

Simplex Infrastructures And 4 Others vs State Of U.P. & Another on 27 November, 2018

Author: Rajeev Misra

Bench: Rajeev Misra

HIGH COURT OF JUDICATURE AT ALLAHABAD

A.F.R

Reserved On: 14.9.2018

Delivered On: 27.11.2018

Court No. - 54

Case :- APPLICATION U/S 482 No. - 14785 of 2015

Applicant :- Simplex Infrastructures And 4 Others

Opposite Party :- State Of U.P. & Another

Counsel for Applicant :- Prashant Vyas,Gopal S. Chaturvedi

Counsel for Opposite Party :- Govt. Advocate,A.N. Singh,Rajvendra Singh,Veer Singh

Hon'ble Rajeev Misra,J.

1. Heard Mr. Gopal S.Chaturvedi, the learned Senior Counsel assisted by Mr. Prashant Vyas, the learned counsel for the applicants, the learned A.G.A. for the State and Mr. Veer Singh, the learned counsel for the opposite party No.2.

2. This application under Section 482 Cr.P.C. has been filed challenging the order dated 1.5.2015, passed by the C.J.M. Meerut, whereby the Protest Petition filed by the opposite party No.2 against the final dated 6.9.2012 submitted by the Investigating Officer in Case Crime No. 382 of 2012 under Sections 406, 420, 467, 468, 471, 506 and 120 B IPC, Police Station Sadar Bazar, District Meerut, has been allowed and the Station Officer of the concerned Police Station has been directed to reconduct the investigation of the concerned case crime number with special investigation of the

issues referred to in the order itself.

3. From the record, it appears that the applicant No.1 Simplex Infrastructures Limited. is a company duly incorporated under the Companies Act, hereinafter referred to as ("The Company"). The company has its registered office at Hemkunt Tower, VI Floor, 89 Nehru Place, New Delhi.

4. The applicant No. 3 Arun Kumar Kundu is the Senior Vice President of the company and he is the Technical Coordinator of the job. The applicant No.4 Arvind Mundra is the Senior General Manager of the Company. The applicant No.5 Apporv Mukherji is said to be an Ex-Director of the company and aged about 79 years. No details of the applicant No.2 have been mentioned in the affidavit filed in support of the application under Section 482 Cr.P.C.

5. The Director General Married Accommodation (DGMAP) entered into a contract with the applicant No. 1 Simplex Infrastructures Limited. i.e. the company for constuction of dwelling units for officers/ JCOs at Meerut, Cantt on 10.3.2010. The copy of the contract so entered between the parties is on the record as Annexure-19 to the affidavit. As per the contract the total valuation of the project was Rs. 267,39,76,491.36/-. The contract so allotted to the applicant No.1 i.e the company was allotted the number CA No. DGMAP/PH-II/PKG-11/ARMY-2/21 of 2009-2010. The same was required to be quoted in all future correspondence.

6. Subsequently, the applicant No.1 entered into a contract with the opposite party No. 2 on 31.5.2010, whereby work order was issued in favour of the opposite party No.2. The said contract is also on the record as Annexure-20 to the affidavit. According to the conditions of the contract, the entire responsibility of executing the work was with the opposite party No.2 and the lump sum price for civil and electrical work of one building was Rs. 46,72,79,200.00/- . In all 25 blocks were to be constructed by the opposite party No.2.

7. It appears that some dispute arose in between the opposite party No.2 and the applicant No.1 the company in respect of the work undertaken by the opposite party No.2 pursuant to the contract dated 1.9.2002. Accordingly, the opposite party No.2 filed an application in the Court of C.J.M, Meerut in the year 2012, praying therein that directions be issued to the Station Officer of Police Station Meerut Cantt. to register an F.I.R in respect of the criminality alleged in the application. This application came to be registered as Misc. Application No. 470/11 of 2012 (Sanjeev Parashar Vs. Simplex Infrastructure Limited. and Others).

8. Considering the nature of the dispute between the parties, it would be appropriate to summarize the allegations made in the complainant:

"(a) That the opposite party No.2 Sanjeev Prasar is the Proprietor of Tanay Land Con India Pvt. Ltd. and Residents of Plot No. 551 Mahavir Nagar, Tok Road, Jaipur-18, and is engaged in the work of constructions building.

