

PRESENT

THE HONOURABLE MR. JUSTICE R. NARAYANA PISHARADI

TUESDAY, THE 02ND DAY OF MARCH 2021 / 11TH PHALGUNA, 1942

Cr1.Rev.Pet.No.536 OF 2020

AGAINST THE ORDER IN CC 10/2013 OF ENQUIRY COMMISSIONER & SPECIAL
JUDGE, THIRUVANANTHAPURAM

REVISION PETITIONER/COMPLAINANT:

THE VIGILANCE AND ANTI-CORRUPTION BUREAU
REPRESENTED BY THE SUPERINTENDENT OF POLICE,
VIGILANCE ANTI-CORRUPTION, BUREAU SPECIAL
INVESTIGATION UNIT-1, THIRUVANANTHAPURAM.

BY SPECIAL PUBLIC PROSECUTOR A RAJESH

RESPONDENTS/ACCUSED NOS.1 TO 5:

- 1 K.SASIKALA
W/O M.S MOHANAN, "KAILASAM", SPV/245(1), KARIYAM,
SREEKARYAM, THIRUVANANTHAPURAM (FORMERLY STORE
SUPERINTENDENT MEDICAL COLLEGE HOSPITAL,
THIRUVANANTHAPURAM) 695 011.
- 2 DR. D. DALUS,
NO.3, BAINS COMPOUND, NANTHANCODE, THIRUVANANTHAPURAM
(FORMERLY SUPERINTENDENT MEDICAL COLLEGE HOSPITAL,
THIRUVANANTHAPURAM) 695 011.
- 3 DR. N. VISWANATHAN,
KARTHIKA, T.C.12/246(2), KUNNUKUZHY,
THIRUVANANTHAPURAM (FORMERLY SUPERINTENDENT MEDICAL
COLLEGE HOSPITAL, THIRUVANANTHAPURAM) 695 011.
- 4 S.RAJALEKSHMI,
"POURNAMI", ARA 659, KAWADIYAR P.O.THIRUVANANTHAPURAM
(FORMERLY PHARMACIST STORE KEEPER MEDICAL COLLEGE
HOSPITAL, THIRUVANANTHAPURAM) 695 003.
- 5 VIJAYAKUMAR,
S/O SAREMAL, NO 85 G BLOCK, SAHAKARA NAGAR,
BANGALOOOR-2-560 092.

R2 BY ADV. SRI.P.VIJAYA BHANU (SR.)

R2 BY ADV. SRI.P.M.RAFIQ

R2 BY ADV. SRI.V.C.SARATH

R2 BY ADV. SRI.M.REVIKRISHNAN

R2 BY ADV. SRI.AJEESH K.SASI
R2 BY ADV. SRI.VIPIN NARAYAN
R2 BY ADV. SMT.POOJA PANKAJ
R2 BY ADV. SRUTHY N. BHAT
R3 BY ADV. SRI.D.KISHORE
R4 BY ADV. SRI.VISHNU BHUVANENDRAN
R4 BY ADV. SMT.B.ANUSREE
R5 BY ADV. SRI.K.SIJU
R5 BY ADV. SRI.S.ABHILASH

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 25.02.2021, THE COURT ON 02.03.2021 PASSED THE FOLLOWING:

R.NARAYANA PISHARADI, J

Crl.R.P.No.536 of 2020

Dated this the 2nd day of March, 2021

ORDER

Is it mandatory for the investigating agency or officer to seek and obtain permission of the trial court for conducting further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 (for short 'the Code'), after filing final report under Section 173(2) of the Code? This is the core question that arises for consideration in the present case.

2. A case was registered by the Vigilance and Anti-Corruption Bureau (VACB), Special Cell, Thiruvananthapuram as V.C.No.2/2004/SCT alleging commission of corrupt practices in relation to purchase of medicines in the Medical College Hospital, Thiruvananthapuram for the year 2003-2004. After completing the investigation, final report was filed in the Court of the Enquiry Commissioner and Special Judge, Thiruvananthapuram against the respondents for the offences under Sections 13(1)(d) and 15 of the

Prevention of Corruption Act, 1988 and also under Section 120B I.P.C.

