

**K. Vadivel**  
v.  
**K. Shanthi & Ors.**

(Criminal Appeal No. 4058 of 2024)

30 September 2024

**[B.R. Gavai and K.V. Viswanathan,\* JJ.]**

**Issue for Consideration**

Under what circumstances could the power be invoked for further investigation and whether on the facts, further investigation was warranted.

**Headnotes<sup>†</sup>**

**Code of Criminal Procedure, 1973 – s. 178(3) – Further investigation – Applications filed by the first respondent for directing the State to conduct further investigation or re-investigation by examining the related occurrence and eyewitnesses of the crime mentioned in the application and submit additional/supplementary charge-sheet – Dismissed by the trial court holding that further investigation cannot be ordered at the post cognizance stage – However, the High Court allowed the application – Correctness:**

**Held:** Contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or re-investigation to unravel the truth and mete out justice to the parties – However, the further investigation cannot be permitted to do a fishing and roving enquiry when the police had already filed a charge-sheet and the very applicant for further investigation, has not whispered about anything new in her evidence as is now sought to be averred in the application – There must be some reasonable basis which should trigger the application for further investigation so that the court is able to arrive at a satisfaction that ends of justice require the ordering/ permitting of further investigation – Though power to order further investigation is a significant power it has to be exercised sparingly and in exceptional cases and to achieve the ends of justice – On facts, the direction for further investigation absolutely unwarranted – Ordering the additional charge sheet to be taken on record at this

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stage pursuant to the further investigation will not be in accordance with law – All the stakeholders in the process have contributed to the delay and in spite of eleven years having elapsed after the incident, the trial has still not concluded – High Court allowed the further investigation without giving valid justification for the same – Denial of speedy and timely justice can be disastrous to rule of law in the long term – Even if the parties involved in a case themselves, with no valid justification attempt to delay the proceedings, the courts need to be vigilant and stop such attempt instantly – Any proceeding or application which *prima facie* lacks merit should not be instituted in a court – Pleadings/petitions with outrageous and *ex facie* unbelievable averments are made with no inhibition whatsoever – These directly impinge on the rule of law, because they add to the pendency and the consequential delay in the disposal of other cases – Such frivolous and vexatious proceedings to be met with due sanctions in the form of exemplary costs to dissuade parties from resorting to such tactics – Thus, the judgment of the High Court set aside as also application filed by the respondent no. 1 before the trial court for further investigation u/s. 173(8) – In view thereof, the additional charge sheet would not be taken on record. [Paras 32, 33, 35, 37, 38, 43-47]

### Case Law Cited

*Vinubhai Haribhai Malaviya & Ors. v. State of Gujarat & Anr.* [\[2019\] 15 SCR 936](#) : [\[2019\] 17 SCC 1](#); *Pooja Pal v. Union of India & Ors.* [\[2016\] 11 SCR 560](#) : [\[2016\] 3 SCC 135](#); *Ram Lal Narang v. State (Delhi Administration)* [\[1979\] 2 SCR 923](#) : [\[1979\] 2 SCC 322](#); *Hasanbhai Valibhai Qureshi v. State of Gujarat & Ors.* [\[2004\] 3 SCR 762](#) : [\[2004\] 5 SCC 347](#); *Vinay Tyagi v. Irshad Ali alias Deepak & Ors.* [\[2013\] 5 SCC 762](#); *Devendra Nath Singh v. State of Bihar & Ors.* [\[2023\] 1 SCC 48](#); *Himanshu Kumar and Others v. State of Chhattisgarh and others* [\[2022\] 11 SCR 724](#) : [\[2022\] SCC OnLine SC 884](#) – referred to.

### List of Acts

Code of Criminal Procedure, 1973.

### List of Keywords

Further investigation; Re-investigation; Charge-sheet; Inherent powers; Delay; Rule of law; Denial of speedy and timely justice; Frivolous and vexatious proceedings; Sanctions; Exemplary costs; Additional charge sheet.

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 4058 of 2024

From the Judgment and Order dated 30.04.2021 of the High Court of Judicature at Madras at Madurai in CRLRC (MD) No. 533 of 2020

**Appearances for Parties**

Jayanth Muth Raj, Sr. Adv., Purushothaman Reddy, Shivansh Dubey, Vinodh Kanna B., Advs. for the Appellant.

