

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29th DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.22291 OF 2025 (GM – RES)



BETWEEN:

XXXX
XXXX
XXXX
XXXX

... PETITIONER

(BY SRI NAGARAJ R., ADVOCATE)

AND:

Digitally
signed by
PADMAVATHI
B K
Location:
High Court of
Karnataka

- 1 . STATE OF KARNATAKA
BY THIRUMALASHETTAHALLI POLICE STATION
BENGALURU – 560 067
REPRESENTED BY
STATE PUBLIC PROSECUTOR.
- 2 . SUPERINTENDENT OF POLICE,
BENGALURU 5,
MILLERS ROAD, VASANTH NAGAR,
BENGALURU,
KARNATAKA – 560 052.

... RESPONDENTS

(BY SRI ANOOP KUMAR, HCGP)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO I. ISSUE WRIT OF MANDAMUS TO THE RESPONDENT POLICE TO CONTINUE FURTHER INVESTIGATION UNDER SECTION 173(8) OF THE CR.PC AND TO SUBMIT SUPPLEMENTARY CHARGESHEET IN CRIME NO. 0122/2022 REGISTERED FOR OFFENCES UNDER SECTION 307 OF THE INDIAN PENAL CODE AND REGISTERED THE LEARNED PRINCIPAL CIVIL JUDGE AND JMFC, HOSAKOTE AND COMMITTED AS SC 11/2023 ON THE FILE OF PRINCIPAL DISTRICT AND SESSIONS JUDGE, BENGALURU RURAL; II. ISSUE A DIRECTION TO ENSURE THAT THE FURTHER INVESTIGATION UNDER SECTION 173(8) OF THE CODE OF CRIMINAL PROCEDURE, 1973, IS CARRIED OUT BY A SENIOR OFFICER NOT BELOW THE RANK OF DEPUTY SUPERINTENDENT OF POLICE (DySP) / ASSISTANT COMMISSIONER OF POLICE (ACP), WHO IS INDEPENDENT OF THE EARLIER INVESTIGATING OFFICER;III. TO COMPLETE AND UNDERTAKE SUCH INVESTIGATION IN A TIME BOUND MANNER AND SUBMIT THE SUPPLEMENTARY CHARGESHEET WITHIN SUCH TIMEFRAME.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/victim is before the Court seeking a direction to the Police to conduct further investigation at the hands of a different Investigating Officer as obtaining under Section 173(8) of the Cr.P.C., and place a supplementary charge sheet before the Principal District and Sessions Judge, Bengaluru Rural in S.C.No.11 of 2023.

2. Heard Sri Nagaraj Ravikumar, learned counsel appearing for the petitioner and Sri Anoop Kumar, learned High Court Government Pleader appearing for the respondents.

3. Facts in brief, germane, are as follows: -

3.1. The accused one Kashis Gupta invites the petitioner to an office party at Marathahalli. Both of them were colleagues. After the party, when both the accused and the petitioner were said to have consumed alcohol, the accused took the petitioner to drop her, sexually assaulted her and attempted to commit rape on her

inside the car after taking the car to an isolated place. The petitioner, on suffering severe injuries, even stab injuries, is admitted to Manipal Hospital and the Police record the statement of the petitioner at Manipal Hospital and read over the recorded statement. Though petitioner did not know Kannada, her statement was recorded in Kannada. On 21-08-2022, based upon the statement rendered by the petitioner, a crime in Crime No.122 of 2022 is registered for the offence punishable under Section 307 of the IPC.

3.2. On 03-09-2022, the learned Magistrate records the statement of the petitioner as obtaining under Section 164 of the Cr.P.C. Several items were seized on 08-09-2022. On 16-09-2022, Manipal Hospital issues a Medico Legal Certificate that the lungs had ruptured, stab wounds were found in the thighs, abdomen and under the breast. The Police conduct investigation and file a charge sheet; not for any other offence, but only for the offence under Section 307 of the IPC, which would be attempt to murder. The charge sheet having been prepared for the offence punishable under Section 307 of the IPC, the matter is committed to the Court

of Session. The Court of Session registers S.C.No.11 of 2023 and frames the charge for the said offence. The petitioner then makes a requisition seeking further investigation at the hands of a different Investigating Officer citing several lacunae in the investigation so conducted in the charge previously laid. The continuance of trial after framing of the charge, makes the petitioner to rush to this Court in the subject petition, on the score that the concerned Court did not have power to direct further investigation after framing of the charge.

3.3. A coordinate Bench of this Court on 03-09-2025 stalls further trial by the following order:

"Learned Additional SPP is directed to accept notice to the respondents.

The photographs produced at Annexure-D series prima facie indicate that the petitioner has sustained bodily injuries, including deep cut injuries below the ribs, on the hand, and on the thigh. Though the crime was registered in the year 2022, the prosecution has not yet secured the FSL report. Notwithstanding this, the learned Sessions Judge has proceeded to frame charges, and the victim is now called upon to tender evidence. Unless the relevant witnesses and the FSL report are secured by the prosecution, commencement of trial at this stage would seriously prejudice the interest of the victim.

In this view of the matter, the learned Additional SPP is directed to forthwith communicate this order to the

Investigating Officer and secure necessary instructions by the next date of hearing.

Re-list this matter in the fresh matters list on 17.09.2025.

Till then, further proceedings in S.C. No.11/2023 on the file of the VI Additional Principal District and Sessions Judge, Bengaluru Rural, insofar as the petitioner is concerned, are stayed."

The said order is in subsistence even today and, therefore, the trial has not progressed.

SUBMISSIONS:

THE PETITIONER:

4. Learned counsel Sri Nagaraj Ravikumar appearing for the petitioner would take this Court through the documents appended to the petition, the photographs to show the condition of the petitioner, bite marks and cigarette burning stains all over the body and would contend that the Police ought to have registered a crime for the offence punishable under Section 376 r/w 511 of the IPC also, in addition to Section 307 of the IPC. He would submit that due to the manner in which the investigation is conducted, no FSL report is received. Even though all the events have happened in the car, the car is not seized. Only the clothes of the petitioner are taken, but not of the accused. He would project serious lacunae in

the investigation and seeks further investigation into the matter as it was a clear case of attempt to rape. He would further contend the statement of the petitioner is recorded in the hospital in Kannada, which language she does not know. Though the petitioner has narrated every circumstance, what is recorded is only stab injuries. Therefore, only the offence under Section 307 of the IPC is laid in the charge sheet. He would contend that this is a fit case for further investigation and this Court should so direct at the hands of a different Investigating Officer.

THE STATE:

5. *Per contra*, the learned High Court Government Pleader would submit that what the Police have done is in terms of what the statement was. The trial is in progress. Therefore, there is no warrant of further investigation in the case at hand. But, if this Court would direct, they would accomplish the act of further investigation.

6. I have given my anxious consideration to the submissions made by the respective learned counsel and have perused the material on record.

CONSIDERATION:

7. The afore-narrated facts are not matters of conjecture; they stand firmly embedded in the record. What, however, unfolds from those facts is a narrative that is both disturbing and disquieting. On the night of **20-08-2022**, the petitioner, who is also the victim of the alleged occurrence, and the accused, **Kashish Gupta**, both colleagues residing in the very same apartment complex, attended an office party. As the festivities waned into the early hours of **21-08-2022**, at about **1.30 a.m.**, the petitioner expressed her desire to return home. The accused, however, prevailed upon her to permit him to drop her at her residence. What commenced as an innocuous offer of companionship is alleged to have swiftly transformed into a journey of terror.

8. **Instead of proceeding towards the petitioner's residence, the accused is alleged to have diverted the**

vehicle on the ostensible pretext of purchasing cigarettes and driven it to a desolate, forsaken and God-forsaken stretch. It is there, according to the petitioner, that the veneer of friendship gave way to unrestrained brutality. The accused is alleged to have made unwelcome sexual advances inside the confines of the vehicle. The petitioner, repelled every such advance. **The rejection, however, appears to have ignited an eruption of unbridled violence. The accused is said to have repeatedly stabbed the petitioner on the chest and abdomen with a knife. It is further her emphatic assertion that the accused forcibly attempted to spread her legs with the unmistakable object of subjecting her to sexual intercourse against her will. When the petitioner resisted with every ounce of strength she could muster, the accused allegedly bit her on several parts of the body, inflicted burn injuries upon her thighs with a lighted cigarette, stabbed her indiscriminately and ultimately abandoned her on the roadside in a grievously injured condition. The injuries, according to the petitioner, were not confined to stab**

wounds alone; they bore the unmistakable imprint of a sustained physical and sexual assault.

