

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRM(M) No.157/2023

Reserved on :15.12.2023
Pronounced on:23.02.2024

- 1) Kewal Krishan, aged 64 years
S/o Late Sh. Tabu Ram
R/o Village Manyal Brahmana
P.O.Sangrampur, Tehsil Marh, Jammu
- 2) Akhter Hussain Qazi, aged 47 years
S/o Ahmad Din Qazzi, R/o Thatri Doda
- 3) Manzoor Ahmad aged 64 years
S/o Mir Alam Mir
R/o Amira Nagar Kulsari, Bhaderwah
- 4) Mukesh Sharma, aged 38 years
S/o Pishori Lal Sharma
R/o KashoorJodpur, Doda
- 5) Surinder Manhas, aged 47 years
S/o Sher Singh Manhas
R/o Prem Nagar Doda
- 6) Nazir Ahmad aged 62 years (retired)
S/o Lal Din Shah
R/o Gangatha, Doda
- 7) MohdSharief aged 66 years
S/o Ab. Gaffar
R/o Ghat Doda
- 8) Ab. Rashid Khanday, aged 61 years (retired)
S/o Mohd Sultan
R/o Gaedi Doda
- 9) MusaratParvaiz aged 37 years
S/o Mushtaq Ahmad
R/o Dhanda, Bhalla

...Petitioner(s)

**Through: Mr. P.N.Raina Sr. Advocate with
Mr. J.A.Hamal, Advocate**

V/s

Union Territory of J&K Th.
Senior Superintendent of Police
Police Station Vigilance Organization Jammu
(Now Anti-Corruption Bureau, Doda, Camp Office Jammu)

...Respondent(s)

Through: Mrs. Monika Kohli, Sr. AAG.

CORAM: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT

PRAAYER:

1. The instant writ petition has been filed on behalf of the petitioners under Section 482 of the Code of Criminal Procedure, 1973 praying for the following reliefs:-

a) Quashing of order dated 30.01.2023, as passed by Ld. Special Judge Anti-corruption, Doda in File No.01/2022, whereby Ld. Court has declined to accept the closure report filed by the respondent in FIR No. 07/2013 and ordered further investigation;

b) Quashing of FIR No.07/2013 registered against the petitioners under sections 5(1)(d) r/w 5(2) of J&K Prevention of Corruption Act, 2006 and 120-B RPC;

c) Quashing of order dated 31.12.2018, as passed by Ld. Special Judge Anti-corruption, Doda in File No.04/Ikhtami, whereby Ld. Court has declined to accept the closure report filed by respondent in FIR No.07/2013 and ordered re-investigation;

2. With a view to appreciate the controversy involved in the instant petition, it would be appropriate to give factual background of the instant case.

BRIEF FACTS OF THE CASE:

3. Briefly put, the facts of the present case are that the Police Station, Vigilance Organization, Jammu registered **FIR No. 07/2013** against the petitioners *U/S 5(1) (d) r/w 5(2) J&K Prevention of Corruption Act, 2006, 120-B Ranbir Penal Code*, for misappropriation of funds by dishonest and fraudulent means. The allegations which had resulted in the registration of FIR related to items that resulted in an enquiry by the department are under the following major heads: -

A. Construction of pond at Sheel

B. Construction of work at the graveyard, Dungram

C. Construction of Pacca Path near the house of Chandrakant and Mir Hussain Shiva Proper.

4. The allegations pertain to the fraudulent withdrawal of funds by officers of the Rural Development Department, Block Ghat, Doda, which revealed that during the years 2009–10 and 2010–11, the then Block Development Officers namely Abdul Karim Tantray and Akthar Hussain Qazi, Executive Engineer REW Doda, namely, Kewal Krishan Gorkha, Assistant Executive Engineer, namely, Manzoor Ahmed Mir, Junior Engineers, namely, Surinder Manhas, Mukesh Sharma, Musrat Parvaiz Naik and some village level workers hatched a criminal conspiracy and in pursuance thereof, withdrew an amount of Rs. 3,93,209 (Rupees Three Lac Ninety-Three Thousand Two Hundred and Nine) against three non-existent works to be executed in Panchayat Hanch, Seel, and Shiva of Block Ghat and misappropriated the same dishonestly and fraudulently, thereby, causing a loss to the state exchequer.

ARGUMENTS ON BEHALF OF THE PETITIONERS: -

5. Mr. P N Raina, learned Senior Counsel, along with Mr. J.A Hamal, Advocate submitted that insofar as the order dated 31/12/2018 is concerned, whereby, the Special Judge, Anti-Corruption, Doda declined to accept the closure report filed by the respondent in FIR No. 07/2013 and ordered **reinvestigation**, is illegal, unfair, without jurisdiction and an abuse of the power of investigation as well as the power of the Hon'ble Court. He submits that the Magistrate has no power to direct fresh/de-novo/re-investigation after the filing of the closure report. In his submission, this power is only available to the higher judiciary that is the High Court and the Supreme Court alone. In support of his submission, he relies on the judgment of the Hon'ble Supreme Court of India in a case titled "***Vinay Tyagi v. Irshad Ali (2013) 5 SCC 762***". Consequently, the learned counsel submits that the order dated **31/12/2018**, which ordered reinvestigation by the Vigilance Organization Jammu was clearly without jurisdiction and against the process of law.