3. The court below took cognizance of the offences on the basis of the final report. The applications for discharge filed by some of the accused under Section 239 of the Code were dismissed by the trial court.

4. The second accused made a petition to the Chief Minister of Kerala to issue a direction to the Director, VACB for conducting further investigation in the case. The aforesaid petition was forwarded to the Director, VACB. He ordered the Superintendent of Police, VACB, Special Investigation Unit-I, Thiruvananthapuram to conduct further investigation in the case. Thereafter, the Superintendent of Police, VACB filed an application before the trial court seeking permission to conduct further investigation in the case.

5. The trial court dismissed the application filed by the investigating officer seeking permission to conduct further investigation in the case. The trial court observed that the investigating agency had no case that any fresh facts had come to light or that it had obtained further evidence over and above what was collected or known earlier and therefore, the condition precedent to exercise the right under Section 173(8) of the Code was not satisfied.

6. The State has filed this revision petition challenging the

legality and propriety of the aforesaid order passed by the trial court.

7. Heard learned Public Prosecutor and also the learned counsel for the respondents/accused.

8. Learned Public Prosecutor submitted that the investigating officer has right under Section 173(8) of the Code to conduct further investigation and it is not necessary to obtain the permission of the trial court for that purpose. Learned Public Prosecutor would also submit that, though the application filed by the investigating officer before the trial court contained a prayer for granting permission to conduct further investigation, it was only a formality and the trial court should have granted permission for such investigation or it should have treated the application as an intimation regarding the further investigation proposed to be conducted in the case.

9. Section 173(1) of the Code states that, every investigation shall be completed without unnecessary delay. Section 173(2) of the Code states that, 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 prescribed form stating the particulars prescribed.

10. Section 173(8) of the Code states that, nothing in Section 173 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.

11. The provision contained in Section 173(8) of the Code does not mandate the officer in charge of the police station to seek the permission of the court to conduct further investigation. The provision indicates that filing a final report under Section 173(2) does not preclude further investigation in respect of an offence.

12. The trial court has relied upon the decision of this Court in **State v. Gopakumar (1988 (1) KLT 924)** to find that, in the absence of any new evidence or material obtained by the investigating officer, he has no right to conduct further investigation. It was a case in which the investigating officer had filed a fresh report, deviating from the conclusion reached in the earlier report, but without conducting any further investigation and without collecting any further evidence. The decision in **Gopakumar** (supra) does not apply to the facts of the present case.

13. A Division Bench of this Court in **Antony Scaria v. State of Kerala : 2001 (2) KLT 93**, has held as follows:

"Section 173(8) Cr.P.C. also says that if the officer in charge of the police station obtains further evidence, oral or documentary, on conducting further investigation, he shall forward to the Magistrate further report or reports regarding such evidence. It is not stated in Section 173(8) that further investigation can be conducted by the officer in charge of the police station only after getting further materials in connection with the crime. On the other hand, what the above clause of Section 173 Cr.P.C. says is regarding the right of the officer in charge of the police station to conduct further investigation of the crime by making it clear that nothing in Section 173 Cr.P.C. shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forward to the Magistrate. Mention about further evidence, oral or documentary, made in that sub clause is that which is obtained during the course of further investigation and what that sub clause provides is that further report or reports regarding such evidence have to be forwarded to the Magistrate".

(emphasis supplied)

14. In **Rama Chaudhary v. State of Bihar : AIR 2009 SC 2308**, it has been held as follows:

"A mere reading of the above provision makes it clear that irrespective of report under sub-section (2) forwarded to the Magistrate, if the officer in charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the

Magistrate with a further report with regard to such evidence in the form prescribed. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to the Magistrate a 'further' report and not fresh report regarding the 'further' evidence obtained during such investigation".