Amit Anand Tiwari, Sr. A.A.G., S. Nagamuthu, Sr. Adv., M.P. Parthiban, R. Sudhakaran, Bilal Mansoor, Shreyas Kaushal, S. Geyolin Selvam, Alagiri K, Sabarish Subramanian, Ms. Devyani Gupta, Vishnu Unnikrishnan, C. Kranthi Kumar, Danish Saifi, B. Sarathraj, Chandra Bhushan Tiwari, Kaustubh Shukla, Sanket Vashistha, Ms. Samridhi Srivastava, Advs. for the Respondents.

**Judgment / Order of the Supreme Court****Judgment**

**K.V. Viswanathan, J.**

1. Leave granted.
2. The present appeal mounts a challenge to the judgment and order dated 30.04.2021 of the Madurai Bench of the Madras High Court in Criminal R.C. (MD) No.533 of 2020. By the said judgment, the High Court has, by a cryptic order, and long after final arguments had been concluded on 19.10.2019 in the trial court, ordered further investigation in the matter. The aggrieved accused is before this Court with a grievance that the direction was not justified in law particularly when already an attempt by the wife of the deceased to summon certain witnesses under Section 311 of the Criminal Procedure Code, 1973 (Cr.P.C.) had been rebuffed by the Trial Court and the High Court as early as in December 2019.
3. The question that arises for consideration is whether the High Court was, on the facts of the case, justified in ordering further investigation?
4. The basic facts essential for adjudication of the present controversy are as follows:-

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5. On 31.03.2013, a First Information Report (FIR) being Crime No. 27 of 2013 was registered on the complaint given by one Padikasu (subsequently examined as PW-1) stating that when he along with the deceased Kumar were doing their morning walk around 5:00 AM and were returning back, three persons alighted from a car with weapons and hacked to death, the deceased Kumar.
6. On 11.07.2013, a final report was filed setting up eight accused for trial, including the appellant.
7. On 20.12.2016, PW-1 - Padikasu was examined. He testified that among the two persons who alighted from the car to attack Kumar, Ganapathy had a sickle in his hand; upon seeing them he began to run; that he phoned the family of deceased Kumar and spoke to the son of the deceased. PW-1 testified that he had not seen the hacking. He further testified that within five to ten minutes, the family members of Kumar came to the place and that he went to the Police Station at 6:45 AM and gave the complaint.
8. PW-1-Padikasu was declared hostile and sought to be cross-examined by the prosecution. In the cross-examination he denied the suggestion that he had told the Police that he saw Ganapathy and Vadivel (appellant) hacking the deceased and Chinnaraja (the other accused) stabbing the deceased with a spear. On a question by the Court, he reiterated that he saw Ganapathy among the persons who alighted having a sickle and since he was perturbed and began to run though he saw others, he was not in a position to identify them. His deposition was recorded on 20<sup>th</sup> of December 2016.
9. Thereafter, on 18<sup>th</sup> of March 2017, the first respondent Shanthi - wife of the deceased was examined. She corroborated the phone call received from PW-1 and also stated that PW-1 told her that Ganapathy, Vadivel (appellant) and Karthick were the accused who hacked her husband with sickle and that while Chinnaraj and Selvaraj stabbed her husband with spear-stick, Madhavan, Murugan and Palaniyappan caught hold of her husband. She also testified that when after receiving the phone call she went to the place of the incident with Sathappa Subramanian and Subramanian, her brothers-in-law and that her own brothers also accompanied her. On 18.03.2017 itself, PW-3, Subbaiah and PW-4, Duraimurugan were examined.
10. On 25.07.2019, PW-1 - Padikasu was recalled at the behest of accused A1 and A2 wherein he stated that he did not specifically

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state to the Police about A1 Ganapathy being present in the place of occurrence and that he had only stated that three unidentified persons had attacked the deceased. He further added that he mentioned about A1 Ganapathy only on account of the Police threatening him.