(b) That on 29.5.2010 the opposite party no.2 had arrived at the office Simplex Infrastructures Limited, Site office and met with the aforesaid accused persons and

had a communication with the accused persons regarding the construction work at Cantt, Meerut.

(c) That it had been informed by the accused persons that they had got a contract from Indian Army for making the married accommodation for the soldiers. The cost of the project was Rs. 250/- crores.

(d) That the accused persons had assured the opposite party No.2 that they have a contract with the Indian Army and to execute work through contractor whole right reserves with company, or it can be done by the other contractors and the Company is fully authorized to complete the work.

(e) That the accused persons with malafide intention had entered into an agreement with the opposite party no.2 regarding the construction work of Rs. 467279200/-

(f) That the accused persons had assured the opposite party No.2 to start the work and they had directed to place the bill within thirty days and after 15 days the said bill will be cleared, but the payment was never made in the time neither the entire bills was ever paid.

(g) That the opposite party no.2 has expended a lot of money on the particular site, but the bill was neither being clear nor the payment was made on time because of which the opposite party No.2 began to face several problems and entered into financial crisis.

(h) That the opposite party No.2 had met with the Manager, Chairman and other officers of the Company and told the problems which he was facing, but the accused persons had not taken heed. On many occasions he had also informed the accused persons in writing, but they had not given any proper reply to him.

(I) That the opposite party No.2 had contacted the office of D.G. (MAP) and came to know that the entire bills had been cleared by the said Authority regarding the work which had been done at the Meerut Site.

(j) that the opposite party no.2, also came to know that the agreement with the D.G. (MAP) was on back to back basis and he had not been informed regarding the same.

(k) That the opposite party No.2 also came to know that the said contract cannot be given to any one without the permission of the D.G. (MAP)

(l) That without giving an opportunity of hearing, the accused persons with malafide intention had reduced the contract and had also taken his entire machineries, when the opposite party No.2 had asked the accused persons to give his money and his machinery and payment then the aforesaid accused persons had threatened him not

to come over the site or he had to face dire consequences.

(m) That the opposite party no.2 had informed the police authorities by moving an application but no action had been taken by the police hence he is moving an application before this court so that the case may be registered under the aforesaid sections."

9. The aforesaid application under Section 156 (3) Cr.P.C. filed by the opposite party No.2 came to be allowed by the Chief Judicial Magistrate, Meerut vide order dated 1.9.2012.

10. In compliance of the aforesaid order dated 1.9.2012, an F.I.R. dated 1.9.2012 came to be registered as Case Crime No. 382 of 2012, under Sections 406, 420, 467, 468, 471, 506 and 120 B IPC at Police Station Sadar Bazar, District Meerut.

11. The Investigating Officer proceeded with the investigation of the aforesaid case crime number. During the course of investigation in terms of Chapter-XII Cr.P.C. the Investigating Officer recorded the statements of various witnesses under section 161 Cr.P.C. i.e. the first informant Sanjay Parashar followed by the statements of various other witnesses namely, Dilip Singh Rawat, Anuj Kumar, Brijesh Pratap Singh Dheeraj Kumar, Colonel Prabhat Awasthi, Vijendra Kumar Sharma, Chief Manager of the company i.e. the applicant No.1 Major General (DGMAP) R.N. Masaldan, , Brigadier A.K. Vishwas and Brigadier A.K. Malik.

12. On the strength of the material collected by the Investigating Officer, during the course of investigation, the Investigating Officer formed an opinion that a final report be submitted. Accordingly, a final report dated 6.9.2012 bearing final report no. 139 was submitted by the Investigating Officer in the Court of the C.J.M, Meerut.

13. Upon submission of the aforesaid final report, notices are said to have been issued to the informant. The opposite party No.2/informant thereafter, filed a protest petition dated 31.7.2014 against the final report dated 6.9.2012.

14. The C.J. M, Meerut allowed the protest petition dated 31.7.2014 vide order dated 1.9.2012. The final report dated 6.9.2012 came to be rejected and directions were issued to the Station Officer of Police Station, Sadar Bazar, District Meerut to reinvestigate the matter with special reference to the issues referred to in the order dated 1.9.2012 and submit the report.

