



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CRIMINAL APPELLATE JURISDICTION**

**CRIMINAL APPLICATION NO.573 OF 2019**

SATISH  
RAMCHANDRA  
SANGAR

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SATISH RAMCHANDRA  
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Date: 2025.12.29  
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<b>Shri Dineshkumar Gokuldas Kalantry</b>	]	
Age : 66 Years, Occupation : Business,	]	
Having office at Spectrum Centre,	]	
Relief Road at Ahmedabad,	]	
Resident of Ahmedabad.	]	<b>...Applicant</b>

**Versus**

- |    |   |   |                       |
|----|---|---|-----------------------|
| 1. | <b>The State of Maharashtra</b>           | ] |                       |
|    | (At the instance of EOW, General          | ] |                       |
|    | Cheating, Unit I, MECR No.02/2005).       | ] |                       |
| 2. | <b>Dr.Prithi Paul Sethi</b>               | ] |                       |
|    | Indian Inhabitant, having his office at:- | ] |                       |
|    | Jerbai Wadia Road, Bhoiwada, Parel,       | ] |                       |
|    | Mumbai : 400 012.                         | ] | <b>...Respondents</b> |

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**WITH  
INTERIM APPLICATION NO.295 OF 2022  
IN  
CRIMINAL APPLICATION NO.573 OF 2019**

<b>Sudha Kalantry,</b>	]	
Age : 65 Years, Partner in Twist Spin	]	
Industries, Indian Habitant, having	]	
Residence at : 115, B, Madhuban	]	
Apartments, Worli Hill Road, Worli,	]	
Mumbai : 400 018.	]	<b>...Intervenor</b>

**In the matter between:-**

<b>Shri Dineshkumar Gokuldas Kalantry</b>	]
Age : 66 Years, Occupation : Business,	]
Having office at Spectrum Centre,	]

Relief Road at Ahmedabad, ]  
Resident of Ahmedabad. ] ...Applicant

**Versus**

1. **The State of Maharashtra** ]  
(At the instance of EOW, General ]  
Cheating, Unit I, MECR No.02/2005). ]
2. **Dr.Prithi Paul Sethi** ]  
Indian Inhabitant, having his office at:- ]  
Jerbai Wadia Road, Bhoiwada, Parel, ]  
Mumbai : 400 012. ] ...Respondents

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Mr.Aabad Ponda (Sr.Advocate) i/b. Mr.Karan L. Jain:-	Advocates for Applicant in Criminal Application No.573 of 2019.
Mr.H.J.Dedhia:-	APP for Respondent No.1 -State.
Mr.Jamshed Ansari:-	Advocate for Intervenor in Interim Application No.295.
Mr.Subhash Jha a/w Mr.Siddharth Jha, Mr.Sumeet Upadhaya, Mr.Ashish Saxena and Mr.Chetan Gogawale i/b.Law Global Advocates:-	Advocates for Respondent No.2 in Criminal Application No.573 of 2019.

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**CORAM : S.M. MODAK, J.**

**RESERVED ON : 12<sup>th</sup> DECEMBER 2025**

**PRONOUNCED ON : 24<sup>th</sup> DECEMBER 2025**

**JUDGMENT :-**

1. The only issue arisen in this Application is “*whether the learned Metropolitan Magistrate was justified in ordering further investigation on the application of the Complainant particularly when charge is framed.*” The said order was passed on 14<sup>th</sup> December 2018 by the learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai in Case No.771/PW/2010. Earlier, there was an order of ‘*issuance of process*’ for the offences under Sections 420, 418, 465, 468, 471, 506(II), 201 read with 34 of the Indian Penal Code, 1860 (“**IPC**”). This was issued on 7<sup>th</sup> August 2010. By passing the said order, the learned Magistrate on one hand refused to accept ‘A’ summary report given by the Economic Offences Wing (“**EOW**”), on the other hand, issued a process. All these orders came to be passed in a private case instituted by Respondent No.2 (hereinafter will be referred to as “**the Complainant**”). Whereas, the present Applicant is one of the person against whom, process was issued. (He will be referred as an **Accused**). Whereas, partner Sudha Kalantry has filed an Intervention Application No.295 of 2022. Process is also issued against her. But no one has argued on her behalf.