(emphasis supplied)

15. In **Vinay Tyagi v. Irshad Ali : (2013) 5 SCC 762**, it has been held as follows:

"A very wide power is vested in the investigating agency to conduct further investigation after it has filed the report in terms of Section 173(2). The legislature has specifically used the expression 'nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Section 173(2) has been forwarded to the Magistrate', which unambiguously indicates the legislative intent that even after filing of a report before the Court of competent jurisdiction, the Investigating Officer can still conduct further investigation and where, upon such investigation, the officer in charge of a police station gets further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the prescribed form. In other words, the investigating agency is competent to file a supplementary report to its primary report in terms of Section 173(8). The supplementary report has to be treated by the Court in continuation of the

primary report and the same provisions of law, i.e., sub-section (2) to sub-section (6) of Section 173 shall apply when the Court deals with such report”.

(emphasis supplied)

16. In the light of the decisions referred to above, the finding made by the trial court, that in the absence of fresh evidence or material obtained by the investigating officer, no further investigation can be conducted in exercise of the right under Section 173(8) of the Code, is erroneous. On the other hand, it is logical that on receiving any new or fresh information on a crime, it would be possible to collect fresh or additional evidence or material only by conducting further investigation.

17. In **Antony Scaria** (supra), it has been categorically held that further investigation of a crime as per Section 173(8) of the Code is possible when the police authority which conducted investigation of the crime or any other superior finds it necessary to do so.

18. Therefore, in the instant case, the reasons stated by the trial court in declining permission to conduct further investigation, are not sustainable in law. The purpose of the provision contained in Section 173(8) of the Code is to enable the investigating agency to gather further evidence and that cannot be frustrated (See **State of West Bengal v. Salap Service Station : (1994) SCC (Cri) 1713**).

The hands of the investigating agency should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth. The investigating officer may exercise his statutory power of further investigation in several situations. It need not be only when new evidence or facts come to his notice. When certain aspects of the matter had not been considered during the investigation already conducted and if it is found that further investigation is to be carried out from a different angle, it can be done. As in the instant case, an accused can bring to the notice of the Government or the investigating officer certain facts which had been omitted to be noticed or investigated earlier. There is no legal impediment or prohibition for the accused to bring to the notice of the investigating officer any fact which was omitted to be traced out at the stage of submission of the earlier report (See **Khaleel v. State of Kerala : 2020 (6) KHC 51**).

19. The question now arises whether it is necessary for the investigating officer to seek and obtain permission from the court to conduct further investigation.

20. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code. Even after the court has taken cognizance of any offence on the

strength of the police report first submitted, it is open to the police to conduct further investigation.

21. In **Ram Lal Narang v. State : AIR 1979 SC 1791**, the Apex Court has held as follows;

"We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light. Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation".

22. In **Abdul Latheef v. State of Kerala : 2014 (3) KLT 905**, a Division Bench of this Court explained the decision of the Apex Court in **Ram Lal Narang** (supra) as follows:

"Apart from holding that 'it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation', cautiously the Supreme Court has not imposed a restriction that only on obtaining the permission from the Court the Investigating Officer should conduct such further investigation".

Thereafter, the Division Bench has held as follows:

"When the investigating agency wants to conduct such a further investigation, it is ordinarily desirable that the Investigating Officer should inform the said matter to the concerned Court and seek formal permission for conducting such an investigation, when the Court has already taken cognizance of the offences based on the final report already filed in the matter. After informing the Court regarding the proposed further investigation and seeking such a formal permission, the Investigating Officer can continue with such further investigation, even without waiting for any such permission from the Court".

23. In **State of A.P v. A.S.Peter : AIR 2008 SC 1052**, it has been held as follows:

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

24. It is significant that in **A.S.Peter** (supra), the Supreme Court had taken into consideration the observations made in **Ram Lal Narang** (supra).

25. Again in **Rama Chaudhary** (supra), it has been held as follows:

"The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge sheet is a statutory right of the police. Re-investigation without prior permission is prohibited. On the other hand, further investigation is permissible".

