

**IN THE HIGH COURT AT CALCUTTA**  
CRIMINAL REVISIONAL JURISDICTION  
APPELLATE SIDE

**Present : The Hon'ble Justice Shivakant Prasad**

**CRR 2115 of 2017**

**Sri Indranil Mukherjee**

**-Vs.-**

**The State of West Bengal & Anr.**

For the Petitioner : Mr. Ayan Bhattacharyya  
Mr. Pawan Kumar Gupta

For the State : Mr. Ayan Basu

For the O.P. No. 2 : Mr. Kallol Kumar Basu  
Mr. Anubrata Datta  
Mr. Siddhartha Bhattacharyya  
Mr. Subhodip Banerjee

Heard On : 04.07.2018

C.A.V. On : 04.07.2018

**Judgment On : 07.9.2018**

**SHIVAKANT PRASAD, J.**

Petitioner has assailed the Charge Sheet No. 49 of 2016, dated 29.7.2016 under Sections 341/325/506 IPC and order dated 04.5.2017 passed by the learned Additional Chief Judicial Magistrate, Bidhannagar, North 24-Parganas in G.R. No. 463 of 2016 arising out of Bidhannagar (E) Police Station Case No. 48 of 2016 dated 03.6.2016 under Sections 341/325/506/34 IPC.

Question which falls for consideration in this case is whether after taking cognizance on charge sheet, Judicial Magistrate can order further investigation under Section 173(8) of the Criminal Procedure Code.

Factual matrix leading to the case is that the petitioner as the complainant filed an FIR with the allegation that on 26.5.2016 while petitioner was going with his driver namely Chapa Oraon to meet with his share broker, he was restrained by the respondent no. 2 and one Rabindranath Bhattacharjee and Ramkrishna Ghosh with two other unknown persons jointly assaulted the petitioner in order to settle their personal grudge against him as a result he suffered injury and was shifted to Salt Lake Sub-Divisional Hospital and then to Emergency Ward of NRS Medical College & Hospital for his treatment who was advised for admission to the Hospital after preliminary treatment.

On 27.5.2018 petitioner before getting admission into the Hospital at Shurshura Nursing Home Pvt. Ltd., he went to Bidhannagar (E) Police Station to lodge a complaint against the culprits namely, Rabindranath Bhattacharjee and Ramkrishna Ghosh but the officer concerned refused to accept the complaint. Then the petitioner sent a letter of complaint vide speed post EW219330724IN dated 27.5.2016 to Commissioner of Police,

Bidhannagar with a copy to I.C., Bidhannagar East Police Station but of no effect.

The petitioner got himself admitted to the Shurshura Nursing Home Pvt. Ltd. for treatment and after preliminary treatment, he was discharged on 28.5.2016. The petitioner again went to the said Police Station for lodging complaint on 28.5.2016 and 29.5.2016 and on 01.6.2016 with his earlier letter of complaint but the complaint was not registered. Failing to lodge any case through Bidhannagar (E) Police Station, petitioner complained the same to the Bidhannagar Commissioner of Police on 30.5.2016 and on 01.6.2018 through his written letter and on 03.6.2016 the petitioner was called by the said Police Station and Bidhannagar (E) Police Station Case No. 48 of 2016 dated 03.6.2016 under Sections 341/325/506/34 IPC was started and on completion of investigation, charge sheet was submitted against only accused Rabindranath Bhattacharjee but the accused Ramkrishna Ghosh was not sent up.

On being aggrieved with the charge-sheet, the petitioner filed an application for further investigation under Section 173(8) of the Code but by the impugned order dated 04.5.2017 the learned Magistrate rejected the same. Hence, petitioner has sought for setting aside the order impugned, inter alia, on the grounds that despite specific allegation against the respondent no. 2 in the FIR,

neither the same was considered by the I.O. during investigation nor the Magistrate considered it while taking cognizance on the charge sheet.

Mr. Ayan Bhattacharya appearing for the petitioner submitted that the learned Magistrate erred in law by holding that the post cognizance stage, Magistrate has no power to allow further investigation on the prayer of complainant after cognizable is taken on the charge sheet or to *suo motu* call for further investigation unless the same is called by the police.

It is also submitted that the legislature in its wisdom has protected the *de facto* complainant by asserting his right under Section 173(2) (ii) of the Code of Criminal Procedure, 1973.

My attention is invited to the formal FIR Annexure- P which reveals that both Rabindranath Bhattacharjee and Ramkrishna Ghosh are arraigned as accused persons for assaulting the complainant on 26.5.2016 at about 3.45 P.M. to 4.00 P.M. While the complainant was medically examined at NRS Medical College Hospital, he gave the history of assault by the said persons inflicting injury on him.