2. There is a chequered history to this litigation. It will be referred in due course. I have heard learned Senior Advocate Shri.Ponda for

Applicant in both the Criminal Applications, learned APP for Respondent No.1 – State and learned Advocate Shri.Subhash Jha for Respondent No.2 in both the Criminal Applications. Both the Counsels have relied upon various judgments of several High Courts and of Supreme Court. They are on the point of power of Supreme Court and of High Court to order further investigation. They also deal with the issue, the stage at which such power can be exercised. It is true that they also deal with who can ask for further investigation. They will be considered at a subsequent stage. The facts which are required for deciding the issue need to be stated.

### **Facts of the case**

- (a) The Complainant runs a business in the name and style as “M/s.Presto Export Ltd.” whereas the Accused runs a business in the name and style as “M/s.Twist Spin Industries”. **The Accused is in business of textile machinery. The owners are Accused No.1–Kiran, Accused No.2–Sudha and Accused No.3–Dinesh.**
- (b) The Complainant has purchased some textile machinery from the Accused and there are other business transaction.
- (c) The Accused in the name of his firm has submitted a bid for sick factory having trade name “Devagiri Mills” at Aurangabad. He represented to the Complainant that he is having good contacts in Maharashtra State Textile

Corporation Ltd. It is the case of the Complainant that an Agreement was executed between the Complainant (M/s.Presto Exports Ltd.) and the Accused persons (M/s.Twist Spin Industries) on 1<sup>st</sup> July 2003. The Accused has agreed to transfer ownership of the company in favour of the Complainant.

- (d) M/s.Presto Exports Ltd. (Complainant) have issued 2 cheques of Rs.10,00,000/- and Rs.35,00,000/- in favour of M/s.Twist Spin Industries (Accused) on account of earnest money to be paid to Maharashtra State Textile Corporation and also consultancy fees to the Accused.
- (e) The Accused participated in the tender process and bid was accepted for Rs.7,51,00,000/- (Rupees Seven Crore Fifty One Lakh) and Rs.75,10,000/- (Rupees Seventy Five Lakh Ten Thousand) was to be paid to Maharashtra State Textile Corporation.
- (f) The Accused have paid Rs.25,00,000/- (Rupees Twenty Five Lakh) towards earnest deposit and they were required to pay further amount of Rs.50,10,000/- (Rupees Fifty Lakh Ten Thousand).
- (g) The Accused persuaded the Complainant to pay an amount of Rs.6,75,90,000/- (Rupees Six Crore Seventy Five Lakh Ninety Thousand).
- (h) The Complainant handed over the file to Accused No.1 on the assurance that he will return the file within 2-3 days. It was taken by the Accused for the purpose of reconsideration

of accounts. *'It was never returned'* is the grievance. This file contains the Agreement. Even the Investigation Agency search out this file but in vain.

- (i) On the representation of the Accused, the Complainant has parted away an amount of Rs.8,08,00,000/- (Rupees Eight Crore Eight Lakh).
- (j) The Complainant was pursuing for giving effect to the Agreement dated 1<sup>st</sup> July 2003 and he was also insisting for transfer of the shares in the name of Informant's company. However, the Accused persons for some reason or other have not fulfilled the promises.

3. On this background, the Complainant has lodged complaint to Vakola Police Station and then to Metropolitan Magistrate Court at Bandra. (Copy of complaint is not made available. Narration of facts is on the basis of impugned order).

4. The Metropolitan Magistrate Court has directed the Vakola Police Station to investigate the offence under Section 156(3) of the Code of Criminal Procedure, 1973 ("Cr.P.C."). However, Vakola Police Station have submitted a report suggesting that it is a civil dispute. It was accepted on 18<sup>th</sup> April 2007. The Division Bench of this Court has set aside the said order on 10<sup>th</sup> July 2007 and directed the EOW to conduct fresh investigation. The said order was challenged before the

Supreme Court at the instance of the Accused but in vain. Again, the Accused approached this Court and prayed for recalling the order dated 10<sup>th</sup> July 2007. There also the Accused have failed.

5. On this background, the EOW has conducted the investigation. On this occasion also, the investigation culminated into filing of 'A' summary report. The learned Magistrate refused to accept it and issued a process. Neither of the parties have made available the two negative reports. Only copy of order issuing process is made available.