6. The learned Counsel for the petitioners further submits that the second order impugned in the petition dated **30.01.2023**; directing further investigation is again without jurisdiction, inasmuch as the said order has been passed casually without considering the entire exercise of investigation done by the VOJ (Vigilance Organization Jammu). He submits that the VOJ, having been cognizant to the situation, where, the petitioners were departmentally charge-sheeted and subsequently, the departmental enquiry had also exonerated them. As per his submission, even the fact of the petitioners having deposited some requisite penalty

amount which, as a consequence of not following the procedure ordered in the enquiry, was taken note of and the vigilance organization had come to a conclusion that there was no criminal element which came to fore and could be treated as a basis for submitting the report in affirmative i.e. producing challan against the petitioners for the said irregularity.

7. It is further case of the petitioners that the expressions used in the latest impugned order dated **30.01.2023** are nothing but an expression rejecting the final investigation report without any legal justification and ordering investigation from a particular angle which is not the jurisdiction of the Magistrate. In support of his submission, he relies on the judgment of the Supreme Court of India in case titled “*Popular Muthiah vs State (2006) 7 SCC 296*”.

8. The learned counsel for the petitioners further submits that since vigilance (now ACB) had investigated all allegations, including the one which was noticed in orders dated **31.12.2018** and **30.01.2023**, repeated orders of reinvestigation/ further investigation cannot be passed, and reports submitted thereupon cannot be refused to be accepted only, because, Magistrate may have the power to agree or disagree to such a report. The basic proposition of law, as per the learned counsel, is that the police have the statutory power of investigation, and the Magistrate cannot ask the final report to be filed in a particular way when the same lies within the realm of the investigating agency.

9. The petitioners further submit that the FIR involved ten individuals with one deceased and several retired. The deposition of penalties by some

retiring individuals was to prevent withholding of their retirement benefits. The ongoing FIR and rejection of closure reports caused undue harassment, warranting quashing of the orders.

10. In light of the submissions, the petitioners pray for the quashing of the orders (*supra*) along with the FIR.

ARGUMENTS ON BEHALF THE RESPONDENT: -

11. Ms. Monika Kohli, learned Sr. AAG, submitted that on the basis of evidence collected during the investigation, including statements of witnesses recorded, expert opinion, and engineering reports, the criminal liability of the concerned public servants, has not been established. As per her submission, on these facts, the instant case was closed as not proved.

12. The learned counsel for the respondents submits that during the course of the investigation, it came to the fore that the work still exists on the ground in good condition and there is no embezzlement on part of the officials except for changing the nomenclature of Pacca path work in Panchayat Shiva without adopting proper procedure, that too at the instance of Gram Sabha and local public. The learned counsel submits that this fact is fully established as all the concerned officials as well as Gram Sabha were fully aware of the change of work which was done due to the fact that PWD had undertaken the construction of the road on the proposed lane drain, which was to be constructed by Rural Development Department. This, as per the submission of the learned counsel, establishes that the work was actually executed, but the measurements were not taken during verification because of changed nomenclature. She further submits that the

mode of execution of work cannot be attributed to criminality, but irregularity.

13. The learned counsel further submits that during the course of the investigation, the works which were alleged to be non-existent were in fact found to be executed on the ground, even though with certain shortcomings like, not strictly following the guidelines of NREGA/MNREGA. Consequently, in the submission of the learned counsel, no criminality was established against the alleged accused persons (Petitioners herein), though they have committed irregularity in deviating from the lead guidelines of the scheme by not following the proper procedure for change of nomenclature of the works.

14. The learned counsel further submits that on the basis of the evidence and statements, the investigation of the instant case was closed as not proved and initiation of Regular Departmental Action (RDA) was recommended against the concerned officials of the RDD for lesser execution of work and not following the proper procedure for the change of nomenclature of the work.

15. She further submits that the Final report (Ikhtitami) u/s 173 Cr.PC was filed before the Court of Special Judge Anti-Corruption, Doda on **16-08-2017**. However, the Ikhtitami was not accepted by the Trial Court and the following observations were raised, whereby, the court below ordered for re-investigation of the case vide order dated **31.12.2018**. One of the complainants, namely Farooq Ahmed had deposed before the court that being a Social Worker of the area, an application had been filed for

registration of the case against the erring officials on account of withdrawal of money on fake bills. He had further deposed that a person who has already died, bills have been withdrawn on their names from the Govt. Treasury and payments have been made, whereas some ineligible laborers and even the students, who were not competent to do the labor work have been shown to be engaged in the completion of the Government work and according to him, the matter requires in-depth investigation.

16. The Court has further taken into consideration the 2nd closure report, wherein the Investigating Officer (I.O) in the case did not associate the complainant, namely, Farooq Ahmed while investigating the case. In the statement made by the complainant in this case, he has deposed before the Trial Court that the I.O of the case has made no effort to record the statements of independent witnesses in order to unearth the bungling committed in the execution of the Government works.

