IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1001 of 2019

Satya Brata Chakrabarti @ S. B. Chakrabarti
vs.
The State of West Bengal & Ors.

For the Petitioners	:	Mr. D. N. Ray, Mr. Biswarup Nandy, Mr. Sourav Halder.
For the State	:	Mr. S. G. Mukherji, Learned P.P. Ms. Zareen N. Khan, Mr. Md. Kutubuddin.
For the Opposite Party no.2	:	Mr. Shyama Prasad Chattopadhyay (in-person).
For the Opposite Party no.3	:	Mr. Pradeep Jewrajka, Ms. Pooja Jewrajka.
Hearing concluded on	:	13.09.2023
Judgment on	:	04.10.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 03.01.2019 passed by the learned Chief Metropolitan Magistrate, Calcutta rejecting thereby the "Narazi Petition" filed by the petitioner in Park Street P.S Case No.310 of 2016 dated 29.12.2016 under Sections 409/120B of the Indian Penal Code, 1860.

2. The petitioner/complainant's case is that the petitioner is a retired Professor and states that he under the capacity of General Secretary along with Professor Isha Mahammad, President, Dr. Sujit Kumar Das, Treasurer and other Members resumed the charge of the Council of The Asiatic Society on 02.05.2016.

3. It is submitted by the petitioner/complainant that the Asiatic Society is a prestigious institution in the field of research and academics. It is a reputed institution for its cultural heritage all over the world. The Society has also got its statutory entity by an Act of Parliament in 1984.

4. That prior to their assumption of charge, one Professor Manabendu Banerjee was the General Secretary, one Professor Ramakanta Chakraborty was the President and one Shahnawaz Shah was the Treasurer. Professor Manabendu Banerjee while holding his office as General Secretary of The Asiatic Society expired and one Professor Ramjit Sen took charge for two and half months.

5. It is stated that during the period of the earlier Council as aforesaid, huge financial irregularities were revealed in the Audit Report and the same was questioned in the Parliament from time to time. Accordingly, the new Council was asked to go into the details of the irregularities and corrective measures were asked to be taken and they were asked to report back to the Government.

6. The petitioner states that the new committee set up a high powered enquiry committee and internal control system. Accordingly, the respective committees submitted their respective reports and also provided the corrective measures. It was further revealed and unearthed by the said

committee reports that huge amount of public money was spent without proper authorization and valid documents.

7. That the opposite party no.1, the Controller of Finance and opposite party no.2 i.e. one M/s. KLB Travels, a private travel agency were revealed to be the offenders for purchase of air tickets and also responsible for such financial mess of siphoning huge public money and in support of the same two copies of audit report and the enquiry report were also provided to the Investigating Agency showing commission of such offence.

8. That the petitioner under the capacity of General Secretary to "The Asiatic Society" lodged a written complaint vide Ref. No.14943 dated 27.12.2016 as de-facto complainant before the Park Street Police Station stating the aforesaid facts.

9. Pursuant to the complaint as aforesaid, Park Street Police Station registered, Park Street Police Station case No.310 of 2016 dated 29.12.2016 under Sections 409/120B of Indian Penal Code against Opposite Party no.2 for criminal breach of trust and misappropriation of public money amounting to Rupees One Crore and also against opposite party no.3 for criminal breach of trust and misappropriation of public money amounting to Rupees Fifty Lakhs and Twenty Thousand.

10. That after lodging the FIR as aforesaid, the petitioner and the other officials of the Asiatic Society witnessed lackadaisical attitude on the part of the Investigating Authority with respect to the investigation of the instant case and the investigating authority never arrested the accused persons for proper investigation of the matter. The Investigating Authority did not go into the audit reports and other documents including report of

the high powered enquiry committee and internal control system and respective committee reports which are basis of commission of the said offence. That the Asiatic Society was asked to furnish all the connected documents in original by the Investigating Officer and the same were duly handed over to him, but the Investigation was not found to be up to the mark and the petitioner and his officials persuaded the matter with the Investigating Officer constantly but there was no result found to be arrived at for about a couple of years.