6. The entire controversy is revolved around order of the Magistrate to order further investigation and whether it can be after framing of charge. Mr.Jha justified the order on the ground that all the materials need to be collected and he criticized the conduct of Vakola Police Station and EOW to undergo faulty investigation. Prior to going to the ratio laid down in various judgments, it will be useful to go through the findings given by the learned Magistrate in the impugned order.

#### **About impugned order**

- (a) Vakola Police Station and EOW Unit No.III have not gone into root of the matter and many Accused have not been arraigned as Accused persons.
- (b) Several documents which were shown were orchestrated and articulate conspiracy hatched by the Accused were not even

collected and filed along with charge-sheet.

- (c) That Accused have not returned the file for some reason or other. The Accused have deliberately caused disappearance of the file.
- (d) The learned Magistrate has heavily relied upon the observations in case *Samaj Parivartan Samudey V/s. State of Karnataka*<sup>1</sup>, *Amrutbhai Shambhubhai Patel V/s. Sumanbhai Kantibhai Patel and Ors.*<sup>2</sup> and observations in case of *Dharam Pal V/s. State of Haryana and Others*<sup>3</sup>.

### Consideration

7. It is true, both the sides have relied upon number of judgments. In some of the matters, further investigation was ordered. But ultimately, the ratio of these judgments need to be considered. Ratio is nothing but interpretation of law to the facts of the case. The Court has to consider what is the purpose of criminal trial preceded by investigation. Article 21 of the Constitution recognizes life and liberty of an individual. The person accused of an offence should get fair chance of defending himself because we are following the principle of '*presumption of innocence*'. At the same time, the Complainant's interest also need to be protected.

8. Investigation is the domain of the Police. Generally, investigation

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<sup>1</sup> 2012 7 SCC 407

<sup>2</sup> (2017) 4 Supreme Court Cases 177

<sup>3</sup> (2016) 4 Supreme Court Cases 160



culminates by way of filing charge-sheet or closure report. However, power to carry out further investigation by the Police is kept intact as per the provisions of Sub-section (8) to Section 173 of the Cr.P.C. Sub-section does not guide us when such investigation can be undertaken. The legislatures have left it to the decision of concerned stakeholders to take a call. The only criteria is “*there is further evidence.*” Ultimately, criminal trial is conducted on the basis of evidence collected during initial investigation or further investigation. There are two aspects involved:-

- (i) Right to carry out investigation. It is always by the Police.
- (ii) But the issue is who can set the clock rolling, whether it is the Police only or any private person or the Magistrate *suo motu*.

9. The criminal Courts have always faced with the difficulty of deciding the applications and stage of filing such applications. In a criminal trial, there is a stage of pre-cognizance, there is a stage in between cognizance till commencement of trial and the third stage is post commencement of trial. There is no two opinion that trial commences when the charge is framed.

10. In the case before me, Application for further investigation was filed by the Complainant on 13<sup>th</sup> July 2018 prior to recording of

evidence is started and charge was framed on 21<sup>st</sup> August 2013. It is not made clear whether there was evidence recorded before charge and whether it is a police or private case. Because if it is a private case, evidence is recorded prior to charge. This fact came to my notice while dictating the order. Even though, no one has argued about facts and necessity of further investigation, from the wording of impugned order, I primarily find there are two reasons for further investigation. One, collecting documentary evidence in the form of Agreement alleged to be executed in between Complainant and the Accused persons. **Second, calling the persons to face the trial who have not been arraigned as Accused persons.**

11. Prior to considering above facts, it will be material to consider ratios in the judgments relied upon by both the sides. **When I have read all these judgments, what I gather is, there are three important factors which are relevant. They are:-**

- (i) At what stage, the Application for grant of further investigation can be made.
- (ii) It was filed by whom.
- (iii) For what purpose, further investigation is sought.

12. There is no doubt about power of the constitutional Courts to order further investigation / re-investigation / *de novo* investigation.

These terminologies are referred in case of *Vinay Tyagi V/s. Irshad Ali Alias Deepak and Others*<sup>4</sup>. In case before me, the power of the trial Court to order further investigation is involved. The power of the Magistrate cannot be equated fully with the power of constitutional Courts. The submission of Mr.Ponda to that effect is correct.

