Vinubhai Haribhai Malaviya vs The State Of Gujarat on 16 October, 2019

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Bench: V. Ramasubramanian, Surya Kant, R.F. Nariman

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS.478-479 OF 2017

Vinubhai Haribhai Malaviya and Ors. … Appellants

Versus

The State of Gujarat and Anr. …Respondents

JUDGMENT

R.F. Nariman, J.

1. This case arises out of a First Information Report (hereinafter referred to as “FIR”) that was lodged on 22.12.2009. The FIR is by one Nitinbhai Mangubhai Patel, Power-of-Attorney holder of Ramanbhai Bhagubhai Patel and Shankarbhai Bhagubhai Patel, who are allegedly residing at “UK or USA”. The gravamen of the complaint made in the FIR is that one Vinubhai Haribhai Malaviya is blackmailing these two gentlemen with respect to agricultural land which is just outside the city of Surat, Gujarat and which admeasures about 8296 square meters. The Reason: FIR alleges that Ramanbhai Patel and Shankarbhai Patel are absolute and independent owners of this land, having obtained it from one Bhikhabhai Khushalbhai and his wife Bhikiben Bhikhabhai in the year 1975. The FIR then narrates that because of a recent price-hike of lands in the city of Surat, the heirs of Bhikhabhai and Bhikiben together with Vinubhai Haribhai Malaviya and Manubhai Kurjibhai Malaviya have hatched a conspiracy in collusion with each other, and published a public notice under the caption “Beware of Land-grabbers” in a local newspaper on 07.06.2008. Sometime

thereafter, Vinubhai Haribhai Malaviya then contacted an intermediary, who in turn contacted Nitinbhai Patel (who lodged the FIR), whereby, according to Nitinbhai Patel, Vinubhai Malaviya demanded an amount of Rs. 2.5 crores in order to "settle" disputes in respect of this land. It is alleged in the said FIR that apart from attempting to extort money from the said Nitinbhai Patel, the heirs of Bhikhabhai and Bhikiben together with Vinubhai Haribhai Malaviya and Manubhai Kurjibhai Malaviya have used a fake and bogus 'Satakhat' and Power-of-Attorney in respect of the said land, and had tried to grab this land from its lawful owners Ramanbhai and Shankarbhai Patel.

2. The background to the FIR is the fact that one Khushalbhai was the original tenant of agricultural land, bearing Revenue Survey No.342, admeasuring 2 Acres, 2 Gunthas, situated at Puna (Mauje), Choriyasi (Tal), District Surat. Khushalbhai died, after which his son Bhikhabhai became tenant in his place. Bhikhabhai in turn died on 23.12.1984 and his wife Bhikiben died on 18.12.1999. A public notice dated 07.06.2008 was issued in 'Gujarat Mitra' and 'Gujarat Darpan Dainik' by the heirs of Bhikhabhai, stating that Ramanbhai and Shankarbhai Patel are land-grabbers, and are attempting to create third-party rights in the said property. This led to the legal heirs of Bhikhabhai, through their Power-of-Attorney holder, applying on 12.06.2008 to the Collector, Nanpura (Surat), to cancel revenue entries that were made way back in 1976.

3. Pursuant to the filing of the FIR, investigation was conducted by the police, which resulted in a charge-sheet dated 22.04.2010 being submitted to the Judicial Magistrate (First Class), Surat. On 23.04.2010, the said Magistrate took cognizance and issued summons to the accused regarding offences under Sections 420, 465, 467, 468, 471, 384 and 511 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). Pursuant to the summons, the accused appeared before the said Magistrate. On 10.06.2011, an application (Exhibit 28) was filed by Accused No.1 Vinubhai Haribhai Malaviya for further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 (hereinafter referred to as "CrPC") and another application (Exhibit 29) for discharge. Likewise, on 14.06.2011, applications for further investigation (Exhibit 31) and for discharge (Exhibit 32) were filed by accused 2 to 6. By an order dated 24.08.2011, the Magistrate dismissed the applications that were filed for further investigation (i.e. Exhibits 28 and 31), stating that the facts sought to be placed by the applicants were in the nature of evidence of the defence that would be taken in the trial. Likewise, on 21.10.2011 the learned Magistrate also rejected the discharge applications that were made (i.e. Exhibits 29 and 32).

4. Meanwhile, on 26.07.2011, Criminal Miscellaneous Application No.816 of 2011 was moved by Vinubhai Haribhai Malaviya and the other accused to register an FIR, or for the Magistrate to order investigation under Section 156(3) of the CrPC into the facts stated in their applications. This was rejected by the learned Magistrate by an order dated 09.09.2011.

5. Separate criminal revision applications were filed before the Sessions Court, Surat, being Revision Application Nos. 376 and 346 of 2011, insofar as the dismissal by the learned Magistrate of further investigation and the order rejecting registration of the FIR were concerned. Both these revision applications were decided by the learned Second Additional Sessions Judge, Surat by a common order dated 10.01.2012. By this order, the learned Second Additional Sessions Judge went into details of facts that were alleged in the application under Section 173(8) and found that a case had

been made out for further investigation. Accordingly, he held:

> "As per the above referred discussion, it can be seen that no effective investigation or discussions have been carried out in all these respect during in the course of the investigation of said offence and further, it is very noteworthy here that matters for which the prayers are made in these Revision Applications, all these matters are pertaining to the complaint of this case. Hence, it is very much necessary that for the purpose of carrying out a detailed and full investigation of this complaint, all these matters should also be investigated. But for the said purpose, it is not necessary that a separate complaint be registered and thereafter its investigation be carried out. But by covering this investigation also in the complaint of the present matter, if it is found out in such investigation that any offence was committed, then appropriate criminal proceedings can be initiated against such person."