17. During the course of further Investigation, the complainant Sh. Farooq Ahmed Dar was called and his statement was recorded, wherein, he has stated that his complaint may be considered as his statement. The learned counsel for the respondents also brought it to the notice of the Trial Court that during further investigation inhabitants of Seel, Hanch, Shiva & Dungram attended the camp office, Doda where witnesses were examined, and their statements were recorded. In their statements, they had stated that the works at Village Panchayat Shiva executed by Rural Development Department Block Ghat during the year 2010-11 are in satisfactory condition but the nomenclature of the works executed was changed by the

officer/officials of the concerned department on the requests of the inhabitants of the area and Sarpanch/Panchs i.e. User Committee.

18. In furtherance, the learned counsel stated that the investigation into FIR No.07/2013, which initially concluded with a closure report due to lack of evidence, faced a setback when the Court of Special Judge Anti-Corruption Doda declined to accept the closure report on **30.01.2023**. The court directed *further investigation* into fraudulent withdrawal of money using fake job cards of deceased government employees. The counsel differs from the court's observation regarding allegations of disbursement of payments to the deceased/Govt. Servants as it was not a part of the original FIR, but the subsequent inquiry, revealed challenges in obtaining information due to a fire incident that destroyed relevant records.

LEGAL ANALYSIS

19. Heard Ld. Counsel for the parties at length and perused the record. With the consent of both of the parties, the case is taken for its final disposal. The questions which have come for the consideration of this Court are as follows:-

- i. Whether the learned Special Judge Anti-Corruption, Doda was within its jurisdictional power to direct re-investigation of the case in light of the closure report submitted by the investigating agency?*
- ii. Whether the trial court can order for further investigation of the case in light of second Closure report submitted by the investigating agency when the main allegations alleged in the complaint have not been investigated at all by the Investigating Agency?*

iii. *Whether the High Court can order re-investigation/de-novo/fresh or further investigation in a peculiar case while exercising powers under section 482 of Code of Criminal Procedure?*

20. From a bare perusal of order dated **31.12.2018**, the Ld. Special Judge, Anti-corruption, Doda, while declining to accept the closure report filed by the respondents in **FIR No. 07/2013**, ordered ‘reinvestigation’ in the matter. Therefore, the first question which is required to be dealt by this Court is, whether the Magistrate can order re-investigation of the case in absence of any express provision of law in this regard.

21. In the present case, the Trial Court in its order dated **31.12.2018**, while declining to accept the closure report, directed the investigating agency to “*re-investigate*” the matter and bring the real offenders before the court. The relevant extract of the order of the Trial Court is reproduced herein under: -

“Thus, in view of the statement recorded before the Court as well as report submitted by the Vigilance Organization, this closure report is not accepted and it is returned with the direction to re-investigate the matter and bring the real offenders before the Court. Office is directed to prepare an index, same shall be consigned to records and closure report be returned to the concerned wing under rules.”

22. The procedure as to completion of investigation and the filing of the report has been provided under **Section 173 of Criminal Procedure Code 1973**. As per the mandate of Section 173(8) of the Code *supra*, the Magistrate has been empowered to direct further investigation after the report has been submitted by the investigating agency. The relevant portion of the section 173(8) of CrPC is reproduced as under:

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

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

23. Before dealing with the question in hand, what is also important to bear in mind is that a ‘further investigation’ as envisaged under section 173(8) CrPC is neither ‘*fresh investigation*’ nor it is ‘*re-investigation*’. A ‘further investigation’ means an additional investigation, for, it is a continuation of the earlier investigation and not a ‘fresh’ or ‘re-investigation’, which starts *ab-initio*, though the materials, which may have surfaced and unearthed during earlier investigation may be taken into account by the officer or the investigating agency conducting re-investigation. Therefore, it must be noted that there is a fine line of distinction between *reinvestigation* and *further investigation*.

24. It is a settled principle of law, that the courts subordinate to the High Court do not have the statutory inherent powers as the High Court does under *Section 482* of the Code, and, therefore, must exercise their jurisdiction within the four corners of the Criminal Procedure Code.

25. The Hon’ble Supreme Court, in case titled *State through Central Bureau of Investigation Versus Hemendhra Reddy & Another. Etc.* reported as (2023) SCC Online SC 515 has culled out the distinction between *further investigation* and *re-investigation* as under:

56. There is no doubt that “further investigation” and “re-investigation” stand altogether on a different footing. In Ramchandran v. R. Udhayakumar reported in (2008) 5 SCC 413, this Court has explained the fine distinction between the two relying on its earlier decision in K. Chandrasekhar v. State of Kerala reported in (1998) 5 SCC 223. We quote paras 7 and 8 as under:

“7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation. This was highlighted by this Court in K. Chandrasekhar v. State of Kerala [(1998) 5 SCC 223 : 1998 SCC (Cri) 1291]. It was, inter alia, observed as follows : (SCC p. 237, para 24)

“24. The dictionary meaning of ‘further’ (when used as an adjective) is ‘additional; more; supplemental’. ‘Further’ investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a ‘further’ report or reports—and not fresh report or reports—regarding the ‘further’ evidence obtained during such investigation.”