11. The petitioner states that, to his great dismay he ultimately received a message from one Anjan Sen, Sub Inspector of Park Street Police Station, the Investigating Officer of the instant case whereby it was revealed that after completion of the investigation, the final report vide F.R No.40/18 dated 29.06.2018 was submitted declaring the case to be civil in nature.

12. **Mr. D. N. Ray, learned counsel for the petitioner** has submitted that the Audit Report and other high powered enquiry committee and internal control system and respective committee reports and especially the two copies of Audit Reports and the Enquiry Report were also provided towards the reference of the offence amounting to criminal breach of trust and misappropriation of public money amounting to Rupees One Crore by opposite party no.2 and also against M/s. KLB Travels, opposite party no.3 herein for criminal breach of trust and misappropriation of public money amounting to Rupees Fifty Lakhs and Twenty Thousand. Therefore, it is evident and already revealed that they are clearly offenders for purchase of air tickets and also responsible for such financial mess of siphoning huge public money.

13. That evidently the essentials of the offence under Section 409 of the Indian Penal Code were fulfilled in the instant case by criminal acts of the accused persons and a clear criminal conspiracy within the accused persons have also been unearthed, hence in the backdrop declaring the aforesaid criminal offence to be of civil in nature is clearly the outcome of a faulty investigation rather of no investigation and the said final report is liable to be set aside.

14. The petitioner then filed one "Narazi Petition" before the learned Chief Metropolitan Magistrate, Calcutta against the acts and deeds of the Investigating Officer.

15. The petitioner states that ultimately the learned Chief Metropolitan Magistrate, Calcutta vide his order dated 03.01.2019 held that the findings of the Investigating Officer culminating in closure of the issue citing the case to be civil in nature was done rightly and thus finding no apparent laches in investigation rejected the "Narazi Petition".

16. It is stated that while rejecting the "Narazi Petition" on 03.01.2019 the learned Chief Metropolitan Magistrate, Calcutta failed to consider the fact that the Investigating Officer while submitting closure report held that although financial irregularities in the breach of financial norms and rules had apparently taken place, but as there was no evidence to show any act with criminal intent, misappropriation on the part of the accused persons, the same resulted in closure of the issue, but the learned trial court did not consider the fact that public money was siphoned not by way of Cheque transaction but by disbursement of cash by withdrawing money through cheque and therefore the opposite party no.2 ought to be held

solely responsible for such misappropriation of money in league with opposite party no.3.

17. It is further submitted that the learned Chief Metropolitan Magistrate, Calcutta while rejecting the "Narazi Petition" on 03.01.2019 failed to consider the fact that the Investigating Officer had not consulted the Audit Report of the Society for the relevant periods, cash books, ledger books of account, detailed information about the policies and guidelines of the society regarding its financial matters and the rules governing the power exercisable by the General Secretary, Controller and Treasurer in its true and correct perspective and moreover treating his closure report as final, has rejected the "Narazi Petition".

18. The learned Trial Court failed to consider the fact that evidently a prima facie case of criminal breach of trust and criminal conspiracy were established since during the period of earlier Council as aforesaid huge financial irregularities were revealed in the Audit Report and the same was questioned in the Parliament from time to time.

19. The learned Chief Metropolitan Magistrate, Calcutta while rejecting the "Narazi Petition" has failed to consider that the Investigating Officer purportedly in connivance with the opposite party nos.2 and 3 has closed the issue declaring the same to be civil in nature.

20. The allegations made in the complaint dated 27.12.2016 were not investigated properly by the Investigating Officer in its true intent and as such the learned Chief Metropolitan Magistrate, Calcutta ought to have allowed the "Narazi Petition" by directing further Investigation by superior Investigating Agency or a Special Investigating Agency.

21. The petitioner submits that the acts complained of, and the transactions revealed during investigation which took place at the behest of the two accused persons certainly tantamount to criminal breach of trust by a public servant and as such, the case should have ended up in a charge sheet.

22. The petitioner, thus, prays for an order directing the opposite party no.1 to re-investigate the complaint of the petitioner being registered as Park Street Police Station Case No.310 of 2016 by a Superior Investigating Agency or a Special Investigating Agency by cancelling the Final Report vide F.R. No.40/18 dated 29.06.2018 submitted in the said Park Street Police Station.