In the Final Report, I.O. has exonerated one of the accused Ramkrishna Ghosh. Admittedly the learned Magistrate has already taken cognizance against the charge sheeted accused namely

Rabindranath Bhattacharjee on 05.8.2016 and issued service of notice on the petitioner impliedly informing him that I.O. has sought for discharge of the said accused Ramkrishna Ghosh as not sent up in the charge sheet. The I.O. does not appear to have taken into consideration medical evidence and the statement of the injured before submission of the Final Report which has resulted in the abuse of power vested in the I.O.

While refusing to entertain the application of the de facto complainant for further investigation, ACJM, Bidhannagar relied on a decision in case of ***Amrut Bhai Patel vs. Suman Bhai Kanti Bhai Patel and Ors*** reported in ***(2017) 4 Supreme Court cases 117*** to conclude that de facto complainant cannot insist for further investigation in view of the interpretation of the Hon'ble Apex Court in the cited decision, especially when cognizance has already been taken in respect of the offence alleged.

It would be apt to take note of the observation made in the cited decision in paragraph 49 thus—

*“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 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 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.”*

The above observation in my humble opinion was in the context of a set of facts which emerged in paragraph 4 of the cited decision as under—

*“4. **Error! Not a valid link.**were recorded under Section 313 Cr.P.C. on 3.12.2013, whereafter an application was filed at the culminating stages of the trial by the appellant/informant seeking a direction under Section 173(8) from the Trial Court for further investigation by the police and in particular to call for a report from the Forensic Science Laboratory as regards one particular page of the register of the Notary (Public), which according to the appellant/informant was of debatable authenticity, as it appeared to have been affixed/pasted with another page thereof. To be precise, this application was filed at a stage when the case was fixed for final arguments.”*

It was in that set of facts and circumstances of the case that the Hon’ble Supreme Court observed in paragraph 21 thus-

*“21. The integration of sub-section 8 is axiomatically subsequent to the 41<sup>st</sup> 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, is 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 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.”*

Mr. Bhattacharjee referred to the authority of three Judge Bench of the Hon'ble Supreme Court in case of ***Bhagwant Singh Vs. Commissioner of Police & Anr. (1985) 2 SCC 537: 1985 SCC (Cri.) 267*** to fortify his argument that the Magistrate has power to order further investigation wherein it has been held that *in a case where the Magistrate to whom a report is forwarded under Section 173(2) decides not to take cognizance of the offence and to drop the proceedings or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. Unnecessary delay on account of the difficulty of effecting service of the notice on the informant cannot be a valid objection against this view because in any case the action taken by the police on the First Information Report has to be supplied to him under Section 173(2). Moreover, the difficulty of service of notice on the informant cannot provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.*

Reliance is also placed on the observations in the following paragraphs of the cited case :

*“4. Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173*

comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the



*informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of Section 173 if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.*

*37. In some judgments of this Court, a view has been advanced, (amongst others in the case of Reeta Nag v State*

*of West Bengal & Ors. [(2009) 9 SCC 129] Ram Naresh Prasad v. State of Jharkhand and Others [(2009) 11 SCC 299] and Randhir Singh Rana v. State (Delhi Administration) [(1997) 1 SCC 361]), that a Magistrate cannot suo moto direct further investigation under Section 173(8) of the Code or direct re-investigation into a case on account of the bar contained in Section 167(2) of the Code, and that a Magistrate could direct filing of a charge sheet where the police submits a report that no case had been made out for sending up an accused for trial. The gist of the view taken in these cases is that a Magistrate cannot direct reinvestigation and cannot suo moto direct further investigation.*

*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 the case of Bhagwant Singh (supra) has, in no uncertain terms, stated that principle, as afore-noticed.*

*39. The contrary view taken by the Court in the cases of Reeta Nag (supra) and Randhir Singh (supra) do not consider the view of this Court expressed in Bhagwant Singh (supra). The decision of the Court in Bhagwant Singh (supra) in regard to the issue in hand cannot be termed as an obiter. The ambit and scope of the power of a magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three Judge Bench concluded as afore-noticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh (supra), are thus squarely in line with the doctrine of precedence. To some extent, the view expressed in Reeta Nag (supra), Ram Naresh (supra) and Randhir Singh (supra), besides being different on facts, would have to be examined in light of the principle of stare decisis.*

*40. Having analysed the provisions of the Code and the various judgments as afore-indicated, 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 (2) above is in conformity with the principle of law stated in Bhagwant Singh's case (supra) by a three Judge Bench and thus in conformity with the doctrine of precedence.*

*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).*

*This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.*

*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."*

In case of **Sri Bhagwan Samardha Sreepada vs. State of Andhra Pradesh & Ors.** reported in (1999) 5 **Supreme Court Cases 740**, Hon'ble Apex Court was of the following opinion and held thus:

*" 10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.) (AIR 1979 SC 1791). The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.*

*11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the magistrate with such an obligation."*

It follows that the Hon'ble Apex Court enumerated the following guidelines to be borne in mind by the Magistrate when the report is forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 of the Code concluding that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things :

1. *He may accept the report and take cognizance of the offence and issue process.*

2. *He may disagree with the report and drop the proceeding.*
3. *He may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses:*
  1. *He may accept the report and drop the proceeding.*
  2. *He may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process*
  3. *He may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed.*

Mr. Bhattacharjee also relied on a decision in case of **Chandra Babu @ Moses vs. State Tr. Insp. of Police & Ors.** reported in **(2015) 8 Supreme Court Cases 774** to argue that further investigation is imperative and permissible under Section 173(8) of the Code wherein it has been held that Judicial Magistrate can disagree with the police report and take cognizance and issue process and summons to the accused. Thus, the Magistrate has the jurisdiction to ignore the opinion expressed by the investigating

officer and independently apply his mind to the facts that have emerged from the investigation.

In the cited case the Judicial Magistrate was actually inclined to direct further investigation but because he had chosen another investigating agency to investigate the matter, he used word “reinvestigation.” And hence the part of the order directing further investigation was held proper though Magistrate in such matter cannot direct reinvestigation but has the power to direct further investigation.

It has been observed that the Superior Courts alone have the jurisdiction under Section 482 Cr.P.C. or under Article 226 of the Constitution of India to direct “further investigation”, “fresh” or “de novo” and even “reinvestigation”. While the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further investigation, reinvestigation or even investigation de novo or by a different agency, depending on the facts of a given case. Needless to say, the power of the Magistrate to direct for further investigation has to be cautiously used.

Reference is also made to a decision in case of ***Vinay Tyagi Vs. Irshad Ali*** reported in ***(2013) 5 Supreme Court Cases 762*** to argue that the police has the power to conduct further investigation in terms of Section 173(8) of the Code but the Magistrate can direct

further investigation in contradistinction to fresh investigation, even where the report has been filed and drew my attention to the observation on the following paragraphs-

*“37. In some judgments of this Court, a view has been advanced, (amongst others in the case of Reeta Nag v State of West Bengal & Ors. [(2009) 9 SCC 129] Ram Naresh Prasad v. State of Jharkhand and Others [(2009) 11 SCC 299] and Randhir Singh Rana v. State (Delhi Administration) [(1997) 1 SCC 361]), that a Magistrate cannot suo moto direct further investigation under Section 173(8) of the Code or direct re-investigation into a case on account of the bar contained in Section 167(2) of the Code, and that a Magistrate could direct filing of a charge sheet where the police submits a report that no case had been made out for sending up an accused for trial. The gist of the view taken in these cases is that a Magistrate cannot direct reinvestigation and cannot suo moto direct further investigation.*

*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 the case of Bhagwant Singh (supra) has, in no uncertain terms, stated that principle, as afore-noticed.*

*39. The contrary view taken by the Court in the cases of Reeta Nag (supra) and Randhir Singh (supra) do not consider the view of this Court expressed in Bhagwant Singh (supra). The decision of the Court in Bhagwant Singh (supra) in regard to the issue in hand cannot be termed as an obiter. The ambit and scope of the power of a magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three Judge Bench concluded as afore-noticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh (supra), are thus squarely in line with the doctrine of precedence. To some extent, the view expressed in Reeta Nag (supra), Ram Naresh (supra) and Randhir Singh (supra), besides being different on facts, would have to be examined in light of the principle of stare decisis.*



40. Having analysed the provisions of the Code and the various judgments as afore-indicated, 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 (2) above is in conformity with the principle of law stated in Bhagwant Singh's case (supra) by a three Judge Bench and thus in conformity with the doctrine of precedence.

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.

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."

Three Judge Bench of the Apex Court in case of **Samaj Parivartana Samudaya & Ors. vs. State Of Karnataka & Ors.** reported in **2012 (3) R.C.R. (Criminal) 788** held at paragraph 36 thus —



*“It is a settled position of law that an investigating agency is empowered to conduct further investigation after institution of a charge-sheet before the Court of competent jurisdiction. A magistrate is competent to direct further investigation in terms of Section 173(8) Criminal Procedure Code in the case instituted on a police report. Similarly, the Magistrate has powers under Section 202 Criminal Procedure Code to direct police investigation while keeping the trial pending before him instituted on the basis of a private complaint in terms of that Section. The provisions of Section 210 Criminal Procedure Code use the expression ‘shall’ requiring the Magistrate to stay the proceedings of inquiry and trial before him in the event in a similar subject matter, an investigation is found to be in progress. All these provisions clearly indicate the legislative scheme under the Criminal Procedure Code that initiation of an investigation and filing of a charge sheet do not completely debar further or wider investigation by the investigating agency or police, or even by a specialized investigation agency. 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.”*