6. Pursuant to this order, the investigation was handed over to Investigating Officer R.A. Munshi (hereinafter referred to as "IO Munshi") on 06.03.2012, who then submitted two further investigation reports – one within three days, dated 09.03.2012 and a second one dated 10.04.2012, in which the IO Munshi went into the facts mentioned in the 173(8) applications that were filed. On 13.06.2012, the original accused withdrew Special Criminal Application No.727 of 2012 filed in the High Court, which was filed challenging the order by which the learned Revisional Court had confirmed the order rejecting the discharge applications, with liberty to move an appropriate application for discharge before the Magistrate. The High Court heard Criminal Revision Application No.44 of 2012 together with Criminal Miscellaneous Application No.1746 of 2012, and arrived at the conclusion that, as a matter of law, the Magistrate does not possess any power to order further investigation after a charge- sheet is filed and cognizance is taken. The High Court further castigated IO Munshi, holding that the furnishing of interim investigation reports, not through a special public prosecutor and not to the Magistrate, but to the Additional Sessions Judge himself smacks of mala fides, as if IO Munshi wanted to oblige and/or favour the accused persons. The High Court further found that the two interim investigation reports virtually acquitted the accused persons, and therefore, the High Court set aside the judgment of the learned Second Additional Sessions Judge dated 10.01.2012, and consequently, the two further interim investigation reports. So far as Criminal Revision Application No.346 of 2011 (which was disposed of by the learned Second Additional Sessions Judge without considering merits, in light of its order in Criminal Revision Application No.376 of 2011) was concerned, the High court remanded the same for fresh consideration to the learned Second Additional Sessions Judge, who would then decide as to whether an FIR should be registered, insofar as the allegations contained in the applications for further investigation are concerned. Pursuant to the aforesaid remand, by judgment dated 23.04.2016, the learned Additional Sessions Judge has rejected the application under Section 156(3) of the CrPC on merits, against which Special Criminal Application No.3085 of 2016 has been filed and is awaiting disposal. Several other proceedings that are pending between the parties have been pointed out to us, with which we have no immediate concern in this case.

7. Shri Dushyant Dave, learned Senior Advocate, appearing on behalf of the Appellants, has forcefully argued, placing reliance on a number of provisions of the CrPC, and a number of our

judgments, that the High Court was wholly incorrect as a matter of law, in holding that post-cognizance a Magistrate would have no power to order further investigation into an offence. He read out in great detail the FIR dated 22.12.2009, the contents of the charge-sheet dated 22.04.2010, and relied heavily on a communication made by the Commissioner of Revenue, Gujarat to the Collector, Surat dated 15.03.2011. According to him, the contents of this communication would show that there is no doubt that further investigation ought to have been carried out on the facts of this case, in that, a huge fraud had been perpetrated on his clients by land-grabbing mafia, and it would be a travesty of justice if the learned Second Additional Sessions Judge's judgment dated 10.01.2012 was not upheld. According to him, the High Court judgment was greatly influenced by the fact that:

> (1) IO Munshi submitted further interim investigation reports very quickly, and (2) had submitted these reports to the Additional Sessions Judge instead of the Magistrate; resulting in the throwing out of the baby with the bathwater. He therefore urged us to uphold the order of the Second Additional Sessions Judge who ordered further investigation, as that would lead to the truth of the matter in this case.

8. On the other hand, Shri Basant and Shri Navare, learned Senior Advocates appearing on behalf of the respondents, supported the judgment of the trial court and the High Court, stating that there is no doubt that without filing a cross-FIR, what was sought to be adduced is evidence which may perhaps amount to a defence in the trial to be conducted, which would be impermissible. They emphasised that at no stage had an application been moved to quash the proceedings, and obviously, a belated application made more than a year after cognizance had been taken, to obtain by way of further investigation facts which were wholly divorced from the FIR would be wholly outside the Magistrate's power under Section 173(8) of the CrPC. They relied upon several judgments, and particularly recent judgments of this Court, in order to show that post-cognizance and particularly after summons is issued to the accused, and the accused appears pursuant to such summons, the Magistrate has no suo motu power, nor can he be moved by the accused, for further investigation at this stage of the proceedings.

9. The question of law that therefore arises in this case is whether, after a charge-sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding.

10. The CrPC is neatly divided into 37 Chapters. In this case we are concerned with Chapters XII to XVII. Chapter XII is titled "Information to the Police and their Powers to Investigate". Chapter XIII has as its title "Jurisdiction of the Criminal Courts in Inquiries and Trials". Chapter XIV speaks of "Conditions Requisite for Initiation of Proceedings". Chapter XV then speaks of "Complaints to Magistrates". Chapter XVI is headed "Commencement of Proceedings before Magistrates" and Chapter XVII is headed "The Charge". Chapters XVIII to XXI are "Trials before a Court of Session"; "Trial of Warrant-Cases by Magistrates"; "Trials of Summons-Cases by Magistrates"; and Summary Trials", respectively.

11. The relevant sections of the CrPC with which we are concerned are as follows:

> "156. Police officer's power to investigate cognizable case.-
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> (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

xxx xxx xxx (3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned. xxx xxx xxx

173. Report of police officer on completion of investigation.-

xxx xxx xxx (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). xxx xxx xxx

190. Cognizance of offences by Magistrates.- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence –

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

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

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try.

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200. Examination of complainant.- A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate:

Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses –

(a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192.

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

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202. Postponement of issue of process.– (1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, [and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction] postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:

Provided that no such direction for investigation shall be made -

(a) Where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Sessions; or

(b) Where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witness on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.

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204. Issue of process.– (1) If in the opinion of a Magistrate taking cognizance of an offence there is sufficient ground for proceeding, and the case appears to be –

(a) a summons-case, he shall issue his summons for the attendance of the accused, or

(b) a warrant-case, he may issue a warrant, or, if he thinks fit, a summon, for causing the accused to be brought or to appear at a certain time before such other Magistrate or (if he has no jurisdiction himself) some other Magistrate having jurisdiction. (2) No summons or warrant shall be issued against the accused under sub-section (1) until a list of the prosecution witnesses has been filed.

(3) In a proceeding instituted upon a complaint made in writing, every summons or warrant issued under sub- section (1) shall be accompanied by a copy of such complaint.

(4) When by any law for the time being in force any process-fees or other fees are payable, no process shall be issued until the fees are paid and, if such fees are not paid within a reasonable time, the Magistrate may dismiss the complaint.

(5) Nothing in this section shall be deemed to affect the provisions of section 87."

12. As the Chapter headings themselves show, there is a neat distinction between the powers of the police to investigate and jurisdiction of the criminal courts in inquiries - followed by the procedure once the trial itself begins. Section 156 deals with a police officer's power to investigate "cognizable cases". A "cognizable case" is defined under Section 2(c) of the CrPC as follows:

> "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.
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> The expression "complaint" is defined in Section 2(d) as follows:
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> "complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.
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> "Inquiry" is defined in Section 2(g) as follows:
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> "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court;
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> "Investigation" is defined in Section 2(h) as follows:
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> "investigation" includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf.