23. Mr. Saswata Gopal Mukherji, learned public Prosecutor has placed the case diary along with a short note and submitted that the investigation in this case is in accordance with law and the dispute is to be decided by a civil court as the ingredients required to constitute the offences alleged are absent in this case.

24. The opposite party no.2 herein, on filing a short note of argument and appearing in person has submitted that since there has been no such audit report on which the total case of complainant is based, the petitioner Satya Brata Chakrabarti has failed to submit the concerned Audit Report in the Supplementary Affidavit dated 05.09.2023, affirmed by the petitioner and as such the present case is not maintainable and may be dismissed with cost.

25. The relevant portion of the order under revision dated 03.01.2019 is reproduced here:-

"It was submitted by the learned APP that mere irregularities committed in spending the funds of an organization by the person entrusted with the same, would not amount to criminal breach of trust unless it is shown that the same was converted to his own use by the accused.

On perusal of the CD, I find that in course of investigation, the IO had consulted the Audit Report of the Society for the relevant periods, Cash books, ledger books of account, and had sought detailed information about the policies and guidelines of the Society regarding its financial matters and the rules governing the powers exercisable by the General Secretary, Controller and Treasurer as it prevailed during the relevant period. Regulations 4A, 43, 44, 45 of the Asiatic Society Regulations were consulted to understand the role of the accused as Controller of Standing Finance Committee of the Council and the powers exercisable by him. Regulations 59 to 65B provided that while the money received and paid by the society is to be handled and held by the treasurer, the Standing Finance Committee was responsible for vetting all expenditures and approving the same, and the Controller, being only an officer of the said committee, did not enjoy any exclusive power in that regard. ***In course of investigation, on consulting the audit report, it was certainly revealed that huge funds were withdrawn from the societies accounts and expenses were incurred for organizing various academic programmes in North East India, and a substantial part of the expenditure was also incurred in meeting travelling and logistic expenses provided by the accused no.2 in apparent violation of fiscal norms of the society****. But it has clearly been reveled during investigation that all payments were made through cheques and no cash transaction took place. Neither did any materials emerge during investigation to show that any part of these irregular expenditures were diverted to the personal accounts of the accused persons, so as to constitute criminal misappropriation.*

In order to constitute criminal breach of trust, a dishonest intention to misappropriate or to convert to one's own use or to dispose off property entrusted to the accused, must exist. ***The materials collected during investigation reveals that the expenses incurred by the accused no.1 on behalf of the society were connected with the affairs undertaken by the society and not for any extraneous purpose, but the fiscal regulations laying down the fiscal discipline in the matter to such expenditures, were not adhered to.*** *In my view, such conduct may make a person liable for disciplinary action within the establishment, but would hardly qualify for a*

criminal action before a court of law, as because the essential ingredient to constitute a criminal offense, in the form of a "dishonest intention to misappropriate", appears to be lacking.

Hence, the I/O rightly submitted closure report citing the case to be civil in nature.

Thus, finding no apparent latches in investigation, I am of the opinion that this is not a case which calls for an order of further investigation u/s 173(8) of the Cr.P.C.

The narazi petition is accordingly rejected. The closure report, describing the case as being of civil nature, is accepted. The accused persons are discharged from this case. The case is filed.

Sd/-
Chief Metropolitan Magistrate
Calcutta"

26. From the copy of the inspection report filed by way of a supplementary affidavit by the petitioner, it is prima facie evident that there has been some discrepancies relating to government funds.

27. Extensive details are provided in the said inspection report. **The learned Magistrate too has observed that there has been expenses incurred from Government fund in apparent violation of the fiscal of the society/institution.**

28. But, as, the investigating officer submitted the final report stating that the dispute is civil in nature, the learned Magistrate has accepted the said report on satisfaction.

29. Section 409 of IPC, lays down:-

"409. Criminal breach of trust by public servant, or by banker, merchant or agent.—*Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a*

public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

Ingredients of offence.– *The essential ingredients of the offence under Sec. 409 are as follows:-*

(1) Accused was a public servant, or a banker or merchant or agent or factor or broker or an attorney;
(2) In such capacity accused was entrusted with certain property or he gained domain over such property which was not his own;
(3) Accused committed criminal breach of trust with respect to such property."

