

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR**

BEFORE

HON'BLE SHRI JUSTICE SANJAY DWIVEDI

ON THE 21ST OF APRIL, 2023

WRIT PETITION No.29159 of 2022

BETWEEN:-

KRISHNA PATI TRPATHI,

.....PETITIONER

**(BY SHRI MANISH DATT – SENIOR ADVOCATE WITH SHRI SIDDHARTH
KUMAR SHARMA - ADVOCATE)**

AND

- 1. STATE OF MADHYA PRADESH, THROUGH ITS
PRINCIPAL SECRETARY, HOME DEPARTMENT,
MANTRALAYA, VALLABH BHAWAN, BHOPAL
(M.P.)**
- 2. SUPERINTENDENT OF POLICE, REWA,
DISTRICT REWA (M.P.)**
- 3. STATION HOUSE OFFICER, THROUGH POLICE
STATION SEMARIYA, DISTRICT REWA (M.P.)**
- 4. SURESH KUMAR MISHRA,**

.....RESPONDENTS

**(SHRI GIRISH KEKRE – GOVERNMENT ADVOCATE FOR THE
RESPONDENTS NO.1 TO 3)**

(SHRI NAMAN NAGRATH – SENIOR ADVOCATE WITH SHRI HIMANSHU

MISHRA – ADVOCATE FOR RESPONDENT NO.4)

.....
Reserved on : 18.01.2023

Pronounced on : 21.04.2023
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This petition having been heard and reserved for orders, coming on for pronouncement this day, the Court pronounced the following:

ORDER

With the consent of counsel for the parties, the matter is finally heard.

2. The case has been assigned to this Court in pursuance to the notification issued by the High Court in pursuance to the order of the Supreme Court passed in **Writ Petition (Civil) No.699/2016- Ashwini Kumar Upadhyay Vs. Union of India and others**. The petitioner being a member of Legislative Assembly, Semariya Assembly, Rewa and as such, this matter is placed before this Court.

3. As per the facts of the case, the respondent no.4 who was working as a Chief Executive Officer, Janpad Panchayat, Sirmour, District Rewa lodged an FIR on 16.08.2022 making an allegation against the accused persons but in the said FIR there was neither any whisper about the present petitioner nor any allegation has been levelled against the petitioner in the alleged crime. In pursuance to the FIR, offence got registered vide Crime No.354 on 2022 against five persons under Sections 341, 342, 294, 147, 148, 149, 353, 332, 325 and 333 of the Indian Penal Code. The charge-sheet was filed before the Court below against the five persons but investigation was left open against some other accused persons as per Section 173(8) of Cr.P.C.

4. One application under Section 190 of Cr.P.C. was filed on

18.11.2022 before the Court below by the complainant and the said application was decided by the Court below by impugned order dated 24.11.2022 directing the investigating authority to investigate the matter and collect evidence against the petitioner because cognizance has been taken by the Court against him also under Sections 120-B, 341, 342, 294, 147, 148, 149, 353, 332, 325 and 333 of the Indian Penal Code and summon was issued against the petitioner.

5. The petitioner has assailed the order dated 24.11.2022 before this Court by filing the instant petition under Article 226 of the Constitution of India seeking quashment of the entire proceedings initiated against him vide order dated 24.11.2022 and also the order taking cognizance against him in RCT Case No. 754/2022. The quashment has also been sought of order dated 08.12.2022 passed by the Revisional Court, dismissing the revision against the order dated 24.11.2022 saying that the revision was not maintainable.

6. Learned counsel for the petitioner submits that the order passed by the Court is without jurisdiction because direction for investigation under Section 190 of Cr.P.C. cannot be passed by the Court but under the said section, the Court can take cognizance against the accused named in the charge-sheet or can discharge them. In support of his submission, learned counsel has placed reliance upon the judgments passed by the Supreme Court and the High Court saying that the Court cannot *suo moto* direct for further investigation or re-investigate the matter. He placed reliance upon the decisions reported in case of **Reeta Nag Vs. State of West Bengal and Others (2009) 9 SCC 129**, **Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and Others (2017) 4 SCC 177** and also in a case of **Tula Ram and Others Vs. Kishore Singh (1977) 4 SCC 459**. He further submits that it is clear

from the provisions of Section 173(8) of Cr.P.C. that the investigating team while submitting the charge-sheet can make a request to the Magistrate that further investigation is required for collecting more material and evidence and the Magistrate on the basis of the report submitted under Section 173(2) is entitled to take cognizance of an offence under Section 190(1)(b) of the Cr.P.C.. However, if it is said by the investigating team that no case is made out against the accused, even then the Court cannot direct for further investigation.