9. Bleeding profusely and battling for survival, the petitioner somehow managed to reach Manipal Hospital, where she was admitted in an extremely critical condition. The medical records would reveal that she remained in the Intensive Care Unit for six days before she could even be shifted to the general ward. It was only thereafter that her statement came to be recorded by the police. Curiously, though the petitioner was admittedly not conversant with Kannada, the statement was recorded in Kannada and was later said to have been translated to her. Be that as it may, the statement that came to be recorded forms the very genesis of the prosecution and, therefore, deserves reproduction in *extenso*. The statement of the petitioner/victim reads as follows:

“ಹೇಳಿಕೆ

Date:21/08/2022

XXXX

ನಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ನಮ್ಮ ತಾಯಿ ಜೊತೆ ವಾಸವಾಗಿರುತ್ತೇನೆ ನಾನು ಈಗ್ಗೆ ಒಂದು ವರ್ಷ ಮೂರು ತಿಂಗಳ ಹಿಂದೆ ದೆಹಲಿಯಿಂದ ಬೆಂಗಳೂರಿಗೆ ಬಂದು XXXX ದಲ್ಲಿ ವಾಸವಿರುತ್ತೇನೆ ನಮ್ಮ

ತಂದೆ ತಾಯಿಗೆ ಒಟ್ಟು ಇಬ್ಬರು ಮಕ್ಕಳಿದ್ದು ಒಂದನೆಯ XXXX ಎರಡನೆಯವಳು ನಾನು ಹೀಗಿರುವಾಗ ನಾನು ದೆಹಲಿಯಿಂದ ಬಂದಾಗಿನಿಂದ XXXX ಕಂಪನಿಯಲ್ಲಿ ಅಕೌಂಟ್ ಮ್ಯಾನೇಜರ್ ಆಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿರುತ್ತೇನೆ. ನಾನು ಕೆಲಸ ಮಾಡುವ ಕಂಪನಿಯಲ್ಲಿರುವ ಕಸಿಸ್ ಗುಪ್ತಾ ರವರು ಇನ್ಸೈಟ್ ಸೇಲ್ಸ್ ಮ್ಯಾನೇಜರ್ ಆಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದು ಅವನು ನನಗೆ ಒಂದು ವರ್ಷದ ಹಿಂದೆ ಪರಿಚಯವಾಗಿದ್ದು ನಾವಿಬ್ಬರೂ ಅನ್ಯೋನ್ಯವಾಗಿದ್ದು ಅವನು ನಾನು ವಾಸ ಮಾಡುವ ಅಪಾರ್ಟ್ ಮೆಂಟ್ ನಲ್ಲಿ ಬೇರೆ ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತಾನೆ. ಹೀಗಿರುವಾಗ ದಿನಾಂಕ 20/08/2022 ಐರನ್ ಹಿಲ್ ಮೈಕೋ ಬ್ರವೇರಿ ಮಾರತ ಹಳ್ಳಿಗೆ ಪಾರ್ಕಿಂಗ್‌ನಲ್ಲಿ ನಾನು ಮತ್ತು ಕಸಿಸ್ ಗುಪ್ತಾ ಅವನ ಕಾರ್ ನಂಬರ್ DL3CC1921 ಕಾರಿನಲ್ಲಿ 09:00 p.m. ಗಂಟೆಗೆ ಮನೆಯಿಂದ ಹೋಗಿರುತ್ತೇವೆ ನಾವಿಬ್ಬರೂ ಪಾರ್ಕಿಂಗ್ ಮುಗಿಸಿಕೊಂಡು ಮಧ್ಯರಾತ್ರಿ ಸುಮಾರು 1:30 ಗಂಟೆಗೆ ಅವನ ಕಾರಿನಲ್ಲಿ ಮರಳಿ ಅಪಾರ್ಟ್ ಮೆಂಟ್ ಹತ್ತಿರ ಬಂದಿರುತ್ತೇವೆ ಆಗ ಕಸಿಸ್ ಗುಪ್ತಾ ನನಗೆ ಸಿಗರೇಟ್ ಬೇಕೆಂದು ನನ್ನನ್ನು ಕೇಳಿದ ನಾವು ಹತ್ತಿರದಲ್ಲಿರುವ ಅಂಗಡಿಯಲ್ಲಿ ನೋಡಿದ್ದು ಮುಚ್ಚಿರುತ್ತದೆ ನಂತರ ಟಿಎಸ್ ಹಳ್ಳಿ ಕ್ರಾಸ್ ನಲ್ಲಿ ಸಿಗಬಹುದೆಂದು ಇಬ್ಬರು ಅದೇ ಕಾರಿನಲ್ಲಿ T.S.ಹಳ್ಳಿ ಕ್ರಾಸ್ ನಲ್ಲಿರುವ ಸಾಯಿ ಪ್ಯಾಲೇಸ್ ಹತ್ತಿರ ಸುಮಾರು 03:00 A.M. ಗಂಟೆಗೆ ಬಂದಿದ್ದು ಪ್ಯಾಲೇಸ್ ಮುಂದೆ ಕಾರು ನಿಲ್ಲಿಸಿ ಡೈವರ್ ಸೀಟ್‌ನಲ್ಲಿ ಕಸಿಸ್ ಗುಪ್ತಾ ಕುಳಿತುಕೊಂಡಿದ್ದು ನಾನು ಪಕ್ಕದ ಸೀಟಿನಲ್ಲಿ ಕುಳಿತುಕೊಂಡಿರುತ್ತೇನೆ ಕಸಿಸ್ ಗುಪ್ತಾ ನನಗೆ ಬೇರೆ ವ್ಯಕ್ತಿ ಜೊತೆ ನೀನು ಸಂಬಂಧ ಇಟ್ಟುಕೊಂಡಿದ್ದೀಯ ಯಾಕೆ ನನಗೆ ಈ ರೀತಿಯಾಗಿ ಮೋಸ ಮಾಡುತ್ತಿದ್ದೀಯಾ ಎಂದು ಕೇಳಿದ ನಾನು ಯಾರ ಜೊತೆಗೂ ಸಂಬಂಧವಿಟ್ಟುಕೊಂಡಿರುವುದಿಲ್ಲವೆಂದು ಹೇಳಿದೆ. ಇಬ್ಬರ ನಡುವೆ ಮಾತಿಗೆ ಮಾತು ಬೆಳೆದು ಆಗ ಕಸಿಸ್ ಗುಪ್ತಾ ಕಾರಿನಲ್ಲಿದ್ದ ಚಾಕುವಿನಿಂದ ನನ್ನ ಎಡ ಎದೆಯ ಕೆಳಗೆ ಬಲವಾಗಿ ಚುಚ್ಚಿ ನಂತರ ಮತ್ತೆ ಬಲ ತೊಡೆ ಎಡ ತೊಡೆ ಎಡಗೈ ಮೇಲೆ ಚಾಕುವಿನಿಂದ ಚುಚ್ಚಿ ನನ್ನ ಮೈ ಮೇಲೆ ಬಿದ್ದು ನನ್ನ ಎಡಗಡೆ ಕೆನ್ನೆಗೆ ಬಲಗೈಗೆ ಮತ್ತು ಕುತ್ತಿಗೆಗೆ ಬಾಯಿಯಿಂದ ಕಚ್ಚಿರುತ್ತಾನೆ. ನಂತರ ಎರಡು ಕೈಗಳಿಂದ ನಿನ್ನನ್ನು ಸಾಯಿಸುತ್ತೇನೆ ಎಂದು ಕತ್ತುಹಿಸುಕಿರುತ್ತಾನೆ. ಆಗ ನನ್ನ ಆತ್ಮ ರಕ್ಷಣೆಗೆ ಅವನ ಕಣ್ಣಿಗೆ ನನ್ನ ಕೈ ಬೆರಳಿನಿಂದ ಚುಚ್ಚಿರುತ್ತೇನೆ ಆಗ ಅವನು ನನ್ನನ್ನು ಬಿಟ್ಟಿರುತ್ತಾನೆ. ನಾನು ಕಾರ್ ಡೋರ್ ತೆಗೆದು ಹೊರಗೆ ಬಂದಿರುತ್ತೇನೆ ಆಗ ಅವನು ಕಾರ್ ಸ್ಟಾರ್ಟ್ ಮಾಡಿಕೊಂಡು ಅಲ್ಲಿಂದ ಹೊರಟು ಹೋಗಿರುತ್ತಾನೆ. ಆಗ ಸಮಯ ಸುಮಾರು 3:30 A.M. ಗಂಟೆ ಯಾಗಿರುತ್ತದೆ. ಆಗ ಎದೆಯ ಕೆಳಭಾಗದಲ್ಲಿ ರಕ್ತ ಜಾಸ್ತಿ ಹೋಗುತ್ತಿದ್ದು ಆಗ ನಾನು ola (ಓಲಾ) ಕ್ಯಾಬ್ ಬುಕ್ ಮಾಡಿಕೊಂಡು ಅಲ್ಲಿಂದ ಮಣಿಪಾಲ್ ಆಸ್ಪತ್ರೆಗೆ ಬಂದಿರುತ್ತೇನೆ ನನ್ನ ಮೇಲೆ ವಿನಾಕಾರಣ ಅನುಮಾನ ಪಟ್ಟು ನನ್ನನ್ನು ಸಾಯಿಕಾಯಿಸುವ ಉದ್ದೇಶದಿಂದ ನನಗೆ ಚಾಕುವಿನಿಂದ ಚುಚ್ಚಿದ ಕಸಿಸ್ ಗುಪ್ತಾ ರವರ ಮೇಲೆ ಕಾನೂನು ರೀತಿ ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ಮಣಿಪಾಲ್ ಆಸ್ಪತ್ರೆಯ ವೈದ್ಯಾಧಿಕಾರಿಯ ಮುಂದೆ ಹೇಳಿಕೆ ನೀಡಿರುತ್ತೇನೆ ನಾನು ಹೇಳಿರುವುದೆಲ್ಲ ಸತ್ಯವಾಗಿರುತ್ತದೆ."