11. On 19.10.2019, on the conclusion of the trial, final arguments were heard, and the case was fixed for filing of written arguments.
12. At this stage, on 22.10.2019, Respondent No. 1 (examined as PW-2/ wife of the deceased) filed Crl. M.P.No.245 of 2019 under Section 311 of the Cr.P.C. She contended that PW-1 - Padikasu has given false evidence; that the Investigating Officer has failed to enquire the proper eye-witnesses; that the direct eye-witnesses to the occurrence-K. Ganesh S/o Kumar, P. Karmegam S/o Periyakaruppan, K. Rajendran S/o Kasi, Sembulingam S/o Padikasu and C. Andiappan S/o Chinnaiah have not been examined and that they deserve to be summoned. According to the application filed by respondent No. 1, these witnesses would speak about the cell phone recovered by the Police from the occurrence spot and that the cell phone was of Nokia Brand holding the sim of Vodafone company which belonged to her. She averred that the Police failed to produce the material object and that the cell phone and call details ought to have been produced by the Police. In view of the above, she prayed that the additional witnesses be summoned and examined.
13. The accused opposed the Section 311 petition by pointing out the delay of 6 years and 9 months in filing the petition and also about respondent No.1 (PW-2) not whispering about any of these facts during her examination. They contended that the persons sought to be examined were none other than her son, brother, brothers-in-law and other close relatives.
14. The State also filed its response opposing the application by averring that when the statement of Respondent No. 1 was recorded nothing was mentioned by her and that during the investigation also nothing of the nature as alleged now was forthcoming; that even while being examined as PW-2 the applicant had not mentioned these facts; that no phone was seized and no sim card was seized and that investigation was properly conducted and final report filed.
15. On 29.11.2019, the Trial Judge dismissed the application filed by respondent No. 1. The Court observed that the application was filed

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after the examination of the prosecution witnesses had concluded and when the case was posted for questioning the accused under Section 313. That respondent No. 1 was already examined as PW-2 on 18.03.2017 and that on that day itself, together with her, Subbaiah alias Subramanian and Duraimurugan were also examined as PW-3 and PW-4 respectively. The Court observed that though the power under Section 311 is available to the Court to reach a just decision, it cannot be exercised unless the facts and circumstances of the case make it apparent as otherwise it would result in causing serious prejudice to the accused resulting in miscarriage of justice. The Court observed that though the power is available, it has to be exercised judiciously and not arbitrarily.

16. The first respondent, vide Crl. O.P (MD) No. 18701 of 2019, challenged the order dated 29.11.2019 dismissing the petition under Section 311 Cr.P.C. before the High Court. The State vehemently opposed the said petition by reiterating its contention in the courts below. The High Court, by its order of 16.12.2019, dismissed Crl. O.P. (MD) No. 18701 of 2019 holding in its operative portion as follows:

“9. It is seen that P.W.1 is the person who stated to have accompanied the deceased victim at the time of occurrence. He had been examined by the respondent police. He had not stated anything as if the occurrence was witnessed either by other persons other than him. He was examined in chief before the trial court on 18.03.2017. On that date also, he has not spoken about the occurrence having been witnessed by any other persons other than him. Further, during cross examination, he has also resiled from his earlier statement. P.W.2 has been examined in chief on 18.03.2017. She has also not spoken about the additional witnesses having seen the occurrence or that they have been left out by the prosecution to be added as witnesses in the final report. Further, after final report has been filed on 11.07.2013, if it is true that the eyewitnesses have been left out, she would have filed the petition for further investigation even at that time, which has also not been done. Therefore, this Court is of the opinion that the petition is filed much belatedly only for the purpose of delaying the trial.

