**IN THE HIGH COURT AT CALCUTTA**

**(Criminal Revisional Jurisdiction)**

**Appellate Side**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 945 of 2019**

**Somnath Gupta**

**Vs.**
**State of West Bengal & Ors.**

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| **For the petitioner** | : Mr. Gobinda Chandra Baidya. |
| **For the State** | : Mr. Prasun Kumar Datta,<br>Mr. Md. Kutubuddin. |
| Heard on | : 11.07.2023 |
| Judgment on | : 26.07.2023 |

**Shampa Dutt (Paul), J.:**

**1.** The present revision has been preferred praying for further investigation for the 2nd time and against an order dated 21.02.2019 passed in Criminal Motion being No.199 of 2018 (Somnath Gupta vs. Kumkum Dey & Ors.) passed by the learned Additional District & Sessions Judge (1st Court) at Serampore, thereby affirming the order dated 07.05.2018 of the learned Judicial Magistrate, 5th Court, Serampore in G.R. 1572 of 2015.

**2.** The petitioner's case is that the petitioner had got a License as a Film Director, being Membership No.416, from Eastern India Motion Picture Directors' Association, having its registered No. i.e. 17690 (T.U. Act) dated

17.01.2013 affiliated to FCTWEL, 30, Chandi Ghosh Road, Kolkata-700 040.

**3.** The petitioner got the Producer License in the name and style of "M/S. S. G. FILM PRODUCTION" from Eastern India Motion Picture Association (EIMPA) and also membership of distributor being Membership card No.D-6119 issued by the Eastern India Motion Picture Association (EIMPA) and completed the shooting of a Bengali film "O-Kay .... ? At Night in the Forest (Bengali)" by spending a sum of Rs.37,71,500/- and thereafter the petitioner sent the film to the Central Board of Film Certification, Government of India for License Certificate and got the permission on 09.01.2015 from the concerned authority. On 18.01.2015, the respondent no.2 the actress of the above mentioned film came and requested the petitioner to hand over the Censor Copy of the DVD with promise to return but unfortunately after lapse of time the Censor Copy DVD was not returned by the respondent no.2 in spite of repeated requests by the petitioner.

**4.** In the month of March, 2015 the petitioner came to know from reliable source that the censor copy DVD which was handed over to the respondent no.2 was available for sale to one DVD shop at Uttarpara namely "Sangam". The petitioner on 09.03.2015 lodged a written complaint before the DEB, Chinsurah and instituted Uttarpara P.S. Case No.79/15 dated 16.03.2015 under Sections 63/65/68A of the Copy Right Act, and Sections 292/293 of the Indian Penal Code against the said Shop Keeper namely Madan Sonkar. The case ended in charge sheet no.328/2016 dated 31.07.2016.

**5.** In the said case the Police of DEB seized huge number of pirated CDs and DVDs including the pirated censor copy of the CDs and DVDs of the petitioner's movie “O Kay.....? At Night in the Forest (Bengali)”. That the censor copy of the original DVD (Mother copy) which was handed over to the respondent no.2 on good faith was sold to the petitioner by the shop keeper of “Sangam” operated by Mr. Madan Sonkar during his visit to “Sangam” on 08.03.2015.

**6.** Though the police of DEB investigated the matter only against the Seller of pirated CDs and DVDs, they did not investigate the matter from where it originated or at whose instance the same was pirated from the CDs and DVDs of that film originally copied, distributed and/or sold in the market, which compelled the petitioner to institute a separate case against the respondent nos.2, 3 and 4 which was registered as Uttarpara P.S Case No.295/2015 dated 28.08.2015 under Sections 420/406/468/120B/34 of the Indian Penal Code and Sections 63/65/68 of the Copy Right Act.

**7.** During the course of investigation of the case, the I.O of the case S.I. Maheswar Majhi took up the investigation but ended the matter by submitting FRT. On being aggrieved the petitioner prayed for further investigation before the learned trial court and after thorough hearing, the court was pleased to direct I.C Uttarpara P.S for further investigation on 10.01.2017 and accordingly the matter was taken up for investigation by another I.O of Uttarpara P.S namely S.I. Swarup Kumar Josh.