Based on her statement, a crime is registered in Crime No.122 of 2022. During the course of the investigation, the further statement of the victim is recorded. It reads as follows:

“ತಿರುಮಲಶೆಟ್ಟಿಹಳ್ಳಿ ಪೊಲೀಸ್ ಠಾಣಾ ಮೊ ನಂ 122-2022 ಕಲಂ 307 ಐಪಿಸಿ

ಪಿರ್ಯಾದಿದಾರರ ಮುಂದುವರೆದ ಹೇಳಿಕೆ

XXXX

ದಿನಾಂಕ: 28/10/2022

ನಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ ಈಗ್ಗೆ ಸುಮಾರು 01 ವರ್ಷದ ಹಿಂದೆ ದೆಹಲಿಯಿಂದ ಬೆಂಗಳೂರಿಗೆ ಬಂದು ನಮ್ಮ ತಾಯಿ ಜೊತೆ ವಾಸವಾಗಿರುತ್ತೇನೆ ನಮ್ಮ ತಂದೆ ತಾಯಿಗೆ ನಾವು ಒಟ್ಟು ಇಬ್ಬರು ಮಕ್ಕಳಿದ್ದು 01ನೇ XXXX ಎರಡನೆಯವಳು ನಾನು XXXX ಆಗಿರುತ್ತೇನೆ ನಾನು ದೆಹಲಿಯಿಂದ ಬಂದಾಗಿನಿಂದ ಬೆಂಗಳೂರು ನಗರ, XXXX ಬಳಿ ಇರುವ XXXX ಕಂಪನಿಯಲ್ಲಿ ಅಕೌಂಟೆಂಟ್ ಮ್ಯಾನೇಜರ್ ಆಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿರುತ್ತೇನೆ. ನಾನು ಕೆಲಸ ಮಾಡುವ ಇದೇ XXXX ಕಂಪನಿಯಲ್ಲಿ ಕಸಿನ್ ಗುಪ್ತಾ ಎಂಬುವವರು ಇನ್ಸೈಟ್ಸ್ ಸೇಲ್ಸ್ ಮ್ಯಾನೇಜರ್ ಆಗಿ ಕೆಲಸ ಮಾಡುತ್ತಿದ್ದು ಕಶೀಶ್ ಗುಪ್ತಾ ರವರು ನಾನು XXXX ಕಂಪನಿಗೆ ಕೆಲಸಕ್ಕೆ ಹೋದ ಸ್ವಲ್ಪ ದಿನಗಳಲ್ಲಿಯೇ ಪರಿಚಯವಾಗಿದ್ದು ನಂತರ ನಾವಿಬ್ಬರು ಪರಸ್ಪರ ಸ್ನೇಹಿತರಾದೆವು, ಪರಿಚಯವಾದ ನಂತರ ನಾವಿಬ್ಬರೂ ತುಂಬಾ ಅನೋನ್ಯವಾಗಿದ್ದೆವು ಅವನು ಸಹ ನಾವು ವಾಸವಾಗಿರುವ XXXX ಅಪಾರ್ಟ್ ಮೆಂಟನಲ್ಲಿಯೇ ಬೇರೆ ಮನೆಯಲ್ಲಿ ವಾಸವಾಗಿರುತ್ತಾನೆ ನಾವು ಸ್ನೇಹಿತರಾಗಿದ್ದರಿಂದ ಆಗ್ಲಾಗ್ಗೆ ವೈಟ್ ಪೀಲ್ಡ್, ಮಾರತಹಳ್ಳಿ ಹಾಗೂ ಇತರೆ ಕಡೆಗಳಲ್ಲಿ ಪಾರ್ಟಿಗಂದು ಸ್ನೇಹಿತರೊಂದಿಗೆ ಹೋಗಿ ಬರುತ್ತಿದ್ದೆವು ಅದರಂತೆ ದಿನಾಂಕ 20/08/2022 ರಂದು ಮಾರತಹಳ್ಳಿಯಲ್ಲಿರುವ ಐರನ್ ಹಿಲ್ ಮೈಕ್ರೋ ಬ್ರೇವರಿಗೆ ಪಾರ್ಟಿಗಂದು ನಾನು & ಕಸಿನ್ ಗುಪ್ತಾ ರವರು ಅವನಿಗೆ ಸೇರಿದ ಕಾರ್ ನಂ ಡಿಎಲ್-3 -ಸಿಸಿ -ಯು-4921 ಕಾರಿನಲ್ಲಿ 09-00 ಗಂಟೆಗೆ ಮನೆಯಿಂದ ಹೋಗಿ ಪಾರ್ಟಿ ಮುಗಿಸಿಕೊಂಡು ಮಧ್ಯರಾತ್ರಿ ಸುಮಾರು 01-30 ಗಂಟೆಗೆ ಅವನ ಕಾರಿನಲ್ಲಿ ಮರಳಿ ಅಪಾರ್ಟ್ ಮೆಂಟ್ ಹತ್ತಿರ ಬಂದಿದ್ದು ಕಸಿನ್ ಗುಪ್ತಾ ಸಿಗರೇಟ್ ಬೇಕೆಂದು ನನ್ನನ್ನು ಕೇಳಿದ್ದು ಅಲ್ಲಿ ಅಂಗಡಿಯನ್ನು ಮುಚ್ಚಿದ್ದರಿಂದ ತಿರುಮಲಶೆಟ್ಟಿಹಳ್ಳಿ ಕ್ರಾಸ್ ನಲ್ಲಿ ಸಿಗಬಹುದೆಂದು ಇಬ್ಬರೂ ಅದೇ ಕಾರಿನಲ್ಲಿ ತಿರುಮಲಶೆಟ್ಟಿಹಳ್ಳಿ ಕ್ರಾಸ್ ನಲ್ಲಿರುವ ಸಾಯಿ ಪ್ಯಾಲೇಸ್ ಹತ್ತಿರ ಸುಮಾರು 03-00 ಗಂಟೆಗೆ ಬಂದಿದ್ದು ಪ್ಯಾಲೇಸ್ ಮುಂದೆ ಕಾರ್ ನಿಲ್ಲಿಸಿ ಡೈವರ್ ಸೀಟ್ ನಲ್ಲಿ ಕಸಿನ್ ಗುಪ್ತಾ ಕುಳಿತುಕೊಂಡಿದ್ದು ನಾನು ಪಕ್ಕದ ಸೀಟಿನಲ್ಲಿ ಕುಳಿತುಕೊಂಡಿರುತ್ತೇನೆ. ಕಸಿನ್ ಗುಪ್ತಾ ನೀನು ನನ್ನ ಸ್ನೇಹಿತೆಯಾಗಿದ್ದರೂ ಸಹ ಬೇರೆ ವ್ಯಕ್ತಿ ಜೊತೆ ನೀನು ಸಂಬಂಧ ಇಟ್ಟುಕೊಂಡಿದ್ದಿಯಾ ಯಾಕೆ ಈ ರೀತಿಯಾಗಿ ಮೋಸ ಮಾಡುತ್ತಿಯಾ ಎಂದು ಕೇಳಿದ ಆಗ ನಾನು ಯಾರ ಜೊತೆಗೂ ಸಂಬಂಧ ಇಟ್ಟುಕೊಂಡಿರುವುದಿಲ್ಲ ಎಂದು ಹೇಳಿದೆ. ಇಬ್ಬರ ನಡುವೆ ಮಾತಿಗೆ ಮಾತು ಬೆಳೆದು ಗಲಾಟೆಯಾಗಿದ್ದು ಆಗ ಎಕಾವಿಕೆ ಕಸಿನ್ ಗುಪ್ತಾ ಕಾರಿನಲ್ಲಿದ್ದ ಚಾಕುವಿನಿಂದ ನನ್ನ ಎಡಗಡೆ ಎದೆಯ ಕೆಳಗಡೆ ಬಲವಾಗಿ ಚುಚ್ಚಿ ನಂತರ ಮತ್ತೆ ಬಲತೊಡೆಗೆ ಎಡತೊಡೆಗೆ ಎಡಗೈ ಮುಂಗೈ ಮೇಲೆ ಚಾಕುವಿನಿಂದ ಚುಚ್ಚಿದ ನನ್ನ ಮೈ ಮೇಲೆ ಬಿದ್ದು, ನನ್ನ ಎಡಗಡೆ ಕನ್ನಿಗೆ ಬಲಗೈಗೆ ಮತ್ತು ಕುತ್ತಿಗೆಗೆ ಬಾಯಿಯಿಂದ ಕಚ್ಚಿರುತ್ತಾನೆ. ನಂತರ ಎರಡು ಕೈಗಳಿಂದ ನಿನ್ನನ್ನು ಸಾಯಿಸುತ್ತೆನೆಂದು ಕತ್ತು ಹಿಚುಗಿರುತ್ತಾನೆ. ಆಗ ನನ್ನ ಆತ್ಮ ರಕ್ಷಣೆಗೆ ಅವನ ಕಣ್ಣಿಗೆ ನನ್ನ ಕೈ ಬೆರಳಿನಿಂದ ಚುಚ್ಚಿರುತ್ತೇನೆ. ನಾನು ಕಾರ್ ಡೋರ್ ತೆಗೆದು ಹೊರಗೆ ಬಂದಿರುತ್ತೇನೆ. ಆಗ ಕಸಿನ್ ಗುಪ್ತಾ ಕಾರ್ ಸ್ಟಾರ್ಟ್ ಮಾಡಿ ಕೊಂಡು ಅಲ್ಲಿಂದ ಹೊರಟು ಹೋಗಿರುತ್ತಾನೆ. ಅವನ ಮೇಲೆ ಕಾನೂನು ರೀತ್ಯ ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ದೂರನ್ನು ನೀಡಿದ್ದು ಅದರಂತೆ ರಾಣಿಯಲ್ಲಿ ಪ್ರಕರಣವು ಸಹ ದಾಖಲಾಗಿರುತ್ತೆ ನಂತರ ನಾನು ದಿನಾಂಕ:03/09/2022 ರಂದು ಹೊಸಕೋಟೆ ಎಸಿಜೆ ಮತ್ತು ಜೆಎಂಎಫ್ ಸಿ