8. In view of the position of law as indicated above, the directions of the High Court for reinvestigation or fresh investigation are clearly indefensible. We, therefore, direct that instead of fresh investigation there can be further investigation if required under Section 173(8) of the Code. The same can be done by CB CID as directed by the High Court.”

26. The Hon’ble Supreme Court has consistently, in a catena of judgments, held that under the Code, the investigating agencies as well as the Trial Court has the power to conduct **“further investigation”** in terms of Section 173 (8) of the Code, which is in contradistinction to fresh/reinvestigation. The power to order reinvestigation or fresh investigation falls exclusively in the domain of higher courts, that too in exceptional cases. It would be advantageous to refer to the law laid by the Apex Court in **“Mithabhai Pashabhai Patel v. State of Gujarat**, reported in **(2009) 6 SCC 332**, the operative portion of which is reproduced as under:

13. It is, however, beyond any cavil that “further investigation” and “reinvestigation” stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a “State” to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction.

15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code.”

27. The Hon’ble Supreme Court of India in the case of “*Vinay Tyagi versus Irshad Ali.*” reported as (2013) 5 SCC 762, has observed as under:

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

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.”

28. Therefore, from the law laid down by the Hon’ble Supreme Court of India in the above-cited judgments, it is emphatically clear that there is a

distinction between *re-investigation* and *further investigation*. It is only *further investigation* which is enabled in the provisions of the code, and is in sharp contradistinction to reinvestigation. Consequently, the power to order for reinvestigation lies beyond the realm of Courts subordinate to the High Court, i.e. Trial Courts.

COURT'S VIEW:

29. From what has been discussed hereinabove, it is clear that *re-investigation* cannot be ordered by the Trial Court within the four corners of Section 173 of the Code. The scope of Section 173(8) of CrPC is clear in this regard that the Magistrate can direct *further investigation* but the *re-investigation* of the case can be only ordered by the constitutional courts. Therefore, the Trial Court, in its order dated **31.12.2018**, has exceeded its jurisdiction by directing the investigating agency to re-investigate the case.

30. In the light of the import of Section 173(8) of the Criminal Procedure Code, read with the law laid down by the Hon'ble Supreme Court of India, this Court is of the considered view that ordering *re-investigation* by a Magistrate after the closure report has been filed, lies beyond the jurisdiction of the Trial Court and thus the Trial Court has exceeded its powers.

Question No. i is accordingly, answered.

ii. Whether the trial court can order for further investigation of the case in light of second Closure report submitted by the investigating agency when the main allegations alleged in the complaint have not been investigated at all by the investigating agency?

31. In so far as the latest order dated **30.01.2023** passed by Special Judge, Anti-Corruption, Doda is concerned, which is also impugned in the present petition, the question which arises before this Court is to consider whether, in the peculiar facts and circumstances of the present case, the Magistrate could have ordered for further investigation under Section 173(8) of CrPC while declining to accept the second closure report filed by the investigating agency after detailed inquiry.

32. There cannot be any fault with the proposition that Magistrate has the power to order for “**further investigation**” under the four corners of section 173(8) of the Code. However, it is important to note that this power conferred on the Magistrate under **Section 173(8)** of the Code requires to be exercised at the very threshold, when the closure report is being submitted to the Magistrate by the investigating agency under section 173(2) of the Code.

33. However, in the peculiar facts of the present case, the learned Special Judge Anti-Corruption, Doda, could not have ordered further investigation of a case, which has cascaded from the order of re-investigation, when the order of re-investigation itself is void *ab-initio* and not sustainable in the eyes of law. This Court in the preceding paragraphs has already held that the order of reinvestigation is beyond the jurisdiction of the Trial Court and any investigation so conducted on the basis of the said order has no legal sanctity and cannot be subsequently legalized.

34. The Hon’ble Supreme Court in the case of “**Amrutbhai Shambhubhai Patel vs Sumanbhai Kantibhai Patel and Ors.**”, reported as **(2017) 4 SCC 177**, in Para 21 has held as under: -

“...21. The integration of Sub-Section 8 is axiomatically subsequent to the 41st Report of the Law Commission Report of India conveying its recommendation that after the submission of a final report under Section 173, a competent police officer, in the event of availability of evidence bearing on the guilt or innocence of the accused ought to be permitted to examine the same and submit a further report to the Magistrate concerned. This assumes significance, having regard to the language consciously applied to design Section 173(8) in the 1973 Code. Noticeably, though the officer in-charge of a police station, in categorical terms, has been empowered thereby to conduct further investigation and to lay a supplementary report assimilating the evidence, oral or documentary, obtained in course of the said pursuit, no such authorization has been extended to the Magistrate as the Court is session of the proceedings. It is, however no longer res integra that a Magistrate, if exigent to do so, to espouse the cause of justice, can trigger further investigation even after a final report is submitted under Section 173(8). Whether such a power is available Suo-motu or on the prayer made by the informant, in absence of a request by the investigating agency after cognizance has been taken and the trial is in progress after the accused has appeared in response to the process issued is the issue seeking scrutiny herein.”

