignty of India. During the investigation, certain other persons (appellants in accompanying appeals) were arrested. Thereafter, a DIG of Police, who was the head of the team conducting the investigation, recommended the case for being investigated by the CBI. Pursuant to such recommendation, the Government of Kerala by a notification dated 02.12.1994 accorded its consent under Section 6 of the Delhi Special Police Establishment Act, 1946 (for short, 'the Act') for further investigation of the case by the CBI. Accordingly, the CBI took up the

investigation. After completion of the investigation, on 16.04.1996, the CBI filed its report in the final form under Section 173(2) of the CrPC, stating that the charges were not proved and were false. Accepting the report, the Magistrate discharged the accused-appellants. Thereafter, on 27.6.1996, the Government of Kerala issued a notification withdrawing the consent earlier given to the CBI to investigate the said case. The object of the said notification was to enable a reinvestigation of the case by a team of State Police Officers. By a mandatory notification dated 08.07.1996, the words "reinvestigation of the case" were substituted by the words "further investigation of the case". The State Government notification dated 27.6.1996 (as amended) was upheld by the High Court. This Court held that, from a plain reading of Section 173 of the CrPC, it is evident that even after submission of police report under sub section (2) on completion of investigation, the police has a right of "further" investigation under sub section (8), but not "fresh investigation" or "reinvestigation". The dictionary meaning of "further" (when used as an adjective) is "additional; more; supplemental". "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. The Court drew inspiration from the fact that sub section (8) clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a "further" report or reports - and not fresh report or reports - regarding the "further" evidence obtained during such investigation. The Court held that once it is accepted that an investigation undertaken by CBI pursuant to a consent granted under Section 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that "further investigation" is a continuation of such investigation which culminates in a further police report under Section 173(8), it necessarily means that withdrawal of consent in the said case would not entitle the State Police to further investigate into the case. However, the Court further observed thus: "To put it differently, if any further investigation is to be made, it is the CBI alone which can do so, for it was entrusted to investigate into the case by the State Government." (Emphasis supplied). Thus, what was held by the Court was that after submission of report under Section 173(2) Cr.P.C. reinvestigation or fresh investigation is not permissible. However, it has been expressly observed that if any further investigation is to be made, it is the CBI alone which can do so. In other words, further investigation could be carried out, but that the same could be done by the CBI alone as it was entrusted to investigate into the case by the State Government and had carried out the investigation and submitted final report in connection therewith.

71. In S. Papaiah (supra) on a complaint made by the UPSC, investigation had been carried out by the CBI and final report was submitted under Section 173 of the CrPC before the Metropolitan Magistrate, before whom the first information report had been lodged, seeking closure of the case. The CBI in spite of the request made to it by the UPSC did not inform about the filing of the final report seeking closure of the case to the UPSC. The report was returned by the learned Metropolitan Magistrate as notice had not been issued to the complainant by the CBI though the CBI had asserted that it had informed the UPSC regarding the filing of the closure report. The final report was resubmitted by the CBI to the Court of the Metropolitan Magistrate along with a copy of the notice sent by the CBI to the UPSC. It appears that the report was again returned by the Metropolitan Magistrate seeking proof of service of notice on the de facto complainant. While the proceedings of submission of the final report were pending, the UPSC addressed a letter to the Director of CBI pointing out that the investigation had not been carried out properly and that the filing of the

closure report was not justified. While the UPSC was awaiting further communication from the CBI in that behalf, the CBI resubmitted the closure report and the learned Metropolitan Magistrate accepted the final report submitted by the CBI and closed the file without any opportunity being provided to the UPSC to have its say. Upon receipt of communication of the order of the court accepting the closure report, the UPSC filed a petition before the learned Metropolitan Magistrate submitting that the complaint had not been properly investigated and that it had no notice about the acceptance of the final report. The Court rejected the petition of the UPSC observing that it had accepted the final report filed by the CBI on 16.03.1995, since the UPSC had not filed its objections to the acceptance of the final report and as such, it could not complain. The Court also opined that since an order accepting final report was a judicial order and not an administrative order, therefore, it had no power to review such an order passed by it "rightly or wrongly" and that the UPSC could file a revision petition seeking appropriate orders against the acceptance of the final report from the revisional court. The revision petition filed by the UPSC was dismissed by the revisional court. In appeal before this Court, it was held thus:

> "13. The appellant brought the contents of communication dated 23.01.1995 to the notice of the learned Metropolitan Magistrate through its Miscellaneous Petition No. 2040 of 1995 seeking 'reinvestigation' but the learned Magistrate, rejected the petition vide order dated 4.11.1995, observing that 'rightly or wrongly that court had passed an order and it had no power to review the earlier order.' Here, again the learned Magistrate fell into an error. He was not required to 'review' his order. He could have ordered 'further investigation' into the case. It appears that the learned Metropolitan Magistrate overlooked the provisions of Section 173(8) which have been enacted to take care of such like situations also." (Emphasis supplied)
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> 72. After referring to the provisions of Section 173(8) of the CrPC, the Court observed that the Magistrate could, thus, in exercise of the powers under Section 173(8) of the CrPC, direct the CBI to "further investigate" the case and collect further evidence keeping in view the objections raised by the UPSC 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 of the CrPC. The Court held that the learned Magistrate failed to exercise the jurisdiction vested in him by law and his order dated 04.11.1995 cannot be sustained.
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> 73. In the light of the aforesaid decision of the Supreme Court, it appears that though the order passed by the learned Magistrate accepting a final report under Section 173 is a judicial order, there is no requirement for recalling, reviewing or quashing the said order for carrying out further investigation under Section 173(8) of the CrPC. As held by this Court in the said decision, the provisions of Section 173(8) of the CrPC have been enacted to take care of such like situations also.
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> 74. In N.P. Jharia v. State of M.P. reported in (2007) 7 SCC 358, proceedings had been initiated against the appellant therein in connection with possession of pecuniary resources disproportionate to his known sources of income. After

investigation the Special Police Establishment (SPE) submitted a "final report" on 01.03.1990 informing the court that no offence was made out against the appellant. The final report was accepted by the Special Judge on 17.04.1990. But on 01.07.1992, the SPE submitted an application before the Special Judge, seeking permission for further investigation. The Special Judge permitted further investigation. Thereafter, the sanction for prosecution was obtained from the State Government on 01.03.1995. The chargesheet was filed in the court on 24.07.1995. On behalf of the appellant, it was urged that once the final report was submitted there is no scope for further investigation. The Court held that so far as further investigation was concerned in the background of Section 173(8) of the CrPC the plea was clearly untenable.

75. In Kari Choudhary v. Mst. Sita Devi and Others reported in (2002) 1 SCC 714, FIR No. 135 was registered on the basis of a complaint lodged by Sita Devi and investigation was commenced thereafter. During investigation, the police found that the murder of the victim, Sugnia Devi was committed pursuant to a conspiracy hatched by her mother-in-law Sita Devi and her daughters-in-law besides the others. So, the police sent a report to the court on 30.11.1998 stating that the allegations in FIR No. 135 were false. The police continued with the investigation after informing the court that they had registered another FIR as FIR No. 208 of 1998. This Court, inter alia, held thus:

"11. Learned counsel adopted an alternative contention that once the proceedings initiated under FIR No. 135 ended in a final report the police had no authority to register a second FIR and number it as FIR No. 208. Of course the legal position is that there cannot be two FIRs against the same accused in respect of the same case. But when there are rival versions in respect of the same episode, they would normally take the shape of two different FIRs and investigation would be carried on under both of them by the same investigating agency. Even that apart, the report submitted to the court styling it as FIR No. 208 of 1998 need be considered as an information submitted to the court regarding the new discovery made by the police during the investigation that persons not named in FIR No. 135 are the real culprits. To quash the proceedings merely on the ground that final report had been laid in FIR No. 135 is, to say the least, too technical. The ultimate object of every investigation is to find out whether the offences alleged have been committed and, if so, who have committed it.

12. Even otherwise, the investigating agency is not precluded from further investigation in respect of an offence in spite of forwarding a report under sub-section (2) of section 173 of a previous occasion. This is clear from Section 173(8) of the Code." (Emphasis supplied)

76. Thus, a conspectus of the aforesaid decisions of this Court rendered in cases where final reports (closure reports) had already been submitted and accepted makes the position of law very clear that even after the final report is laid before the

Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted. It is also evident, that prior to carrying out a further investigation under Section 173(8) of the CrPC, it is not necessary for the Magistrate to review or recall the order accepting the final report.