13. The judgments relied upon by both the parties consist of judgments of *Ram Lal Narang V/s. State (Delhi Administration)*<sup>5</sup> which was delivered in the year 1979 and latest judgment of *Rampal Gautam and Others V/s. State by Mahadevapura Police Station, Mahadevapura, Bengaluru and Another*<sup>6</sup> delivered in the year 2025. Both the judgments are delivered by the Supreme Court. There are judgments delivered by the Supreme Court and various High Courts in between that period. Mr.Ponda heavily relied upon the observations by three Judges Bench of Hon'ble Supreme Court in case of *Vinubhai Haribhai Malaviya and Others V/s. State of Gujarat and Another*<sup>7</sup>. According to him, considering the Bench strength and considering the similarity of the issue involved in that case and issue involved in this case, the observations therein are perfectly applicable.

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4 (2013) 5 Supreme Court Cases 762

5 (1979) 2 Supreme Court Cases 322

6 2025 SCC OnLine SC 1231

7 2019 SCC OnLine SC 1346

14. On the point of law of precedent, he also relied upon few of the judgments delivered by Hon'ble Supreme Court. It is in respect of binding effect of judgment of the earlier Bench. Even if there is a subsequent judgment opining different view and not taking a note of the view expressed by earlier Bench, still the earlier view is applicable. The learned Advocate Mr.Jha also relied upon few of the judgments given by other High Courts and in some of them, the observations of ***Vinubhai*** are considered. But, according to Mr.Ponda, these observations opining that "*application for further investigation can be entertained even after framing of charge*" cannot be considered because on the same issue, there are judgments delivered by our High Court. Whereas, according to Mr.Jha, further investigation is justified for having a fair investigation.

#### **Judgment in case of 'Vinubhai'**

15. The observations in case of ***Vinubhai*** has to be understood in three ways:-

- (a) What are the facts of *Vinubhai's* case and what is ultimately held.
- (b) What are the facts of *Amrutbhai* and what is ultimately held.
- (c) In what manner, the Supreme Court in case of *Vinubhai* has dealt with the observations in case of *Amrutbhai*.

**'Amrutbhai' Judgment**

16. In the said judgment, an application for further investigation was filed at fag end i.e. at the stage of arguments. Finally, this was disallowed. However, certain observations are made in paragraph No.49. They are as follows:-

- (a) Power to order further investigation after charge-sheet is not available to the Magistrate to exercise either on its own or on the application of the Complainant.
- (b) Such course is only open when the Investigation Agency makes a request and that too, for the purpose of detecting material evidence.

Probably, the Applicant relied upon these observations because in present case, the Application for further investigation was filed by the Complainant and after framing of charge and it was allowed. The only difference is, in case of ***Amrutbhai***, it was at the stage of final arguments whereas in present case, it was immediately after charge but prior to recording of evidence.

17. Now, it will be relevant to see how the Supreme Court in ***Vinubhai's*** case has dealt with observations in case of ***Amrutbhai***.

**Vinubhai's case**

18. The Supreme Court affirmed some of the observations in case of

***Amrutbhai***. They are as follows:-

*“40. Despite the aforesaid judgments, some discordant notes were sounded in three recent judgments. In Amrutbhai Shambhubhai Patel v. Sumabhai Kantibhai Patel, on the facts in that case, the appellant/ informant therein sought a direction under Section 173(8) from the trial court for further investigation by the police long after charges were framed against the respondents at the culminating stages of the trial. The Court in its ultimate conclusion was correct, in that, once the trial begins with the framing of charges, the stage of investigation or inquiry into the offence is over, as a result of which no further investigation into the offence should be ordered....”*

In nutshell, three Judges Bench approved this view. After framing of charge, there should not be order of further investigation. According to Mr.Ponda, this observation supports him. Whereas, according to Mr.Jha, there is power in Magistrate even after framing of charge for doing fair investigation.

19. Now, it will be relevant to consider which observations of ***Amrutbhai*** are overruled in ***Vinubhai***'s judgment. Three Judges Bench observed:-

*“But instead of resting its judgment on this simple fact, this Court from paras 29 to 34 resuscitated some of the earlier*

*judgments of this Court, in which a view was taken that no further investigation could be ordered by the Magistrate in cases where, after cognizance is taken, the accused had appeared in pursuance of process being issued.”*

Three Judges Bench disapproved this view and observed:-

*“....What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. 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 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), 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences”.*

*(Emphasis laid)*

It is further observed:-

“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.” (***Emphasis laid***)

20. What is ratio of above observations is “*at pre-trial stage, the Magistrate does not loses power to order further investigation at the instance of the complainant*”. Even though this is the ratio, we are not dealing a case involving pre-charge stage but a stage after framing of charge.