35. It would also be apt to refer to the judgment of the Hon'ble Supreme rendered in the case titled, *“Ramchandran v R. Udhyakumar and others, reported in (2008) 5 SCC 413”*, the relevant extract, whereof, is reproduced as under:-

“...7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above Section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or re-investigation. This was highlighted by this Court in K. Chandrasekhar v. State of Kerala and Ors. (1998 (5) SCC 223). It was, inter alia, observed as follows:-

"24. The dictionary meaning of "further"(when used as an adjective) is "additional; more; supplemental".Further" investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab-initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that Sub-Section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a "further" report or reports -- and not fresh

report or reports -- regarding the "further" evidence obtained during such investigation;

8. In view of the position of law as indicated above, the directions of the High Court for re-investigation or fresh investigation are clearly indefensible. We, therefore, direct that instead of fresh investigation there can be further investigation if required under Section 173 (8) of the Code. The same can be done by the CB (CID) as directed by the High Court."

36. Although, procedurally, the order of reinvestigation and the subsequent order of further investigation cannot be sanctified or legalized, this Court is not oblivious to the facts which led to the Trial Court to order for further investigation into the present matter. At this juncture, it is also important to note that the petitioner has approached this Court under Section 482 of Criminal Procedure Code, which is its power to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

37. The fact of the matter is that the main allegation which has been leveled by the complainant in the complaint, has not been inquired/ investigated into by the Investigating Agency for reasons which do not impress upon this Court. This was precisely the reason that, firstly, the Special Judge Anti-Corruption, Doda after recording the statement of the complainant that no effort was made by the Investigating Officer to associate with the complainant or record statements of independent witnesses, ordered *reinvestigation* with a view that the investigating agency was trying to shield the real offenders, and also without alluding to the real offence. Subsequently, the Special Judge Anti-Corruption, Doda, while deciding on the second closure report, after calling for and perusing the complaint, which, according to him was detailed and was annexed with documentary evidence, observed that, yet again, the Investigating Agency

had not drawn its attention on the fraudulent drawl of money in the name of deceased persons and on withdrawal of money by the concerned officials on fake job cards of Govt. employees. Perusal of the order of the learned judge further reveals that the Special Judge Anti-Corruption, Doda was of the view that the Investigating Agency, by focusing only on the aspect of execution of works and the change in nomenclature, was attempting to over-simplify serious allegations of indictment against the erring officials. Thus, while declining to accept the second closure report, the learned Special Judge Anti-Corruption observed as follows :-

“5. The investigating officers seem to have lost focus from real subject matter of investigation and have thus played with ducks and drakes to conclude that its case of commission of no-offences. The standard of investigation adopted in FIR in question, if I may say so with restraint, is far below that of a preliminary verification before registration of an FIR in vigilance cases. Investigation conducted shows, either total reluctance on the part of investigating officers to un-ravel the truth or pure lack of modicum knowledge of law needed by investigating officers to investigate a criminal case pertaining to one under Prevention of Corruption Act. I say no more.”

6. For all what is said hereinabove the acceptance of this closure report is thus declined and same is returned to investigating agency for “further investigation” in accordance with law. Office shall prepare an Index and consign the same to records after returning closure report as aforesaid to the concerned through prosecution.”

38. The record thus reveals a deliberate attempt on part of the Investigating Agency to circumnavigate the main allegations in the complaint while only dealing with issues ancillary to the main issue time and again. The record even reveals that the respondents while filing the

reply, have gone to the extent of making a statement that *“there was no such allegation of withdrawing of money in the name of deceased/Govt. Employees/fake payments on un-executed works and fake beneficiaries”*, when in fact, this was the main allegation in the complaint. With a view to verify the allegations levelled in the complaint filed by the complainant (Farooq Ahmad Dar), this Court directed Mrs. Kohli, the learned Senior Additional Advocate General to produce the record and a perusal whereof reveals that that these allegations were there in the complaint.

39. With a view to proceed further in the matter, this Court deems it proper to reproduce the relevant part of the complaint filed by the complainant (Farooq Ahmed) which is as under: -

“This is to intimate that the B.D.O’s of Block Ghat Session 2008-09 to 2010-11 namely (i) Abdul Karim Tantray and (ii) Akther Hussain Qazi No. 2 VLW’s namely (I) Mohd. Sharief Per Pvt. Shiva (ii) Surinde Kumar Pyt. Bhabore (iii) Abdul Rashid Khandy Pyt. Udhyanpur and Seel (iv) VLW’s of Pyt. Upper-Aronra Session 2008 to 2010-11 (v) Nazir Ahmed Shah Pyt. Hanch and JE’s of related Panchayats also have committed serious fraud and have caused serious loss to state exchequer by disbursing/drawing the funds on the name of deceased/Govt. Employees/fake payments on un-executed works and fake beneficiaries.

The names of the deceased person are as under:

Nath Ram S/o Bhag Chand R/o Sharie Pyt. Udhyanpur Job Card No. 123-A Session 2010-11 (Date of Death 07-09-2009) Ghulam Mohd. S/o Fazal Din Shah R/o Shiva Job Card No. 38-A Session 2009-10 (Date of Death 28.12.2008).