77. We may summarise our final conclusion as under:

(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.

(ii) Prior to carrying out further investigation under Section 173(8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.

(iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.

(v) There is nothing in the CrPC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the CrPC.

ONE DISTURBING PART OF THE PRESENT LITIGATION

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 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).

6. Although sub section (8) of Section 173 of Cr.P.C 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. Therefore, acceptance of final report by Magistrate does not debar him from taking cognizance of the offence if no further investigation fresh materials come to light. 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) of Cr.P.C to suggest that the court is obliged to hear the accused before any such direction is made.

7. In the instant case, in the counter filed by the Respondent/CBI, it is specifically stated that in the year 2013, CBI received certain information/materials warranting reopening of the investigation. Accordingly, the Inspector of Police, CBI/ ACB has filed a petition in Crl. M.P.No.3833/2013 in respect of the same First Information Report, stating that the prosecution is in possession of new evidence to substantiate the allegation of possession of disproportionate assets to the known sources of income against the accused persons. The said petition has been allowed by the learned Principal Special Judge for CBI Cases, permitting further investigation.

8. In so far as the power of the Magistrate to direct further investigation is concerned, I may point out her that the power of the Magistrate under Section 156(3) of the code to direct further investigation is clearly an independent power and does not stand in conflict with the power of the Police Officer. The power conferred upon the Magistrate under Section 156(3) of the code can be exercised by the Magistrate even after submission of a report by the Investigating Officer, which would mean that it would be open to the Magistrate not to accept the conclusion of the Investigating Officer and direct further investigation. This provision does not, in any way, affect the power of the Investigating Officer to further investigate the case even after submission of the report as provided in sub section (8) of Section 173 of the Code. Therefore, considering all these provisions, in my view, the Magistrate can order reopening of the investigation even after acceptance of the final report "making closure report".

9. In the instant case, the learned Principal Special Judge for CBI Cases has passed the impugned order on the petition filed by the Investigating Officer, Inspector, CBI/ACB. It is now clear that sub section (8) of section 173 of Cr.P.C gives power to the Investigating Officer to reopen the investigation in the case in which final report had been submitted earlier and after completing the investigation fresh report has to be submitted before the learned Special Judge under sub section (2)

of Section 173 of the Code. Of course, this can be done only on such fresh materials which did not come to the knowledge of the Investigating Officer, while he was conducting the investigation and in my view, exactly the same situation prevailed in this case.

11. The same view has also been taken in the decision of the Hon'ble Supreme Court in State of Rajasthan Vs. Aruna Devi and others (1995-SCC-Crl-1) wherein it was held that acceptance of final report by Magistrate does not debar him from taking cognizance of the offence if on further investigation fresh materials come to light.

12. Mr. N. Chandrasekaran, the learned Special Public Prosecutor has contended that there is no legal bar to the reopening of the investigation of any case in which closure report has been submitted if there are sufficient, cogent fresh materials to proceed against the accused persons. I find all force in his submissions. Having considered the rival contentions of both the parties, I am of the opinion that in view of the facts that the Inspector CBI/ACB has collected some fresh materials connected with this case, which were not available to the Investigating Officer earlier, it cannot be said that the learned Principal Special Judge for CBI cases had acted beyond its jurisdiction by ordering reopening of the investigation of the case.

13. For the reasons stated above, I find full force in the contentions raised by the learned Special Public Prosecutor for CBI Cases. I, therefore, do not find any illegality in the impugned order which warrants any interference by this court." (Emphasis supplied)

79. It goes without saying that the aforesaid judgment delivered by the learned Single Judge of the High Court was very much binding to a Co- ordinate Bench when the Crl. O.P. Nos. 15873 and 11101 of 2015 respectively and Crl. O.P. No. 411 of 2016 were heard and decided. These are the matters, which were filed by the accused persons seeking discharge from the criminal proceedings. We may reproduce some of the observations made by the Co- ordinate Bench of the High Court in the impugned order assailed before us:

> "9. The legal point involved in the present criminal original petitions is as to whether the concerned Magistrate is having power of granting fresh investigation, especially after getting closure report and consequently accepting the same.
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> 10. The Hon'ble Supreme Court, with regard to power of a Magistrate under section 173(8) of the code of Criminal Procedure, 1973, has made a threadbare discussion in the decision reported in AIR 2015 SC 3566 (Chandra Babu alias Moses V. State through the Inspector of Police and others). After making elaborate discussion, the Hon'ble Supreme Court has culled out the powers of Magistrate under the said Section like thus:
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> "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"

11. From a cursory reading of the observations made by the Hon'ble Supreme Court, it is discernible that after getting a final report under section 173(2) of the said code, the concerned Magistrate is having power, either to take cognizance or to direct the investigating agency to conduct further investigation as per section 173(8) of the said code.

12. Even a mere reading of Section 173 of the Code and its sub- clauses, would get to show that after getting a final report, the concerned Magistrate is having unfettered right of granting further investigation as envisaged in sub-clause(s) of Section 173 of the said code.

13. But, the legal position involves in the present petitions is otherwise. The legal point is as to whether after closure of final report, as well as First Information Report, whether the concerned Magistrate is having power to grant permission either to conduct further investigation/re-investigation/de-novo investigation.

14. At this juncture, it would be condign to look into the real dictionary meaning of "further investigation". The dictionary meaning of 'further' (when used as an adjective) is additional; more; supplemental'. ‘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. Therefore, it is pellucid that for granting permission to conduct 'further investigation' an investigation must be pending or to put it in short, some proceeding must be pending before the concerned court. It is also a settled principle of law that after filing a final report under sub-clause (2) of Section 173 of the said code, while matter is pending, the investigating officer can collect some more materials so as to strengthen the accusation made against the concerned accused.

15. As adverted to earlier, in the instant case, the main contention of the petitioners is that already investigation has been done against the accused 1 and 2 and a closure report has been filed before the Principal Special Judge for CBI Cases, Chennai and the same has been accepted and consequently, First Information Report has been dosed. Under the said circumstances, to grant permission either to conduct 'further investigation' or 'reinvestigation' does not arise.

Xxx xxx xxx

20. After lapse of four years from passing the order mentioned supra in the year 2013, the respondent, as petitioner, has filed Crl.M.P.No.3833 of 2013, on the file of the Principals Special Court for CBI Cases, Chennai, herein, it is prayed to permit the petitioner therein to re-open and further investigation the above case.

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23. The learned Special Public Prosecutor has advanced his entire argument only on the basis of the order passed in Criminal Original Petition No.6371 of 2014. In fact, at the time of passing the order in Crl.O.P.No.6371 of 2014, the decision mentioned supra has not been brought to the knowledge of this court. Under the said circumstances, this court has erroneously ratified the permission granted by the Principal Special Judge for CBI cases, Chennai. Therefore, on the basis of the order passed, in Crl.O.P.No.6371 of 2014 by this court, we cannot come to a conclusion that the order passed by the Principal Special Judge for CBI Case, Chennai, is valid in law. Further, it has already been pointed out that the said order has been passed even without power. Since the said order is totally alien to law, the subsequent proceedings are also bad in law.

24. The present petitions have been filed praying to quash the final report filed in Calendar Case No.13 of 2015. Since the permission granted to the respondent for conducting re-investigation or further investigation by the Principal Special Judge for CBI Cases, Chennai is totally illegal and since the subsequent proceedings are also entirely bad in law, it is needless to say that the final report filed thereon is also both factually and legally not sustainable. Under the said circumstances, the legal point raised on the side of the petitioner is really having subsisting force. On that score alone, these petitions are liable to be allowed." (Emphasis supplied)

80. Thus, one Co-ordinate Bench of the High Court, virtually sat in appeal over the judgment of another Co-ordinate Bench and took a contrary view. The learned Single Judge says in his impugned order that the High Court in its earlier order dated 11.09.2014 referred to above omitted to consider the decision of this Court in the case of Vinay Tyagi (supra) and therefore, per incuriam whereas, the decision of this Court in the case of Vinay Tyagi (supra) was very much looked into and has been referred to in the order dated 11.09.2014. Thus, two contrary views have been taken by different judges of equal strength of the High Court on the same subject and litigation.