7. The Supreme Court in case of Reeta Nag (**supra**) has observed as under:-

“17. Mr Venugopal submitted that the view taken by the High Court was on the basis of the settled position of law that having taken cognizance of an offence, the Magistrate had no jurisdiction to direct a reinvestigation of the case under sub-section (8) of Section 173 CrPC. On the other hand, the High Court made it clear that if during the trial any fresh material surfaced against the discharged persons, the Magistrate could take recourse to Section 319 CrPC. It was urged that the High Court should have kept in mind the well-settled principle that whatever was required to be done under a statute, could only be done in the manner prescribed by the statute and in no other manner.

* * *

25. What emerges from the abovementioned decisions of this Court is that once a chargesheet is filed under Section 173(2) CrPC and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173(8). The Magistrate cannot suo motu direct a further investigation under Section 173(8) CrPC or direct a reinvestigation into a case on account of the bar of Section 167(2) of the Code.

* * *

26. In the instant case, the investigating authorities did not apply for further investigation and it was only upon the

application filed by the de facto complainant under Section 173(8) was a direction given by the learned Magistrate to reinvestigate the matter. As we have already indicated above, such a course of action was beyond the jurisdictional competence of the Magistrate. Not only was the Magistrate wrong in directing a reinvestigation on the application made by the de facto complainant, but he also exceeded his jurisdiction in entertaining the said application filed by the de facto complainant.

27. Since no application had been made by the investigating authorities for conducting further investigation as permitted under Section 173(8) CrPC, the other course of action open to the Magistrate as indicated by the High Court was to take recourse to the provisions of Section 319 of the Code at the stage of trial. We, therefore, see no reason to interfere with the order of the High Court since it will always be available to the Magistrate to take recourse to the provisions of Section 319 if any material is disclosed during the examination of the witnesses during the trial.”

8. The Supreme Court further in case of Amrutbhai (*supra*) relying upon the case of Reeta Nag has also observed as under:-

“11. The enumeration of this Court in Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] also to the same effect was adverted to. The High Court thus deduced on the basis of an in-depth survey of the state of law, as above, on the import and ambit of Section 173(8) CrPC that in the absence of any application or prayer made by the investigating authority for further investigation in the case, the trial court had erred in allowing the application filed by the appellant/informant for the same.

* * *

16. A plain comparison of these two provisions would amply demonstrate that though these relate to the report of a police officer on completion of investigation and the steps to ensue pursuant thereto, outlining as well the duties of the officer in charge of the police station concerned, amongst others to communicate, the action taken by him to the person, if any, by whom the information relating to the

commission of offence was first given, it is explicit that the recast provision of the 1973 Code did incorporate sub-section (8) as a significant addition to the earlier provision.

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29. The question that fell for appraisal in *Randhir Singh Rana* [*Randhir Singh Rana v. State (Delhi Admn.)*, (1997) 1 SCC 361] was as to whether a Judicial Magistrate, after taking cognizance of an offence, on the basis of a police report and after appearance of the accused in pursuance of the process issued, can order of his own, further investigation in the case. The significantly additional feature of this query is the stage of the proceedings for directing further investigation in the case i.e. after the appearance of the accused in pursuance of the process already issued. This Court reiterated that such power was available to the police, after submission of the charge-sheet as was evident from Section 173(8) in Chapter XII of the 1973 Code. That it was not in dispute as well that before taking cognizance of the offence under Section 190 of Chapter XIV, the Magistrate could himself order investigation as contemplated by Section 156(3) of the Code was noted as well. This Court also noticed the power under Section 311 under Chapter XXIV to summon any person as a witness at any stage of an inquiry/trial or other proceedings, if the same appeared to be essential to the just decision of the case.