15. Feeling aggrieved by the order dated 1.9.2012, the applicants have now approached this Court by means of this application under Section 482 Cr.P.C.

16. The present application came up for admission on 25.2.2015 and this Court passed the following interim order on 25.5.2015:

"Heard Sri G.S. Chaturvedi, learned senior counsel assisted by Sri Prashant Vyas for the applicants; the learned A.G.A. for the State and perused the record.

The submission of the learned counsel for the applicants is that a bare perusal of the first information report which resulted in a final report, after investigation, discloses that the dispute between the applicants and the opposite party No.2 is with regard to payment under a work contract. The allegation is to the effect that the informant was given a work order by the applicant No.1 of an amount of Rs. 46,72,79,200/-, under which, the informant proceeded but payment of the bills were made with delay and complete payment was not made.

The submission of the learned counsel for the applicants is that the dispute between the applicants and the opposite party No.2 is purely of a civil nature and therefore criminal proceedings would not be legally justified. It has been submitted that the Investigating Agency rightly, after investigation, submitted a final report whereas the court below, without any justification, has directed for re-investigation even though such re-investigation cannot be directed by subordinate court in view of the decision of the Apex Court in the case of Vinay Tyagi v. Irshad Ali @ Deepak and others : (2013) 5 SCC 762. It has also been submitted that the dispute between the applicants and the opposite party No.2 is engaging attention of an arbitrator in a separate proceeding and, therefore, the order passed by the learned Magistrate would amount to abuse of the process of law.

The matter requires consideration.

Learned A.G.A. has accepted notice on behalf of the State. Issue notice to the opposite party No.2 returnable within four weeks.

List this application for orders on 23.07.2015.

Till the next date of listing, the effect and operation of the order dated 01.05.2015 passed by the Chief Judicial Magistrate, Meerut in Case Crime No. 382 of 2012, P.S. Sadar Bazar, District Meerut, shall remain stayed."

17. Pursuant to the order dated 25.5.2015, the parties have exchanged the affidavits. As a result, the matter was heard for final disposal.

18. Mr. Gopal S. Chaturvedi, the learned Senior Counsel submits that the present case shall be governed by the provisions of Section 173 Cr.P.C. Thus for ready reference the provisions of Section 173 Cr.P.C. are quoted herein under:-

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

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

(1 A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of the police station.

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

(a) the names of the parties;

(b) the nature of the information;

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

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

(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether with or without sureties;

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

(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under section 376, 376A, 376B, 376C or 376 D of the Indian Penal Code (45 of 1860).

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

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

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

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

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

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

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

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

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2)."

19. With reference to the aforesaid provisions, the learned Senior Counsel vehemently submits that the Magistrate while exercising his jurisdiction under section 173 (8) Cr.P.C. cannot direct reinvestigation. The Magistrate can only direct for further investigation. In support of the aforesaid submission, reliance is placed upon a two Judges' judgement of the Apex Court in the Case of Vinay Tyagi Vs. Irshad Ali @ Deepak and Others reported in 2013 (5) SCC 762, wherein the following has been observed in paragraphs 20, 21, 22, 23, 24, 25, 26, 27 and 30 of the judgement:-

"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:

- (i) Initial investigation,
- (ii) Further investigation,
- (iii) Fresh or de novo or reinvestigation.

21. The "initial investigation" is the one which the empowered police officer shall conduct in furtherance of registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.

22. "Further investigation" is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as "further investigation". The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as "supplementary report". "Supplementary report" would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a "reinvestigation", "fresh" or "de novo" investigation.

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

24. In *Manu Sharma v. State (NCT of Delhi)* [(2010) 6 SCC 1 : (2010) 2 SCC (Cri) 1385] (SCC p. 80, para 199), the Court stated that it is not only the responsibility of the investigating agency, but also that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society. The maxim *contra veritatem lex nunquam aliquid permittit* applies to exercise of powers by the courts while granting approval or declining to accept the report.

25. In *Gudalure M.J. Cherian v. Union of India* [(1992) 1 SCC 397] , this Court stated the principle that in cases where charge-sheets have been filed after completion of investigation and request is made belatedly to reopen the investigation, such investigation being entrusted to a specialised agency would normally be declined by the court of competent jurisdiction but nevertheless in a given situation to do justice between the parties and to instil confidence in public mind, it may become necessary to pass such orders.