#### **Ratio in ‘Vinubhai’ on facts**

21. After observing that “*power of the Magistrate to order further investigation cannot be curtailed*”, the Hon’ble Supreme Court on facts of the case has refused to continue the order of further investigation sought at the instance of the accused but directed to register fresh FIR. Still, it is not clear as to how the observations in this judgment are useful to the Applicant. Reason is “*these observations relate to the stage of pre-filing of charge-sheet*” whereas we are dealing with the case post-framing of charge.



22. **Mr.Ponda's** emphasis is more on reiteration of observation of Amrutbhai in **Vinubhai's** case. Mr.Ponda relied upon observations in case of **K. Vadivel V/s. K. Shanthi and Others**<sup>8</sup>. There is emphasis on a view that “*power to order further investigation has to be exercised sparingly and in exceptional cases.*” In that case, the stage was final arguments and the order to further investigate was set aside.

### **Judgments relied upon by Mr.Jha**

23. As against this, Mr.Jha, relied upon the judgment in case of **Rampal Gautam and Others V/s. State by Mahadevpura Police Station, Mahadevpura, Bengaluru and Another**<sup>9</sup>. It is true, the observations in case of **Vinubhai** are not pointed out to the Bench also consisting of three Judges. The facts of that case are, evidence was underway and the Complainant after her evidence was over filed application under Section 173(8) of Cr.P.C. The Supreme Court refused to order investigation under that provision but left liberty open to proceed under Section 311 of Cr.P.C. The reason why Mr.Jha has relied upon this judgment finds place in paragraph No.12 of the said judgment.

**The observations are as follows:-**

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<sup>8</sup> 2024 SCC OnLine SC 2643

<sup>9</sup> 2025 SCC OnLine SC 1231

“12. At the outset, we may record that a direction to conduct further investigation even after filing of the chargesheet and commencement of the trial is permissible in law as has been held by a catena of judgments of this Court. Reference in this regard may be made to *Hasanbhai Valibhai Qureshi v. State of Gujarat* wherein, this Court observed that the prime consideration for directing further investigation is to arrive at the truth and to do real substantial justice.....”

**(Emphasis supplied)**

The submission of Mr.Jha is, “*post-trial further investigation is also permissible when it is for the purpose of finding of the truth and to do real substantial justice.*”

24. If we consider the ratio in above judgments, it is true, in case of ***Rampal Gautam*** (cited supra), the observations in case of ***Vinubhai*** were not pointed out. We can gather the ratio in case of ***Rampal Gautam*** in two ways. One is considering the facts of filing of application at belated stage, it was rejected. However, still the Supreme Court reiterated the observations in case of ***Hasanbhai*** to the effect “*for ascertaining the truth and doing complete justice*”, prayer can be considered even at post-trial stage. Even in case of ***Vinubhai***, the Supreme Court has opined that the issue depends upon facts and circumstances of the case. **I think, this is the proper ratio which is**

**culled out after reading above judgments.**

25. There are other judgments of Supreme Court and other High Courts. In case of *Anant Thanur Karmuse V/s. State of Maharashtra and Others*<sup>10</sup>, the observations in case of *Vinubhai* are also referred in paragraph No.40. The issue involved in that Appeal is referred in paragraph No.32. The Supreme Court has laid emphasis on fair investigation and fair trial. There was grievance against the Investigating Agency for not carrying out the investigation properly and not filing charge-sheet against all the accused. The reasons are recorded in paragraph No.47. Mr.Ponda laid emphasis that the powers of the Magistrate and of High Court are different. Question is, when there is a grievance about faulty investigation in any manner and the grievance is made either before the Magistrate or before the High Court, whether the Magistrate can pay attention to certain grievances. Except on certain issues, the Magistrate is having all powers to order further investigation.