**8.** That though the learned A.C.J.M., Serampore was pleased to order for further investigation of the case but the I.O. of the case S.I. Swarup Kumar Josh did not take any positive initiation to unearth the truth, he

only made a single seizure list on 14.03.2017 of some articles and papers as produced by the petitioner at P.S. but did not seize some important articles, though received.

**9.** That since then the petitioner tried to contact the I.O. but he did not pay any heed to him. That the I.O. of the case S.I. Swarup Kumar Josh demanded Rs.2,00,000/-(Rupees Two lakh only) from the petitioner as bribe in order to investigate the matter properly. On 14.03.2017 when the petitioner went to the Police Station of Uttarpara, the said I.O. reduced the amount of the bribe from Rs.2,00,000/- to Rs.50,000/- for the interest of fair investigation and ultimately the petitioner/complainant could not meet the unlawful demand of the I.O. and preferred to file a writ petition before the Hon'ble High Court at Calcutta vide W.P. No.13930(W) of 2017 on 08.05.2017.

**10.** That during pendency of the writ petition of Hon'ble High Court at Calcutta, the petitioner to his utter surprise came to learn that the Police has already submitted the charge sheet but the I.O. did not inform the petitioner, in contravention of Section 173(2) (ii) of Cr.P.C. which is mandatory provision of law which "a police officer conducting the investigation and submitting the charge sheet after completion of investigation shall communicate the action taken by him, to the person by whom the information relating to the commission of the offence was first given", as such the petitioner could not seek any relief in the matter before the learned trial court as per provision of Section 173(8) of Cr.P.C.

**11.** On 04.08.2017 Hon'ble Justice Mr. Joymalya Bagchi was pleased to dispose of the writ petition.

**12.** The petitioner then advanced an application under Section 173(8) of Cr.P.C. before the learned trial court praying for further investigation on some important points which the I.O. did not perform during his investigation of the case and which are very essential for the prosecution case on the following aspects:-

a) That the complainant was made the sole independent witness of the case in the charge sheet though there are many corroborative witnesses to prove the case namely (a) Smt. Sumita Gupta, (b) Sri Sukanta Singha, (c) Sri Biswajit Biswas and others.

b) That the I.O. did not seize the Pen Camera and its CD from which it was evident the accused namely Madan Sonkar was selling the pirated CDs and DVDs of the petitioner's movie at his shop “SANGAM” on 08.03.2015 though the petitioner submitted the same to the I.O. and accordingly he received the same but did not include it to the seizure list.

c) That the I.O. also failed to collect the series of complaint lodged by the complainant with different police officials about the crime.

d) That the I.O. did not seize the forged censor certificate which was handed over by accused Rohit Tiwary to Sukanta Sinha on 21.01.2016 in presence of witness Udayan Ray, for the purpose of selling the said movie of the petitioner from where it well transpires that in the column by Central Board of Film Certification, the name of another accused person Kumkum Dey has been placed in place of the petitioner.

e) That the I.O. did not mention or tag the previous complaint which was instituted by DEB, Hooghly in connection with Uttarpara P.S. Case No.79/2015 with this instant case.

f) That practically the I.O. of the case carelessly and speedily concluded the investigation without properly investigating and also did not safeguard the interest of the petitioner.

**13. It is submitted that learned trial court while passing the impugned order did not consider all above referred facts and opined for the provision of 319 and 311 of Cr.P.C. by which no purpose will be fulfilled due to the defective investigation.**

**14.** Being aggrieved and dissatisfied by the order dated 07.05.2018 passed by the learned 5th J.M. at Serampur in G.R. Case No.1572/2015 the petitioner moved a Criminal Motion before the learned Sessions Judge at Hooghly being Criminal Motion No.199 of 2018 and the said case was finally heard on 21.02.2019. The learned Sessions Judge was pleased to dismiss the prayer of the petitioner.

**15. Mr. Gobinda Chandra Baidya, learned counsel for the petitioner** has submitted that the learned Sessions Judge has erred in law and as well as facts.

**16.** That the impugned order passed by the learned Sessions Judge has been passed without appreciating the urgency involved in the case for establishing the offence against the accused persons by police investigation.

**17.** That the impugned order passed by the learned Sessions Judge is otherwise bad, illegal and ought to be set aside.