Yet Mr. Bhattarjee relied in case of **Kishan Lal Vs. Dharmendra Bafna and Another** reported in (2009) 7 **Supreme Court Cases 685** wherein the Hon’ble Apex Court observed and held that the investigating officer may exercise the statutory power of further investigation in several situations yet the learned Magistrate or the Superior Courts can direct further investigation, if the investigation is found to be tainted and/or

which was otherwise unfair or is otherwise necessary in the ends of justice.

I find from the material on record placed before me that the investigating agency has perfunctorily conducted investigation without taking into account the medical evidence by not sending the accused Ramkrishna Ghosh in the charge sheet despite allegation levelled against him. The learned Magistrate has also overlooked the police papers placed on the Case Dairy while taking cognisance against one charge sheeted accused and committed error by rejecting the application for further investigation.

In rebuttal Mr. Kallol Kumar Basu, learned counsel for the opposite party no. 2 relied on the decision in case of ***Athul Rao vs. State of Karnataka & Anr. (2017 (9) scale 161)*** wherein the Investigating Officer had submitted charge sheet after investigation and then also filed a supplementary charge sheet on the subsequent date in which the charges were framed and cognizance were taken as a consequence of which the case was set down for trial.

In my humble opinion it was in that set of fact, the Hon'ble Supreme Court relying on the decision of the case of ***Amrut Bhai*** (supra) observed in paragraph 8 that the question as to whether after framing of the charges and taking cognizance, it is open to the Magistrate to direct further investigation either *suo motu* or on an

application filed by the complainant/informant, it is no more *res integra* and analysing the decisions in **Amrut Bhai** (supra) it has been held that neither the Magistrate *suo motu* nor on an application filed by the complainant/informant can direct further investigation. Further investigation in a given case may be ordered 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 light purpose of adjudication in hand.

In that view of the matter the Hon'ble Supreme Court in the cited decision turned down the prayer for further investigation. I am of the considered view that the Hon'ble Supreme Court decisions in **Atul Rao** and **Amrut Bhai** (supra) are quite distinguishable from the present facts and circumstances of the case.

Relying on the aforesaid decisions, Mr. Ayan Basu appearing for the State opposite party submitted that though opinion of the I.O. is not binding on the Magistrate but the accused not sent up in the Final Report can be prosecuted at the stage of trial on the basis of evidence to be adduced by the prosecution.

In the instant case as it is revealed from the materials on record that the charge sheet has been submitted against one accused and another accused was not sent up who allegedly

assaulted the complainant. It was the complainant who approached the learned Magistrate only after having the information and notice with regard to the submission of the charge sheet. Therefore, it was expedient on the part of the learned Magistrate to have disposed of the application for further investigation under Section 173 (8) of the Code.

Bestowing an anxious consideration to the facts situation of the case and in respectful consideration of the larger bench decision of the Hon'ble Supreme Court in **Bhagwant Singh** and in case of **Samaj Parivartan Samudaya and Ors.** (supra), I am of the considered opinion that the Magistrate has ample power to direct further investigation after submission of the charge sheet by the police even when cognizance has been taken on the charge sheet because the decision in **Amrut Bhai** case (supra) is on a different set of facts as it was at culminating stage of argument.

Therefore, I hold that the submission of a report under Sub-Section 173(2) does not preclude the power of the Magistrate to direct further investigation by the investigating agency and submission of supplementary charge sheet thereon notwithstanding the Magistrate has taken cognizance of the offence on a police report submitted under the said provision although such power may be precluded at the culminating stage of trial after cognisance has been

taken on framing of charge against the accused on the basis of the Final Report.

Thus, in the larger interest of the justice and for fair trial, it is imperative for the Magistrate to grant further investigation because if the order impugned is allowed to be sustained, it will amount to arming the police with unbridled power to exonerate any person from the periphery of the investigation and it would be playing into the hands of the I.O. who submitted the charge sheet against one accused exonerating another by not sent up him in the charge sheet with an ulterior design.

Ergo, I direct learned Additional Chief Judicial Magistrate, Bidhannagar to decide on the final report of the Investigating Agency on consideration of the police papers placed in the Case Diary before he takes cognizance on the final report. In consequence thereof the order impugned stands set aside.

Accordingly, the revisional application is disposed of.

Urgent certified photocopy of this Judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SHIVAKANT PRASAD, J.)

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