



Judgment

Cr.WP-928-2024

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY :
NAGPUR BENCH : NAGPUR.

CRIMINAL WRIT PETITION NO. 928 OF 2024

...

- 1] Sumit S/o Karan Singh Gautam,
Aged 38 years, Occ. Auto Dealer,
R/o. Malviya Nagar, Tumsar,
Tahsil Tumsar, District Bhandara 441912.
- 2] Imran S/o Abdul Haquie Turak,
Aged 33 years, Occ. Business,
R/o. Azad Nagar, Tumsar, Tasil Tumsar,
District Bhandara 441912.
- 3] Ashish S/o Narendra Gajbhiye,
Aged 32 years, Occ. Auto Dealer,
R/o. Azad Nagar, Tumsar, Tasil Tumsar,
District Bhandara 441912.
- 4] Firozkhaa s/o Moharamkhaa Pathan,
Aged 35 yeas, Occ. Labour,
R/o. Azad Nagar, Tumsar, Tasil Tumsar,
District Bhandara 441912.

... **PETITIONERS**

- - V E R S U S - -

State of Maharashtra,
Through Police Station Officer,

Police Station Warthi,
Tahsil Mohadi, and District Bhandara.

... **RESPONDENT**

Mr. A.Saxena, Advocate for the Petitioners.

Mr. B.M. Lonare, A.P.P. for the Respondent/State.

CORAM : M.M. NERLIKAR, J.

DATE : NOVEMBER 17, 2025.

Rule. Rule made returnable forthwith. Heard finally
with the consent of learned counsel for the parties.

2. The petitioners challenge the order dated 09/09/2024, wherein, the application filed by the prosecution for seeking permission to file additional charge-sheet on record is allowed and the permission is granted to submit supplementary charge-sheet on record.

3. The learned counsel appearing for petitioners submit

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that the Investigating Officer has not sought permission / leave from the learned Magistrate for conducting the further investigation. He further submits that there is no material against the petitioners to connect them with the crime. Even if the statement recorded by the Investigating Officer of the informant is taken into consideration, the same does not demonstrate that there is an overt act on the part of petitioners. The original charge-sheet was filed on 12/01/2022, however, the statement dated 12/01/2022 of Rahul Pandurang Deshpande, who is the informant is not filed on record alongwith original charge-sheet. It was submitted that with *mala fide* intention, the Investigating Officer has implicated the present petitioners in the crime. Lastly, he relied on the Judgment of the Supreme Court in the case of ***Vinay Tyagi VS Irshad Ali Alias Deepak and Others***, (2013) 5 SCC 762, to submit that if the leave is not sought from the learned Magistrate, then the supplementary charge-sheet would not be maintainable, and accordingly, he prayed to quash and set

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aside the order dated 09/09/2024 passed by the learned Additional Sessions Judge, Bhandara.

4. On the other hand the learned A.P.P. submits that admittedly the charge-sheet is filed on 12/01/2022, however, thereafter, the statement of informant was recorded. He further pointed out that the petitioners have sought anticipatory bail and there is also sufficient evidence against the petitioners as the incident was captured in the C.C.T.V. footage as well as in the mobile phone. There were some serious lapses on the part of the Investigating Officer, and therefore, the Court below, while passing the order below Exh.82, in view of aforesaid lapses directed the Superior Officer to take necessary action against the Investigating Officer. Lastly, he submits that further investigation is the continuation of the initial investigation, and therefore, there is no merit in the petition and it deserves to be dismissed.

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5. Upon hearing the learned counsel for petitioners and the learned A.P.P., it appears that the original charge-sheet was filed on 12/01/2022, and on the same date, the statement of the first informant was also recorded. There is no dispute regarding the filing of the charge-sheet on 12/01/2022, however, the learned counsel appearing for the petitioners has submitted that the statement of the informant was recorded on the same day without there being any evidence against the petitioners. It is true that the statement was recorded on 12/01/2022, however, whether it was recorded before or after filing of the charge-sheet is a disputed question of fact and this Court cannot go into same. The fact remains that the said statement implicates the present petitioners.

6. Admittedly, the supplementary charge-sheet was filed only after the Court granted permission on 09/09/2024 by allowing the application of the Investigating Officer. The argument of the learned counsel for the petitioners that there is

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no new material to justify the filing of the supplementary charge-sheet deserves no consideration for the reason that the record shows that the statement of the first informant recorded on 12/01/2022, the details in respect of the present petitioners, the list of witnesses to be examined, and the order granting anticipatory bail was placed on record through the supplementary charge-sheet. The incident which was captured in the CCTV footage and in the mobile phone has already been placed on record which is part of the original charge-sheet. *Prima facie*, it appears that the Trial Court, after considering the entire material that surfaced on record, has permitted to file the supplementary charge-sheet on record. The Trial Court has held that the purpose of the supplementary charge-sheet in the present case is to include additional accused persons to try them together with the original accused based on the same evidence already presented and to avoid multiplicity of proceedings, the application under Exh.82 is allowed permitting to file supplementary charge-sheet on record. Whether the

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petitioners are involved in the crime or not and whether the statement of the informant recorded on 12/01/2022, C.C.T.V. footage and mobile recording are to be considered or not would be based on the evidence which would be led by the Prosecution and the same cannot be considered at this stage.