**18. Mr. Prasun Kumar Datta, learned counsel for the State** has placed the case diary.

**19. From the materials on record,** it appears that on further investigation, the case ended in charge sheet.

**20. The Hon'ble High Court's order in W.P. No.13930 (W) of 2017 dated 04.08.2017 is as follows:-**

> *"Nobody appears in support of the writ petition, when the matter is taken up for consideration.*
>
> *Report is filed on behalf of the respondent police authorities, wherefrom it appears that charge sheet has been filed against all the accused persons. The report is taken on record.*
>
> *In view of such fact, I dispose of this writ petition observing that it shall be open to the petitioner to appear before the criminal court and ventilate his grievances therein in accordance with law, if so advised.*
>
> *There will be no order as to costs."*

**21.** On perusal of the materials on record including the case diary, it appears **extensive seizure has been made in this case**.

**22. Expert opinion is also part of the case diary** along with statements recorded.

**23. Further investigation has been conducted** by DEB, Hooghly and Charge Sheet has been filed on 31.07.2016.

**24.** As per report of the State, charge has been framed on 21.12.2017. The case has been fixed for evidence. The order of the trial court is as follows:-

***GR 1572/15***

***Dated:- 07.05.2018***

*"Hence, it is*

***Ordered***

*that the instant application u/s 173 (8) of Cr.P.C. hereby stands dismissed but without any order as to cost.*

*However, as the power to proceed against any person, not being the accused before the court under Section 319 of the Cr.P.C., must be exercised only where there appears during inquiry or trial, sufficient evidence indicating his involvement in the offence as an accused and not otherwise. The word "evidence" in this regard contemplates the evidence of witnesses given in court in inquiry or trial. The court cannot add person(s) as accused on the basis of material available in the chargesheet or case diary, but must be based on the evidence adduced before it to the court's satisfaction.*

*The de facto has not mentioned the names of the persons who ought to be added as accused in this case, in his application. If there is any person who ought to be added an accused(s) in this case, he may certainly have the advantage given under Section 319, if during his evidence, the court is satisfied to that end.*

*Likewise he may take recourse to section 311 Cr.P.C. during trial.*

*Fix 12.07.2018 for app/charge."*

***Sd/-***
***Judicial Magistrate***
***5th Court, Serampore, Hooghly***

**25.** The Sessions Court dismissed the revision and affirmed the order of the learned Magistrate.

**26.** The Supreme Court (Majority decision) in ***Romila Thapar & Ors. Vs Union of India & Ors., Writ Petition (Criminal) No. 260 of 2018 on 28th September, 2018*** held :-

*"**19.** After the high-pitched and at times emotional arguments concluded, each side presenting his case with equal vehemence, we as Judges have had to sit back and ponder over as to who is right or whether there is a third side to the case. The petitioners have raised the issue of credibility of Pune Police investigating the crime and for attempting to stifle the dissenting voice of the human rights activists. The other side with equal vehemence argued that the action taken by Pune Police*

*was in discharge of their statutory duty and was completely objective and independent. It was based on hard facts unraveled during the investigation of the crime in question, pointing towards the sinister ploy to destabilize the State and was not because of difference in ideologies, as is claimed by the so called human rights activists.*

***20.*** *After having given our anxious consideration to the rival submission and upon perusing the pleadings and documents produced by both the sides, coupled with the fact that now four named accused have approached this Court and have asked for being transposed as writ petitioners, the following broad points may arise for our consideration:-*

*(i) Should the Investigating Agency be changed at the behest of the named five accused?*

*(ii) If the answer to point (i) is in the negative, can a prayer of the same nature be entertained at the behest of the next friend of the accused or in the garb of PIL?*

*(iii) If the answer to question Nos.(i) and/or (ii) above, is in the affirmative, have the petitioners made out a case for the relief of appointing Special Investigating Team or directing the Court monitored investigation by an independent Investigating Agency?*

*(iv) Can the accused person be released merely on the basis of the perception of his next friend (writ petitioners) that he is an innocent and law abiding person?*

***21.*** *Turning to the first point, we are of the considered opinion that the issue is no more res integra. In Narmada Bai Vs. State of Gujarat and Ors.1, in paragraph 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of Investigating 1 (2011) 5 SCC 79 Agency. Further, the accused persons cannot choose as to which Investigating Agency must investigate the offence committed by them. Paragraph 64 of this decision reads thus:-*

*"64. ….. It is trite law that accused persons do not have a say in the matter of appointment of an investigation agency. The accused persons cannot choose as to which*