26. Further, in *R.S. Sodhi v. State of U.P.* [1994 Supp (1) SCC 142 : 1994 SCC (Cri) 247] , where allegations were made against a police officer, the Court ordered the investigation to be transferred to CBI with an intent to maintain credibility of investigation, public confidence and in the interest of justice. Ordinarily, the courts would not exercise such jurisdiction but the expression "ordinarily" means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. "Ordinarily" excludes extraordinary or special circumstances. In other words, if special circumstances exist, the court may exercise its jurisdiction to direct "fresh investigation" and even transfer cases to the courts of higher jurisdiction which may pass such directions.

27. Here, we will also have to examine the kind of reports that can be filed by an investigating agency under the scheme of the Code.

27.1. Firstly, the FIR which the investigating agency is required to file before the Magistrate right at the threshold and within the time specified.

27.2. Secondly, it may file a report in furtherance of a direction issued under Section 156(3) of the Code.

27.3. Thirdly, it can also file a "further report", as contemplated under Section 173(8).

27.4. Finally, the investigating agency is required to file a "final report" on the basis of which the court shall proceed further to frame the charge and put the accused to trial or discharge him as envisaged by Section 227 of the Code.

30. The power of the court to pass an order for further investigation has been a matter of judicial concern for some time now. The courts have taken somewhat divergent but not diametrically opposite views in this regard. Such views can be reconciled and harmoniously applied without violation of the rule of precedence. In *State of Punjab v. CBI* [(2011) 9 SCC 182 : (2011) 3 SCC (Cri) 666] , the Court noticed the distinction that exists between "reinvestigation" and "further investigation". The Court also noticed the settled principle that the courts subordinate to the High Court do not have the statutory inherent powers as the High Court does under Section 482 of the Code and therefore, must exercise their jurisdiction within the four corners of the Code."

20. It is thus strenuously urged by the learned Senior Counsel for the applicants that the impugned order dated 1.5.2015, passed by the C.J.M, Meerut being contrary to the law laid down in *Vinay Tyagi's case* (Supra) cannot be sustained and is therefore liable to be quashed by this Court.

21. Per contra, the learned counsel for the complainant, namely, Mr. Veer Singh, has strongly opposed the present petition. According to the learned counsel for the opposite party No.2, the meaning of the term 'reinvestigation' with reference to section 173 (8) Cr.P.C. has already been decided by the Apex Court to mean further investigation. It is next contended that since the matter is at pre-cognizance stage and the present applicants have not yet been summoned by the court below, no proceedings can be said to be pending against the present applicants before the court below. As such the present application under Section 482 Cr.P.C. is not maintainable. The applicants who are the prospective accused persons have no right to middle with the enquiry undertaken by the Magistrate.

22. A three Judges' Bench judgment of the Apex Court in the case of Chandra Babu @ Moses Vs. State Inspector of Police & Ors., reported in 2015 (8) SCC 774 has considered the earlier judgment in Vinay Tyagi's case (Supra) and held as follows in paragraphs 16, 17, 18, 19, 20 and 21 of the judgement. For ready reference the same are quoted herein under:

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

17. Having stated thus, we may presently proceed to deal with the facet of law where the Magistrate disagrees with the report and on applying his independent mind feels, that there has to be a further investigation and under that circumstance what he is precisely required to do. In this regard, we may usefully refer to a notable passage from a three-Judge Bench decision in Bhagwant Singh v. Commr. of Police[(1985) 2 SCC 537 : 1985 SCC (Cri) 267] , which is to the following effect:

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

(1) he may accept the report and take cognizance of the offence and issue process, or
(2) he may disagree with the report and drop the proceeding, or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report.

The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding, or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or (3) he may direct further investigation to be

made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the first information report, the informant would certainly be prejudiced because the first information report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the first information report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the first information report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process.

We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the first information report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant.

Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."

18. Relying on the said paragraph, a two-Judge Bench in *Vinay Tyagi v. Irshad Ali* [(2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , has opined thus:

"37. In some judgments of this Court, a view has been advanced, [amongst others in *Reeta Nag v. State of W.B.* [(2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] , *Ram Naresh Prasad v State of Jharkhand* [(2009) 11 SCC 299 : (2009) 3 SCC (Cri) 1336] and *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 has, in no uncertain terms, stated that principle, as aforenoticed.