13. The statutory scheme contained in the CrPC therefore puts "inquiry" and "trial" in water-tight compartments, as the very definition of "inquiry" demonstrates. "Investigation" is for the purpose of collecting evidence by a police officer, and otherwise by any person authorised by a Magistrate in this behalf, and also pertains to a stage before the trial commences. Investigation which ultimately leads to a police report under the CrPC is an investigation conducted by the police, and may be ordered in an inquiry made by the Magistrate himself in "complaint" cases.

14. The erstwhile Code of Criminal Procedure, 1898 did not contain a provision by which the police were empowered to conduct a further investigation in respect of an offence after a police report under Section 173 has been forwarded to the Magistrate. The Forty-First Law Commission Report (The Code of Criminal Procedure, 1898) forwarded to the Ministry of Law in September 1969 (hereinafter referred to as the "Law Commission Report"), therefore, recommended the addition of sub-section (7) to Section 173 as it stood under the Code of Criminal Procedure, 1898 for the following reasons:

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

15. What is interesting to note is that the narrow view of some of the High Courts had placed a hindrance in the way of the investigating agency, which can be very unfair to the prosecution as well as the accused.

16. Article 21 of the Constitution of India makes it clear that the procedure in criminal trials must, after the seminal decision in Mrs. Maneka Gandhi v. Union of India & Anr. (1978) 1 SCC 248, be "right, just and fair and not arbitrary, fanciful or oppressive" (see paragraph 7 therein). Equally, in Commissioner of Police, Delhi v. Registrar, Delhi High Court, New Delhi (1996) 6 SCC 323, it was stated that Article 21 enshrines and guarantees the precious right of life and personal liberty to a person which can only be deprived on following the procedure established by law in a fair trial which assures the safety of the accused. The assurance of a fair trial is stated to be the first imperative of the dispensation of justice (see paragraph 16 therein).

17. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are

not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over the CrPC that must needs inform the interpretation of all the provisions of the CrPC, so as to ensure that Article 21 is followed both in letter and in spirit.

18. Pooja Pal v. UOI (2016) 3 SCC 135 is an important judgment which speaks of the fundamental right under Article 21 of the Constitution in the context of the goal of "speedy trial" being tempered by "fair trial". The Court put it thus:

> "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.
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> 86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore, cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though well-demarcated contours of

> crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard-and-fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice."

19. With the introduction of Section 173(8) in the CrPC, the police department has been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate. Quite obviously, this power continues until the trial can be said to commence in a criminal case. The vexed question before us is as to whether the Magistrate can order further investigation after a police report has been forwarded to him under Section 173.

20. It is interesting to note that even under the Code of Criminal Procedure, 1898, in Kamlapati Trivedi v. State of West Bengal (1980) 2 SCC 91, this Court held as follows:

> "50. Sections 169 and 170 do not talk of the submission of any report by the police to the Magistrate, although they do state what the police has to do short of such submission when it finds at the conclusion of the investigation (1) that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate (Section 169) or (2) that there is sufficient evidence or reasonable ground as aforesaid (Section 170). In either case the final report of the police is to be submitted to the Magistrate under sub-section (1) of Section 173. Sub-section (3) of that section further provides that in the case of a report by the police that the accused has been released on his bond (which is the situation envisaged by Section 169), the Magistrate shall make "such order for the discharge of such bond or otherwise as he thinks fit". Now what are the courses open to the Magistrate in such a situation? He may, as held by this Court in Abhinandan Jha v. Dinesh Mishra [(1967) 3 SCR 668: AIR 1968 SC 117: 1968 Cri LJ 97]:
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> (1) agree with the report of the police and file the proceedings; or (2) not agree with the police report and
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> (a) order further investigation, or
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> (b) hold that the evidence is sufficient to justify the forwarding of the accused to the Magistrate and take cognizance of the offence complained of.

51. The appropriate course has to be decided upon after a consideration of the report and the application of the mind of the Magistrate to the contents thereof. But then the problem to be solved is whether the order passed by the Magistrate pertains to his executive or judicial capacity. In my opinion, the only order which can be regarded as having been passed by the Magistrate in his

capacity as the supervisory authority in relation to the investigation carried out by the police is the one covered by the course 2(a). The order passed by the Magistrate in each of the other two courses, that is, (1) and (2)(b), follows a conclusion of the investigation and is a judicial order determining the rights of the parties (the State on the one hand and the accused on the other) after the application of his mind. And if that be so, the order passed by the Magistrate in the proceeding before us must be characterised as a judicial act and therefore as one performed in his capacity as a Court."

21. What is recognised by this decision is that in the circumstance that the Magistrate does not agree with the police report, he may order further investigation - which is done in his capacity as a supervisory authority in relation to investigation carried out by the police.

22. Indeed, Section 156(3) has remained unchanged even after the advent of the CrPC of 1973. Thus, in State of Bihar v. J.A.C. Saldhana and Ors. (1980) 1 SCC 554, this Court held:

> "19. The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) 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 Section 173(8)." Likewise, in Sakiri Vasu v. State of U.P. and Ors. (2008) 2 SCC 409, this Court held:
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> "12. Thus in Mohd. Yousuf v. Afaq Jahan [(2006) 1 SCC 627: (2006) 1 SCC (Cri) 460: JT (2006) 1 SC 10] this Court observed: (SCC p. 631, para 11) "11. The clear position therefore is that any Judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigation under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complainant because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter."
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> 13. The same view was taken by this Court in Dilawar Singh v. State of Delhi [(2007) 12 SCC 641 : JT (2007) 10 SC 585] (JT vide para 17). We would further clarify that

even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) CrPC, and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order(s) as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) CrPC.

14. Section 156(3) states:

"156. (3) Any Magistrate empowered under Section 190 may order such an investigation as abovementioned." The words "as abovementioned" obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the police station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII CrPC. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order reopening of the investigation even after the police submits the final report, vide State of Bihar v. J.A.C. Saldanha [(1980) 1 SCC 554 : 1980 SCC (Cri) 272 : AIR 1980 SC 326] (SCC : AIR para 19).

17. In our opinion Section 156(3) CrPC is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an FIR and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) CrPC, though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary for its execution."

23. It is thus clear that the Magistrate's power under Section 156(3) of the CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the "investigation" referred to in Section 156(1) of the CrPC would, as per the definition of "investigation" under Section 2(h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) of the CrPC.