7. However, the right of the Investigating Officer to file a supplementary charge-sheet cannot be curtailed. Further investigation is the continuation of the earlier investigation. Even if it is considered that the supplementary charge-sheet was filed at a belated stage, that by itself is not sufficient to quash the order granting permission to file the supplementary charge-sheet. As pointed out by the learned counsel for the petitioners, the observations of the Supreme Court in the case of ***Vinay Tyagi (supra)***, paragraph 49, is reproduced below:-

“49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no

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specific requirement in the provisions of Section 173(8) of the Code to conduct "further investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of the court, The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct "further investigation" and/or to file a "supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process."

It would also be useful to refer to the observations of the Apex Court in the recent judgment of ***State Through Central Bureau of Investigation VS Hemendhra Reddy and Another***, (2023) 16 SCC 779, wherein it is held that further investigation *dehors* any direction from the Court, paragraph Nos. 60 to 68

are reproduced as under:-

“60. This Court in *Hasanbhai*¹¹ held thus: (SCC pp. 350-51, paras 12-13)

“12. Sub-section (8) of Section 173 of the Code permits further investigation, and even de hors 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 v. State (Delhi Admn.)* [(1979) 2 SCC 322 : 1979 SCC (Cri) 479 : 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 the 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

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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 in 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.”

61. *In Ram Lal Narang v. State (Delhi Administration) reported in (1979) 2 SCC 322, this Court held thus:*

“21. As observed by us earlier, there was no provision in the CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to

further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.”

62. *In State of Andhra Pradesh v. A.S. Peter reported in (2008) 2 SCC 383, this Court held thus:*

“9. Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police. A distinction also exists between further investigation and reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not.”

63. *In Nirmal Singh Kahlon v. State of Punjab and Others reported in (2009) 1 SCC 441, this Court held as follows:*

“68. An order of further investigation in terms of Section 173(8) of the Code by the State in exercise of its jurisdiction under Section 36 thereof stands on a different footing. The power of the investigating officer to make further investigation in exercise of its statutory

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jurisdiction under Section 173(8) of the Code and at the instance of the State having regard to Section 36 thereof read with Section 3 of the Police Act, 1861 should be considered in different contexts. Section 173(8) of the Code is an enabling provision. Only when cognizance of an offence is taken, the learned Magistrate may have some say. But, the restriction imposed by judicial legislation is merely for the purpose of upholding the independence and impartiality of the judiciary. It is one thing to say that the court will have supervisory jurisdiction to ensure a fair investigation, as has been observed by a Bench of this Court in Sakiri Vasu v. State of U.P. [(2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440], correctness whereof is open to question, but it is another thing to say that the investigating officer will have no jurisdiction whatsoever to make any further investigation without the express permission of the Magistrate.”

64. In Vinay Tyagi (*supra*), it was held that “further investigation” in terms of Section 173(8) of the CrPC can be made in a situation where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the Court. The report on such further investigation under Section 173(8) of the CrPC can be termed as a supplementary report.

65. *In Vinay Tyagi (supra), it was held that: (SCC p.790, para 40)*

“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.

40.4. 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.

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40.6. *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. ...”*

66. *In Vinubhai (supra); a three-Judge Bench of this Court has endeavoured to lay at rest the controversy enveloping the evasive issue of further investigation directed by the Magistrate. This Court, speaking through Justice R.F. Nariman, has laid down at Para 42 that: (SCC p. 39)*

“42. ... To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the

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progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law.”

It was also clarified that: (Vinubhai case⁵, SCC p.21, para 28)

“28. The “investigation” spoken of in Section 156(3) would embrace the entire process, which begins with the collection of evidence and continues until charges are framed by the Court, at which stage the trial can be said to have begun.”.

67. *Thus, this Court, in conclusion, observed that, “27. ... when Section 156(3) states that a Magistrate empowered under Section 190 may order “such an investigation”, such Magistrate may also order further investigation under Section 173(8), regard being had to the definition of “investigation” contained in Section 2(h).”*

68. *Thus, in view of the law laid down by this Court in the various decisions cited hereinabove, it is well settled*

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that sub section (8) of Section 173 of the CrPC permits further investigation, and even de hors any direction from the court, it is open to the police to conduct proper investigation, even after the court takes cognizance of any offence on the strength of a police report earlier submitted.

The same view is reiterated in the case of ***Bohatie Devi (Dead) Through Legal Representatives VS. State of Uttar Pradesh and Others***, (2023) 16 SCC 349.

8. From the law laid down in the aforesaid judgments, it can be concluded that though there is no specific requirement under Section 173(8) of the Cr.P.C. to obtain leave of the Court for conducting further investigation, however, it is a matter of long-standing practice and a procedure of propriety to seek permission of the Court to continue further investigation and file supplementary charge-sheet. However, merely not obtaining leave of the Court will not, by itself, vitiate the filing of the supplementary charge-sheet, as it is a settled position of law

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that it is a right of the Investigating Officer to further investigate in respect of offence even after a report under Sub-Section (2) of Section 173 Cr.P.C. is forwarded to a Magistrate and prior approval of the Magistrate is not required.

9. It could be seen from the supplementary charge-sheet that the Investigating Officer has recorded the statement of the first informant, wherein, the names of the present petitioners are apparent. If that is coupled with the CCTV footage, then there appears to be sufficient material against the present petitioners. The reasoning provided by the Trial Court for permitting to file supplementary charge-sheet which is arraying the present petitioners as new accused persons so as to prevent multiplicity of proceedings is justified and in this view of the matter, I do not find any error in the order of the Trial Court passed below Exh.-82 by the learned Additional Sessions Judge, Bhandara, dated 09/09/2024. Accordingly, the present petition is **dismissed**.

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It is needless to mention at this juncture that the Trial Court shall not be influenced by the observations of this Court while conducting the trial.

[**M. M. NERLIKAR, J**]