26. No doubt, it is true, Mr.Jha has relied upon some of the judgments wherein the issue of further investigation has cropped up before High Court. It is true, the observations in case of *Siby Paul, S/o*

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<sup>10</sup> (2023) 5 Supreme Court Cases 802

***M.V. Paulose, Manavalan V/s. State Represented by S.I. of Police and Another***<sup>11</sup> support the submission of Mr.Jha. In that case, the High Court has ordered further investigation even after commencement of the trial. In that case, application for further investigation was filed by the Complainant after he got knowledge about the faulty investigation when he received the summons for giving evidence. In that case, there was grievance about not recording the statement of all the witnesses. Even, the place of execution of the Agreement was shifted.

27. Mr.Jha also relied upon observations in case of ***Parakramsinh Khumansinh Zala V/s. State of Gujarat***<sup>12</sup> wherein grievance was made by the Complainant about damage noticed to firing pins. This was after framing of charge. This was allowed. It is true in paragraph No.12, there is reference of ***Vinubhhai*** and ***Hasanbhai***. The test of “*arriving at truth and doing substantial justice*” was followed.

28. In case of ***Usman Ali V/s. State of U.P. and Others***<sup>13</sup>, the issue was about transfer of investigation to CBI / NIA. Depending upon the facts, it is permissible even after filing of charge-sheet.

29. In case of ***Monowara Sardar V/s. State of West Bengal and***

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<sup>11</sup> 2011 SCC OnLine Ker 4273

<sup>12</sup> MANU/GJ/0890/2021

<sup>13</sup> 2025 SCC OnLine 2118

*Others*<sup>14</sup>, the High Court does not find any fault in the materials collected and the investigation was found unbiased and honest. The power of the trial Court to alter the charge under Section 216 of Cr.P.C. was considered. Prayer for reinvestigation was rejected.

30. To counter the observations by other High Courts, Mr.Ponda relied upon the observations in case of *Bharat V/s. State and Another*<sup>15</sup> and observations in case of *Giles Knapton V/s. State of Goa Thr. Womens Police Station Panaji Goa and Another*<sup>16</sup>. They are by our own High Court.

31. Mr.Jha also relied upon few of the judgments on the point of restraint to exercise inherent powers to interfere with the investigation. But they are on the point of quashing of FIR, not going into disputed questions of fact or appreciate defense in a quashing petition. Even though they deal with power of the High Court, these judgments are on different set of facts. They deal with the issue of quashing of FIR on the submission that no case is made out against the accused. This is not the issue involved before me. Hence those observations are not helpful to Mr.Jha.

32. After considering the above observations, we can cull out the

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<sup>14</sup> 2025 SCC OnLine Cal 958

<sup>15</sup> 2024 SCC OnLine Bom 3863

<sup>16</sup> 2024 SCC OnLine Bom 4673

principles. They are as follows:-

(a) Observations in *Amrutbhai*:-

Further investigation not permissible at the fag end of trial at the instance of Complainant.

(b) Observations in *Vinubhai*:-

After cognizance is taken, Magistrate can order further investigation at the instance of Complainant (however, in that case, it was at the instance of accused and rejected.

(c) Observation in case of *Rampal Gautam*:-

Though on facts, it was disallowed after Complainant finished evidence, it was held permissible to arrive at truth and to do real substantial justice.

(d) Though, observations of *Hasanbhai* were referred (it was a case of further investigation cropped up before High Court), still in *Rampal*, issue was involved before the Magistrate.

(e) Bombay High Court has not allowed further investigation but other High Courts have allowed it.

33. Ultimately, the job of the Court is:-

(a) Consider the ratio which is similar to the facts before you.

(b) Consider the general principles laid down in those judgments.

34. If we apply these principles, I do not think, the ratio in *Vinubhai* is helpful to the Applicant. It is the ratio in case of *Rampal* which will

be helpful. The principles laid down in case of *Dr Shah Faesal and Others V/s. Union of India and Another*<sup>17</sup> and *Central Board of Dawoodi Bohra Community and Another V/s. State of Maharashtra and Another*<sup>18</sup> cannot be made applicable. Because stage of investigation in *Vinubhai* and stage of investigation in case of *Rampal* is different. I hold that application for further investigation by the Complainant after charge before the Magistrate is maintainable. I will give reasons hereinafter.