30. The Supreme Court in ***N. Raghavender vs State of Andhra Pradesh, CBI, Criminal Appeal No. 5 of 2010, on 13.12.2021,*** held:-

"Ingredients necessary to prove a charge under Section 409 IPC:

41. *Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust.* ***(See: Sadupati Nageswara Rao v. State of Andhra Pradesh, (2012) 8 SCC 547).***

42. *The entrustment of public property and dishonest misappropriation or use thereof in the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409 IPC. The expression 'criminal breach of trust' is defined under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such*

> *trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405 IPC, the following ingredients must be satisfied:*
>
> *(i) Entrusting any person with property or with any dominion over property;*
>
> *(ii) That person has dishonestly mis-appropriated or converted that property to his own use;*
>
> *(iii) Or that person dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.*
>
> ***43.*** *It ought to be noted that the crucial word used in Section 405 IPC is 'dishonestly' and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is 'mis-appropriates' which means improperly setting apart for ones use and to the exclusion of the owner."*

31. The financial discrepancies as stated in the inspection report are in detail wherein there is prima facie materials to show that there has been use of government fund in violation of its rules and the said findings is to be properly investigated, which in the present case has not been fair and proper.

32. In ***Anant Thanur Karmuse vs. State of Maharashtra, Criminal Appeal No. 13 of 2023, on 24 February, 2023,*** the Supreme Court held:-

> *"**8.** Now, so far as the power of the Constitutional Courts to order further investigation / re-investigation / de novo investigation even after the chargesheet is filed and*

charges are framed is concerned, the following decisions are required to be referred to:- 8.1 In the case of Bharati Tamang (supra), after taking into consideration the decisions of this Court in the case of Babubhai Vs. State of Gujarat, (2010) 12 SCC 254 (paras 40 and 42) and the subsequent decision of this Court in the case of Ram Jethmalani Vs. Union of India (2011) 8 SCC 1 and other decision on the point, ultimately the principles, which are culled out are as under:-

"41. From the various decisions relied upon by the petitioner counsel as well as by respondents' counsel, the following principles can be culled out.

41.1. The test of admissibility of evidence lies in its relevancy.

41.2. Unless there is an express or implied constitutional prohibition or other law, evidence placed as a result of even an illegal search or seizure is not liable to be shut out.

41.3. If deficiency in investigation or prosecution is visible or can be perceived by lifting the veil which try to hide the realities or covering the obvious deficiency, Courts have to deal with the same with an iron hand appropriately within the framework of law.

41.4. It is as much the duty of the prosecutor as of the Court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice.

41.5. In order to ensure that the criminal prosecution is carried on without any deficiency, in appropriate cases this Court can even constitute Special Investigation Team and also give appropriate directions to the Central and State Governments and other authorities to give all required assistance to such specially constituted investigating team in order to book the real culprits and for effective conduct of the prosecution.

41.6. While entrusting the criminal prosecution with other instrumentalities of State or by constituting a Special Investigation Team, the High Court or this Court can also monitor such investigation in order to ensure proper conduct of the prosecution.

41.7. In appropriate cases even if the charge-sheet is filed it is open for this Court or even for the High Court to direct

investigation of the case to be handed over to CBI or to any other independent agency in order to do complete justice.

41.8. In exceptional circumstances the Court in order to prevent miscarriage of criminal justice and if considers necessary may direct for investigation de novo." 8.2 In the case of Dharam Pal (supra), after taking into consideration the catena of decisions on the point, it is observed and held that the constitutional courts can direct for further investigation or investigation by some other investigating agency. It is observed that the purpose is, there has to be a fair investigation and a fair trial. It is observed that the fair trial may be quite difficult unless there is a fair investigation. It is further observed and held that the power to order fresh, de novo or re- investigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. While observing and holding so, in paragraphs 24 and 25, it is observed and held s under:-

"24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quite difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. It can never be forgotten that as the great ocean has only one test, the test of salt, so does justice has one flavour, the flavour of answering to the distress of the people without any discrimination. We may hasten to add that the democratic set-up has the potentiality of ruination if a citizen feels, the truth uttered by a poor man is seldom listened to. Not for nothing it has been said that sun rises and sun sets, light

and darkness, winter and spring come and go, even the course of time is playful but truth remains and sparkles when justice is done. It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. If there is indentation or concavity in the investigation, can the "faith" in investigation be regarded as the gospel truth? Will it have the sanctity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the "tour de force" of the prosecution and if we allow ourselves to say so it has become "idée fixe" but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one's wild imagination. One may think an impartial investigation would be a nostrum but not doing so would be like playing possum. As has been stated earlier, facts are self-evident and the grieved protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an "orphan under law"."

