

**IN THE HIGH COURT OF JHARKHAND AT RANCHI**  
**W.P.(Cr.) No. 73 of 2018**

Manbahala Mahto, aged about 40 years, son of Late  
Doman Mahto, resident of Chandaghashi,  
P.O.-Tetri (Namkum), P.S.-Jagganathpur,  
District-Ranchi, Jharkhand. .... ... Petitioner

Versus

1. State of Jharkhand.
2. Central Bureau of Investigation through its Director,  
CGO Complex, New Delhi, P.O. & P.S.- Lodhi Road,  
District-Delhi.
3. Director General of Police, Jharkhand Police  
Head Quarters, Dhurwa, P.O. & P.S.-Dhurwa,  
District-Ranchi. .... ... Respondents

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**CORAM : HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI**

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For the Petitioner : Mr. Jitendra Shankar Singh, Advocate.  
: Mr. Randhir Kumar, Advocate.  
For the State : Mr. Manoj Kumar, G.A.-III.  
: Mr. P.C. Sinha, A.C. to G.A.-III.  
For the CBI : Mr. Prashant Pallav, A.S.G.I.  
: Mr. Bajrang Kumar, A.C. to A.S.G.I.  
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**14/ 07.07.2022** Heard Mr. Jitendra Shankar Singh, learned counsel appearing for the petitioner, Mr. Manoj Kumar, learned G.A.-III for the State and Mr. Prashant Pallav, learned A.S.G.I. for the CBI.

2. This petition has been directed for *de novo* re-investigation of the case, arising out of Dhurwa Ranchi (Tupudana O.P.) P.S. Case No. 45 of 2016 dated 05.02.2016 corresponding to G.R. No. 772 of 2016.

3. The case pertains to murder of Binay Mahto, a 13 years' old son of the petitioner, whose dead body was found outside the teacher's quarter of *Sapphire International School, Ranchi* located within the school premises itself. Late Binay Mahto was a VII<sup>th</sup> Grade student of the said school.

4. Mr. Jitendra Shankar Singh, learned counsel appearing for the petitioner submits that late Binay Mahto was murdered in the wee hours of 05.02.2016 at around 1.30 AM and the petitioner received the said information about 3.00 AM from the officer of the Sapphire International School, who lodged the complaint, against which, an FIR, being P.S. Case No. 45 of 2016 was registered and the investigation began to be carried out by the Officer-in-charge, Tupudana O.P. and later on by the Assistant Superintendent of Police, Hatia, Ranchi, who issued instruction note to the I.O. to investigate the case. He submits that the chargesheet has been submitted and the learned Court has taken the cognizance and also the trial has proceeded. He further submits that in course of trial, the trial Court found that the investigation is not concluded in proper way and the prosecution story is creating the doubt. He further submits that the Court has further observed that it is surprising that three persons Smt. Kaninika Bose, Atanu

Nag and R.N. Pradhan are only entitled to care all boys, who are residing in hostel, which are surrounded by the boundary wall and locked gate, but how the deceased Vinay Kumar Mahto reached before teacher resident's gate, it is question for investigation, but I.O. do not take statement of hostel in-charge and produced a concocted story before the Court and finding that the learned Court called upon further persons to face the trial. However, this petition was filed prior to the order of trial court.

5. By order dated 26.09.2018, this Court observed that the supplementary investigation was kept pending, but no further report has been filed before the Court below and the order dated 01.06.2018 of the learned trial Court further substantiates the contention of the petitioner with respect to perfunctory investigation, being conducted by the police. On 04.10.2018, this Court stayed the further proceedings in the Court below, as the Central Forensic Science Laboratory, Kolkata had demanded certain equipment and the said Forensic report was not received by that time.

6. In view of para-54 of the case diary, which is annexed with this petition, it appears that the Inspector General of Police, Ranchi has directed to make investigation on certain lines, but the investigation has not been done on that point, as pointed out by the Inspector General of Police, Ranchi.

7. It is pertinent to mention here that two children were tried by the Juvenile Justice Board, Ranchi and by judgment dated 06.07.2018, the said two children have been acquitted by the Board and it has been observed that the I.O. (P.W.-18) regarding the children, who were arrested on the basis of scientific investigation is clearly demolished by the FSL report and it has been submitted that the police official wrongly arrived to the conclusion that the blood of deceased was found in the house of children. They ought to have waited for the FSL report before arriving at any conclusion.

8. It is settled that the investigation is for the purpose of collecting evidence by a police officer, and otherwise by any person authorized by a Magistrate in this behalf, and also pertains to a stage before the trial commences, which ultimately leads to a police report under the Cr.P.C., is an investigation conducted by the police, and may be ordered in an inquiry made by the Magistrate himself in complaint case. The fair trial must kick off only after an investigation is itself fair and just and the ultimate aim of all investigation and inquiry is to ensure that those, who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial and for that purpose by way of amendment in the Cr.P.C., Section 173(8) of Cr.P.C. has been incorporated.