26. However, in **Vinay Tyagi** (supra), the Apex Court has held as follows:

"It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct 'further investigation' or file supplementary report with the leave of the Court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the Courts to conduct 'further investigation' and file 'supplementary report' with the leave of the Court. The Courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the Court to conduct 'further investigation' and/or to file a 'supplementary report' will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. Such a view can be supported from two different points of view. Firstly, through the doctrine of precedence, as afore - noticed, since quite often the Courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible

with the aid of doctrine of contemporanea expositio. Even otherwise, to seek such leave of the Court would meet the ends of justice and also provide adequate safeguard against a suspect/accused”.

27. Interestingly, in the earlier decision by a three-Judge Bench in **Samaj Parivartan Samudaya v. State of Karnataka : AIR 2012 SC 2326**, the decision in **Rama Chaudhary** (supra) had been referred to with approval.

28. On an analysis of the decisions referred to above, it can be seen that, in any of these cases, the Apex Court has not held that further investigation can be conducted by the investigating officer only after getting permission from the court. In **Ram Lal Narang** (supra), the Apex Court has only stated that it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation. **Vinay Tyagi** (supra) only recognizes the legal practice adopted by the investigating agencies to seek permission of the court for conducting further investigation. In the decisions in **Rama Chaudhary** (supra) and **A.S.Peter** (supra), the Supreme Court has categorically held that the law does not mandate obtaining prior permission from the Magistrate for further investigation and that carrying out further investigation even after filing of the charge sheet is the statutory right of the police.

29. Further investigation is the prerogative of the investigating

officer. Permission for it is only a formality or courtesy. It is only as a matter of courtesy that the investigating officer is required to inform the court regarding the further investigation being conducted in the case so as to enable the court to decide the further action to be taken in the case which is pending before it on the basis of the final report already submitted.

30. Absence of permission by the court does not render the further investigation illegal. Even in **Ram Lal Narang** (supra), it has been held as follows:

"Though the investigating agency would have done better if it had informed the Ambala Magistrate and sought his formal permission for the second investigation, we are satisfied that the investigating agency did not act out of any malice. We are also satisfied that there has been no illegality".

(emphasis supplied)

31. The discussion above leads to the conclusion that it is not mandatory for the investigating officer to seek and obtain permission of the court for conducting further investigation under Section 173(8) of the Code. However, as an accepted legal practice, it is always desirable that the investigating officer shall inform the court with regard to the further investigation proposed to be conducted and seek formal permission of the court in that regard. It is a well-accepted

legal practice based on principles of courtesy and propriety.

32. In the instant case, it is only proper to direct the trial court to treat the application filed by the investigating officer for granting permission to conduct further investigation as due intimation to the court regarding the further investigation proposed to be conducted.

33. At the same time, the investigating officer is cautioned that what he shall conduct shall be "further investigation" and not "re-investigation".

34. The question whether the recently inserted Section 17-A of the Prevention of Corruption Act is applicable or not to a "further investigation" is left open in the absence of any submissions made before this Court on that issue.

35. Consequently, the revision petition is allowed. The impugned order is set aside. The application filed by the investigating officer before the trial court seeking permission for conducting further investigation shall be treated as due intimation regarding the conducting of such investigation and the trial court shall record it accordingly.

Sd/-R.NARAYANA PISHARADI, JUDGE

jsr

APPENDIX

PETITIONER'S EXHIBITS:

ANNEXURE A TRUE COPY OF CRL. MP NO 235/2020 IN CC NO 10/2013 ON THE FILE OF THE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE THIRUVANANTHAPURAM

ANNEXURE B CERTIFIED COPY OF THE ORDER OF THE COURT OF THE ENQUIRY COMMISSIONER AND SPECIAL JUDGE, THIRUVANANTHAPURAM IN CRL.MP NO 235/2020 IN CC NO 10/2013 DATED 26.6.2020

RESPONDENTS EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

LSN