81. We would like to extend a word of caution over here. While it is open to a learned Judge to differ with a view of a Co-ordinate Bench the sequitur is to make a reference to a larger Bench on papers being placed before the learned Chief Justice. The learned Judge cannot simply say "with due respect, I do not agree to the ratio..." or "the decision is per incuriam as a binding judgment of the Supreme Court has not been considered...." and proceed to take a contrary view as done in the impugned order. Such an approach would result in conflicting opinions of Co-ordinate Benches, resulting in judicial chaos and is, thus, improper. This is something atrocious and unacceptable.

82. We may remind the High Court of the observations made by this Court in Official Liquidator v. Dayanand and Others reported in (2008) 10 SCC 1. In this decision, this Court has emphasised the adherence to basics of judicial discipline and the need for predictability and a certainty in law. In

that context, certain earlier judgments have been referred to as to whether one Bench of the Court not following the view of another Co-ordinate Bench has been commented upon as under:

> "78. There have been several instances of different Benches of the High Courts not following the judgments/orders of coordinate and even larger Benches. In some cases, the High Courts have gone to the extent of ignoring the law laid down by this Court without any tangible reason. Likewise, there have been instances in which smaller Benches of this Court have either ignored or bypassed the ratio of the judgments of the larger Benches including the Constitution Benches. These cases are illustrative of non-adherence to the rule of judicial discipline which is sine qua non for sustaining the system. In Mahadeolal Kanodia v. Administrator General of W.B. [AIR 1960 SC 936 :
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> (1960) 3 SCR 578] this Court observed : (AIR p. 941, para 19) "19. ... If one thing is more necessary in law than any other thing, it is the quality of certainty. That quality would totally disappear if Judges of coordinate jurisdiction in a High Court start overruling one another's decisions. If one Division Bench of a High Court is unable to distinguish a previous decision of another Division Bench, and holding the view that the earlier decision is wrong, itself gives effect to that view the result would be utter confusion. The position would be equally bad where a Judge sitting singly in the High Court is of opinion that the previous decision of another Single Judge on a question of law is wrong and gives effect to that view instead of referring the matter to a larger Bench. In such a case lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between dissentient judgments of their own High Court." (emphasis added)
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> 79. In Lala Shri Bhagwan v. Ram Chand [AIR 1965 SC 1767] Gajendragadkar, C.J. observed : (AIR p. 1773, para 18) "18. ... It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned Single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a Single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a Single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety.

It is to be regretted that the learned Single Judge departed from this traditional way in the present case and chose to examine the question himself." Xxx xxx xxx

82. In Vijay Laxmi Sadho (Dr.) v. Jagdish [(2001) 2 SCC 247] this Court considered whether the learned Single Judge of the Madhya Pradesh High Court could ignore the judgment of a coordinate Bench on the same issue and held : (SCC p. 256, para

33) “33. As the learned Single Judge was not in agreement with the view expressed in Devilal case [Devilal v. Kinkar Narmada Prasad, Election Petition No. 9 of 1980 (MP)] it would have been proper, to maintain judicial discipline, to refer the matter to a larger Bench rather than to take a different view. We note it with regret and distress that the said course was not followed. It is well settled that if a Bench of coordinate jurisdiction disagrees with another Bench of coordinate jurisdiction whether on the basis of ‘different arguments’ or otherwise, on a question of law, it is appropriate that the matter be referred to a larger Bench for resolution of the issue rather than to leave two conflicting judgments to operate, creating confusion. It is not proper to sacrifice certainty of law. Judicial decorum, no less than legal propriety forms the basis of judicial procedure and it must be respected at all costs.” Xxx xxx xxx

90. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to the constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in the last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass roots will not be able to decide as to which of the judgments lay down the correct law and which one should be followed.

91. We may add that in our constitutional set-up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions. Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the constitutional ideals. This principle is required to be observed with greater rigour by the members of judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.” (Emphasis supplied) We need to add nothing more in this context.

DELAY IN TRIAL ON ACCOUNT OF FURTHER INVESTIGATION

83. It was vehemently submitted on behalf of the accused that further investigation if permitted after such a long lapse of time, would result in delay in trial. For years to come, the sword of Damocles should not be kept hanging on the neck of the accused persons. In such circumstances, it was argued before us that keeping in mind that this litigation is now almost more than a decade old, it will not be in fitness of things to put the accused persons to trial.