9. It is also well settled that inquiry and trial are water-tight

compartments. The fair trial and re-investigation was the subject matter in the case of *Pooja Pal Versus Union of India & Ors.*, reported in (2016) 3 SCC 135, in which the Article-21 of the Constitution of India was considered, which was the goal of speedy and fair trial. Reference may be made to paras-83 and 86 of that judgment, which are quoted hereinbelow:-

*“83. A “speedy trial”, albeit the essence of the fundamental right to life entrenched in the Article 21 of the Constitution of India has a companion in concept in “fair trial”, both being in alienable constituents of an adjudicative process, to culminate in a judicial decision by a court of law as the final arbiter. There is indeed a qualitative difference between right to speedy trial and fair trial so much so that denial of the former by itself would not be prejudicial to the accused, when pitted against the imperative of fair trial. As fundamentally, justice not only has to be done but also must appear to have been done, the residuary jurisdiction of a court to direct further investigation or reinvestigation by any impartial agency, probe by the state police notwithstanding, has to be essentially invoked if the statutory agency already in-charge of the investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. As the cause of justice has to reign supreme, a court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion. Justice then would become a casualty. Though a court’s satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analyzed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed*

*through a committed, resolved and a competent investigating agency.*

*86. A trial encompasses investigation, inquiry, trial, appeal and retrial i.e. the entire range of scrutiny including crime detection and adjudication on the basis thereof. Jurisprudentially, the guarantee under Article 21 embraces both the life and liberty of the accused as well as interest of the victim, his near and dear ones as well as of the community at large and therefore cannot be alienated from each other with levity. It is judicially acknowledged that fair trial includes fair investigation as envisaged by Articles 20 and 21 of the Constitution of India. Though, well demarcated contours of crime detection and adjudication do exist, if the investigation is neither effective nor purposeful nor objective nor fair, it would be the solemn obligation of the courts, if considered necessary, to order further investigation or reinvestigation as the case may be, to discover the truth so as to prevent miscarriage of the justice. No inflexible guidelines or hard and fast rules as such can be prescribed by way of uniform and universal invocation and the decision is to be conditioned to the attendant facts and circumstances, motivated dominantly by the predication of advancement of the cause of justice.”*

10. By way of Section 173(8) of the Cr.P.C., the police department has been armed with the power to further investigate an offence, even after a police report has been forwarded to the Magistrate and in the light of that investigating agency of Jharkhand, although submitted that the chargesheet, but further investigation has been kept open. However, FSL report has been filed, but the supplementary chargesheet has not been filed as yet, i.e. after lapse of more than 6 years of the first chargesheet. The trial Court has also having the jurisdiction for a direction of re-investigation under Section 173(2) of the Cr.P.C., however, once the trial proceeded, the re-investigation cannot be directed by the trial Court and that order can only be passed by the Constitutional Bench, as has been held by the Hon'ble Supreme Court in the case of ***Vinubhai Haribhai Malaviya & Ors. Versus State of Gujarat & Anr.***, reported in (2019) 17 SCC 1. In the case of ***UPSC Versus S. Papaiah***, reported in (1997) 7 SCC 614, the closure report submitted by the Central Bureau of Investigation was the subject matter and this aspect of the

matter has been considered by the Hon'ble Supreme Court and the Court went on to hold that where objections have been furnished by the complainant i.e. the Union Public Service Commission, against the closures report of the police, the Magistrate could in exercise of powers under Sections 173(2) Cr.P.C. and can direct the CBI to further investigate the case and collect further evidence keeping in view the objections raised by the complainant.

11. In the case of *Hasanbhai Valibhai Qureshi Versus State of Gujarat*, reported in (2004) 5 SCC 347, wherein the Hon'ble Supreme Court in pars-11, 12 and 13 held as follows:-

*"11. Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the Court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.*

*12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the Court as such, it is open to the police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.*

*13. In Ram Lal Narang and Anr. vrs State (Delhi Admn.) (AIR 1979 SC 1791) it was observed by this Court that further investigation is not altogether ruled out merely because cognizance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the Courts. In view of the aforesaid position in law if there is necessity for further investigation the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand on the way of further investigation if that would help the Court in arriving at the truth and do real and*

*substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case.”*

12. Thus, these are the settled principles of reinvestigation of the case wherein the investigation has not been done properly.