ನ್ಯಾಯಾಲಯ ದಲ್ಲಿ ನ್ಯಾಯಾಧೀಶರ ಮುಂದೆ ನನ್ನ ಕಲಂ 164 ಸಿಆರ್ ಪಿಸಿ ರೀತ್ಯ ಹೇಳಿಕೆಯನ್ನು ನೀಡಿದ್ದು ಅದರಲ್ಲಿ ನನ್ನ ಸ್ನೇಹಿತನಾದ ಕಶೀಶ ಗುಪ್ತ ರವರು ನನಗೆ ಲೈಂಗಿಕ ಸಂಬೋಗಕ್ಕೆ ಒತ್ತಾಯ ಮಾಡಿರುತ್ತಾನೆ ನಾನು ಅದಕ್ಕೆ ಒಪ್ಪದ್ದರಿಂದ ನನಗೆ ಚಾಕುವಿನಿಂದ ಚುಚ್ಚಿ ಲೈಂಗಿಕ ಸಂಬೋಗಕ್ಕೆ ಒತ್ತಾಯ ಮಾಡಿ ಕೊಲೆ ಮಾಡಲು ಪ್ರಯತ್ನ ಮಾಡಿರುತ್ತಾನೆಂದು ಹೇಳಿಕೆ ನೀಡಿರುತ್ತೇನೆ ನಾನು ಮತ್ತು ಕಶೀಶ ಗುಪ್ತ ರವರು ಸ್ನೇಹಿತರಾಗಿದ್ದು ಈ ಮೊದಲು ಅನ್ಯೂನ್ಯವಾಗಿದ್ದವು ನಾವು ಈ ಹಿಂದೆ ಪಾರ್ಟಿ ಗಳಿಗೆ ಸ್ನೇಹಿತರೊಂದಿಗೆ ಹೋಗಿ ಬರುತ್ತಿದ್ದವು ನಮ್ಮ ಮಧ್ಯೆ ಸಣ್ಣ ಪುಟ್ಟ ವಿಚಾರಗಳಿಗೆ ಸಣ್ಣ ಪುಟ್ಟ ಗಲಾಟೆಗಳಾಗಿದ್ದವು ನಾನು ನ್ಯಾಯಾಲಯದಲ್ಲಿ ನೀಡಿರುವ ಹೇಳಿಕೆ ಹಾಗೂ ದೂರನ್ನು ನೀಡುವಾಗ ಆಸ್ಪತ್ರೆಯಲ್ಲಿ ನೀಡಿರುವ ಹೇಳಿಕೆಯನ್ನು ಬೇರೆ ರೀತಿ ನೀಡಿರುತ್ತೇನೆ ಕಶೀಶ ಗುಪ್ತ ರವರು ನಮ್ಮ ಮಧ್ಯೆ ಇರುವ ಸಣ್ಣ ವಿಚಾರಗಳನ್ನು ಮನಸ್ಸಿನಲ್ಲಿಟ್ಟುಕೊಂಡು ನನ್ನನ್ನು ಕೊಲೆ ಮಾಡು ಉದ್ದೇಶದಿಂದ ನನಗೆ ಚಾಕುವಿನಿಂದ ನನ್ನ ಎಡಗಡೆ ಎದೆಯ ಕೆಳಗಡೆ ಬಲವಾಗಿ ಚುಚ್ಚಿ ನಂತರ ಮತ್ತೆ ಬಲತೊಡೆಗೆ ಎಡತೊಡೆಗೆ ಎಡಗೈ ಮುಂಗೈ ಮೇಲೆ ಚಾಕುವಿನಿಂದ ಚುಚ್ಚಿರುತ್ತಾನೆ ಆದ್ದರಿಂದ ಸದರಿ ಕಶೀಶ ಗುಪ್ತ ರವರ ಮೇಲೆ ಕಾನೂನು ರೀತ್ಯ ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ಕೋರುತ್ತೇನೆ."

Upon the completion of investigation, the Police file a final report against the accused for the offence punishable under Section 307 of the IPC only and nothing else. The summary of the charge sheet as obtaining in column No.17 reads as follows:

"17. ಕೇಸಿನ ಸಂಕ್ಷಿಪ್ತ ಸಾರಾಂಶ

ಕಲಂ 307 ಐಪಿಸಿ

ದಿನಾಂಕ:21/08/2022 ರಂದು ಬೆಳಿಗಿನ ಜಾವ ಸುಮಾರು 03-30 ಗಂಟೆ ಸಮಯದಲ್ಲಿ ಘನ ನ್ಯಾಯಾಲಯದ ವ್ಯಾಪ್ತಿಗೆ ಸೇರಿದ ತಿರುಮಲಶೆಟ್ಟಿಹಳ್ಳಿ ಪೊಲೀಸ್ ಠಾಣಾ ಸರಹದ್ದು ತಿರುಮಲಶೆಟ್ಟಿಹಳ್ಳಿ ಗ್ರಾಮದಿಂದ ಚನ್ನಸಂದ್ರಕ್ಕೆ ಹೋಗುವ ರಸ್ತೆಯಲ್ಲಿರುವ ಶ್ರೀ ಸಾಯಿ ಪ್ಯಾಲೇಸ್ ಎಂಬ ಕಲ್ಯಾಣ ಮಂಟಪದ ಮುಂಭಾಗದಲ್ಲಿ ಈ ದೋಷಾರೋಪಣಪಟ್ಟಿ ಕಾಲಂ ನಂ-12 ರಲ್ಲಿ ಕಂಡ ಎ1 ಆರೋಪಿ ಹಾಗೂ ಸಾಕ್ಷಿ-01 ರವರು ಎ1 ಆರೋಪಿಗೆ ಸೇರಿದ ಡಿಎಲ್-3 -ಸಿಸಿ -ಯು 4921 ಕಾರಿನಲ್ಲಿ ಬಂದು ಕಲ್ಯಾಣ ಮಂಟಪದ ಮುಂಭಾಗ ನಿಲ್ಲಿಸಿಕೊಂಡು ಎ1 ಆರೋಪಿಯು ಸಾಕ್ಷಿ 01 ರವರಿಗೆ ನೀನು ಬೇರೆ ವ್ಯಕ್ತಿಯ ಜೊತೆಗೆ ಸಂಬಂಧ ಇಟ್ಟುಕೊಂಡಿದ್ದಿಯಾ ಯಾಕೆ ಈ ರೀತಿ ಮೋಸ ಮಾಡುತ್ತಿಯಾ ಎಂದು ಕೇಳಿದ್ದು ಅದರಕ್ಕೆ ಎ1 ಆರೋಪಿ ಮತ್ತು ಸಾಕ್ಷಿ 01 ರವರಿಗೆ ಮಾತಿಗೆ ಮಾತು ಬೆಳೆದಿದ್ದು ಆಗ ಎ1 ಆರೋಪಿಯು ಸದರಿ ಕಾರಿನಲ್ಲಿದ್ದ ಚಾಕುವನ್ನು ತೆಗೆದುಕೊಂಡು ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ಏಕಾ ಏಕಿ ಕೊಲೆ ಮಾಡುವ ಉದ್ದೇಶದಿಂದ ಎಡಗಡೆ ಎದೆಯ ಕೆಳಗಡೆ

ಬಲವಾಗಿ ಚುಚ್ಚಿ ನಂತರ ಮತ್ತೆ ಬಲತೊಡೆಗೆ ಎಡತೊಡೆಗೆ ಎಡಗೈ ಮುಂಗೈ ಮೇಲೆ ಚಾಕುವಿನಿಂದ ಚುಚ್ಚಿ ಸಾಕ್ಷಿ-1 ರವರಿಗೆ ತೀವ್ರ ಸ್ವರೂಪದ ಗಾಯಗಳುಂಟು ಮಾಡಿರುವುದು ತನಿಖೆಯಿಂದ ದೃಢಪಟ್ಟಿರುತ್ತೆ

The petitioner makes a requisition to the respondents seeking a direction to respondent No.1 - Police to conduct further investigation in S.C. No.11 of 2023. The requisition of the petitioner reads as follows:

"Date:03/07/2025

From:

XXXX
XXXX
XXXX
XXXX

To:

Station House officer,
Thirumalashettahalli PS, [Bengaluru Rural]
Thirumalashettahalli, Koralur,
Bangalore district, Karnataka – 560 067.

Subject: Requisition seeking further investigation under Section 173(8) CrPC in Crime No. 0122/2022, currently pending as SC No. 11/2023 before the Hon'ble VI Additional District and Sessions Court, Bengaluru Rural

Respected Sir/Madam,

1. I, XXXX, the victim and complainant in Crime No. 0122/2022 registered at Thirumalashettahalli Police Station, Bengaluru Rural, most respectfully submit this requisition requesting your kind intervention and direction to initiate further investigation under Section 173(8) of the Code of Criminal Procedure, 1973.