40. As stated in the second closure report regarding the observations of the allegations of disbursement of payments to the deceased/Govt. Servant as raised by the Trial Court in the aforementioned order dated 30-01-2023, the respondents have taken a specific stand while filling the reply that no such allegations were alleged in the FIR. The respondents have further

stated that the allegations, as observed above, have been enquired by the enquiry officer during course of verification upon which FIR came to be registered. As per the stand of the respondents, no information/record could be obtained regarding the payment to deceased, Govt. employee and engaging underage labour from the concerned department. The respondents have further pleaded in their reply that during the course of further investigation, concerned record was called from ACD Doda, who informed that all the record has been gutted in fire incident and in this regard FIR No. 201/2018 under Section 436 RPC has been lodged in Police Station, Doda.

41. The stand of the respondents is self-contradictory in light of the fact that on one hand, the respondents have pleaded that these allegations have been enquired into by the Enquiry Officer and in the same breath, the respondents have pleaded that the record was gutted in fire. Once, no record was available with the respondents, then on what basis, the Inquiry Officer while conducting preliminary inquiry, has given a clean chit to the petitioners is not forthcoming from the record. This smacks foul play on part of the respondents, who without a thorough preliminary inquiry or investigation have given a clean chit to the petitioners.

42. The Court is of the view that the main allegation leveled in the complaint regarding the disbursement of payments to the deceased/Govt. Servants were not investigated by the Vigilance Organization Jammu, even after the Special Court's orders specifically highlighting this issue. Hence, this Court is of the view that, factually, the shoddy investigation and lapses in identifying the moot issue in the complaint led to the order for further investigation by the subordinate Court. However, as discussed, the power of

further investigation which the Magistrate was otherwise empowered under Section 173(8) has been exercised as a consequence of the proceedings of earlier order of *re-investigation* which was itself bad in law from the very inception. Consequentially, any proceeding which flows from such an order is also nullity in the eyes of law and deserves to be quashed. Despite the said orders being procedurally unsustainable, this Court cannot lose sight of the aforementioned reasons, why such further investigation was ordered in the peculiar facts of the instant case.

43. In addition to the aforementioned, the conduct of the petitioners has not been above board in the present litigation. From a bare perusal of the pleadings in the instant petition, it is abundantly clear that the order passed by the Trial Court for re-investigation was not objected to by the petitioners at the time of passing of the order on 31.12.2018 and the same has been acted upon and the reinvestigation has already been done. Pursuant to the re-investigation, the second closure report was filed and the petitioners after having accepted the said order gladly and voluntarily have thrown challenge to the said order belatedly after five years.

44. Further, it is apt to mention that the petitioners did not have any grievance against the earlier order of reinvestigation, as they were given a clean chit and it was only when the latest order of further investigation was passed, it appears that the petitioners have arisen from a deep slumber and have challenged the earlier order of re-investigation in the instant petition after a gap of five years.

45. Had the learned Trial Court not ordered further investigation by virtue of the impugned Order **30.01.2023**, the petitioners would not have any grouse against the same, as they have accepted the order gladly and voluntarily for five long years. It was only, when Trial Court ordered further investigation, the petitioners have arisen from a deep slumber and challenged the order of re-investigation dated **31.12.2018** along with the order of further investigation dated **30.01.2023**.

COURT'S VIEW

46. Therefore, in light of what has been discussed hereinabove, the Court is of the view that the order passed by the Learned Special Judge Anti-Corruption, Doda for *further investigation* of the case as an offshoot of the earlier order of *re-investigation*, does not sustain the test of law. On this Court has recorded a finding that the aforementioned order of *re-investigation* was *per se* illegal, then, the order of *further investigation* passed by the learned Special Judge Anti-Corruption, Doda, cannot be said to be legal. This Court also takes note of the facts leading up to the order of further investigation by the learned Special Judge, as well as the conduct of the petitioners and the investigating agency in the present case.

47. As far as the facts of the present case are concerned, it is crystal clear that the main allegations leveled in the complaint were not investigated upon by the Investigating Agency and this was precisely the reason that the learned Special Judge Anti-Corruption, Doda was constrained to order *further investigation* in the instant case. It is apparent from a bare perusal of the facts in the instant case that the intention of the learned Magistrate while ordering *further investigation* was with the sole object to ensure fair

investigation in the case so as to reach a just and fair conclusion. Had the Investigating Agency conducted the investigation fairly keeping into consideration the allegations leveled in the complaint, then perhaps there was no occasion for the learned judge to have ordered *further investigation* in the instant case.

48. Conscious of the riders imposed under Section 173 (8) of the Code and the law laid down by the Hon'ble Apex Court in this regard, the Magistrate in the instant case has exceeded the jurisdiction vested in him and thus, this Court has no hesitation in holding that the order of *re-investigation*, even at this belated stage, is unsustainable in the eyes of law.

Accordingly, Question No. ii is answered.