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10. In view of the above, this Court does not find any infirmity in the order passed by the trial Judge. Accordingly, this Criminal Original Petition is dismissed.”
17. Taking a cue, as it were, from the observations of the High Court that the first respondent would have filed a petition seeking for further investigation at that time if eyewitnesses have been left out, the first respondent in January, 2020 filed Cr. M.P. No 40/2020 in S.C. No. 61/2014 before the Court of the Additional District and Sessions Judge with a prayer for directing the State to conduct further investigation or reinvestigation by examining the related occurrence and eyewitnesses of the crime mentioned in the application and submit additional (or) supplementary charge-sheet. In the application, it was averred that the Investigating Officer had failed to enquire Kattarimani who had accompanied her husband-deceased Kumar and also had failed to examine proper eyewitnesses; that PW-1 Padikasu had given false statements and evidence and that Padikasu had expressed fear and mentioned about the threatening influences of the accused and other pressures brought by the accused; that investigation has been carried out in a haphazard manner; that there is lack of collection of material evidence; that the cell phone used by PW-1 Padikasu and the cell phone of deceased Kumar has not been properly secured and placed for tracing the call details. That non-examination of R. Natarajan, M. Muthu, S. Ramasamy who are the occurrence witnesses and eye witnesses K. Ganesan S/o Late Kumar, P. Karmagan S/o Periyakaruppan, K. Rajendran S/o Kasi, Sembulingam S/o Padikasu and C. Audiappan S/o Chinnaiah are designed at the behest of the inspector of police.
18. It will be noticed from the application that insofar as the eyewitnesses, who according to the first respondent were not enquired, the names are common as mentioned in her earlier Section 311 application. Under the category of occurrence witnesses, she has added three names which surfaced for the first time in this application. This aspect will be considered later in this judgment.
19. The application was strongly opposed by the accused. The accused, in their counter, averred that the application was not maintainable without the consent of the public prosecutor and that the misconceived application was intended to fill up the lacunae in the prosecution; the allegation that any threat to witnesses were denied and it was

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contended that no such complaint was made in the last seven years about any such threats being administered and even on 18.03.2017 when the respondent no. 1 (PW-2) along with her brothers PW-3 and PW-4 were examined, no such complaint was made. The accused further averred that further investigation cannot be ordered at the post cognizance stage either *suo moto* or at the instance of victims/complainants and it can only be done at the behest of the investigating agency. The accused further averred that after the section 311 Cr.P.C. petition, namely, Crl. O.P. (MD) No. 18701 of 2019 was dismissed even Section 313 Cr.P.C. examination had been concluded and thereafter the accused had concluded oral arguments and filed written arguments. So contending, they had prayed for the dismissal of the petition for further investigation.

20. The State also opposed the application stating that the case has been investigated properly and charge-sheet filed; that the respondent no. 1 has recorded her statement and her earlier application to examine additional witnesses has been dismissed and that the present application is only with an intent to drag the proceeding.
21. The trial court dismissed the petition for further investigation by its order of 23<sup>rd</sup> July, 2020. The trial court held that the respondent no. 1 (PW-2) in her examination on 18.03.2017 in court did not speak anything as to about what she is mentioning now in the application. That final report was filed as early as on 11.07.2013 and if her contention is correct, she would have filed a petition for further investigation at that very time. The trial court further held that further investigation cannot be ordered at the post cognizance stage either *suo moto* or at the instance of victims/complainants or at the instance of anyone else except the investigating agency and that the petition was only filed to prolong the proceeding.
22. The respondent No. 1 filed a criminal revision before the High Court to which the accused filed a counter reiterating the contentions. By the impugned order, without any discussion whatsoever and holding the following in the operative portion, the High Court allowed the application:

“10. It is seen that an opportunity to examine additional witness was not given by this Court on the ground that the petitioner has not filed a petition for further investigation. In the above circumstances, denying (sic.) a relief of further

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investigation may cause prejudice to the petitioner. It is stated that P.W.1 turned hostile. This is a murder case. For the above reasons, it is decided that further investigation is necessary. The order passed in Crl.M.P.No.40 of 2020 in S.C.No.61 of 2014 dated 23.07.2020 on the file of the learned Additional District Judge, Pudukottai is set aside. The investigation agency is hereby directed to take up the case for further investigation and to complete the investigation, after examining all the witnesses referred by the petitioner and to file a additional chargesheet within a period of three months.