2. The matter, arising from a brutal incident that occurred on the night of 20.08.2022, involves grave offences including

attempted rape, grievous sexual assault, and attempted murder. The FIR in the said matter was registered under Section 307 IPC, and is now pending as SC No. 11/2023 before the Hon'ble VI Additional District and Sessions Court, Bengaluru Rural.

3. While the FIR and initial chargesheet were filed, the investigation was riddled with serious procedural lapses and material omissions that have undermined the integrity of the case and compromised my right to a fair investigation.

4. Failure to invoke appropriate sections of the IPC relating to sexual assault and attempted rape, despite explicit statements made under Section 164 statement before Addl. Civil Judge (Jr.Dn) & JMFC Court Hoskote, Bengaluru Rural District dated 03.09.2022.

* Non-inclusion of crucial medical records from Manipal Hospital in the chargesheet, despite grievous stab wounds, surgeries, and documented injuries;

* Omission of FSL reports and forensic evidence relating to seized materials (knife, clothes, and blood-stained items);

* Failure to medically examine me for sexual assault despite statutory mandate under Section 164-A CrPC;

* Non-identification and examination of key eyewitnesses (including 2 unnamed persons present at near the scene of the crime);

* Failure to trace and examine the Ola cab driver (Devaraja HM) who transported me to the hospital. The driver witnessed the accused attempting to get the vehicle alongside the complainant. wherefore police officer not taken the statement or he has not been made as a witness in the Chargesheet of the driver who was eye witness of this crime.

* Ignoring digital and electronic evidence, such as CCTV footage and location/GPS data around the crime scene.

* I was not at all called to police station to give my further statement or submitted any documents pertaining to the crime.

I had not received any Notice from the police station. I only got to know when I received the notice from the court that you had filed chargesheet and only 307 Crpc offence is made out.

* My sister XXXX was not at all called to police station to give my further statement or submitted any documents pertaining to the crime. I had not received any Notice from the police station. I only got to know when I received the notice from the court that you had filed chargesheet and only 307 Crpc offence is made out.

WHEREFORE, I humbly request the SHO, Thirumalashettahalli PS to undertake further investigation under section 173(8) of CrPC, 1973 in CrPC in Crime No. 0122/2022, currently pending as SC No. 11/2023 before the Hon'ble VI Additional District and Sessions Court, Bengaluru Rural."

The petitioner thereafter approaches this Court in the present petition seeking further investigation in S.C.No.11 of 2023.

10. The petitioner has filed several documents to demonstrate serious lacunae in the conduct of investigation. To begin with, it is necessary to notice the statement of the petitioner/victim under Section 164 of the Cr.P.C. It reads as follows:

"IN THE COURT OF CIVIL JUDGE AND JMFC., HOSKOTE.

TS Halli Cr no: 122/2022

Name	: XXXX
Father name	: XXXX
Age	: XXXX.

Occupation : Account Manager, XXXX, Bengaluru

Residence : Bengaluru

(Oath has been duly administered to the witness on this 3rd September 2022 after getting it comformed that she is giving her statement voluntarily there is no any coercion. Thereafter the statement of victim has been recorded in camera proceedings)

I know accused by name Kashish Gupta he also works in XXXX company. On 20.08.2022 he asked me that what I would do on 21.08.2022. I said that it was my holiday. He invited me to office party held at Marathahalli. Accused also resides in the apartment where I reside. On 21.08.2022 at 10. Pm we both went to marathahalli by his car. When we reached there, there were other people in queue then we waited for 45 minutes. Thereafter we went in partyhall we waited for an hour, but his friends didn't come. Since it was getting late I told him that I wanted to go home. He was insisting me to wait. I waited for some more time, at about 1.30 am I was booking my cab but he said that he would drop me.

When we came back to our apartment he said that he wanted a cigarrate. So he drow his car ahead of out apartment and took me in a isolated area. After some time I said him that I wanted to go home he asked me to have sex with him. I said no then he started touching my thighs and chest. When I resisted he became aggressive and removed a knife. And he grabbed my hand and stabbed with knief on my chest. He stabbed me thrice on my chest, once on my stomach. He dragged my hairs and pulled my face on his private part. I was so crying and begging him to leave me, but he said if I have sex with him he would leave me. I said no, he started biting me everywhere on my back and on my face. He was trying to take off his pant, just I tried to depend my self hence I scrached his eyes.

I was telling him to leave me, but he kept saying that he would kill me. I somehow managed to open the door of the car of my side. I was trying to get me away from his grip, at that time he took his knief and scratched on parts of my body. He was trying to take off my dress I punched him and tried to crawl out side of the car. As I was getting out of the car he held my leg and stabbed on my leg. I got out from his car and started running. Since I was injured and bleeding I could not run fast and he came out side the car. There was a path hole, he tried to push me in that hole. I lost my balance and fell down on the other end. Then he came on the top of me and sat on my back. Then he started pressing my neck and tried to strangle. He was sitting on my back and rubbing with his private part. He tried to put his hand inside my short wearing. I kept telling him to leave me but he went on saying that either I had to have sex with him or he would kill me.

Since I was bleeding I felt little unconcious I asked him to get himself off from me. When I stopped depending myself he got himself off from me. I crawled further arid tried myself to get up and I saw a house and some people there, about 10 mtrs away from me and I ran to them and sat infront of the house. I had phone with me and I tried to book cab for me, he also followed me and saw the people there and he asked some water they gave him. Then he tried to snatch my phone I did not give him, then he laid on the ground. After some time the cab which I booked came to the spot, driver of that cab also saw the accused. Accused was also trying to get into the cab, but I asked the driver to run the cab and from there I went to the hospital and I admitted in hospital. I was under treatment in ICU for 6 days and 2 days under observation. I got discharged from the hospital, meanwhile my elder sister and my mother had lodged the complaint against the accused.

(The statement of the victim is recorded as she has deposed as per my dictation).

R.O.& F.C.,
Sd/-

Prl., Civil/Judge and JMFC.,
Hoskote”

(Emphasis added at each instance)

The statement of the petitioner, recorded under Section 164 of the Cr.P.C., unfolds a harrowing narrative that leaves little to the imagination. It is not the account of a mere physical altercation; it is the narration of a desperate struggle by a woman fighting to preserve her bodily integrity and sexual autonomy against an assailant who, according to her, was determined to violate both. The petitioner unequivocally states that she cried inconsolably, pleaded with the accused to leave her and repeatedly begged for mercy. Those entreaties, however, are alleged to have fallen on deaf ears. On the contrary, the accused is stated to have coldly declared that he would let her go only if she yielded to his demand for sexual intercourse. Such a statement, if true, lays bare the unmistakable intent that animated the entire episode.

11. The petitioner would further narrate on her refusal, the accused became increasingly violent. He allegedly bit her indiscriminately all over her body, attempted to remove his trousers with the object of committing sexual intercourse against her will

and, when met with resistance, unleashed brutal physical violence. She is said to have been mercilessly assaulted and repeatedly stabbed on her legs. Every act attributed to the accused, viewed either in isolation or cumulatively, unmistakably points towards an endeavour to ravish the petitioner. **The allegations do not merely portray an assault; they prima facie depict an attempt to commit rape, interrupted not by any voluntary desistance on the part of the accused but by the relentless resistance offered by the victim herself.**

12. The narrative does not end there. Bleeding profusely from the injuries allegedly inflicted upon her and overpowered by the brutality of the assault, the petitioner is stated to have collapsed into unconsciousness. Upon regaining consciousness after some time, she somehow gathered the strength to summon a cab and reach Manipal Hospital for medical aid. Even at that stage, according to the petitioner, the accused attempted to pursue her as she was struggling to board the cab, a circumstance which only accentuates the gravity of the allegations.

13. If this indeed is the statement of the victim recorded under Section 164 of the Cr.P.C., this Court is constrained to observe that it is startling, if not shocking, that the investigating agency confined the crime merely to an offence punishable under Section 307 of the IPC. Equally disquieting is the fact that the jurisdictional Court, oblivious to the tenor and substance of the victim's statement, proceeded to frame charge only for the offence punishable under Section 307 of the IPC. A statement which, on its plain reading, prima facie discloses ingredients of an attempt to commit rape appears to have escaped the attention of both the investigating agency and the Court below. Such an omission, at least prima facie, strikes at the very root of a fair and comprehensive investigation.

14. The inadequacies in the investigation do not end with the erroneous characterization of the offence. The statement of the petitioner and the subsequent events disclose disturbing gaps that cast a serious shadow over the manner in which the investigation has been conducted. The petitioner specifically asserts that on the very next day, i.e.,

21-08-2022, the clothes and shoes worn by the accused had mysteriously disappeared. A yellow plastic cover, approximately nine inches in length, allegedly used by the accused to conceal the knife employed during the assault, was not even forwarded to the Forensic Science Laboratory for examination. More alarmingly, despite the allegation that the occurrence had taken place inside the vehicle and despite visible blood stains on the window panes of the car, no biological samples, blood swabs or other forensic material were collected from the interior of the vehicle. Such omissions are not mere procedural irregularities; they are investigative lapses of considerable magnitude, capable of impairing the search for truth itself. A criminal investigation is expected to unearth every available piece of evidence, particularly where the allegations concern offences of such grave nature. An investigation that leaves behind obvious and potentially incriminating material without examination can scarcely inspire confidence.