39. The contrary view taken by the Court in Reeta Nag and Randhir Singh do not consider the view of this Court expressed in Bhagwant Singh.

The decision of the Court in Bhagwant Singh in regard to the issue in hand cannot be termed as an obiter. The ambit and scope of the power of a Magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three-Judge Bench concluded as aforenoticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh, are thus squarely in line with the doctrine of precedent. To some extent, the view expressed in Reeta Nag, Ram Naresh and Randhir Singh, besides being different on facts, would have to be examined in light of the principle of stare decisis."

And eventually the Division Bench ruled:

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

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

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

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

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

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

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

"The power of the Magistrate to direct 'further investigation' is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code."

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

"At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct 'further investigation', 'fresh' or 'de novo' and even 'reinvestigation'. 'Fresh', 'de novo' and 'reinvestigation' are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised

by the superior courts very sparingly and with great circumspection."

And again:

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

21. We respectfully concur with the said view. As we have already indicated, the learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another agency.

Therefore, that part of the order deserves to be lanced and accordingly it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the Superintendent of Police concerned. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with law. We may hasten to add that we have not expressed any opinion relating to any of the factual aspects of the case."

23. On the strength of the aforesaid observations of the Apex Court, it is thus, urged by the learned counsel for the informant that the impugned order dated 1.9.2012 passed by the Chief Judicial Magistrate, Meerut when examined in the light of the aforesaid observations of the Apex Court in Chandra Babu @ Moses Case (supra), it cannot be said that the same is illegal, as it directs re-investigation. This Court need not dwell into the question regarding the meaning and effect of the term "re-investigation" in relation to Section 173 (8) Cr.P.C. as the same stands concluded to mean further investigation by the aforesaid judgment of the Apex Court. Therefore, the challenge to the impugned order dated 1.9.2012 on the ground of it being illegal and without jurisdiction is wholly misconceived.

24. It is next contended by the learned counsel for the informant that the present application filed by the applicants under section 482 Cr.P.C. is not maintainable being premature. The present applicants have not yet been summoned by the Court below after taking cognizance upon the criminality alleged against the accused persons i.e. the applicants herein. On the aforesaid factual premise, he submits that the stage of the proceedings is at pre-cognizance stage, and the present applicants have not been summoned by the Court below which obviously could be only after taking of cognizance of the criminality alleged against the present applicants. Since the present applicants have not yet been summoned by the court below, no proceedings can be said to be pending against

the applicants before the court below. As no proceedings are pending against the applicants, the present application filed by the applicants under section 482 Cr.P.C. challenging the order dated 1.5.2015, whereby the C.J.M, Meerut has directed for reinvestigation of Case Crime Number 382 of 2012, under Sections 406, 420, 467, 468, 471, 506 and 120 B IPC at Police Station Sadar Bazar, District Meerut is not maintainable. The description of the applicant No.1 Simplex Infrastructure Limited. as given in the cause title of the present application is incomplete, whereas no description in respect of the applicant No.2 namely, Rajiv Mundhra has been mentioned in the affidavit accompanying the application under Section 482 Cr.P.C. On the cumulative strength of the aforesaid submission, it is strenuously urged by the learned counsel for the complainant-opposite party No.2 that the present application filed by the applicants being premature is therefore liable to be dismissed by this Court.

25. Coming to the said submission urged by the learned counsel for the applicants, the Court finds that subsequent to the registration of the F.I.R., the Police proceeded with the investigation of the concerned case crime number and submitted a final report. Upon submission of the final report, a protest petition was filed by the opposite party no.2, which came to be allowed and the matter was directed to be re-investigated with special reference to the issues mentioned in the order of the Chief Judicial Magistrate, Meerut itself. Thus, on date the matter is still at the stage of investigation, which is pre-cognizance stage. The issue which arises for consideration before this Court is whether an order passed by the Court directing further investigation can be challenged by the prospective accused at the pre-cognizance stage.