11. On receipt of the additional chargesheet, the trial Court is directed to frame charges afresh and to proceed with the trial and to dispose of the case as expeditiously as possible.”
23. The present Special Leave Petition has been filed on 14.03.2022. By an order of 16.08.2022, this Court, while issuing notice, stayed the operation of the impugned order. It appears that before the filing of the Special Leave Petition, the additional charge-sheet also came to be prepared on 02.12.2021.
24. We have heard Mr. Jayanth Muth Raj, learned senior advocate, for the appellant as well as Shri Amit Anand Tiwari, learned Additional Advocate General, for the State as well as Shri S. Nagamuthu, learned senior advocate, for the respondent No. 1 (wife of the deceased).
25. The learned senior counsel for the appellant contends that the present application filed by respondent no. 1 is a disguised attempt to reopen the earlier proceedings under Section 311 which attained finality; that after framing of charges, respondent no. 1, who is not a complainant, cannot file an application for further investigation under Section 173(8) of Cr.P.C.; that the trial court had no jurisdiction to entertain the application under Section 173(8) of Cr.P.C. after framing of charges; that no grounds have been made out for further investigation and that the High Court ought not to have interfered with the order of trial court in the exercise of its revisional jurisdiction. Learned senior counsel relied on several judgments of this Court to support the contentions.

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26. The learned Additional Advocate General for the State and the learned senior counsel for the respondent no. 1 strongly defended the impugned order. They contended that the interest of justice is paramount and it will even trump the need to avoid any delay being caused in the proceedings; that the investigating agency has carried out further investigation in compliance with the impugned order and prepared the additional charge-sheet on 02.12.2021 bringing out certain new facts and material; that no prejudice is caused to the defence as the material will be furnished to the accused persons and they will have ample opportunity to put forth their defence. To support their stand, learned senior counsel referred to several precedents.
27. We have carefully considered the submissions of the learned counsels for the parties, perused the records as well as written submissions filed by them.
28. The legal position on the aspect of further investigation is fairly well settled. Under the Code of Criminal Procedure, 1973, pursuant to the recommendation of the Law Commission, in its 41<sup>st</sup> Report, Section 173(8) has been expressly engrafted setting at rest any controversy that may have obtained earlier. Section 173(8) reads as under:

“173(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).”

29. The question really is, under what circumstances could this power be invoked and whether on the facts of this case, is a further investigation warranted.
30. There was some debate at the Bar as to whether the Addl. District and Sessions Judge before whom the application was filed by the respondent no. 1 under Section 173(8) after the conclusion of the evidence could have ordered further investigation. The premise of

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the argument was even though in the present case the Addl. District and Sessions Judge has not ordered and it was the High Court which had ordered it, while exercising jurisdiction under Section 397 read with 401 of Cr.P.C. The contention was that as per the law laid down by this Court in *Vinubhai Haribhai Malaviya & Ors. vs. State of Gujarat & Anr. (2019) 17 SCC 1*, further investigation could at best have been ordered till the commencement of the trial.

31. In the present case, though the Trial Judge rejected the application, the High Court has ordered further investigation. Considering the fact that we are inclined to set aside the order of the High Court, on merits, we deem it unnecessary to discuss the issue of jurisdiction.
32. Ultimately, the contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties (see *Pooja Pal vs. Union of India & Ors. (2016) 3 SCC 135*, para 83). As noticed in *Ram Lal Narang vs. State (Delhi Administration) (1979) 2 SCC 322*, (para 20) where fresh materials come to light which would implicate persons not previously accused or absolve persons already accused or where it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, it may be the duty of the investigating agency to investigate the genuineness of the same and submit a report to the court.
33. However, the further investigation cannot be permitted to do a fishing and roving enquiry when the police had already filed a charge-sheet and the very applicant for further investigation, in this case respondent no. 1, has not whispered about anything new in her evidence as is now sought to be averred in the application. There must be some reasonable basis which should trigger the application for further investigation so that the court is able to arrive at a satisfaction that ends of justice require the ordering/permitting of further investigation. In *Hasanbhai Valibhai Qureshi vs. State of Gujarat & Ors., (2004) 5 SCC 347*, this Court held as under:-

“13. In *Ram Lal Narang v. State (Delhi Admn.)* [(1979) 2 SCC 322] 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

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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.”

34. In *Vinay Tyagi vs. Irshad Ali alias Deepak & Ors., (2013) 5 SCC 762*, this Court dealing with the aspect of the power of Magistrate to direct further investigation had the following to say:

“41. ....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.”