15. In the teeth of the aforesaid facts, the issue that now falls for consideration lies in a narrow but significant compass: **whether the acts attributed to the accused merely depict an assault simpliciter culminating in an attempt to murder, or whether they unmistakably transcend that boundary and enter the domain of an attempt to commit rape punishable under Section 376 read with Section 511 of the Indian Penal Code.** The answer to the issue necessarily lies in an examination of the statutory contours of Section 511 of the IPC and the rich body of jurisprudence that has evolved around the expression "*attempt*" in criminal law.

16. Section 511 of the IPC reads as follows:

"511. Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprisonment provided for that offence, or with such fine as is provided for the offence, or with both.

Illustrations

(a) A makes an attempt to steal some jewels by breaking open a box, and finds after so opening the box, that there is no jewel in it. He has done an act towards the commission of theft, and therefore is guilty under this section.

(b) A makes an attempt to pick the pocket of Z by thrusting his hand into Z's pocket. A fails in the attempt in consequence of Z's having nothing in his pocket. A is guilty under this section."

Section 511 of the IPC is the repository of punishment for attempts to commit offences where the Code does not expressly prescribe a separate punishment. The provision proceeds on the well-settled principle that criminal culpability is not postponed until the final consummation of the offence. The law intervenes the moment preparation ripens into an overt act directed towards the commission of the intended crime. Thus, where intention is translated into action, though the intended offence ultimately remains unconsummated, Section 511 steps in to visit the offender with penal consequences.

JUDICIAL LANDSCAPE:

17. The jurisprudence on the distinction between *preparation* and *attempt* is no longer *res integra*. Time and

again, the Apex Court has explained that what the law punishes is not a mere evil thought nor a remote preparation, but the commencement of execution of the criminal design. Once the conduct of the accused unmistakably demonstrates a determined movement towards the commission of the intended offence, the offence travels beyond preparation and assumes the character of an attempt.

17.1. The Apex Court in **CHAITU LAL v. STATE OF UTTARAKHAND**¹, has considered what would become an attempt to commit an offence, and has held as follows:

"....

6. Heard the counsel appearing for both parties. In the present case, the statement rendered by the complainant victim (PW 1) is corroborated by the daughter of the complainant victim (PW 2) who is an eyewitness to the said incident, husband of the complainant victim (PW 3) and independent witness Sohan Lal (PW 4). The courts below have observed that although these witnesses were subjected to lengthy cross-examination, they have remained persistent in their statements and there was no material contradiction so as to raise any doubt regarding their credibility.

¹ (2019) 20 SCC 272

7. The statement of the complainant victim reveals that the appellant-accused had attempted to molest her on numerous occasions. In order to attract culpability under Section 354 IPC, the prosecution has to prove that the accused applied criminal force on the victim with the intention of outraging her modesty. In the case at hand, prior to the commission of the offence, the appellant-accused had attempted to molest the complainant victim on the same day itself. Later that night, the appellant-accused forcibly entered the house of the complainant victim in a drunken state, being aware about the absence of her husband. Thereafter, the appellant-accused, exerting criminal force, pounced upon the complainant victim and forcibly lifted her petticoat. Although, the complainant victim pleaded the accused to stop considering the fact that she was his aunt; he responded stating, it does not matter to him. The aforesaid action of the appellant-accused is sufficient to prove his culpability.

8. The counsel of the appellant-accused has pleaded that the actions of the appellant-accused do not constitute the offence under Section 511 read with Section 376, as the appellant-accused had not committed any overt act such as any attempt to undress himself in order to commit the alleged act. This Court in *Aman Kumar v. State of Haryana* [*Aman Kumar v. State of Haryana*, (2004) 4 SCC 379 : 2004 SCC (Cri) 1266] , held that: (SCC p. 388, para 11)

"11. In order to find an accused guilty of an attempt with intent to commit a rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part."

9. The attempt to commit an offence begins when the accused commences to do an act with the necessary intention. In the present case, the appellant-accused pounced upon the complainant victim, sat upon her and lifted her petticoat while the complainant victim protested against his advancements and wept. The evidence of the daughter (PW 2) also reveals that she pleaded with the appellant-accused to spare her mother. In the meantime, hearing such commotion, other

villagers intervened and threatened the accused of dire consequences pursuant to which the accused ran away from the scene of occurrence. Here, the evidence of independent witness Sohan Lal (PW 4) assumes significance in corroborating the events on the date of occurrence, wherein he has averred that at around 10.00 p.m., he heard noise coming from the house of complainant victim, pursuant to which he saw the appellant-accused's wife holding his neck coming out from the house of the complainant victim. PW 4 had also overheard the complainant victim complaining that the appellant-accused was quarrelling with her.

10. Herein, although the complainant victim and her daughter were pleading with the accused to let the complainant victim go, the appellant-accused did not show any reluctance that he was going to stop from committing the aforesaid offence. Therefore, had there been no intervention, the appellant-accused would have succeeded in executing his criminal design. The conduct of the accused in the present case is indicative of his definite intention to commit the said offence.

11. The counsel on behalf of the appellant-accused placed reliance upon *Tarkeshwar Sahu v. State of Bihar (Now Jharkhand)* [*Tarkeshwar Sahu v. State of Bihar (Now Jharkhand)*, (2006) 8 SCC 560 : (2006) 3 SCC (Cri) 556], to claim the benefit of acquittal for the offence under Section 511 read with Section 376 IPC. But, on careful perusal of the aforesaid decision in the backdrop of facts and circumstances of the present case, both the cases are distinguishable as in the case cited above, it is clearly noted that the accused failed at the stage of preparation of commission of the offence itself. Whereas, in the present case before us the distinguishing fact is the action of the appellant-accused in forcibly entering the house of the complainant victim in a drunken state and using criminal force to lift her petticoat despite her repeated resistance.

12. Further, the plea of the appellant-accused regarding the delay in registering the FIR has been duly considered by both the courts below. It has been duly noted that the husband of the complainant victim (PW 3) was staying in Nandprayag

while the incident occurred in the remote village of Salna. Subsequent to the incident, the complainant victim first travelled to meet her husband (PW 3). After narrating the said incident to him, she further travelled to register a complaint before the Chief Judicial Magistrate, Chamoli, which is again far off from the place of occurrence. Considering the aforesaid factual scenario, the delay in registering FIR does not affect the case of the prosecution adversely.

13. Considering the facts and circumstances, the guilt of the appellant-accused has been established beyond doubt. In our opinion, therefore, the courts below have rightly convicted and sentenced the accused. In view of the aforesaid observations, the appeal lacks merit and is accordingly dismissed."

The Apex Court in **Chaitu Lal v. State of Uttarakhand**, while dealing with an allegation of attempt to commit rape, lucidly expounds that an attempt begins the moment the accused commences acts accompanied by the requisite criminal intention. The Court holds that if the surrounding circumstances demonstrate that the accused would have succeeded in accomplishing his object but for resistance by the victim or intervention by others, the law would readily infer the existence of the requisite intention. The Court emphatically observes that to constitute an attempt to commit rape, it is not necessary that every conceivable overt act towards penetration should have taken place. What is required is

that the conduct of the accused must unmistakably exhibit a determination to gratify his sexual desire notwithstanding every resistance offered by the victim. The principle emerging from the said judgment is clear as daylight. **The law does not insist upon completion of the offence before it can condemn the conduct. The law condemns the determined journey towards the offence as much as the completed destination itself.**

17.2. The Apex Court in the case of **STATE OF MADHYA PRADESH v. MAHENDRA**², while considering the entire spectrum of law and delineating what would become attempt under Section 511 of the IPC, has held as follows:

"....

Analysis

Distinction between "preparation" and "attempt" to commit rape

12. It is a settled proposition of criminal jurisprudence that in every crime, there is first, mens rea (intention to commit), secondly, preparation to commit it, and thirdly, attempt to commit it. If the third stage, that is, "attempt" is successful, then the crime is complete. If the attempt fails, the crime is not complete, but law still punishes the person for attempting the said act.

²(2022) 12 SCC 442

"Attempt" is punishable because even an unsuccessful commission of offence is preceded by mens rea, moral guilt, and its depraving impact on the societal values is no less than the actual commission.

13. There is a visible distinction between "preparation" and "attempt" to commit an offence and it all depends on the statutory edict coupled with the nature of evidence produced in a case. The stage of "preparation" consists of deliberation, devising or arranging the means or measures, which would be necessary for the commission of the offence. Whereas, an "attempt" to commit the offence, starts immediately after the completion of preparation. "Attempt" is the execution of mens rea after preparation. "Attempt" starts where "preparation" comes to an end, though it falls short of actual commission of the crime.

14. However, if the attributes are unambiguously beyond the stage of preparation, then the misdemeanours shall qualify to be termed as an "attempt" to commit the principal offence and such "attempt" in itself is a punishable offence in view of Section 511IPC. The "preparation" or "attempt" to commit the offence will be predominantly determined on evaluation of the act and conduct of an accused; and as to whether or not the incident tantamounts to transgressing the thin space between "preparation" and "attempt". If no overt act is attributed to the accused to commit the offence and only elementary exercise was undertaken and if such preparatory acts cause a strong inference of the likelihood of commission of the actual offence, the accused will be guilty of preparation to commit the crime, which may or may not be punishable, depending upon the intent and import of the penal laws.