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33. The scope of the judicial audit in *Reeta Nag* [*Reeta Nag v. State of W.B.*, (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051], to reiterate, was whether, after the charge-sheet had been filed by the investigating agency under Section 173(2) CrPC, and charge had been framed against some of the accused persons on the basis thereof, and other co-accused had been discharged, the Magistrate could direct the investigating agency to conduct a reinvestigation or further investigation under sub-section (8) of Section 173. The recorded facts revealed that the Magistrate had in the contextual facts directed for reinvestigation and to submit a report, though prior thereto, he had taken cognizance of the offences involved against six of the original sixteen accused persons, discharging the rest. The informant had thereafter filed an application for reinvestigation of the case and the

prayer was acceded to. This Court referred to its earlier decisions in *Sankatha Singh v. State of U.P.* [*Sankatha Singh v. State of U.P.*, AIR 1962 SC 1208 : (1962) 2 Cri LJ 288], and *Master Construction Co. (P) Ltd. v. State of Orissa* [*Master Construction Co. (P) Ltd. v. State of Orissa*, AIR 1966 SC 1047] to the effect that after the Magistrate had passed a final order framing charge against some of the accused persons, it was no longer within his competence or jurisdiction to direct a reinvestigation into the case. The decision in *Randhir Singh Rana* [*Randhir Singh Rana v. State (Delhi Admn.)*, (1997) 1 SCC 361] , which propounded as well that after taking cognizance of an offence on the basis of a police report and after the appearance of the accused, a Magistrate cannot of his own order further investigation, though such an order could be passed on the application of the investigating authority, was recorded. It was reiterated with reference to the earlier determination of this Court in *Dinesh Dalmia v. CBI* [*Dinesh Dalmia v. CBI*, (2007) 8 SCC 770 : (2008) 1 SCC (Cri) 36] that the power of the investigating officer to make a prayer for conducting further investigation in terms of Section 173(8) of the Code was not taken away only because a charge-sheet had been filed under Section 173(2) and a further investigation was permissible even if cognizance had been taken by the Magistrate. This Court, therefore summed up by enunciating that once a charge-sheet was filed under Section 173(2) CrPC and either charges have been framed or the accused have been discharged, the Magistrate may on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authority, permit further investigation under Section 173(8), but he cannot suo motu direct a further investigation or order a reinvestigation into a case on account of the bar of Section 167(2) of the Code. It was thus held that as the investigating authority did not apply for further investigation and an application to that effect had been filed by the de facto complainant under Section 173(8), the order acceding to the said prayer was beyond the jurisdictional competence of the Magistrate. It was, however observed, that a Magistrate could, if deemed necessary, take recourse to the provisions of Section 319 CrPC at the stage of trial.

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

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

51. In contradistinction, Sections 156, 190, 200, 202 and 204 CrPC clearly outline the powers of the Magistrate and the courses open for him to chart in the matter of directing investigation, taking of cognizance, framing of charge, etc. Though the Magistrate has the power to direct investigation under Section 156(3) at the pre-cognizance stage even after a charge-sheet or a closure report is submitted, once cognizance is taken and the accused person appears pursuant thereto, he would be bereft of any competence to direct further investigation either suo motu or acting on the request or prayer of the complainant/informant. The