33. In ***State through Central Bureau of Investigation vs. Hemendhra Reddy etc. etc., in Criminal Appeal Nos. ..... Of 2023 (arising out of SLP (Crl.) Nos. 7628-7630 of 2017), on 28 April, 2023,*** held:-

"Difference between "Further Investigation" and "Re-investigation"

51. *There is no doubt that "further investigation" and "re-investigation" stand altogether on a different footing. In Ramchandran v. R. Udhayakumar and Others reported in (2008) 5 SCC 413, this Court has explained the fine distinction between the two relying on its earlier decision in K. Chandrasekhar v. State of Kerala and Others reported in (1998) 5 SCC 223. We quote paras 7 and 8 as under:*

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation.

This was highlighted by this Court in K. Chandrasekhar v. State of Kerala [(1998) 5 SCC 223 : 1998 SCC (Cri) 1291] . It was, inter alia, observed as follows : (SCC p. 237, para 24) "24. The dictionary meaning of 'further' (when used as an adjective) is 'additional; more; supplemental'. 'Further' investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports—and not fresh report or reports—regarding the 'further' evidence obtained during such investigation."

8. In view of the position of law as indicated above, the directions of the High Court for reinvestigation or fresh investigation are clearly indefensible. We, therefore, direct that instead of fresh investigation there can be further investigation if required under Section 173(8) of the Code. The same can be done by CB CID as directed by the High Court." Position of Law on the subject of "Further Investigation"

***77.** We may summarise our final conclusion as under:*

(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.

(ii) Prior to carrying out further investigation under Section 173(8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.

(iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.

(v) There is nothing in the CrPC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the CrPC.

84. *In the aforesaid context, we may only say that the general rule of criminal justice is that "a crime never dies". The principle is reflected in the well-known maxim nullum tempus aut locus occurrit regi (lapse of time is no bar to Crown in proceeding against offenders). It is settled law that the criminal offence is considered as a wrong against the State and the Society even though it has been committed against an individual. Normally, in serious offences, prosecution is launched by the State and a Court of law has no power to throw away prosecution solely on the ground of delay. Mere delay in approaching a Court of law would not by itself afford a ground for dismissing the case. Though it may be a relevant circumstance in reaching a final verdict. (See: Japani Sahoo v. Chandra Sekhar Mohanty reported in (2007) 7 SCC 394.)*

85. *The following observations in Hasanbhai (supra), have been made by this Court in reference to further investigation:*

"13. ….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. …"

86. *Thus, the assurance of a fair trial is to be the first imperative in the dispensation of justice. [Reference: Commissioner of Police, Delhi and Another v. Registrar, Delhi High Court, New Delhi reported in (1996) 6 SCC 323]. The need for fair investigation has also been emphasized in Vinay Tyagi (supra) where it was observed as under:*

"48. What ultimately is the aim or significance of the expression "fair and proper investigation" in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. …."

87. *Reference may also be placed on the decision in Pooja Pal v. Union of India and Others reported in (2016) 3 SCC 135, where the fundamental rights enshrined under Article 21 of the Constitution of India were discussed in the context of "speedy trial" juxtaposed to "fair trial" in the following manner:*

"83. A "speedy trial", albeit the essence of the fundamental right to life entrenched in Article 21 of the Constitution of India has a companion in concept in "fair trial", both being inalienable 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 analysed 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.".

(Emphasis supplied)"

34. **Further investigation** leads to collection of further evidence to unveil the truth.

35. **Re-investigation** in addition to collection of further evidence, also has a second look and fresh assessment of the evidence already on record (case diary), while submitting a final report which in cases of this nature, is required for a fair and just investigation.