24. However, Shri Basant relied strongly on a Three Judge Bench judgment in Devarapalli Lakshminarayana Reddy & Ors. v. V. Narayana Reddy & Ors. (1976) 3 SCC 252. This judgment, while deciding whether the first proviso to Section 202 (1) of the CrPC was attracted on the facts of that case, held:

> "17. Section 156(3) occurs in Chapter XII, under the caption : "Information to the Police and their powers to investigate"; while Section 202 is in Chapter XV which bears the heading: "Of complaints to Magistrates". The power to order police investigation under Section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post- cognizance stage when the Magistrate is in seisin of the case. That is to say in the case of a complaint regarding the commission of a cognizable offence, the power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence under Section 190(1)(a). But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). It may be noted further that an order made under sub- section (3) of Section 156, is in the nature of a peremptory reminder or intimation to the police to exercise their plenary powers of investigation under Section 156(1). Such an investigation embraces the entire continuous process which begins with the collection of evidence under Section 156 and ends with a report or charge-sheet under Section 173. On the other hand, Section 202 comes in at a stage when some evidence has been collected by the Magistrate in proceedings under Chapter XV, but the same is deemed insufficient to take a decision as to the next step in the prescribed procedure. In such a situation, the Magistrate is empowered under Section 202 to direct, within the limits circumscribed by that section an investigation "for the purpose of deciding whether or not there is sufficient ground for proceeding". Thus the object of an investigation under Section 202 is not to initiate a fresh case on police report but to assist the Magistrate in completing proceedings already instituted upon a complaint before him." This judgment was then followed in Tula Ram & Ors. v. Kishore Singh (1977) 4 SCC 459 at paragraphs 11 and 15.

25. Whereas it is true that Section 156(3) remains unchanged even after the 1973 Code has been brought into force, yet the 1973 Code has one very important addition, namely, Section 173(8), which did not exist under the 1898 Code. As we have noticed earlier in this judgment, Section 2(h) of the 1973 Criminal Procedure Code defines "investigation" in the same terms as the earlier definition contained in Section 2(l) of the 1898 Criminal Procedure Code with this difference – that "investigation" after the 1973 Code has come into force will now include all the proceedings under the CrPC for collection of evidence conducted by a police officer. "All" would clearly include proceedings under Section 173(8) as well. Thus, 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).

26. Section 2(h) is not noticed by the aforesaid judgment at all, resulting in the erroneous finding in law that the power under Section 156(3) can only be exercised at the pre-cognizance stage. 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. For these reasons, the statement of the law contained in paragraph 17 in Devarapalli Lakshminarayana Reddy (supra) cannot be relied upon.

27. Ram Lal Narang v. State (Delhi Administration) (1979) 2 SCC 322, is an early judgment which deals with the power contained in Section 173(8) after a charge-sheet is filed. This Court adverted to the Law Commission Report and to a number of judgments which recognised the right of the police to make repeated investigations under the Code of Criminal Procedure, 1898. It then quoted the early Supreme Court judgment in H.N. Rishbud v. State of Delhi AIR 1955 SC 196 case as follows:

> "17. In H.N. Rishbud v. State of Delhi [AIR 1955 SC 196: (1955) 1 SCR 1150: 1955 Cri LJ 526] this Court contemplated the possibility of further investigation even after a Court had taken cognizance of the case. While noticing that a police report resulting from an investigation was provided in Section 190 CrPC as the material on which cognizance was taken, it was pointed out that it could not be maintained that a valid and legal police report was the foundation of the jurisdiction of the court to take cognizance. It was held that where cognizance of the case had, in fact, been taken and the case had proceeded to termination, the invalidity of the precedent investigation did not vitiate the result unless miscarriage of justice had been caused thereby. It was said that a defect or illegality in investigation, however serious, had no direct bearing on the competence of the procedure relating to cognizance or trial. However, it was observed:
>
> "It does not follow that the invalidity of the investigation is to be completely ignored by a Court during trial. When the breach of such 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 re- investigation as the circumstances of an individual case may call for." This decision is a clear authority for the view that

further investigation is not altogether ruled out merely because cognizance of the case has been taken by the court; defective investigation coming to light during the course of a trial may be cured by a further investigation, if circumstances permit it." The Court then went on to hold:

"20. Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

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." (emphasis supplied)
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> 28. In Union Public Service Commission v. S. Papaiah (1997) 7 SCC 614, this Court dealt with a case in which the Central Bureau of Investigation (hereinafter referred to as the "CBI") had submitted a closure report. It then quoted from a Three Judge Bench judgment in Bhagwant Singh v.

Commissioner of Police and Anr. (1985) 2 SCC 357, in which this Court stated that a Magistrate, in dealing with a report from the police under Section 173, can adopt one of three courses - (1) he may accept the report and drop the proceedings; or (2) he may disagree with the report, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The Court then went on to hold that where objections have been furnished by the complainant, i.e. the Union Public Service Commission, against the closure report of the police, the Magistrate could, in exercise of 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 complainant (see paragraph 13 therein).

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

> "11. Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.
>
> 12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognisance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.

> 13. In Ram Lal Narang v. State (Delhi Admn.) [(1979) 2 SCC 322: 1979 SCC (Cri) 479 : AIR 1979 SC 1791] it was observed by this Court that further investigation is not altogether ruled out merely because cognisance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case."1

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

> "16. Although the said sub-section does not, in specific terms, mention about the powers of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by a court which has the jurisdiction to do so, it would not be a proper exercise of revisional 1This statement of the law was approved in Rama Chaudhary v. State of Bihar (2009) 6 SCC 346 (at paragraphs 14 to 19) and in Samaj Parivartan Samudaya and Ors. v.

State of Karnataka and Ors. (2012) 7 SCC 407 (at paragraph 58). powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation, the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back on that track. If they come to the same conclusion, it is of added advantage to the persons against whom the allegations were made, and if the allegations are found false again the complainant would be in trouble. So from any point of view the Special Judge's direction would be of advantage for the ends of justice. It is too premature for the High Court to predict that the investigating officer would not be able to collect any further material at all. That is an area which should have been left to the investigating officer to survey and recheck.

17. In Bhagwant Singh v. Commr. of Police [(1985) 2 SCC 537 : 1985 SCC (Cri) 267] a three-Judge Bench of this Court has said, though in a slightly different context, that three options are open to the court on receipt of a report under Section 173(2) of the Code, when such report states that no offence

has been committed by the persons accused in the complaint. They are: (SCC p. 542, para 4) (1) The court may accept the report and drop the proceedings; or (2) the court may disagree with the report and take cognizance of the offence and issue process if it takes the view that there is sufficient ground for proceeding further; or (3) the court may direct further investigation to be made by the police.

18. Another three-Judge Bench in India Carat (P) Ltd. v. State of Karnataka [(1989) 2 SCC 132 : 1989 SCC (Cri) 306] has stated thus: (SCC pp. 139-40, para

16) "16. The position is, therefore, now well settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the investigating officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the investigating officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, in exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused."