26. The Apex Court in the case of Chandra Deo Vs. Prakash Chandra, reported in AIR 1963 SC 1430, held that the accused has no right till the process is issued. The aforesaid judgment of the Apex Court dealt with a matter arising out of the proceedings under the old Code of 1908, but the principle laid down in the aforesaid judgment still continues to hold the field as nothing contrary to what has been said in the aforesaid judgment has been said by the Apex Court in relation to the Code of 1973.

27. In the case in hand, no process has been issued by the court below summoning the accused. As such, no proceedings can be said to be pending against the accused i.e. the applicants herein. The power under Section 482 Cr.P.C. can be exercised only in relation to certain proceedings which are pending against the person who approaches the High Court by means of an application under Section 482 Cr.P.C. The inherent powers of the High Court as contemplated under Section 482 Cr.P.C. are not to be confused with the inherent powers of the High Court under Article 226 of the Constitution of India. This issue has also been set at rest by the Apex Court in the case of Divine Retreat Centre Versus State of Kerala & Ors. reported in AIR 2008 SC 1614, wherein the following has been observed in paragraph-48:

"48. In our view, the whole of public law remedies available under Article 226 of the Constitution of India and the constituent power to issue writs in the nature of mandamus, certiorari, prohibition and co- warrant are neither echoed nor transplanted into Section 482. May be both the powers to issue writs and pass appropriate orders under Section 482 of the Code are conferred upon the High Court

but they undoubtedly operate in different fields.

WHETHER THE ANONYMOUS PETITION IS TO BE TREATED AS PUBLIC INTEREST LITIGATION?"

28. A Full Bench of our Court in the case of Ranjeet Singh & Another Vs. State of U.P. & Others, reported in 2000 (3) Cr.L.J. 2738 considered the question as to whether the accused has the right to be heard at the time of acceptance or rejection of the final report. The Full Bench categorically answered this question in the negative by observing as follows in paragraph nos. 83 to 85:

"83. The latest case law of the Hon. Supreme Court in Shri Bhagwan (supra) has already been noted above. It has been held that there is nothing in Sec. 173(8) to suggest that the Court is obliged to hear the accused before any direction of further investigation is made. "Causing of, any such obligation on the Court would only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard."

84. It is also to be noted here that the Hon. Mr. Justice J.C Gupta in Karan Singh v. State, 1997 ACC 163 : (1997 AIHC 376), Hon. Mr. Justice R.R.K Trivedi in S.C Misra v. State, 1996 AWC (Supp) 318. Hon. Mr. Justice K. Narain in S.K Sharma reported in 1994 ACC, 748 and Hon. N.B Asthana in Anil Kumar v. State, 1994 ACC 535 have held that the Magistrate is not required under the law to hear an accused before rejecting a final report submitted by the Investigating Officer or while hearing an informant in opposition of filing of such final report.

85. In view of the aforesaid observations there is absolutely no scope to uphold the argument of the learned counsel for the petitioners that the accused should be afforded an opportunity by the Magistrate/Court before accepting or rejecting a final report submitted by the police after investigation of a First Information Report. The learned Single Judge's view in Gajendra Kumar Agrawal 1991 ACC 314 does not lay down the correct law and is hereby over ruled."

29. A learned Single Judge of this Court in the case of Abdul Aziz & Others versus State of U.P. & Others, reported in AIR 1958 All 109 considered the question regarding the right of the accused at the investigation stage and held that the accused has no right to be heard at the stage of investigation. The learned Single Judge observed as follows in paragraph nos. 9, 10, 12 and 13:

"9. Thus at the stage of Section 156(3) Cr.P.C. any order made by the Magistrate does not adversely affect the right of any person, since he has got ample remedy to seek relief at the appropriate stage by raising his objections. It is incomprehensible that accused can not challenge the registration of F.I.R. by the police directly, but can challenge the order made by the Magistrate for the registration of the same with the same consequences. The accused does not have any right to be heard before he is summoned by the Court under the Code of Criminal Procedure and that he has got no right to raise any objection till the stage of summoning and resultantly he can not be conferred with a right to challenge the order passed prior to his summoning. Further,

if the accused does not have a right to install the investigation, but for the limited grounds available to him under the law, it surpasses all suppositions to comprehend that he possesses a right to resist registration of F.I.R.