*investigation agency must investigate the alleged offence committed by them." (emphasis supplied)*

***22.*** *Again in Sanjiv Rajendra Bhatt Vs. Union of India and Ors.2, the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Paragraph 68 of this judgment reads thus:*

*"68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in* ***Union of India v. W.N. Chadha3, Mayawati v. Union of India4, Dinubhai Boghabhai Solanki v. State of Gujarat5, CBI v. Rajesh Gandhi6,*** *Competition Commission of India v. SAIL7 and Janta Dal v.H.S. Choudhary.8"*

*(emphasis supplied)*

***23.*** *Recently, a three-Judge Bench of this Court in E. Sivakumar Vs. Union of India and Ors.9, while dealing with the appeal preferred by the "accused" challenging the order of the High Court directing investigation by CBI, in paragraph 10 observed:*

*"10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In paragraph 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki Vs. State of Gujarat10, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed in Narender G. Goel Vs. State of Maharashtra11, in particular, paragraph 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity."*

***24. This Court in the case of Divine Retreat Centre Vs. State of Kerala and Ors.12, has enunciated that the High 9 (2018) 7 SCC 365 10 Supra @ Footnote 5 11 (2009) 6 SCC 65 12 (2008) 3 SCC 542 Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of*** *its own choice to investigate into a crime on whatsoever basis.* ***The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own Investigating Agency to investigate the crime in which they are interested.*** *The Court then went on to clarify that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.*

***25.*** *Be that as it may, it will be useful to advert to the exposition in State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.13 In paragraph 70 of the said decision, the Constitution Bench observed thus:*

*"70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles 32 13 (2010) 3 SCC 571 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to*

*properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."*

***27.*** *In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation. The first two modified reliefs claimed in the writ petition, if they were to be made by the accused themselves, the same would end up in being rejected. In the present case, the original writ petition was filed by the persons claiming to be the next friends of the concerned accused (A16 to A20). Amongst them, Sudha Bhardwaj (A19), Varvara Rao (A16), Arun Ferreira (A18) and Vernon Gonsalves (A17) have filed signed statements praying that the reliefs claimed in the subject writ petition be treated as their writ petition. That application deserves to be allowed as the accused themselves have chosen to approach this Court and also in the backdrop of the preliminary objection raised by the State that the writ petitioners were completely strangers to the offence under investigation and the writ petition at their instance was not maintainable. We would, therefore, assume that the writ petition is now pursued by the accused themselves and once they have become petitioners themselves, the question of next friend pursuing the remedy to espouse their cause cannot be countenanced. The next friend can continue to espouse the cause of the affected accused as long as the concerned accused is not in a position or incapacitated to take recourse to legal remedy and not otherwise.*

***30.*** *We find force in the argument of the State that the prayer for changing the Investigating Agency cannot be dealt with lightly and the Court must exercise that power with circumspection. As a result, we have no hesitation in taking a view that the writ petition at the instance of the next friend of the accused for transfer of investigation to independent Investigating Agency or for Court monitored investigation cannot be countenanced, much less as public interest litigation."*

**27.** The said judgment was referred to by the Supreme Court in ***Vinubhai Haribhai Malaviya Vs The State of Gujarat on 16.10.2019 in Original Appeal 478-479 of 2017***, wherein a **Three Judge Bench** held:-

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

***38.** However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct "further investigation" and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] has, in no uncertain terms, stated that principle, as aforenoticed.*

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

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

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

***40.3.** The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three- Judge Bench and thus in conformity with the doctrine of precedent.*

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

***40.5.** The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It*

*does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.*

***40.6.*** *It has been a procedure of propriety that the police has to seek permission of the court to continue "further investigation" and file supplementary charge- sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."*

*xxx xxx xxx*

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

***49.*** *Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct "further investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of*

*the court to conduct "further investigation" and/or to file a "supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.*

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

***51.*** *We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct "further investigation" on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct "further investigation" to clear its doubt and to order the investigating agency to further*

*substantiate its charge-sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this Court in Sivanmoorthy v. State [(2010) 12 SCC 29: (2011) 1 SCC (Cri) 295]."*

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

*"8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished." In paragraph 34, this Court adverted to*