35. It is essential to note that this Court emphasized that though power to order further investigation is a significant power it has to be exercised sparingly and in exceptional cases and to achieve the ends

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of justice (see **Devendra Nath Singh vs. State of Bihar & Ors., (2023) 1 SCC 48**, para 45). Whether further investigation should or should not be ordered is within the discretion of the Magistrate and the said discretion is to be exercised on the facts of each case in accordance with law. This Court also held that in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 Cr.P.C. could be exercised to direct further investigation or even reinvestigation. This Court reiterated the principle that even under Section 482 Cr.P.C. the wide powers are to be exercised fairly with circumspection and in exceptional cases.

36. In **Himanshu Kumar and Others vs. State of Chhattisgarh and others, 2022 SCC OnLine SC 884** dealing with the prayer for transfer of investigation to CBI, this Court had the following to say:

“47. ....We are conscious of the fact that though a 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 re-investigation, 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 analyzed to decide the needfulness of further investigation or re-investigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law should be to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency.”

37. Applying the above law to the facts of the present case, we find that for the following reasons the direction for further investigation is absolutely unwarranted:-
- i. The application for further investigation was filed in January 2020 by respondent no. 1. The charge sheet under Section 173 Cr.P.C. too had been filed as early as on 11.07.2013.
  - ii. On 20<sup>th</sup> December, 2016, PW-1 Padikasu was examined, he was recalled and cross-examined on 25.07.2019.

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- iii. Respondent No. 1 (who is the applicant for further investigation) herself was examined on 18.03.2017. There is no whisper in her deposition about what she now seeks to contend in the application for further investigation. There was nothing that had prevented her from deposing in the box about any failure of the investigating officer, to enquire Kattarimani or any person concerned; about R. Natrajan, M. Muthu and S. Ramasamy being occurrence witnesses and about K.Ganesan S/o Late Kumar, P. Karmagan S/o Periyakaruppan, K. Rajendran S/o Kasi, Sembulingam S/o Padikasu and C. Audiappan S/o Chinnaiah being eye witnesses, and about how such failure has caused prejudice.
- iv. In fact, seeking the examination of these five witnesses mentioned hereinabove, first respondent filed application under Section 311 Cr.P.C. which came to be dismissed by the trial court on 29.11.2019 and was confirmed by the High Court. The application under Section 311 Cr.P.C. itself was filed on 22.10.2019, that is after a period of about six years after the filing of the charge-sheet.
- v. It is only when the High Court dismissed her petition under Section 311 Cr.P.C. stating that she had not made any prayer for further investigation that she filed the present application in January, 2020. At the stage when she filed the application for further investigation, the accused had concluded oral arguments and had also filed written arguments.
- vi. The trial court dismissed the application stating that the respondent no. 1 when examined as PW-2 did not speak anything about what she had mentioned in her application and that though the final report was filed as early as on 11.07.2013, respondent no. 1 has filed the application for further investigation only in January, 2020. Though, the trial court held that no further investigation could be ordered at the post cognizance stage, we have, as explained above, not proceeded on that reasoning, since that is clearly erroneous.
- vii. The High Court has not recorded any reason whatsoever and has not set out any legal principle which is relevant and applicable to the facts. All that is said is the Section 311 petition of the respondent no. 1 has been denied on the ground that

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she has not filed a petition for further investigation; that denial of relief would cause prejudice to respondent no. 1; that PW-1 has turned hostile and that being a murder case, it is decided to order for further investigation. Not one of the legal principles adverted to hereinabove has been considered by the Court.

- viii. As pointed out hereinabove, the failure to claim further investigation at that stage was not the only basis for the High Court to reject the revision against the dismissal of the Section 311 application. The High Court had given other detailed reasons also like PW-1 and PW-2 not whispering about the additional witnesses, when they deposed in Court.
38. We are convinced that ordering the additional charge sheet to be taken on record at this stage pursuant to the further investigation will not be in accordance with law. It will be contrary to the settled principles as laid down by this Court. We have also to satisfy ourselves examined the additional charge sheet placed before us. Primarily, apart from explaining the motive which is already set out in the evidence of PW-2, there is a reference to three of these witnesses named in this application as having come to rescue of the deceased after hearing the noise raised by the deceased. It is now alleged that A-5 tried to prevent the said two witnesses from approaching Kumar and threatened them with the sickle. It is also alleged that at that point these witnesses saw A-1 and A-4 committing overt acts on the deceased.
39. As pointed out earlier, when the application under Section 311 Cr.P.C. was filed on 22.10.2019, the State, in its response and in the arguments before the Court vehemently opposed the application. Even before the High Court in the Revision filed against the dismissal of the application under Section 311 Cr.P.C., the Additional Public Prosecutor appearing for the State had expressly contended that the respondent no. 1 was examined more than five times by the investigating officer and even in her deposition in court had not adverted to any of these aspects.
40. Before the trial court and the High Court in the present set of proceedings concerning the application for further investigation, the State had opposed the prayer contending that the investigation of the case has been done properly and charge-sheet had been duly filed arraigning all the allegedly involved individuals.