36. The Supreme Court (Majority decision) in ***Romila Thapar & Ors. Vs Union of India & Ors., Writ Petition (Criminal) No. 260 of 2018 on 28th September, 2018***, held :-

> *"**19.** After the high-pitched and at times emotional arguments concluded, each side presenting his case with equal vehemence, we as Judges have had to sit back and ponder over as to who is right or whether there is a third side to the case. The petitioners have raised the issue of credibility of Pune Police investigating the crime and for attempting to stifle the dissenting voice of the human rights activists. The other side with equal vehemence argued that the action taken by Pune Police was in discharge of their statutory duty and was completely objective and independent. It was based on hard facts unraveled during the investigation of the crime in question, pointing towards the sinister ploy to destabilize the State and was not because of difference in ideologies, as is claimed by the so called human rights activists.*
>
> ***20.** After having given our anxious consideration to the rival submission and upon perusing the pleadings and documents produced by both the sides, coupled with the fact that now four named accused have approached this Court and have asked for being transposed as writ petitioners, the following broad points may arise for our consideration:-*
>
> *(i) Should the Investigating Agency be changed at the behest of the named five accused?*
>
> *(ii) If the answer to point (i) is in the negative, can a prayer of the same nature be entertained at the behest of the next friend of the accused or in the garb of PIL?*

(iii) If the answer to question Nos.(i) and/or (ii) above, is in the affirmative, have the petitioners made out a case for the relief of appointing Special Investigating Team or directing the Court monitored investigation by an independent Investigating Agency?

(iv) Can the accused person be released merely on the basis of the perception of his next friend (writ petitioners) that he is an innocent and law abiding person?

21. *Turning to the first point, we are of the considered opinion that the issue is no more res integra. In Narmada Bai Vs. State of Gujarat and Ors.1, in paragraph 64, this Court restated that it is trite law that the accused persons do not have a say in the matter of appointment of Investigating 1 (2011) 5 SCC 79 Agency. Further, the accused persons cannot choose as to which Investigating Agency must investigate the offence committed by them. Paragraph 64 of this decision reads thus:-*

"64. ….. It is trite law that accused persons do not have a say in the matter of appointment of an investigation agency. The accused persons cannot choose as to which investigation agency must investigate the alleged offence committed by them." (emphasis supplied)

22. *Again in Sanjiv Rajendra Bhatt Vs. Union of India and Ors.2, the Court restated that the accused had no right with reference to the manner of investigation or mode of prosecution. Paragraph 68 of this judgment reads thus:*

"68. The accused has no right with reference to the manner of investigation or mode of prosecution. Similar is the law laid down by this Court in ***Union of India v. W.N. Chadha3, Mayawati v. Union of India4, Dinubhai Boghabhai Solanki v. State of Gujarat5, CBI v. Rajesh Gandhi6,*** *Competition Commission of India v. SAIL7 and Janta Dal v. H.S. Choudhary.8"*

(emphasis supplied)

23. *Recently, a three-Judge Bench of this Court in E. Sivakumar Vs. Union of India and Ors.9, while dealing with the appeal preferred by the "accused" challenging the order of the High Court directing investigation by CBI, in paragraph 10 observed:*

"10. As regards the second ground urged by the petitioner, we find that even this aspect has been duly considered in the impugned judgment. In paragraph 129 of the impugned judgment, reliance has been placed on Dinubhai Boghabhai Solanki Vs. State of Gujarat10, wherein it has been held that in a writ petition seeking impartial investigation, the accused was not entitled to opportunity of hearing as a matter of course. Reliance has also been placed in Narender G. Goel Vs. State of Maharashtra11, in particular, paragraph 11 of the reported decision wherein the Court observed that it is well settled that the accused has no right to be heard at the stage of investigation. By entrusting the investigation to CBI which, as aforesaid, was imperative in the peculiar facts of the present case, the fact that the petitioner was not impleaded as a party in the writ petition or for that matter, was not heard, in our opinion, will be of no avail. That per se cannot be the basis to label the impugned judgment as a nullity."