direction for investigation by the Magistrate under Section 202, while dealing with a complaint, though is at a post-cognizance stage, it is in the nature of an inquiry to derive satisfaction as to whether the proceedings initiated ought to be furthered or not. Such a direction for investigation is not in the nature of further investigation, as contemplated under Section 173(8) of the Code. If the power of the Magistrate, in such a scheme envisaged by CrPC to order further investigation even after the cognizance is taken, the accused persons appear and charge is framed, is acknowledged or approved, the same would be discordant with the state of law, as enunciated by this Court and also the relevant layout of CrPC adumbrated hereinabove. Additionally had it been the intention of the legislature to invest such a power, in our estimate, Section 173(8) CrPC would have been worded accordingly to accommodate and ordain the same having regard to the backdrop of the incorporation thereof. In a way, in view of the three options open to the Magistrate, after a report is submitted by the police on completion of the investigation, as has been amongst authoritatively enumerated in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267], the Magistrate, in both the contingencies, namely; when he takes cognizance of the offence or discharges the accused, would be committed to a course, whereafter though the investigating agency may for good reasons inform him and seek his permission to conduct further investigation, he suo motu cannot embark upon such a step or take that initiative on the request or prayer made by the complainant/informant. Not only such power to the Magistrate to direct further investigation suo motu or on the request or prayer of the complainant/informant after cognizance is taken and the accused person appears, pursuant to the process, issued or is discharged is incompatible with the statutory design and dispensation, it would even otherwise render the provisions of Sections 311 and 319 CrPC, whereunder any witness can be summoned by a court and a person can be issued notice to stand trial at any stage, in a way redundant. Axiomatically, thus the impugned decision annulling the direction of the learned Magistrate for further investigation is unexceptional and does not merit any interference. Even otherwise on facts, having regard to the progression of the developments in the

trial, and more particularly, the delay on the part of the informant in making the request for further investigation, it was otherwise not entertainable as has been rightly held by the High Court.”

9. After considering the cases relied by learned counsel for the petitioner and as per the relevant provisions of Cr.P.C., it is clear that in Section 190 of Cr.P.C., the expression “taking cognizance” means the Magistrate should apply his mind on the facts mentioned in the complaint with a view to take further action. The Magistrate on the basis of the material placed in the charge-sheet, if satisfied to take cognizance then exercising power provided under Section 190 of Cr.P.C., he may take cognizance or can discharge the accused but there is no mechanism available under Section 190 of Cr.P.C. empowering the Magistrate to direct for further investigation *suo moto* or even on application by any person. It is observed by the Supreme Court that even considering the provision that the Magistrate can direct investigation under Section 156(3) of Cr.P.C. before the stage of taking cognizance but once cognizance is taken, the Magistrate cannot direct for further investigation.

10. Thus, in the present case, if the impugned order dated 24.11.2022 is seen, then it is clear that the charge-sheet submitted by the police against some of the accused under Section 173(2) of Cr.P.C. but kept the investigation open under Section 173(8) in respect of other accused persons not including the petitioner then the Magistrate while exercising the power under Section 190, took cognizance over the report submitted by the police against the named accused persons, having no right to direct police to investigate the matter further and collect the material against a particular person. The Magistrate not only this but took cognizance also against the petitioner and directed police to

investigate and collect material against the petitioner. This order, therefore, is otherwise illegal.

11. As per the settled principle of law, if the statute provides that things are to be done in a particular manner then it should be done in that manner only and not otherwise. Undoubtedly, the Magistrate has power to direct investigation or for further investigation under Section 156(3) of Cr.P.C. but not at this stage when the Court has exercised the power under Section 190 of Cr.P.C. In the present case, the Court below has done so and, therefore, the order dated 24.11.2022 is illegal and contrary to law.

12. However, the objection raised by the respondents with regard to maintainability of the petition has been dealt with by this Court on 21.12.2022 and entertained the petition subject to filing reply by the respondents but they refused to file reply.

13. The Revisional Court has refused to entertain the revision saying that in pursuance to the notification, the Court had no jurisdiction to entertain any matter relating to the sitting MLA and the petitioner being a sitting MLA of Semariya, Rewa Constituency, the matter cannot be entertained. According to learned counsel for the petitioner under such a circumstance, petition filed under Article 226 of the Constitution of India can be entertained.

14. I do not find any illegality in the order passed by the revisional Court and as such, the petition filed by the petitioner under Article 226 of the Constitution of India can be entertained by this Court.

15. In view of the aforesaid discussion, relying on the several decisions of the Supreme Court and also considering the respective provision, the order dated 24.11.2022 taking cognizance against the petitioner and directing investigation against him by the trial Court is

improper and as such, the same is liable to be set aside. Therefore, the impugned order dated 24.11.2022 in respect of the petitioner is set aside.

16. *Ex consequentia*, the petition filed by the petitioner stands **allowed.**

(SANJAY DWIVEDI)
JUDGE

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