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41. It is only in this Court that the State has vehemently defended the order. A counter affidavit was filed by the State in this Court in September, 2024 without offering any tenable justification for the need for further investigation. We direct that for all these reasons the additional charges ought not to be taken on the record of the trial Court.
42. A brief postscript. While it is true that delay in trial will cede to the pursuit of truth, however, a distinction should be made between cases where there exist genuine grounds to hold up the proceedings and cases where such grounds do not exist. This case is a classic example of the latter category. The FIR was filed on 31.03.2013 and the charge-sheet on 11.07.2013. At the fag end of the trial in October 2019, on the eve of the final arguments, the first round of applications under Section 311 of Cr.P.C. came to be filed, which culminated in its dismissal in December, 2019.
43. Soon thereafter in January, 2020, virtually the same grounds which had been rejected earlier were rehashed in the form of an application under Section 173(8) Cr.P.C. on behalf of the respondent no. 1. The State, which had hitherto opposed all the applications up to the High Court, turned turtle and stoutly supported the respondent no. 1 in this Court without offering any tenable justification as to how the earlier investigation which had arrayed eight accused for trial lacked credibility.
44. The net result has been that all the stakeholders in the process have contributed to the delay and in spite of eleven years having elapsed after the incident, the trial has still not concluded. No doubt, the High Court allowed the further investigation which we have today reversed. The judgment of the High Court also gave no valid justification for ordering a further investigation.
45. The victims of crime, the accused, and the society at large have a legitimate expectation that justice will be available to the parties within a reasonable time. It is beyond cavil that speedy and timely justice is an important facet of rule of law. Denial of speedy and timely justice can be disastrous to rule of law in the long term. Even if the parties involved in a case themselves, with no valid justification attempt to delay the proceedings, the courts need to be vigilant and nip any such attempt in the bud instantly. The administration of justice feeds on the faith of the citizenry and nothing should be done to even remotely shake that faith and confidence.

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46. The legal profession has an important role to play in the process. Any proceeding or application which *prima facie* lacks merit should not be instituted in a court. We are constrained to observe this because of late we notice that pleadings/petitions with outrageous and *ex facie* unbelievable averments are made with no inhibition whatsoever. This is especially so in some family law proceedings, both civil and criminal. Reading some of the averments therein, we are left to wonder whether at all the deponents were conscious of what has been written purportedly on their behalf, before appending their signatures. These misadventures directly impinge on the rule of law, because they add to the pendency and the consequential delay in the disposal of other cases which are crying for justice. It is time that such frivolous and vexatious proceedings are met with due sanctions in the form of exemplary costs to dissuade parties from resorting to such tactics. If we have desisted from such a course in this case, it is only because the High Court allowed the petition and it is here that we have, reversing the High Court, dismissed the petition for further investigation.
47. In view of what has been stated hereinabove, we set aside the judgment of the High Court dated 30.04.2021 in Criminal RC (MD) No. 533 of 2020. Consequently Cr. M.P. No 40/2020 in S.C. No. 61/2014 filed by the respondent no. 1 before the Court of Additional District and Sessions Judge for further investigation under Section 173(8) Cr.P.C. would stand dismissed. We further direct that, in view of the dismissal of the application, the additional charge sheet dated 02.12.2021 will not be taken on record. The appeal is, accordingly, allowed.
48. We direct that after hearing arguments of parties afresh, the trial should be concluded and judgment pronounced within eight weeks from today.

*Result of the Case:* Appeal allowed

<sup>†</sup>*Headnotes prepared by:* Nidhi Jain