49. It goes without saying that it does not lie within the domain of the courts to intrude on police matters assigned to them by law for investigation who have the expertise in the matter. The role of the judiciary and the police are meant to complement each-other rather than transgressing in their respective domains. Preserving individual freedom while maintaining law and order can only be achieved by allowing each institution to carry out its designated responsibilities. It is pertinent to highlight that if any evidence is sought to be presented by the complainant, which may or may not assist the investigating agency, but it is entirely unreasonable on part of the investigating agency to ignore its examination during investigation process. There is no legal provision that prohibits the investigating officer from reviewing the material if it is essential for uncovering the truth.

50. As far as the facts of the present case are concerned, it is crystal clear that the main allegations leveled in the complaint were not investigated upon by the investigating agency and this was precisely the reason that the learned Special Judge Anti-Corruption, Doda was constrained to order *further investigation* in the instant case.

51. It is apparent from a bare perusal of the facts in the instant case that the intention of the learned Magistrate while ordering *further investigation* was with the sole object to ensure fair investigation in the case so as to reach just and fair conclusion. Had the investigating agency conducted the investigation fairly keeping into consideration the allegations leveled in the complaint, then perhaps there was no occasion for the learned judge to have ordered *further investigation* in the instant case.

52. An investigation aimed at bringing out the truth, by taking into consideration all relevant material which is desirable for the purpose of an investigation, is what would constitute a fair investigation. As a necessary corollary, an investigation which brushes aside material central to the cause of ascertainment of truth, and misses wood for the trees, would be hard to categorize as a fair investigation.

53. In this regard, this Court is fortified by the view of the Hon'ble High Court of Judicature at Bombay in case titled *Nikhil Ashokrao Waghmare and Others Vs State of Maharashtra and Another* (CrlA No 573 of 2022) decided on 18.10.2023, wherein it was observed as follows:

“Since the fair investigation and discovery of truth is the ultimate object, the investigating officer has to unearth the truth and bring the real facts on record. It is a requirement of fair trial that there

is fair investigation, and there can be no fair investigation if the investigating officer does not take into consideration all relevant material which is desirable for the purpose of investigation. Needless to say that the Code of Criminal Procedure does not envisage one sided investigation aimed at collecting material only to substantiate the case of prosecution.”

54. Similarly, in *Samaj Parivartan Samudaya v. State of Karnataka*, (2012) 7 SCC 407, the Hon’ble Supreme Court has made the following observations: -

“56. Significantly, it requires to be noticed that when the court is to ensure fair and proper investigation in an adversarial system of criminal administration, the jurisdiction of the court is of a much higher degree than it is in an inquisitorial system. It is clearly contemplated under the Indian criminal jurisprudence that an investigation should be fair, in accordance with law and should not be tainted. But, at the same time, the court has to take precaution that interested or influential persons are not able to misdirect or hijack the investigation so as to throttle a fair investigation resulting in the offenders escaping the punitive course of law. It is the inherent duty of the court and any lapse in this regard would tantamount to error of jurisdiction.

60. We do not find any necessity to multiply the precedents on this issue. It is a settled principle of law that the object of every investigation is to arrive at the truth by conducting a fair, unbiased and proper investigation.

55. Further the Hon’ble Apex Court in *Vinay Tyagi (Supra)* has held as under:

“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 investigation canons.”

56. Owing to the lapses and inconsistencies in the present investigation, it becomes necessary to consider the following question: -

iii. Whether the High Court can order re-investigation/de-novo/fresh or further investigation in a peculiar case while exercising powers under section 482 of Code of Criminal Procedure?

57. While dealing with the question in hand as to the High Court's exercise of its inherent powers under **Section 482 of Criminal Procedure Code** it is advantageous to reproduce the relevant provisions of law: -

482. Saving of inherent powers of High Court.

- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

58. Section 482 of the Code of Criminal Procedure Code affirms that the High Court retains inherent powers to issue orders to uphold the principles of justice, irrespective of the provisions outlined in the Code. This means

that the High Court can intervene to ensure the enforcement of court orders or to prevent any misuse of legal processes, as deemed necessary. Thus, the language used in Sub-section 8 of Section 173 of the Code does not constrain the powers of the High Court to order a *fresh investigation* or *re-investigation* under Section 482 of the Code, if it determines such action essential for achieving fair and impartial justice.

59. This Court is supported by the view taken by the Hon'ble Apex Court in a recent case titled *Devendra Nath Singh Vs State of Bihar* reported in (2023) 1 SCC 48, wherein, it has been observed as under:

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 156 CrPC 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 482 CrPC 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 482 CrPC 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 482 CrPC 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 482 CrPC 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.

60. Furthermore, the Hon'ble Supreme Court in case titled *State of Punjab Vs CBI and Ors* reported in (2011) 9 SCC 182, in Para 22 and 24 has observed as follows:

22. Section 482 of the Cr.P.C., however, states that nothing in the Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under the Cr.P.C. or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Thus, the provisions of the Cr.P.C. do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the

Court or to prevent the abuse of any process of the Court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 of the Cr.P.C., therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of the Cr.P.C. for fresh investigation or re-investigation if the High Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice.

24. It is clear from the aforesaid observations of this Court that the investigating agency or the Court subordinate to the High Court exercising powers under Cr.P.C. have to exercise the powers within the four corners of the Cr.P.C. and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 of the Cr.P.C. and such further investigation will not mean fresh investigation or re-investigation. But these limitations in sub-section (8) of Section 173 of the Cr.P.C. in a case where charge sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 of the Cr.P.C. for securing the ends of justice.