35. Sub-section (8) of Section 173 is worded in negative way. Instead of saying what is permissible, legislature has said what is not prohibited. Sub-section (8) is in two parts. They are as follows:-

Part 1:-

*“Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate ...”*

It implies when charge-sheet is filed, it does not prevent further investigation. This is general principle. It does not say this investigation can be initiated by whom that is to say, by police, by complainant or Magistrate. There cannot be a dispute that such

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<sup>17</sup> (2020) 4 Supreme Court Cases 1

<sup>18</sup> (2005) 2 Supreme Court Cases 673

investigation can be initiated by police. But whether it can be “by *Magistrate suo motu or at the instance of complainant*” is a question and if so at what stage. In this case, we are only dealing with “*investigation can be initiated at the instance of the Complainant and at the stage after framing of charge*”.

Part 2:-

*“And, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form of prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”*

This part clearly indicates, this investigation is always to be done by the Police (whoever may initiate for further investigation).

36. Now, in this case, investigation is ordered by the Magistrate.

Mr.Ponda’s serious emphasis is “*on Magistrate’s power*”. Because

he is not having any doubt about power of constitutional Court to

order such investigation. Now, if first part is perused, the word

“*Magistrate*” is used at one place. It contemplates, filing of charge-

sheet before Magistrate’s Court. Section 173 title is “*Report of*



*police officer on completion of investigation*". It is included in Chapter XII *"Information to the police and their powers to investigate"*. I have tried to search provisions in Cr.P.C. giving rights to the Complainant / First-Informant during investigation and trial. Following are the references:-

- (a) **As per Section 154(1)** – information given by the First-Informant has to be reduced into writing.
- (b) If person is aggrieved, he has got right to inform higher police officers.
- (c) **Section 156(3)** – gives power to order investigation. Such Magistrate must be empowered to take cognizance under Section 319 of Cr.P.C.
- (d) There is power given to proceed against a person who is not accused of any offence. Section does not say to whom the power is given and it has to be initiated by whom. Certainly, it has to be inferred that this power has to be exercised by the Magistrate. Now, it can be at the instance of Public Prosecutor or even at the instance of Complainant. Can we say this power has to be exercised by the Constitutional Courts only?

37. Similarly, Sub-section (8) to Section 173 does not use the word Magistrate, power can be exercised by the Magistrate. The contingency which has cropped up in *Vinubhai's* case is at the

instance of the accused. They want to bring on record certain materials which suits to their defense. In other judgments, there are contingencies accrued after commencement of trial. When it is at the instance of the Complainant, on many occasions, there was a grievance against the Police. It is either due to oversight or faulty investigation or on account of some pressure. (We are not dealing with the cases of further investigation moved at the instance of Police or by Magistrate). Now, if such Complainant comes to know about defective investigation and if he makes a grievance to the Magistrate seized of the case, then what is wrong? He is right for two reasons. One, there is no prohibition contained there and second, when the Magistrate is seized of the case, at first instance, it is justified in approaching the Court of Magistrate.

38. Furthermore, if we consider the stages in criminal trial, there is stage for deciding an application for discharge, there is stage of considering the materials for satisfying case is made out for framing of charge. How a Magistrate is supposed to consider whether there is any lacunae in materials collected during investigation. It is not expected from the accused to point out any lacunae in the investigation. The public prosecutor also proceeds

on the basis of papers. The police if got some additional material, they can certainly tell the Magistrate. So the stakeholder which remains is the Complainant/First-Informant. In recent criminal jurisprudence, he is recognised and given right of audience in different way. Just because charge is framed, it does not mean that the Magistrate can shut his eyes to certain lacunae pointed out in investigation. Police has every right and if Police themselves at fault, who will point out? It is the Complainant only who can point out the same. Even Court is having power to alter the charge under Section 216 of Cr.P.C. at any stage prior to the judgment. So there are provisions in the Code which are incorporated in securing fair trial to both the accused as well as to the Complainant. So, I hold that Complainant's application under Section 173(8) is maintainable even after framing of charge. Whether to allow such application is question to be decided on facts and circumstances. If it is at fag end of trial, the Court should be reluctant to allow it. It is also true, there is difference in between "*further investigation*" and "*reinvestigation / de novo investigation*", "*transfer of investigation*". I am not going into broader issue but restrict myself to "*issue of further investigation*".