84. In the aforesaid context, we may only say that the general rule of criminal justice is that "a crime never dies". The principle is reflected in the well-known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). It is settled law that the criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of law would not by itself afford a ground for dismissing the case. Though it may be a relevant circumstance in reaching a final verdict. (See: Japani Sahoo v. Chandra Sekhar Mohanty reported in (2007) 7 SCC 394.)

85. The following observations in Hasanbhai (supra), have been made by this Court in reference to further investigation:

> "13. ....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. ..."

86. Thus, the assurance of a fair trial is to be the first imperative in the dispensation of justice. [Reference: Commissioner of Police, Delhi and Another v. Registrar, Delhi High Court, New Delhi reported in (1996) 6 SCC 323]. The need for fair investigation has also been emphasized in Vinay Tyagi (supra) where it was observed as under:

> "48. What ultimately is the aim or significance of the expression "fair and proper investigation" in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. ...."

87. Reference may also be placed on the decision in Pooja Pal v. Union of India and Others reported in (2016) 3 SCC 135, where the fundamental rights enshrined under Article 21 of the Constitution of India were discussed in the context of "speedy trial" juxtaposed to "fair trial" in the following manner:

> "83. A "speedy trial", albeit the essence of the fundamental right to life entrenched in Article 21 of the Constitution of India has a companion in concept in "fair trial", both being inalienable constituents of an adjudicative process, to culminate in a judicial decision by a court of law as the final arbiter. There is indeed a qualitative difference between right to speedy trial and fair trial so much so that denial of the former by itself would not be prejudicial to the accused, when pitted against the imperative of fair trial. As fundamentally, justice not only has to be done but also must appear to have been done, the residuary jurisdiction of a court to direct further investigation or reinvestigation by any impartial agency, probe by the State Police notwithstanding, has to be essentially invoked if the statutory agency already in charge of the

investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. As the cause of justice has to reign supreme, a court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion. Justice then would become a casualty. Though a court's satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analysed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.".

(Emphasis supplied) NON-COMPLIANCE OF THE SECOND PROVISO TO SECTION 17 OF THE 1988 ACT

88. The Second proviso to Section 17 of the 1988 Act directs that the offence referred to under clause (e) of sub section (1) of Section 13 of the 1988 Act shall not be investigated without the order of a police officer not below the rank of a Superintendent of Police. Thus, from the Second proviso, it is clear that an investigation into the offence referred to in clause (e) of sub section (1) of Section 13 of the 1988 Act even by any police officer enumerated in clauses

(a) to (c) or any Police Officer authorized in that behalf by the State Government as per the first proviso, can be undertaken only by an order of the police officer not below the rank of Superintendent of Police. Thus, the Second proviso is in the nature of additional safe guard for the public servant who are accused of the offence punishable under Section 13(1)(e) of the 1988 Act against an investigation by a police officer without the knowledge and consent of superior police officer not below the rank of Superintendent of Police. A superior police officer of the rank of Superintendent of Police or any officer higher in rank is required to pass an order before an investigation, if any, for such offence is commenced. It is needless to point-out that, before directing such investigation, the Superintendent of Police or an officer superior to him is required to apply his mind to the information and come to an opinion that the investigation on such allegations is necessary. The argument canvassed on behalf of the accused persons is that there is no such order of the police officer not below the rank of Superintendent of Police in the chargesheet. We do not propose to go into this issue in the present litigation. This issue was not even raised before the High Court. Even otherwise, this is a question of fact and a matter of record. If it is the case of the accused that there is no such order on record, the same may be pointed out to the trial court in the course of the trial. It is for the trial court to verify the record, look into it and take an appropriate call on this issue in accordance with law.

89. In view of the aforesaid discussion, all the appeals filed by the CBI succeed and are hereby allowed.

90. The impugned orders passed by the High Court are hereby set aside.

91. The Special Court shall now proceed further with the trial of the accused persons in accordance with law.

92. Pending applications if any shall stand disposed of.

.....J. (SURYA KANT) .....J. (J.B. PARDIWALA) NEW DELHI;

APRIL 28, 2023.