24. This Court in the case of Divine Retreat Centre Vs. State of Kerala and Ors.12, has enunciated that the High 9 (2018) 7 SCC 365 10 Supra @ Footnote 5 11 (2009) 6 SCC 65 12 (2008) 3 SCC 542 Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint an investigating officer of *its own choice to investigate into a crime on whatsoever basis.* ***The Court made it amply clear that neither the accused nor the complainant or informant are entitled to choose their own Investigating Agency to investigate the crime in which they are interested.*** *The Court then went on to clarify that the High Court in exercise of its power under Article 226 of the Constitution can always issue appropriate directions at the instance of the aggrieved person if the High Court is convinced that the power of investigation has been exercised by the investigating officer mala fide.*

25. *Be that as it may, it will be useful to advert to the exposition in State of West Bengal and Ors. Vs. Committee for Protection of Democratic Rights, West Bengal and Ors.13 In paragraph 70 of the said decision, the Constitution Bench observed thus:*

"70. Before parting with the case, we deem it necessary to emphasise that despite wide powers conferred by Articles

32 13 (2010) 3 SCC 571 and 226 of the Constitution, while passing any order, the Courts must bear in mind certain self-imposed limitations on the exercise of these Constitutional powers. The very plenitude of the power under the said articles requires great caution in its exercise. Insofar as the question of issuing a direction to the CBI to conduct investigation in a case is concerned, although no inflexible guidelines can be laid down to decide whether or not such power should be exercised but time and again it has been reiterated that such an order is not to be passed as a matter of routine or merely because a party has levelled some allegations against the local police. This extraordinary power must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and instil confidence in investigations or where the incident may have national and international ramifications or where such an order may be necessary for doing complete justice and enforcing the fundamental rights. Otherwise the CBI would be flooded with a large number of cases and with limited resources, may find it difficult to properly investigate even serious cases and in the process lose its credibility and purpose with unsatisfactory investigations."

27. *In view of the above, it is clear that the consistent view of this Court is that the accused cannot ask for changing the Investigating Agency or to do investigation in a particular manner including for Court monitored investigation. The first two modified reliefs claimed in the writ petition, if they were to be made by the accused themselves, the same would end up in being rejected. In the present case, the original writ petition was filed by the persons claiming to be the next friends of the concerned accused (A16 to A20). Amongst them, Sudha Bhardwaj (A19), Varvara Rao (A16), Arun Ferreira (A18) and Vernon Gonsalves (A17) have filed signed statements praying that the reliefs claimed in the subject writ petition be treated as their writ petition. That application deserves to be allowed as the accused themselves have chosen to approach this Court and also in the backdrop of the preliminary objection raised by the State that the writ petitioners were completely strangers to the offence under investigation and the writ petition at their instance was not maintainable. We would, therefore, assume that the writ petition is now pursued by the accused themselves and once they have become petitioners themselves, the question of next friend pursuing the remedy to espouse their cause cannot be countenanced. The next friend can continue to espouse the cause of the affected accused as long as the concerned*

accused is not in a position or incapacitated to take recourse to legal remedy and not otherwise.

30. *We find force in the argument of the State that the prayer for changing the Investigating Agency cannot be dealt with lightly and the Court must exercise that power with circumspection. As a result, we have no hesitation in taking a view that the writ petition at the instance of the next friend of the accused for transfer of investigation to independent Investigating Agency or for Court monitored investigation cannot be countenanced, much less as public interest litigation."*

37. The said judgment was referred to by the Supreme Court in ***Vinubhai Haribhai Malaviya Vs The State of Gujarat on 16.10.2019 in Original Appeal 478-479 of 2017,*** wherein a **Three Judge Bench** held:-

*"**9.** The question of law that therefore arises in this case is whether, after a charge-sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding.*

38. *However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct "further investigation" and require the police to submit a further or a supplementary report. A three-Judge Bench of this Court in Bhagwant Singh [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] has, in no uncertain terms, stated that principle, as aforenoticed.*

40. *Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:*

40.1. *The Magistrate has no power to direct "reinvestigation" or "fresh investigation" (de novo) in the case initiated on the basis of a police report.*

40.2. *A Magistrate has the power to direct "further investigation" after filing of a police report in terms of Section 173(6) of the Code.*

40.3. *The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three- Judge Bench and thus in conformity with the doctrine of precedent.*

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.*

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. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."*

xxx xxx xxx

48. *What ultimately is the aim or significance of the expression "fair and proper investigation" in criminal jurisprudence? It has a twin purpose: Firstly, the investigation must be unbiased, honest, just and in accordance with law; secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is*

inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.