19. In Union Public Service Commission v. S. Papaiah [(1997) 7 SCC 614 : 1997 SCC (Cri) 1112] a two-Judge Bench considered the scope of Section 173(8) of the Code in extenso. Dr. A.S. Anand, J. (as the learned Chief Justice then was) after extracting Section 173(8) of the Code has observed thus: (SCC pp. 620-21, 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.""

31. In Samaj Parivartan Samudaya (supra), a Three Judge Bench of this Court, while dealing with illegal mining in Andhra Pradesh and Karnataka, issued directions to the CBI to investigate the entire matter (despite private complaints already pending and being investigated by one or other competent Court or investigation agency), as a Central Empowered Committee Report disclosed fresh facts as to illegal mining in these States. In a review of the machinery of criminal investigations under the CrPC, this Court held:

> "27. Once the investigation is conducted in accordance with the provisions of CrPC, a police officer is bound to file a report before the court of competent jurisdiction, as contemplated under Section 173 CrPC, upon which the Magistrate can proceed to try the offence, if the same were triable by such court or commit the case to the Court of Session. It is significant to note that the provisions of Section 173(8) CrPC open with non obstante language that nothing in the provisions of Sections 173(1) to 173(7) 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. Thus, under Section

173(8), where charge- sheet has been filed, that court also enjoys the jurisdiction to direct further investigation into the offence. (Ref. Hemant Dhasmana v. CBI [(2001) 7 SCC 536 : 2001 SCC (Cri) 1280] .) This power cannot have any inhibition including such requirement as being obliged to hear the accused before any such direction is made.

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29. While the trial court does not have inherent powers like those of the High Court under Section 482 CrPC or the Supreme Court under Article 136 of the Constitution of India, such that it may order for complete reinvestigation or fresh investigation of a case before it, however, it has substantial powers in exercise of discretionary jurisdiction under Sections 311 and 391 CrPC. In cases where cognizance has been taken and where a substantial portion of investigation/trial has already been completed and where a direction for further examination would have the effect of delaying the trial, if the trial court is of the opinion that the case has been made out for alteration of charge, etc. it may exercise such powers without directing further investigation. (Ref. Sasi Thomas v. State [(2006) 12 SCC 421 : (2007) 2 SCC (Cri) 72] .)

30. Still in another case, taking the aid of the doctrine of implied power, this Court has also stated that an express grant of statutory power carries with it, by necessary implication, the authority to use all reasonable means to make such statutory power effective. Therefore, absence of statutory provision empowering the Magistrate to direct registration of an FIR would not be of any consequence and the Magistrate would nevertheless be competent to direct registration of an FIR. (Ref. Sakiri Vasu v. State of U.P. [(2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440])

31. Thus, CrPC leaves clear scope for conducting of further inquiry and filing of a supplementary charge- sheet, if necessary, with such additional facts and evidence as may be collected by the investigating officer in terms of sub-sections (2) to (6) of Section 173 CrPC to the court. To put it aptly, further investigation by the investigating agency, after presentation of a challan (charge-sheet in terms of Section 173 CrPC) is permissible in any case impliedly but in no event is impermissible.

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37. We may notice that the investigation of a case or filing of charge-sheet in a case does not by itself bring the absolute end to exercise of power by the investigating agency or by the court. Sometimes and particularly in the matters of the present kind, the investigating agency has to keep its options open to continue with the investigation, as certain other relevant facts, incriminating materials and even persons, other than the persons stated in the FIR as accused, might be involved in the commission of the crime. The basic purpose of an investigation is to bring out the truth by conducting fair and proper investigation, in accordance with law and ensure that the guilty are punished."

32. In Gulzar Ahmed Azmi v. Union of India and Ors. (2012) 10 SCC 731, this Court, while rejecting an argument that further investigation by the police should be entrusted with a supernumerary body

created under the head of a retired Supreme Court Judge along with other officers and experts, held that if further investigation is sought under Section 173(8) of CrPC, the same can always be effected even after the filing of the final report.

33. We now come to the decision in Vinay Tyagi v. Irshad Ali and Ors. (2013) 5 SCC 762. This is another case that arose out of a CBI report to the Magistrate, which requested for closure of the case against the accused. The judgment of the Court first discussed in detail how the criminal investigative machinery is set into motion right until the stage at which the trial begins. The Court then held:

> "20. Having noticed the provisions and relevant part of the scheme of the Code, now we must examine the powers of the court to direct investigation. Investigation can be ordered in varied forms and at different stages. Right at the initial stage of receiving the FIR or a complaint, the court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Code. Investigation can be of the following kinds:
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> (i) Initial investigation,
> (ii) Further investigation,
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> (iii) Fresh or de novo or reinvestigation." Thereafter, the question with which we are faced was directly tackled as follows:
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> "29. Now, we come to the former question i.e. whether the Magistrate has jurisdiction under Section 173(8) to direct further investigation.
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> xxx xxx xxx
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> 32. In Minu Kumari v. State of Bihar [(2006) 4 SCC 359:
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> (2006) 2 SCC (Cri) 310] (SCC pp. 363-64, para 11), this Court explained the powers that are vested in a Magistrate upon filing of a report in terms of Section 173(2)(i) and the kind of order that the court can pass.

The Court held that when a report is filed before a Magistrate, he may either (i) accept the report and take cognizance of the offences and issue process; or (ii) may disagree with the report and drop the proceedings; or (iii) may direct further investigation under Section 156(3) and require the police to make a further report.

33. This judgment, thus, clearly shows that the Court of Magistrate has a clear power to direct further investigation when a report is filed under Section 173(2) and may also exercise such powers with the aid of Section 156(3) of the Code. The lurking doubt, if any, that remained in giving wider interpretation to Section 173(8) was removed and controversy put to an end by the judgment of this Court in Hemant Dhasmana v. CBI [(2001) 7 SCC 536: 2001 SCC (Cri) 1280] where the Court held

that although the said section does not, in specific terms, mention the power of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by the court, which has the jurisdiction to do so, then such order should not even be interfered with in exercise of a higher court's revisional jurisdiction. Such orders would normally be of an advantage to achieve the ends of justice. It was clarified, without ambiguity, that the Magistrate, in exercise of powers under Section 173(8) of the Code can direct CBI to further investigate the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the new report to be submitted by the investigating officer, would be governed by sub-section (2) to sub-section (6) of Section 173 of the Code. There is no occasion for the Court to interpret Section 173(8) of the Code restrictively. After filing of the final report, the learned Magistrate can also take cognizance on the basis of the material placed on record by the investigating agency and it is permissible for him to direct further investigation. Conduct of proper and fair investigation is the hallmark of any criminal investigation.