*Common Cause v.Union of India (1996) 6 SCC 775, and dealt with when trials before the Sessions Court; trials of warrant-cases; and trials of summons-cases by Magistrates can be said to commence, as follows:*

*"**34.** In Common Cause v. Union of India [(1996) 6 SCC 775 : 1997 SCC (Cri) 42 : AIR 1997 SC 1539] , this Court while dealing with the issue held: (SCC p. 776, para 1) "1. II (i) In cases of trials before the Sessions Court the trials shall be treated to have commenced when charges are framed under Section 228 of the Code of Criminal Procedure, 1973 in the cases concerned.*

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

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

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

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

*"**39.** Section 2(g) CrPC and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under CrPC by the Magistrate or the court.*

*The word "inquiry" is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial." A clear distinction between "inquiry" and "trial" was thereafter set out in paragraph 54 as follows:*

*"**54.** In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC."*

***36.** Despite the aforesaid judgments, some discordant notes were sounded in three recent judgments. In Amrutbhai Shambubhai Patel v. Sumanbhai Kantibai Patel (2017) 4 SCC 177, on the facts in that case, the Appellant/Informant therein sought a direction under Section 173(8) from the Trial Court for further investigation by the police long after charges were framed against the Respondents at the culminating stages of the trial.*

*The Court in its ultimate conclusion was correct, in that, once the trial begins with the framing of charges, the stage of investigation or inquiry into the offence is over, as a result of which no further investigation into the offence should be ordered. But instead of resting its judgment on this simple fact, this Court from paragraphs 29 to 34 resuscitated some of the earlier judgments of*

*this Court, in which a view was taken that no further investigation could be ordered by the Magistrate in cases where, after cognizance is taken, the accused had appeared in pursuance of process being issued. In particular, Devarapalli Lakshminarayana Reddy (supra) was strongly relied upon by the Court. We have already seen how this judgment was rendered without adverting to the definition of "investigation" in Section 2(h) of the CrPC, and cannot therefore be relied upon as laying down the law on this aspect correctly. The Court therefore concluded:*

*"**49.** On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and the accused has entered appearance in response thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant can direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand.*

***50.** The unamended and the amended sub-section (8) of Section 173 of the Code if read in juxtaposition, would overwhelmingly attest that by the latter, the investigating agency/officer alone has been authorised to conduct further investigation without limiting the stage of the proceedings relatable thereto. This power qua the investigating agency/officer is thus legislatively intended to be available at any stage of the proceedings. The recommendation of the Law Commission in its 41st Report which manifestly heralded the amendment, significantly had limited its proposal to the empowerment of the investigating agency alone.*

***51.** In contradistinction, Sections 156, 190, 200, 202 and 204 CrPC clearly outline the powers of the Magistrate and the courses open for him*

*to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by CrPC to order further investigation even after the cognizance is taken, the accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of CrPC adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) CrPC would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] , the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections*

*311 and 319 CrPC, whereunder any witness can be summoned by a court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court."*

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

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

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

*cognizance stage, more particularly when, in exercise of powers under Section 227 CrPC, the Magistrate discharges the accused. However, Section 173(8) CrPC confers power upon the officer in charge of the police station to further investigate and submit evidence, oral or documentary, after forwarding the report under sub-section (2) of Section 173 CrPC. Therefore, it is always open for the investigating officer to apply for further investigation, even after forwarding the report under sub-section (2) of Section 173 and even after the discharge of the accused. However, the aforesaid shall be at the instance of the investigating officer/police officer in charge and the Magistrate has no jurisdiction to suo motu pass an order for further investigation/reinvestigation after he discharges the accused." Realising the difficulty in concluding thus, the Court went on to hold:*

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

***38.** There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod*

> *under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled."*

**28.** By a Judgment dated 12.10.2022 the Supreme Court in Criminal Appeal No. 1768 of 2022 (***Devendra Nath Singh Vs State of Bihar & Ors***) relying upon several precedents including ***Vinubhai Haribhai Malaviya Vs The State of Gujarat (Supra)*** held:-

> *"**12.5.** The case of **Divine Retreat Centre** (supra) has had the peculiarity of its own. Therein, the Criminal Case bearing No. 381 of 2005 had been registered at Koratty Police Station on the allegations made by a female remand prisoner that while taking shelter in the*

