



AFR

HIGH COURT OF CHHATTISGARH, BILASPURCRMP No.1116 of 2021

1. Mirza Dawood Baig S/o Late Shri Mirza Aalam Baig Aged About 63 Years R/o D-250, M.R. Colony, Tagore Nagar P.S. Kotwali, Raipur, Civil And Revenue District Raipur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through District Magistrate, Raipur, District Raipur Chhattisgarh.
2. Station House Officer Women Police Station Raipur, District Raipur Chhattisgarh.
3. Smt. Shahana Gazala W/o Aasif Mallik Baig Aged About 34 Years R/o Laxminagar Ekta Chowk Pachpedinaka Raipur, District Raipur Chhattisgarh.

---- Respondents

For Petitioner

Mr. Sunil Sahu, Advocate

For Respondent/State

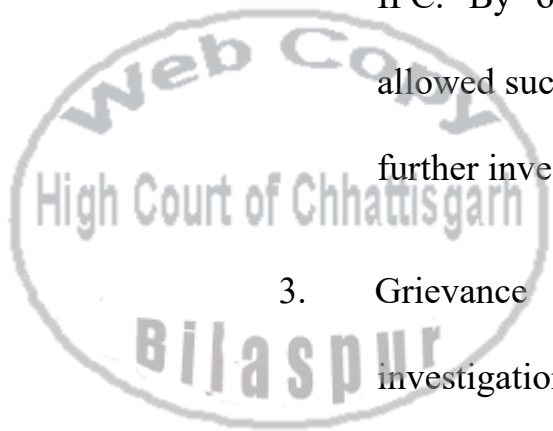
Ms M. Asha, Panel Lawyer

Hon'ble Mr. Justice Goutam BhaduriOrder on Board6-4-2022

1. Challenge in this petition is to the order dated 28-9-2021 passed by the Special/Additional Sessions Judge, Raipur, in Cr.Rev. No.58/2021 whereby the order dated 23-3-2021 passed by the Judicial Magistrate First Class, Raipur, in Cr.Case No.6998/2015 was affirmed.



2. Brief facts of this case are that charge sheet was filed against the petitioner under Sections 498-A, 323, 377/34, 406 and 506B of the Indian Penal Code on a complaint filed by the complainant namely; Smt. Shahana Gazala (respondent No.3 herein). While the proceeding was pending before the trial Court an application was filed by the Public Prosecutor under Section 173(8) Cr.P.C. with a prayer to direct further investigation for proving the offence under Section 406 of the IPC. By order dated 16-12-2016 the learned Magistrate allowed such application filed by the prosecution and directed further investigation of the matter.
3. Grievance of the petitioner is that till date the further investigation which was carried out under Section 173 (8) Cr.P.C. is not produced before the Court. It is contended on behalf of the petitioner that the outcome of investigation would be necessary in order to meet out the case by the petitioner and it cannot be concealed.
4. Learned counsel appearing for the State, *per contra*, would oppose the aforesaid argument of the petitioner and would submit that it would be the prerogative of the State to file report of further investigation or not.





5. I have heard learned counsel appearing for the petitioner as also the State and perused the papers annexed with the petition.
6. Section 173 (8) Cr.P.C. is quoted below for ready reference :

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

XXX XXX XXX

(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)."

7. Recently, in the matter of **Luckose Zachariah @ Zak Nedumchira Luke and Ors. Vs. Joseph Joseph and Ors.**¹ the issue was dealt with by the Hon'ble Supreme Court and it was held that in the event of a further investigation, the report has to be forwarded to the Magistrate upon which, 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 in sub-section (2).

¹ Cr.A. No.256 of 2022 (arising out of SLP (Crl.) No.9556 of 2021 (decided on 18-2-2022)





8. In the matter of **Vinay Tyagi Vs. Irshad Ali alias Deepak and Others**², the Hon'ble Supreme Court held that since a supplementary report under Section 173(8) Cr.P.C. was presented before the Magistrate after further investigation, the Magistrate would be required to take into account both the report under Section 173(2) as well as the supplementary report and then determine as to whether there is any ground for proceeding.

9. In **Vinay Tyagi** (supra) the Hon'ble Supreme Court further held thus at para 42 :

"42. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these reports, the court shall discharge an accused in compliance with the provisions of Section 227 of the Code."

10. Likewise, in the matter of **Joshinder Yadav Vs. State of Bihar**³, the Hon'ble Supreme Court held that role of Presiding Judge in criminal trial vigilance to ensure fair trial. The criminal Court must be alert, it must oversee the actions

² (2013) 5 SCC 762

³ (2014) 4 SCC 42





of prosecution and investigating agency and, in case it suspects foul play, it must use its vast powers and frustrate any attempt to set at naught, a genuine prosecution. The said logic would apply for both the prosecution and the accused. If certain further investigation is carried out, irrespective of its result whether it supports the accused or the prosecution to demonstrate the fact of fair trial the police is required to place the same before the Magistrate. It cannot be stated that for time immemorial that can be withheld.

11. By applying the principles laid down in its previous decisions i.e. **Vinay Tyagi** (supra) and **Vinubhai Haribhai Malaviya and Others Vs. State of Gujarat and Another**⁴, the Hon'ble Supreme Court in **Luckose Zachariah** (supra) held that the Magistrate shall have due regard to both the reports i.e. the initial report which was submitted under Section 173(2) as well as the supplementary report which would be submitted after further investigation in terms of Section 173(8). It is thereafter that the Magistrate would have to take a considered view in accordance with law as to whether there is ground for presuming that the persons named as accused have committed an offence.

4 (2019) 17 SCC 1



12. In the case at hand, if the further investigation is carried out irrespective of its outcome the investigation report is required to be placed before the Court of Magistrate.
13. Applying the well settled principles of law and for the reasons stated hereinabove, the present Cr.M.P. is allowed. The impugned order dated 28-9-2021 passed by the Special/Additional Sessions Judge, Raipur, in Cr.Rev. No.58/2021 and the order dated 23-3-2021 passed by the Judicial Magistrate First Class, Raipur, in Cr.Case No.6998/2015 are set aside.

14. Consequently, the police is directed to submit a report of further investigation, which was directed by the Judicial Magistrate First Class vide its order dated 16-12-2016 within a period of thirty days from the date of receipt of copy of this order.

Sd/-

(Goutam Bhaduri)
Judge

Gowri



Head Note

Further investigation carried out under Section 173 (8) CrPC required to be placed before the Magistrate.

दण्ड प्रक्रिया संहिता की धारा 173(8) के तहत किसी अपराध के संबंध में किये गये अतिरिक्त अन्वेषण की रिपोर्ट मजिस्ट्रेट के समक्ष प्रस्तुत किया जाना आवश्यक है।