15. Section 511IPC is a general provision dealing with attempts to commit offences which are not made punishable by other specific sections of the Code and it provides, inter alia, that,

"511. Punishment for attempting to commit offences punishable with imprisonment for life or

16. It is extremely relevant at this stage to brush up the elementary components of the offence of "rape" under Section 375IPC, as was in force at the time when the occurrence took place in the instant case. The definition of "rape", before the 2013 Amendment, used to provide that:

(emphasis supplied)

17. A plain reading of the above provision spells out that sexual intercourse with a woman below sixteen years, with or

without her consent, amounted to "rape" and mere penetration was sufficient to prove such offence. The expression "penetration" denotes ingress of male organ into the female parts, however slight it may be. This Court has on numerous occasions explained what "penetration" conveys under the unamended Penal Code which was in force at the relevant time. In *Aman Kumar* [*Aman Kumar v. State of Haryana*, (2004) 4 SCC 379 : 2004 SCC (Cri) 1266] , it was summarised that : (SCC p. 386, para 7)

"7. Penetration is the sine qua non for an offence of rape. In order to constitute penetration, there must be evidence clear and cogent to prove that some part of the virile member of the accused was within the labia of the pudendum of the woman, no matter how little (see Joseph Lines, IC&K 893)."

18. Even prior thereto, this Court in *Madan Lal v. State of J&K* [*Madan Lal v. State of J&K*, (1997) 7 SCC 677 : 1997 SCC (Cri) 1151] opined that the degree of the act of an accused is notably decisive to differentiate between "preparation" and "attempt" to commit rape. It was held thus : (SCC p. 689, para 12)

"12. The difference between preparation and an attempt to commit an offence consists chiefly in the greater degree of determination and what is necessary to prove for an offence of an attempt to commit rape has been committed is that the accused has gone beyond the stage of preparation. If an accused strips a girl naked and then making her lie flat on the ground undresses himself and then forcibly rubs his erected penis on the private parts of the girl but fails to penetrate the same into the vagina and on such rubbing ejaculates himself then it is difficult for us to hold that it was a case of merely assault under Section 354IPC and not an attempt to commit rape under Section 376 read with Section 511IPC. In the facts and circumstances of the present case the offence of an attempt to commit rape by the accused has been clearly established and the High Court rightly convicted him under Section 376 read with Section 511IPC."

19. The difference between "attempt" and "preparation" in a rape case was again elicited by this Court in *Koppula Venkat Rao v. State of A.P.* [*Koppula Venkat Rao v. State of A.P.*, (2004) 3 SCC 602 : 2004 SCC (Cri) 840] , laying down that : (SCC p. 606, paras 10-11)

"10. An attempt to commit an offence is an act, or a series of acts, which leads inevitably to the commission of the offence, unless something, which the doer of the act neither foresaw nor intended, happens to prevent this. *An attempt may be described to be an act done in part-execution of a criminal design, amounting to more than mere preparation, but falling short of actual consummation, and, possessing, except for failure to consummate, all the elements of the substantive crime.* In other words, an attempt consists in it the intent to commit a crime, falling short of, its actual commission or consummation/completion. It may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. The illustrations given in Section 511 clearly show the legislative intention to make a difference between the cases of a mere preparation and an attempt.

11. In order to find *an accused guilty of an attempt with intent to commit rape, court has to be satisfied that the accused, when he laid hold of the prosecutrix, not only desired to gratify his passions upon her person, but that he intended to do so at all events, and notwithstanding any resistance on her part.* Indecent assaults are often magnified into attempts at rape. In order to come to a conclusion that the conduct of the accused was indicative of a determination to gratify his passion at all events, and in spite of all resistance, materials must exist. Surrounding circumstances many times throw beacon light on that aspect."

(emphasis supplied)

20. In light of the statutory provisions as construed by this Court from time to time in the cited decisions, let us

examine whether the respondent attempted to commit rape of the prosecutrices or there was only preparation on his behalf?

21. We may at the outset explain that what constitutes an “attempt” is a mixed question of law and facts. **“Attempt” is the direct movement towards the commission after the preparations are over. It is essential to prove that the attempt was with an intent to commit the offence. An attempt is possible even when the accused is unsuccessful in committing the principal offence. Similarly, if the attempt to commit a crime is accomplished, then the crime stands committed for all intents and purposes.”**

The Apex Court in **State of Madhya Pradesh v. Mahendra**, considers the distinction between *preparation* and *attempt* has **been delineated with remarkable clarity. The Court reiterates that every offence ordinarily passes through three distinct stages—intention, preparation and attempt. While intention remains confined to the recesses of the mind and preparation generally escapes punishment, an attempt marks the commencement of execution.** It is at that stage that the law intervenes, for the accused has crossed the threshold from contemplation into action. The Court explains that an attempt is the direct movement towards commission of the offence after preparation has ceased, and whether a particular act constitutes preparation or attempt is necessarily a mixed question of fact and

law to be gathered from the conduct of the accused and the surrounding circumstances.

18. Tested on the anvil of the aforesaid authoritative pronouncements, the facts of the case at hand leave little room for doubt. The statement of the petitioner recorded under Section 164 of the Cr.P.C. is neither vague nor embellished. It is vivid, spontaneous and graphically chronicles every stage of the occurrence. The petitioner narrates that the accused repeatedly demanded sexual intercourse; forcibly touched her body; attempted to remove her clothes; dragged her towards himself; pressed her face against his private parts; repeatedly declared that he would either have sexual intercourse with her or kill her; continued the assault despite her desperate resistance; inflicted multiple stab injuries, bite marks and burn injuries; throttled her; and persisted in his attempts until the petitioner somehow escaped from his clutches. Such allegations, if accepted at their face value—as they necessarily must be at this stage—are not mere indicators of preparation. They

unmistakably depict a sustained and determined attempt to subject the victim to sexual intercourse against her will.

19. It therefore becomes difficult, if not impossible, to comprehend how the investigating agency, despite such a graphic narration and despite the statement under Section 164 of the Cr.P.C., confined the investigation only to the offence punishable under Section 307 of the IPC. **The investigation, *prima facie*, appears to have perceived the stab wounds but overlooked the conduct that preceded those wounds. It noticed the injuries upon the body, but failed to examine whether those very injuries were inflicted in the course of an attempt to commit a far graver offence. Such an investigation cannot be described as either comprehensive or complete.**

20. **Once this Court arrives at a *prima facie* conclusion that the investigation suffers from glaring omissions, which have the potential to result in miscarriage of justice, the consequential question is no longer whether further investigation should be directed, but who should conduct such investigation.** The answer to that question is equally well

settled. The Constitutional Courts, in order to preserve the sanctity of a fair investigation and thereby a fair trial, possess ample jurisdiction to direct further investigation even after the filing of the charge-sheet and even after the framing of charges, if the facts so warrant.

21. The Apex Court in the case of **ANANT THAKUR KARMUSE v. STATE OF MAHARASHTRA**³, while considering the entire spectrum of law on the issue, observes that the Constitutional Courts may direct further investigation at the hands of a different investigating agency to ensure fair investigation, and holds as follows:

" "

36. Now, so far as the power of the constitutional courts to order further investigation/reinvestigation/de novo investigation even after the charge-sheet is filed and charges are framed is concerned, the following decisions are required to be referred to.

37. In *Bharati Tamang* [*Bharati Tamang v. Union of India*, (2013) 15 SCC 578 : (2014) 6 SCC (Cri) 566] , after taking into consideration the decisions of this Court in *Babubhai v. State of Gujarat* [*Babubhai v. State of Gujarat*, (2010) 12 SCC 254 : (2011) 1 SCC (Cri) 336] , paras 40 and 42 and the subsequent decision of this Court in *Ram Jethmalani v. Union of India* [*Ram Jethmalani v. Union of India*, (2011) 8 SCC 1 : (2011) 3 SCC (Cri) 310] and other decision on

³ (2023) 5 SCC 802

the point, ultimately the principles, which are culled out are as under : (*Bharati Tamang case* [*Bharati Tamang v. Union of India*, (2013) 15 SCC 578 : (2014) 6 SCC (Cri) 566] , SCC p. 597, para 41)

"41. From the various decisions relied upon by the petitioner counsel as well as by respondents' counsel, the following principles can be culled out.

41.1. The test of admissibility of evidence lies in its relevancy.

41.2. Unless there is an express or implied constitutional prohibition or other law, evidence placed as a result of even an illegal search or seizure is not liable to be shut out.

41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, courts have to deal with the same with an iron hand appropriately within the framework of law.

41.4. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

41.5. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

41.6. While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the High Court or this Court can also monitor such investigation in order to ensure proper conduct of the prosecution.

41.7. In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.

41.8. In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo."

38. In *Dharam Pal* [*Dharam Pal v. State of Haryana*, (2016) 4 SCC 160 : (2016) 2 SCC (Cri) 259] , after taking into consideration the catena of decisions on the point, it is observed and held that the constitutional courts can direct for further investigation or investigation by some other investigating agency. It is observed that the purpose is, there has to be a fair investigation and a fair trial. It is observed that the fair trial may be quite difficult unless there is a fair investigation. It is further observed and held that the power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation.

39. While observing and holding so in *Dharam Pal* [*Dharam Pal v. State of Haryana*, (2016) 4 SCC 160 : (2016) 2 SCC (Cri) 259] , in paras 24 and 25, it is observed and held as under : (SCC pp. 170-71)

"24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is

avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one taste, the taste of salt, so does justice have one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idée fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law".