34. In support of these principles reference can be made to the judgments of this Court in UPSC v. S. Papaiah [(1997) 7 SCC 614: 1997 SCC (Cri) 1112], State of Orissa v. Mahima [(2007) 15 SCC 580:

> (2010) 3 SCC (Cri) 611: (2003) 5 Scale 566] , Kishan Lal v. Dharmendra Bafna [(2009) 7 SCC 685: (2009) 3 SCC (Cri) 611], State of Maharashtra v. Sharadchandra Vinayak Dongre [(1995) 1 SCC 42: 1995 SCC (Cri) 16].

35. We may also notice here that in S. Papaiah [(1997) 7 SCC 614: 1997 SCC (Cri) 1112] , the Magistrate had rejected an application for reinvestigation filed by the applicant primarily on the ground that it had no power to review the order passed earlier. This Court held that it was not a case of review of an order, but was a case of further investigation as contemplated under Section 173 of the Code. It permitted further investigation and directed the report to be filed.

36. Interestingly and more particularly for answering the question of legal academia that we are dealing with, it may be noticed that this Court, while pronouncing its judgment in Hemant Dhasmana v. CBI [(2001) 7 SCC 536 : 2001 SCC (Cri) 1280] has specifically referred to the judgments S. Papaiah [(1997) 7 SCC 614: 1997 SCC (Cri) 1112] and Bhagwant Singh v. Commr. of Police [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267] . While relying upon the three-Judge Bench judgment of Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537: 1985 SCC (Cri) 267] , which appears to be a foundational view for development of law in relation to Section 173 of the Code, the Court held that the Magistrate could pass an order for further investigation. The principal question in that case was whether the Magistrate could drop the proceedings after filing of a report under Section 173(2), without notice to the complainant, but in para 4 of the judgment, the three- Judge Bench dealt with the powers of the Magistrate as enshrined in Section 173 of the Code…" "37. In some judgments of this Court, a view has been advanced, [amongst others in Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129 :

> (2009) 3 SCC (Cri) 1051] , Ram Naresh Prasad v. State of Jharkhand [Ram Naresh Prasad v. State of Jharkhand, (2009) 11 SCC 299 : (2009) 3 SCC (Cri) 1336. Ed.: Ram

> Naresh case does not seem to indicate that the Magistrate cannot suo motu direct further investigation: rather it seems to indicate that the Magistrate in fact can do so.] and Randhir Singh Rana v. State (Delhi Admn.) [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361]] that a Magistrate cannot suo motu direct further investigation under Section 173(8) of the Code or direct reinvestigation into a case on account of the bar contained in Section 167(2) of the Code, and that a Magistrate could direct filing of a charge-sheet where the police submits a report that no case had been made out for sending up an accused for trial. The gist of the view taken in these cases is that a Magistrate cannot direct reinvestigation and cannot suo motu direct further investigation.

38. However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct "further investigation" and require the police to submit a further or a supplementary report. A three-

Judge Bench of this Court in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] has, in no uncertain terms, stated that principle, as aforenoticed.

39. The contrary view taken by the Court in Reeta Nag [Reeta Nag v. State of W.B., (2009) 9 SCC 129 :

> (2009) 3 SCC (Cri) 1051] and Randhir Singh [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] do not consider the view of this Court expressed in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] . The decision of the Court in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] in regard to the issue in hand cannot be termed as an obiter. The ambit and scope of the power of a Magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three-Judge Bench concluded as aforenoticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh [Bhagwant Singh v. Commr.

of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] , are thus squarely in line with the doctrine of precedent. To some extent, the view expressed in Reeta Nag [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] , Ram Naresh [Ram Naresh Prasad v. State of Jharkhand, (2009) 11 SCC 299 : (2009) 3 SCC (Cri) 1336. Ed.: Ram Naresh case does not seem to indicate that the Magistrate cannot suo motu direct further investigation: rather it seems to indicate that the Magistrate in fact can do so.] and Randhir Singh [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] , besides being different on facts, would have to be examined in light of the principle of stare decisis.

40. Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section

173(2) read with Section 173(8) and Section 156(3) of the Code:

> 40.1. The Magistrate has no power to direct "reinvestigation" or "fresh investigation" (de novo) in the case initiated on the basis of a police report.
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> 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.
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> 40.3. The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three-

Judge Bench and thus in conformity with the doctrine of precedent.

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8). 40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

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. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case." xxx xxx xxx

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. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.

49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct "further

investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct "further investigation" and/or to file a "supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.

50. Such a view can be supported from two different points of view: firstly, through the doctrine of precedent, as aforenoticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of contemporanea expositio. Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused.

51. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct "further investigation" on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct "further investigation" to clear its doubt and to order the investigating agency to further substantiate its charge-sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this Court in Sivanmoorthy v. State [(2010) 12 SCC 29: (2011) 1 SCC (Cri) 295]."

34. A Bench of 5 learned Judges of this Court in Hardeep Singh v. State of Punjab and Ors. (2014) 3 SCC 92 was faced with a question regarding the circumstances under which the power under Section 319 of the Code could be exercised to add a person as being accused of a criminal offence. In the course of a learned judgment answering the aforesaid question, this Court first adverted to the constitutional mandate under Article 21 of the Constitution as follows:

> "8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished." In paragraph 34, this Court adverted to Common Cause v.
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> Union of India (1996) 6 SCC 775, and dealt with when trials before the Sessions Court; trials of warrant-cases; and trials of summons-cases by Magistrates can be said to commence, as follows:
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> "34. In Common Cause v. Union of India [(1996) 6 SCC 775 : 1997 SCC (Cri) 42 : AIR 1997 SC 1539] , this Court while dealing with the issue held: (SCC p. 776, para 1) "1. II (i) In cases of trials before the Sessions Court the trials shall be treated to have commenced when charges are framed under Section 228 of the Code of Criminal Procedure, 1973 in the cases concerned.

(ii) In cases of trials of warrant cases by Magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under Section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by Magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the accused concerned under Section 246 of the Code of Criminal Procedure, 1973.

(iii) In cases of trials of summons cases by Magistrates the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked under Section 251 whether they plead guilty or have any defence to make." (emphasis supplied) The Court then concluded:

> "38. In view of the above, the law can be summarised to the effect that as "trial" means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the "trial" commences only on charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken."