13. Mr. Manoj Kumar, learned G.A.-III, appearing for the respondent State submits that the investigation has been proceeded in right direction and the chargesheet has been submitted and pursuant thereto cognizance has been taken and thereafter trial has also proceeded. To justify his submission, he draws the attention of this Court towards the counter affidavit as well as the supplementary counter affidavit, filed by the state. Accordingly, he submits that there is no irregularity or illegality. He further submits that with regard to this crime, *Ranchi Abhibhavak Manch* has filed the W.P. (PIL) No. 712 of 2016, which is still pending. He further submits that the petitioner has also intervened in the said PIL. He further submits that one petition filed before the Hon'ble Supreme Court has been subsequently withdrawn by the petitioner.

14. Mr. Jitendra S. Singh, learned counsel appearing for the petitioner by way of reply of the contention of Mr. Manoj Kumar, learned G.A.-III appearing for the State submits that the PIL was filed initially when the investigation was not going on properly and subsequently chargesheet has been submitted and the learned Court has come to the conclusion that the investigation has not been done properly and thereafter this petition has been filed before this Court and the entire facts of both the cases are different. He submits that during the pendency of the trial, this petition has been filed for reinvestigation, however, subsequently on 01.06.2018, the learned Court has also found illegality in the investigation, which has been brought on record by way of filing supplementary affidavit. He further submits that before the Hon'ble Supreme Court, the petition, filed by the petitioner was withdrawn due to the fact that the petitioner was intended to apply to the concerned Court for proper and further investigation and in the light of that observation, this petition has been withdrawn before the Supreme Court and the prayer has been kept open for reinvestigation.

15. Looking into the observation of the Trial Court in order dated 01.06.2018 and para-54 of the case diary, which has been brought on record, wherein direction has been issued by the Inspector General of Police, which has not been followed by the I.O. and the observation of the Juvenile Justice Board, which has been discussed hereinabove, clearly suggests that the investigation has not been conducted properly.

16. In a case where a 16 years' old child has been found murdered in the premises of the school and a poor father is running pillar to post for justice. Thus, it is crystal clear that it is a case of reinvestigation by the independent agency.

17. In the given circumstances, the mere fact that there may be further delay in concluding the trial should not stand in the further investigation, if that helps the Court in arriving at the true and real and also to substantiate the effective justice. This Court is not expressing any final opinion on merits that will come in the further investigation.

18. Sections 4 and 6 of the Delhi Police Establishment Act has been considered by the Hon'ble Supreme Court in so many cases and it has been held that if the Constitutional Court comes to a conclusion that, if a particular case is required to be handed over to the specialized agency, the Court has power to do so. Thus, this aspect of the matter is not required to be examined by this Court, whether the case can be handed over to a particular agency or not.

19. It is well settled that the Court can direct the investigation by an independent agency under the exceptional situation, if Court comes to a conclusion that the confidence and credibility of the investigating agency is required to be maintained in the mind of the people in general.

20. The submission of Mr. Manoj Kumar with regard to the PIL and filing the intervener petition by the petitioner in that PIL and withdrawal of the petition before the Hon'ble Supreme Court are not coming in the way of this Court to pass the order, in view of the fact that before the Supreme Court, the petitioner withdrew the petition with the liberty that he wants to approach the concerned Court for proper and further investigation. The PIL was filed during the investigation, which was going on and subsequently the police submitted the chargesheet and trial Court proceeded and the order of the trial Court as well as the Juvenile Justice Board, as discussed above, have been considered by this Court and in the light of the judgments referred to above with regard to Section 173(8) Cr.P.C., there is no impediment in passing of this order.

21. Accordingly, the reinvestigation of the case is handed over the Central Bureau of Investigation and the Central Bureau of Investigation shall take over investigation of this case immediately from the Ranchi Police, in connection with Dhurwa Ranchi (Tupudana O.P.) P.S. Case No. 45 of 2016 dated 05.02.2016 corresponding to G.R. No. 772 of 2016. It is expected that investigation of this case shall be concluded by the CBI within eight months from the date of taking over the case for re-investigation from

the Ranchi Police.

22. This Court directs that the CBI shall take the reinvestigation and the concerned files shall be handed over by the Ranchi Police to the CBI within a period of one week from the date of receipt of this judgment.

23. After submission of the further report by the CBI, the trial will proceed before the competent Court and till then the pending trial shall not proceed and after submission of the further report, the learned Court shall proceed in accordance with law.

24. Mr. Manoj Kumar, learned G.A. appearing for the State shall intimate to the Ranchi Police forthwith and Mr. Prashant Pallav, learned A.S.G.I. is requested to communicate this order to the competent authority for the needful.

25. In view of the above observations and directions, this petition is allowed and disposed of.

**(Sanjay Kumar Dwivedi, J.)**

*Amitesh/-*