10. Distinguishing Division Bench ruling in the case of Ajay Malviya Vs. State of U.P., 2000(41) ACC 435, this Court in the case of Rakesh Puri and another Vs. State of U.P. and another 2006 (56) ACC 910 has held as under:-

"To sum up the discussions made above, it is clear that the alleged accused has no right to challenge an order passed under section 156(3) Cr.P.C. at pre-cognizance stage by a Magistrate and no revision lay against such an order at the instance of the alleged accused under section 397(1) Cr.P.C. being barred by section 397(2) Cr.P.C. nor at his instance an application under Section 482 Cr.P.C. is maintainable for the simple reason that if cognizable offence is disclosed in an application filed by the aggrieved person, then his such an application must be investigated to bring culprits to books and not to thwart his attempt to get the FIR registered by rejecting such an application which will not amount to securing the ends of justice but will amount to travesty of it.

12. Relying upon the decision of the Apex Court in the case of Central Bureau of Investigation Vs. State of Rajasthan (2001 (42) ACC 451), it was held by this Court in the case of Rakesh Puri Vs. State (supra) as follow:-

"It is preposterous even to cogitate that a person has a right to appear before the Magistrate to oppose an application seeking a direction from him for registration and investigation of the offence when he has no right to participate in the said ex-parte proceeding. If permitted this will amount to killing of foetus of investigation in the womb when it was not there at all. Such power has not been conferred under the law on the prospective accused.

When the accused does not have any right to participate in a proceeding, how can he be permitted to challenge an interlocutory order passed in such a proceeding. If an accused cannot stop registration of a complaint under section 190(1)(a) Cr.P.C. howsoever fanciful, mala fide or absurd the allegations may be, he certainly does not possess the power to stall registration of FIR of cognizable offence against him."

13. In view of the law laid down in the aforesaid cases, I am of the considered opinion that the prospective accused has no right to stop the registration of the FIR and its investigation by the police either by filing Revision or moving application under section 482 Cr.P.C. Although after registration of the case in pursuance of the order passed under section 156(3) Cr.P.C., the accused can move the High Court in its writ jurisdiction under Article 226 of the Constitution of India for quashing of the FIR, but prior to the registration of the F.I.R., the prospective accused has no right to challenge that order. Therefore, in present case also, the application moved by the applicants under section 482 Cr.P.C. to set aside the impugned order deserves to be rejected."

30. The Apex Court in the case of Narendra G. Goel Versus State of Maharashtra & Another reported in 2009 (6) SCC 65, has also held in paragraph-11 of the judgment that an accused has no right to be heard at the stage of investigation. For ready reference, paragraph-11 is reproduced herein-under:

"11. It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case. In Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P. [(1999) 5 SCC 740] this Court observed, "There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard." The accused can certainly avail himself of an opportunity to cross examine and/or otherwise controvert the authenticity, admissibility or legal significance of material evidence gathered in course of further investigations. Further in light of the views expressed by the investigating officer in his affidavit before the High Court, it is apparent that the investigating authorities would inevitably have conducted further investigation with the aid of CFS under Section 173(8) of the Code."

31. Thus, from the ratio which is discernible from the case law as enumerated herein-above, it is apparent that an accused has no right of hearing during the course of investigation. The various orders passed by the Magistrate before summoning the accused is an attempt on the part of the Magistrate to arrive at a just conclusion on the allegations made in the complaint or the F.I.R. as the case may be. The accused will have the right to prove his innocence at the time of trial but that by itself will not give a right to the accused to interfere before the stage of summoning either by invoking the revisional powers of the Court or the inherent powers of the High Court under Section 482 Cr.P.C. as the Code clearly prohibits holding of two trials in respect of the same wrong. As such none of the submissions raised by the learned Senior Counsel create a dent in the impugned order warranting its quashing.

32. Consequently, the challenge to the proceedings of Case No. 382 of 2012 (Sanjeev Parasar Vs. Simplex Infrastructure Limited and Others) under Sections 406, 420, 467, 468, 471, 506 and 120 B IPC at Police Station Sadar Bazar, District Meerut is misconceived at this stage, as the matter is still at the stage of investigation and the applicants who are the prospective accused persons have not yet been summoned by the Court till date.

33. For the reasons given herein above, no occasion arises before this Court to entertain the present application. The application fails. It is accordingly dismissed.

Order Date :- 27.11.2018 Arshad