35. Paragraph 39 of the judgment then referred to the "inquiry" stage of a criminal case as follows:

> "39. Section 2(g) CrPC and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under CrPC by the Magistrate or the court. The word "inquiry" is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial." A clear distinction between "inquiry" and "trial" was thereafter set out in paragraph 54 as follows:
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> "54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC."

36. Despite the aforesaid judgments, some discordant notes were sounded in three recent judgments. In Amrutbhai Shambubhai Patel v. Sumanbhai Kantibai Patel (2017) 4 SCC 177, on the facts in that case, the Appellant/Informant therein sought a direction under Section 173(8) from the Trial Court for further investigation by the police long after charges were framed against the Respondents at the culminating stages of the trial. The Court in its ultimate conclusion was correct, in that, once the trial begins with the framing of charges, the stage of investigation or inquiry into the offence is over, as a result of which no further investigation into the offence should be ordered. But instead of resting its judgment on this simple fact, this Court from paragraphs 29 to 34 resuscitated some of the earlier judgments of this Court, in which a view was taken that no further investigation could be ordered by the Magistrate in cases where, after cognizance is taken, the accused had appeared in pursuance of process being issued. In particular, Devarapalli

Lakshminarayana Reddy (supra) was strongly relied upon by the Court. We have already seen how this judgment was rendered without adverting to the definition of "investigation" in Section 2(h) of the CrPC, and cannot therefore be relied upon as laying down the law on this aspect correctly. The Court therefore concluded:

> "49. On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and the accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant can direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.
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> 50. The unamended and the amended sub-section (8) of Section 173 of the Code if read in juxtaposition, would overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorised to conduct further investigation without limiting the stage of the proceedings relatable thereto. This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings. The recommendation of the Law Commission in its 41st Report which manifestly heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.
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> 51. In contradistinction, Sections 156, 190, 200, 202 and 204 CrPC clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by CrPC to order further investigation even after the cognizance is taken, the accused persons appear and charge is framed, is acknowledged or approved, the

> same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of CrPC adumbrated hereinabove.

Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) CrPC would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] , the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 CrPC, whereunder any witness can be summoned by a court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court."

37. This judgment was followed in a recent Division Bench judgment of this Court in Athul Rao v. State of Karnataka and Anr. (2018) 14 SCC 298 at paragraph 8. In Bikash Ranjan Rout v. State through the Secretary (Home), Government of NCT of Delhi (2019) 5 SCC 542, after referring to a number of decisions this Court concluded as follows:

> "7. Considering the law laid down by this Court in the aforesaid decisions and even considering the relevant provisions of CrPC, namely, Sections 167(2), 173, 227 and 228 CrPC, what is emerging is that after the investigation is concluded and the report is forwarded by the police to the Magistrate under Section 173(2)(i) CrPC, the learned Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceedings, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. If the Magistrate disagrees with the report and drops the proceedings, the informant is required to be given an opportunity to submit the protest application and thereafter, after giving an opportunity to the informant, the Magistrate may take a further decision whether to drop the proceedings against the accused or not. If the learned Magistrate accepts the objections, in that case, he may issue process and/or even frame the charges against the accused. As observed hereinabove, having not been satisfied with the investigation on considering the report forwarded by the police under Section 173(2)(i) CrPC, the Magistrate may, at

that stage, direct further investigation and require the police to make a further report. However, it is required to be noted that all the aforesaid is required to be done at the pre-cognizance stage. Once the learned Magistrate takes the cognizance and, considering the materials on record submitted along with the report forwarded by the police under Section 173(2)(i) CrPC, the learned Magistrate in exercise of the powers under Section 227 CrPC discharges the accused, thereafter, it will not be open for the Magistrate to suo motu order for further investigation and direct the investigating officer to submit the report. Such an order after discharging the accused can be said to be made at the post-cognizance stage. There is a distinction and/or difference between the pre- cognizance stage and post-cognizance stage and the powers to be exercised by the Magistrate for further investigation at the pre-cognizance stage and post- cognizance stage. The power to order further investigation which may be available to the Magistrate at the pre-cognizance stage may not be available to the Magistrate at the post-cognizance stage, more particularly, when the accused is discharged by him. As observed hereinabove, if the Magistrate was not satisfied with the investigation carried out by the investigating officer and the report submitted by the investigating officer under Section 173(2)(i) CrPC, as observed by this Court in a catena of decisions and as observed hereinabove, it was always open/permissible for the Magistrate to direct the investigating agency for further investigation and may postpone even the framing of the charge and/or taking any final decision on the report at that stage. However, once the learned Magistrate, on the basis of the report and the materials placed along with the report, discharges the accused, we are afraid that thereafter the Magistrate can suo motu order further investigation by the investigating agency. Once the order of discharge is passed, thereafter the Magistrate has no jurisdiction to suo motu direct the investigating officer for further investigation and submit the report. In such a situation, only two remedies are available: (i) a revision application can be filed against the discharge or (ii) the Court has to wait till the stage of Section 319 CrPC. However, at the same time, considering the provisions of Section 173(8) CrPC, it is always open for the investigating agency to file an application for further investigation and thereafter to submit the fresh report and the Court may, on the application submitted by the investigating agency, permit further investigation and permit the investigating officer to file a fresh report and the same may be considered by the learned Magistrate thereafter in accordance with law. The Magistrate cannot suo motu direct for further investigation under Section 173(8) CrPC or direct reinvestigation into a case at the post-cognizance stage, more particularly when, in exercise of powers under Section 227 CrPC, the Magistrate discharges the accused. However, Section 173(8) CrPC confers power upon the officer in charge of the police station to further investigate and submit evidence, oral or documentary, after forwarding the report under sub-section (2) of Section 173 CrPC. Therefore, it is always open for the investigating officer to apply for further investigation, even after forwarding the report under sub-section (2) of Section 173 and even after the discharge of the accused. However, the aforesaid shall be at the instance of the investigating officer/police officer in charge and the Magistrate has no jurisdiction to suo motu pass an order for further investigation/reinvestigation after

he discharges the accused." Realising the difficulty in concluding thus, the Court went on to hold:

> "10. However, considering the observations made by the learned Magistrate and the deficiency in the investigation pointed out by the learned Magistrate and the ultimate goal is to book and/or punish the real culprit, it will be open for the investigating officer to submit a proper application before the learned Magistrate for further investigation and conduct fresh investigation and submit the further report in exercise of powers under Section 173(8) CrPC and thereafter the learned Magistrate to consider the same in accordance with law and on its own merits."

38. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. 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 mid- way 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) of the 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. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled.

39. We now come to certain other judgments that were cited before us. King Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 18, was strongly relied upon by Shri Basant for the proposition that unlike superior Courts, Magistrates did not possess any inherent power under the CrPC. Since we

have grounded the power of the Magistrate to order further investigation until charges are framed under Section 156(3) read with Section 173(8) of the CrPC, no question as to a Magistrate exercising any inherent power under the CrPC would arise in this case.

40. Union of India and Anr. v. W.N Chadha (1993) Supp. 4 SCC 260, is a judgment which states that the accused has no right to participate in the investigation till process is issued to him, provided there is strict compliance of the requirements of fair investigation Likewise, the judgments in Smt. Nagawwa v. Veeranna Shivalongappa Konjalgi & Ors. (1976) 3 SCC 736, Prabha Mathur and Anr. v. Pramod Aggarwal & Ors., (2008) 9 SCC 469, Narender G. Goel v. State of Maharashtra (2009) 6 SCC 65 and Dinubhai Bhogabhai Solanki v. State of Gujarat & Ors. (2014) 4 SCC 626, which state that the accused has no right to be heard at the stage of investigation, has very little to do with the precise question before us. All these judgments are, therefore, distinguishable. Further, Babubhai v. State of Gujarat & Ors. (2010) 12 SCC 254, is a judgment which distinguishes between further investigation and re-investigation, and holds that a superior court may, in order to prevent miscarriage of criminal justice if it considers necessary, direct investigation de novo, whereas a Magistrate's power is limited to ordering further investigation. Since the present case is not concerned with re-investigation, this judgment also cannot take us much further. Likewise, Romila Thapar v. Union of India, (2018) 10 SCC 753, held that an accused cannot ask to change an investigating agency, or to require that an investigation be done in a particular manner, including asking for a court- monitored investigation. This judgment also is far removed from the question that has been decided by us in the facts of this case.

41. When we come to the facts of this case, it is clear that the FIR dated 22.12.2009 is concerned with two criminal acts, namely, the preparing of fake and bogus 'Satakhat' and Power- of-Attorney in respect of the agricultural land in question, and the demanding of an amount of Rs. 2.5 crores as an attempt to extort money by the accused persons. The facts that are alleged in the application for further investigation are facts which pertain to revenue entries having been made in favour of Ramanbhai Bhagubhai Patel and Shankarbhai Bhagubhai Patel, and how their claim over the same land is false and bogus. Shri Basant is, therefore, right in submitting that the facts alleged in the applications for further investigation are really in the nature of a cross-FIR which has never been registered. In fact, the communication of the Commissioner of Revenue, Gujarat dated 15.03.2011 to the Collector, Surat - so strongly relied upon by Shri Dushyant Dave - bears this out. In this communication, the learned Commissioner doubts that a particular order dated 14.04.1976 passed by a revenue authority ever existed, and that by making an application in the name of the long since deceased Bhikhabhai Khushalbhai in 2010, for getting a copy of Form No.3 would, prima facie, amount to a criminal offence. Further, the learned Commissioner goes on to state that Bhikiben (Bhikhabhai's widow), who had passed away in December 1999, could not possibly have made an application in the year 2000; which shows that her signature is also prima facie forged. Further, the said Ramanbhai and Shankarbhai Patel are at present 48 and 53 years old, and if they could be said to be in possession of the said agricultural land since 1934, they could be said to be in possession at a time when they were not yet born. Further, since these two gentlemen were abroad from the very beginning, it is stated that they could not possibly be farmers cultivating agricultural land. For these, and various other reasons, the Commissioner concluded:

"Thus, looking to all the aforesaid particulars, as per the submission made by the lady applicant, scam has been made in respect of her land by creating false bogus cases/resolutions/orders passed or by forging fake documents. Submission is made for initiating criminal proceedings against all those who are involved in such scam and whether there is substance in this matter or not? Thorough inquiry be made in that connection at your level. Till the real particulars in this matter are not becoming clear, it is appearing necessary to stop the NA Permission/Construction activities. Therefore, after making necessary proceedings in that regard, detailed report having basis of the proceedings done is to be immediately submitted to the undersigned and periodical information of the proceedings done in this matter also be given to the undersigned."

42. Given the allegations in the communication of 15.03.2011, we are of the view that this is not a case which calls for any further investigation into the facts alleged in the FIR lodged on 22.12.2009. Yet, having regard to what is stated by the learned Commissioner in the said letter, we are of the view that the police be directed to register an FIR qua these facts, which needs to be investigated by a senior police officer nominated by the concerned Commissioner of Police.

43. We, therefore, set aside the impugned High Court judgment insofar as it states that post-cognizance the Magistrate is denuded of power to order further investigation. However, given that the facts stated in the application for further investigation have no direct bearing on the investigation conducted pursuant to the FIR dated 22.12.2009, we uphold the impugned High Court judgment insofar as it has set aside the judgment of the Second Additional Sessions Judge dated 10.01.2012 which had ordered further investigation, and also the consequential order setting aside the two additional interim reports of the IO Munshi. So far as Criminal Revision Application No.346 of 2011 is concerned, we set aside the impugned High Court judgment which remanded the matter to the revisional court. Consequently, the judgment of the learned Additional Sessions Judge dated 23.04.2016 upon remand is also set aside, rendering Special Criminal Application No.3085 of 2016 infructuous.

44. However, given the serious nature of the facts alleged in the communication of the Commissioner of Revenue dated

15.03.2011, we direct that the police register an FIR based on this letter within a period of one week from the date of this judgment. This FIR is to be enquired into by a senior police officer designated by the concerned Commissioner of Police, who is to furnish a police report pursuant to investigation within a period of three months from the date on which such officer is appointed to undertake such investigation. If such police report results in a prima facie case being made out, and if the Judicial Magistrate takes cognizance of such charge-sheet, charges will then be framed and trial held. In the meanwhile, the trial in FIR dated 22.12.2009, which has been stayed by this Court by an order dated 24.04.2019, will not be commenced until the police report is submitted in the FIR to be lodged by

the police pursuant to this judgment. The learned Magistrate may then decide, in the event that cognizance is taken of the police report in the FIR to be filed, as to whether a joint-trial should take place, or whether separate trials be conducted one after the other pursuant to both the FIRs.

45. With these observations, these appeals are disposed of.

.....J. (R.F. Nariman) .....J. (Surya Kant) .....J. New Delhi (V. Ramasubramanian) October 16, 2019.