### **Facts of the case**

39. Considering the facts, I am not in favour of justifying further investigation. What I feel, the learned Magistrate has simply referred to some of the judgments without applying the correct ratio. In case of ***Samaj Parivartan Samudaya and Others V/s. State of Karnataka and Others***<sup>19</sup>, the issue was about challenge to the Government order thereby suspending mining operations. The High Court set aside the said Notification. When the matter reaches to the Supreme Court, there was certain observation about power of the Police to investigate. There was FIR against mining companies under various provisions of IPC, for doing mining illegally. Even the Central Empowered Committee was ordered to do inspection. They have also given a report while dealing with these issues. The Supreme Court made certain observations about doing investigation after filing of charge-sheet. The provisions of Section 319 of Cr.P.C. was quoted. (paragraph Nos.35 and 37). Learned Magistrate has not considered that “*issue of further investigation was not directly involved.*” Those observations is not the ratio. Learned Magistrate was wrong in applying it blindly.

40. Learned Magistrate has also referred about the observations in

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<sup>19</sup> (2012) 7 Supreme Court Cases 407

case of *Dharam Pal V/s. State of Haryana and Others*<sup>20</sup>. The issue involved was about transfer of investigation after commencement of the trial. The prayer was rejected by the High Court but it was allowed by the Supreme Court. There was grievance of faulty investigation. That issue has not cropped up before the Magistrate but before the High Court. As said above, the powers of the constitutional Courts are wider. Learned Magistrate has overlooked this fact.

41. The learned trial Court has placed reliance on the observations in case of *Amrutbhai*. The stage of the case was fag end and prayer was rejected whereas in the present case, charge is framed and evidence has to start. Those observations do not help the case of the Complainant.

42. I am giving following reasons why learned Magistrate has committed fault in ordering further investigation:-

- (a) On two occasions, the Police (Vakola Police Station and EOW) have given a negative report i.e. against the Complainant. Second, no doubt, learned Magistrate is empowered to disagree with the negative report and that is how, the learned Magistrate has issued a process.
- (b) Yet, it is not decided whether the opinion given by the Police is wrong and whether the Complainant was right in pressing for '*issuance of process*'. It will be decided once the recording

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20 (2016) 4 Supreme Court Cases 160

of evidence will start.

- (c) About the grievance made by the Complainant about taking the file and not returning back by the Accused, the Police have already investigated and came to the conclusion that no Agreement was found.
- (d) It is not that Police have not investigated on this aspect. The Police have got wide powers to investigate even by interrogating the Accused persons.
- (e) It cannot be said that the Complainant was docile throughout but he was active and approached High Court on one occasion and the order accepting summary was set aside. On second occasion, even there was negative report by EOW, he convinced the learned Magistrate and then process was issued.

43. I do not find any justifiable reasons given by the learned Magistrate in ordering further investigation.

44. It is true, there has to be a fair criminal trial and which is possible only when it is preceded by fair investigation. Fair investigation implies sufficient opportunity to conduct investigation. It also implies an opportunity to the Complainant put forth any fault in the investigation. However, pointing out fault does not mean you can challenge the investigation unless there is justifiable ground thereby doubting investigation. I do not think, this has happened in this case.

45. For the above reasons, the order of further investigation cannot be justified in the eyes of law. I feel that the trial needs to be conducted. One of the fault is also about involvement of more Accused persons. This ground is also not fortified so interference is warranted. If any materials are brought on record during evidence, the Complainant is at liberty to request the Magistrate to consider that evidence and pass appropriate orders. This can be only after hearing the Accused. Hence the following order:-

-: **ORDER** :-

- (i) The Criminal Application No.573 of 2019 is allowed.
- (ii) **The order dated 14<sup>th</sup> December 2018** passed by then learned Additional Chief Metropolitan Magistrate, Esplanade, Mumbai **is set aside.**
- (iii) The Application for further investigation **is dismissed.**
- (iv) The Court of Additional Chief Judicial Magistrate First Class, Esplanade, Mumbai (then learned Additional Metropolitan Magistrate, 47<sup>th</sup> Court, Esplanade, Mumbai, **is at liberty to proceed with the trial of the case from the appropriate stage.**
- (v) **Pending Interim Applications** are also stand **disposed of.**

[S. M. MODAK, J.]