40. Now, so far as the reliance placed upon the decision of this Court in *VinubhaiHaribhai Malaviya* [*VinubhaiHaribhai Malaviya v. State of Gujarat*, (2019) 17 SCC 1 : (2020) 3 SCC (Cri) 228] , relied upon on behalf of the respondent-accused is concerned, it is required to be noted that in the said decision, this Court was considering the powers of the Magistrate. Even in the said decision, it is observed and held that there is no good reason given by the Court as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued. It is further observed that power of the police to further investigate the offence continues right till the stage the trial commences. It is further observed that Article 21 of the Constitution demands no less than a fair and just investigation. In para 42 as such, it is observed and held as under : (SCC pp. 39-40)

"42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, *Sakiri* [*Sakiri Vasu v. State of U.P.*, (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440] , *Samaj Parivartan Samudaya* [*Samaj Parivartan Samudaya v. State of Karnataka*, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365] , *Vinay Tyagi* [*Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , and *Hardeep Singh* [*Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] ; *Hardeep Singh* [*Hardeep Singh v. State of Punjab*, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86] having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's

nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8)CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *HasanbhaiValibhai Qureshi* [*HasanbhaiValibhai Qureshi v. State of Gujarat*, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603] . Therefore, to the extent that the judgments in *AmrutbhaiShambhubhai Patel* [*AmrutbhaiShambhubhai Patel v. SumanbhaiKantibhai Patel*, (2017) 4 SCC 177 : (2017) 2 SCC (Cri) 331] , *Athul Rao* [*Athul Rao v. State of Karnataka*, (2018) 14 SCC 298 : (2019) 1 SCC (Cri) 594] and *Bikash Ranjan Rout* [*Bikash Ranjan Rout v. State (NCT of Delhi)*, (2019) 5 SCC 542 : (2019) 2 SCC (Cri) 613] have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Admn.)* [*Randhir Singh Rana v. State (Delhi Admn.)*, (1997) 1 SCC 361] and *Reeta Nag v. State of W.B.* [*Reeta Nag v. State of W.B.*, (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] also stand overruled.”

....

42. Applying the law laid down by this Court in *Dharam Pal* [*Dharam Pal v. State of Haryana*, (2016) 4 SCC 160 : (2016) 2 SCC (Cri) 259] and *Bharati Tamang* [*Bharati Tamang v. Union of India*, (2013) 15 SCC 578 : (2014) 6 SCC (Cri) 566] and to do the complete justice and in furtherance of fair investigation and fair trial, the constitutional courts may order further investigation/reinvestigation/de novo investigation even after the charge-sheet is filed and the charges are framed. If the submission on behalf of the accused and even as observed by the High Court that once the charge-sheet is filed and the charges are framed, there may not be any order for further investigation/reinvestigation/de novo investigation is accepted, in that case, the accused may see to it that the charges are framed to avoid any fair investigation/fair trial. It would lead to travesty of justice.

....

47. It can be seen from the aforesaid that there was no proper investigation by the State investigating agency at the relevant time and even the material evidences were also not collected. At the cost of repetition, it is observed that during the pendency of the writ petition before the High Court and pursuant to the various orders passed by the High Court, the State investigating agency were compelled to investigate in the matter and belatedly Accused 13 was charge-sheeted in the month of March 2022. Even according to the State investigating agency, still the further investigation is required on certain aspects. Some of the illustrations/instances which required further investigation are narrated in Para 4 of the counter-affidavit filed on behalf of Respondents 1 to 3. Elaborate reasons and on what further investigation is required has not been stated on the apprehension that if the same is disclosed at this stage, it may frustrate the very purpose of the investigation/further investigation.

48. Be that as it may, even according to the State investigating agency, the further investigation is required. **As observed and held by this Court in the aforesaid decisions, the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the charge-sheet and framing of the charges cannot be an impediment in ordering further**

investigation/reinvestigation/de novo investigation, if the facts so warrant."

21.1. Earlier to the afore-quoted judgment in **ANANT THAKUR KARMUSE** *supra*, the Apex Court in the case of **DEVENDRA NATH SINGH v. STATE OF BIHAR**⁴, observes that this Court in exercise of its jurisdiction under Section 482 of the Cr.P.C. may direct further investigation if the investigation is not in the proper direction or otherwise, and holds as follows:

" "

35. In *Vinay Tyagi* [*Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , this Court dealt with the wide range of issues relating to the powers of the High Court under Section 482CrPC as also the powers of the Magistrate under Section 173CrPC; and different vistas of the processes of conducting "fresh investigation" and/or "further investigation". This Court observed and held as under : (SCC pp. 791-93, paras 43-45 & 48-49)

*"43. At this stage, we may also state another well-settled canon of 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***

⁴ (2023) 1 SCC 48

courts very sparingly and with great circumspection.

44. We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of the Magistrate under Section 228 of the Code. *Wherever a charge-sheet has been submitted to the court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the Court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency.* These principles have been reiterated with approval in the judgments of this Court in *Disha v. State of Gujarat* [*Disha v. State of Gujarat*, (2011) 13 SCC 337 : (2012) 2 SCC (Cri) 628] , *Vineet Narain v. Union of India* [*Vineet Narain v. Union of India*, (1998) 1 SCC 226 : 1998 SCC (Cri) 307] , *Union of India v. Sushil Kumar Modi* [*Union of India v. Sushil Kumar Modi*, (1996) 6 SCC 500] and *Rubabbuddin Sheikh v. State of Gujarat* [*Rubabbuddin Sheikh v. State of Gujarat*, (2010) 2 SCC 200 : (2010) 2 SCC (Cri) 1006] .

45. The power to order/direct "reinvestigation" or "de novo" investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the court may, by declining to accept such a report, direct "further investigation", or even on the basis of the record of the case and the documents annexed thereto, summon the accused.

48. What ultimately is the aim or significance of the expression "fair and proper investigation" in criminal jurisprudence? It has a twin purpose : Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.

49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct "further investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct "further investigation" and/or to file a "supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process."

(emphasis supplied)

....

40. In the course of this decision, this Court in *Vinubhai Haribhai Malaviya* [*Vinubhai Haribhai Malaviya v. State of Gujarat*, (2019) 17 SCC 1 : (2020) 3 SCC (Cri) 228] expounded on the theory and philosophy related with the aim of investigation and inquiry as also on the wide range of powers of the police and the Magistrate as regards investigation and further investigation, inter alia, in the following passages : (*Vinubhai Haribhai Malaviya case* [*Vinubhai Haribhai Malaviya v. State of Gujarat*, (2019) 17 SCC 1 : (2020) 3 SCC (Cri) 228] , SCC pp. 15, 19 & 39, paras 18, 25 & 42)

"18. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over CrPC that must needs inform the interpretation of all the provisions of CrPC, so as to ensure that Article 21 is followed both in letter and in spirit.

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

police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8)CrPC.

42. ... To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8)CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding."

....

45. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:

45.1. The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual

perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.

45.2. The powers of the Magistrate to ensure proper investigation in terms of Section 156CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8)CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

45.3. Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8)CrPC, 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 482CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8)CrPC do not limit or affect such powers of the High Court to pass an order under Section 482CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

45.4. Even when the wide powers of the High Court in terms of Section 482CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

45.5. The powers under Section 482CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when

ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted."

(Emphasis supplied at each instance)

The Apex Court in afore-quoted judgment holds that the **right to a fair investigation is not merely a statutory entitlement but an inseparable facet of Article 21 of the Constitution. A defective, truncated or one-sided investigation strikes at the very root of a fair trial. Therefore, neither the filing of the final report nor the framing of charges can operate as an impregnable barrier against an order directing further investigation where the ends of justice so demand. The constitutional obligation of the Court is to discover the truth and not merely to preserve the procedural *status quo*.**

22. The cumulative effect of the aforesaid discussion unmistakably persuades this Court to hold that the present case is one of those exceptional cases where the interests of justice command a fresh look into the investigation. The omissions noticed

are neither trivial nor technical. They strike at the very substratum of the prosecution. To permit the trial to proceed on the foundation of an investigation which, *prima facie*, appears to have overlooked material facets of the occurrence would be to allow justice to travel on an incomplete record. Such a course cannot receive the imprimatur of a Constitutional Court.

23. Accordingly, the ends of justice would be best served if **further investigation is entrusted, not to the very investigating machinery that conducted the earlier investigation, but to the Crime Investigation Department (CID) of the State**, so that the investigation is carried to its logical culmination in an independent, comprehensive and impartial manner before the competent Court proceeds further with the trial.

24. For the aforesaid reasons, the following:

ORDER

- (i) Writ Petition is ***allowed***.
- (ii) *Mandamus* issues to the State to entrust further investigation into the matter to a different investigating agency i.e., the Crime Investigation Department, who

shall further investigate the matter and submit a report of that investigation before the concerned Court, within an outer limit of three months from the date of such entrustment. The entrustment shall happen within fifteen days from the date of the receipt of a copy of this order.

- (iii) Till the Crime Investigation Department submits its report, the concerned Court shall not proceed with the trial and regulate its procedure thereafter, based on the report of the Crime Investigation Department, in accordance with law.

Ordered accordingly.

Sd/-
(M.NAGAPRASANNA)
JUDGE

bkp
CT:MJ