COURTS VIEW:

61. As far as the facts of the present case are concerned, initially, the learned Judge while ordering the re-investigation of the case has over stepped to the extent of ordering *re-investigation* into the case which was the domain of the Higher Courts under Section 482 of the Code. Whether a Magistrate should order *further investigation* depends on the circumstances of each case. It is within the domain of the Magistrate to order *further investigation* only, however, the power to direct *re-investigation* lies with the higher Courts, based on the facts in each case.

62. No doubt Section 482 of the Code does not grant any new powers to the High Court but rather preserves its inherent authority, however, such

power is not an arbitrary discretion of the court. The power so granted under the Section *supra* shall be used cautiously and judiciously and only in those events where there is no direct conflict with any express provision of the code.

63. This Court is conscious of the fact that the powers of the High Court in terms of Section 482 must be exercised sparingly, with circumspection, and in exceptional cases. At the same time, it is a well-established principle in criminal law that courts must make every possible endeavor to ensure fair and transparent investigation and if it comes to knowledge of the High Courts that there is any lacuna on part of the Magistrate or investigating agency, the High Courts, in terms of its power under Section 482 must step-in, in such situations so as to ensure a fair investigation, which is a precursor to a fair trial. Thus, after a careful analysis of the instant case, this Court deems it proper to invoke the inherent powers under 482 of the Criminal Procedure Code.

64. It goes without saying that the constitutional courts have the authority to order re-investigation/*de-novo*/fresh or even assign the investigation to any other investigating agency, with a view to ensure a fair investigation, as a fair trial is often impossible without a fair investigation. While this Court acknowledges that issuing such a direction with regard to an investigation of a case should be done sparingly, the facts and circumstances of the present petition, as discussed above, have compelled this court to exercise this power.

65. This Court is fortified by the view taken by the Hon'ble Apex Court in the case titled *Anant Thanur Karmuse vs State of Maharashtra* reported as (2023)5 SCC 805, the relevant paras, whereof are reproduced as under:

“Para 38: In the case of Dharm Pal (supra), 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 re-investigation 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.”

Accordingly, Question No. iii is answered.

CONCLUSION

66. This Court finds that in terms of the mandate of Section 173(8) of the Code, the order of re-investigation passed by the learned Special Judge, Anti-Corruption, Doda, dated **31.12.2018**, cannot sustain. Despite the fact that much water has flown from the date the said order was passed, yet this Court is not hesitant to quash the said order as the same was passed without proper application of mind and jurisdictional power of the said Court.

67. Therefore, the petition is hereby allowed to the extent of holding the order the Order of **re-investigation** dated **31.12.2018** passed by Special Judge Anti-Corruption, Doda, as unsustainable in the eyes of law and is

liable to be quashed. Accordingly, the Order of **re-investigation** dated **31.12.2018** is quashed.

68. Further, the subsequent order passed by the Learned Special Judge Anti-Corruption, Doda dated **30.01.2023** ordering *further investigation*, for the reasons spelled out in the said order, being an offshoot of earlier illegal order of *re-investigation* is also quashed.

69. Additionally, given the nature of allegations alleged in the complaint and the nature of investigation conducted by the investigating agency (Vigilance Organization Jammu), this Court, in terms of its power under Section 482 of the Code, deems it proper to order for a fresh investigation in the present case, preferably within a period of **two months** from today, under the supervision of Director, Anti-Corruption Bureau, J&K, with a view to ensure fair and just investigation and the Anti-Corruption Bureau shall submit the report of the said investigation before the learned Special Judge Anti-Corruption, Doda, who shall proceed thereafter in accordance with law.

70. It is not for this Court to examine, whether the contents of the complaint are correct or not. Nonetheless, the same requires to be thoroughly investigated and an investigation of such a nature *per se* would also aid the petitioners to clear their position, rather than being subjected to face multifarious litigations and investigations. Therefore, it is in the interests of the petitioners/accused that the competent agency under the supervision of a senior officer is permitted to investigate and bring out the true facts before the court of competent jurisdiction.

71. It goes without saying that the manner in which an investigation has to be done lies within the domain and expertise of the investigating agency. Consequently, any observation in the judgement should not be construed as a direction to conduct the investigation in a particular way or from a particular angle.

72. The petition is disposed of in the manner indicated hereinabove.

73. Registry is directed to handover the record to Mrs. Monika Kohli, learned Senior Additional Advocate General against proper receipt.

(WASIM SADIQ NARGAL)
JUDGE

JAMMU:

23.02.2024

“Ram Krishan”

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- The seal of the High Court of Jammu & Kashmir and Ladakh is a large, faint watermark in the background. It is an oval shape with the words "HIGH COURT" at the top and "JAMMU & KASHMIR AND LADAKH" at the bottom. In the center is the State Emblem of India, featuring four Asiatic lions standing back to back on a circular abacus, with a wheel in the center.
- i. Whether the Judgment is Reportable: YES
ii. Whether the Judgment is Speaking: YES