*appellant-Centre, she was subjected to molestation and exploitation and she became pregnant; and thereafter, when she came out of the Centre to attend her sister's marriage, she was implicated in a false theft case and lodged in jail. Parallel to these proceedings, an anonymous petition as also other petitions were received in the High Court, which were registered as a suo motu criminal case. In that case, the High Court, while exercising powers under Section 482 CrPC, directed that the said Criminal Case No. 381 of 2005 be taken away from the investigating officer and be entrusted to the Special Investigating Team ('SIT'). The High Court also directed the said SIT to investigate/inquire into other allegations levelled in the anonymous petition filed against the appellant-Centre. However, this Court did not approve the order so passed by the High Court and in that context, while observing that no unlimited and arbitrary jurisdiction was conferred on the High Court under Section 482 CrPC, explained the circumstances under which the inherent jurisdiction may be exercised as also the responsibilities of the investigating officers, inter alia, in the following words: -*

*"**27.** In our view, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 of the Code. The power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the section itself. It is well settled that Section 482 does not confer any new power on the High Court but only saves the inherent power which the Court possessed before the enactment of the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order 29 under the Code, ( ii ) to prevent abuse of the process of court, and ( iii) to otherwise secure the ends of justice.*

*** *** ***

***39.*** *The sum and substance of the above deliberation and analysis of the law cited leads us to an irresistible conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. However, we may hasten to add that unfettered discretion does not mean any unaccountable or unlimited discretion and act according*

*to one's own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by the Code itself.*

***40. In our view, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge.*** *Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither are the accused nor the complainant or informant entitled to choose their own investigating agency to investigate a crime in which they may be interested.*

***41.*** *It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and noncompliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code."*

*(emphasis supplied)*

***12.6.*** *In the case of* ***Madan Mohan*** *(supra), this Court, of course, reiterated the settled principles that no superior Court could issue a direction/mandamus to any subordinate Court commanding them to pass a particular order but, the questioned directions had been as regards dealing with a bail application, which were not approved by this Court while observing, inter alia, as under: -*

*"**15.** In our considered opinion, the High Court had no jurisdiction to direct the Sessions Judge to "allow" the application for grant of bail. Indeed, once such direction had been issued by the High Court then what was left for the Sessions Judge to decide except to follow the directions of the High Court and grant bail to*

> *Respondents 2 and 3. In other words, in compliance to the mandatory directions issued by the High Court, the Sessions Judge had no jurisdiction to reject the bail application but to allow it.*
>
> ***16.*** *No superior court in hierarchical jurisdiction can issue such direction/mandamus to any subordinate court commanding them to pass a particular order on any application filed by any party. The judicial independence of every court in passing the orders in cases is well settled. It cannot be interfered with by any court including superior court."*
>
> ***12.7.*** *In the case of* ***Neetu Kumar Nagaich*** *(supra), this Court issued directions for de novo investigation in regard to the unnatural death of a law student. We need not elaborate on the said decision for the fact that such directions were issued under the writ jurisdiction of this Court."*

**29.** Thus keeping with the view of the **Supreme Court in *Romila Thapar Vs Union of India (Supra), Vinubhai Haribhai Malaviya Vs The State of Gujarat (Supra), Devendra Nath Singh Vs State of Bihar & Ors*. *(Supra),*** the prayer for further investigation for the Second time cannot be allowed as the relevant materials are already on record and the order of the learned Magistrate dated 07.05.2018 and the order under revision dated 21.02.2019 are in accordance with law.

**30.** In the present case this court finds that the materials on record vis a vis the charge sheet proves that the investigation has been conducted in a fair manner and is prima facie not malafide and thus the charge sheet filed is in accordance with law. Accordingly cognizance taken is also in accordance with law.

**31.** There is thus no scope for interference in respect of the order under revision. Any further indulgence shown to the petitioner/complainant would

clearly amount to an abuse of the process of court and law and also be against the interest of justice.

**32. The revisional application being CRR 945 of 2019 is accordingly dismissed.**

**33.** The order dated 21.02.2019 passed in Criminal Motion being No.199 of 2018 (*Somnath Gupta vs. Kumkum Dey & Ors.*) passed by the learned Additional District & Sessions Judge (1st Court) at Serampore, **is hereby affirmed**.

**34.** All connected applications, if any, stands disposed of.

**35.** Interim order, if any, stands vacated.

**36.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.

**37.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**