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 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.*

50. *Such a view can be supported from two different points of view: firstly, through the doctrine of precedent, as aforenoticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of contemporanea expositio. Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused.*

51. *We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct "further investigation" on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms*

of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct "further investigation" to clear its doubt and to order the investigating agency to further substantiate its charge-sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this Court in Sivanmoorthy v. State [(2010) 12 SCC 29: (2011) 1 SCC (Cri) 295]."

34. *A Bench of 5 learned Judges of this Court in Hardeep Singh v. State of Punjab and Ors. (2014) 3 SCC 92 was faced with a question regarding the circumstances under which the power under Section 319 of the Code could be exercised to add a person as being accused of a criminal offence. In the course of a learned judgment answering the aforesaid question, this Court first adverted to the constitutional mandate under Article 21 of the Constitution as follows:*

"8. The constitutional mandate under Articles 20 and 21 of the Constitution of India provides a protective umbrella for the smooth administration of justice making adequate provisions to ensure a fair and efficacious trial so that the accused does not get prejudiced after the law has been put into motion to try him for the offence but at the same time

also gives equal protection to victims and to society at large to ensure that the guilty does not get away from the clutches of law. For the empowerment of the courts to ensure that the criminal administration of justice works properly, the law was appropriately codified and modified by the legislature under CrPC indicating as to how the courts should proceed in order to ultimately find out the truth so that an innocent does not get punished but at the same time, the guilty are brought to book under the law. It is these ideals as enshrined under the Constitution and our laws that have led to several decisions, whereby innovating methods and progressive tools have been forged to find out the real truth and to ensure that the guilty does not go unpunished." In paragraph 34, this Court adverted to Common Cause v.Union of India (1996) 6 SCC 775, and dealt with when trials before the Sessions Court; trials of warrant-cases; and trials of summons-cases by Magistrates can be said to commence, as follows:

"34. In Common Cause v. Union of India [(1996) 6 SCC 775 : 1997 SCC (Cri) 42 : AIR 1997 SC 1539] , this Court while dealing with the issue held: (SCC p. 776, para 1) "1. II (i) In cases of trials before the Sessions Court the trials shall be treated to have commenced when charges are framed under Section 228 of the Code of Criminal Procedure, 1973 in the cases concerned.

(ii) In cases of trials of warrant cases by Magistrates if the cases are instituted upon police reports the trials shall be treated to have commenced when charges are framed under Section 240 of the Code of Criminal Procedure, 1973 while in trials of warrant cases by Magistrates when cases are instituted otherwise than on police report such trials shall be treated to have commenced when charges are framed against the accused concerned under Section 246 of the Code of Criminal Procedure, 1973.

(iii) In cases of trials of summons cases by Magistrates the trials would be considered to have commenced when the accused who appear or are brought before the Magistrate are asked under Section 251 whether they plead guilty or have any defence to make." (emphasis supplied) The Court then concluded:

"38. In view of the above, the law can be summarised to the effect that as "trial" means determination of issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the court informs him of the same, the "trial" commences only on

charges being framed. Thus, we do not approve the view taken by the courts that in a criminal case, trial commences on cognizance being taken."

35. *Paragraph 39 of the judgment then referred to the "inquiry" stage of a criminal case as follows:*

"39. Section 2(g) CrPC and the case laws referred to above, therefore, clearly envisage inquiry before the actual commencement of the trial, and is an act conducted under CrPC by the Magistrate or the court.

The word "inquiry" is, therefore, not any inquiry relating to the investigation of the case by the investigating agency but is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial." A clear distinction between "inquiry" and "trial" was thereafter set out in paragraph 54 as follows:

"54. In our opinion, the stage of inquiry does not contemplate any evidence in its strict legal sense, nor could the legislature have contemplated this inasmuch as the stage for evidence has not yet arrived. The only material that the court has before it is the material collected by the prosecution and the court at this stage prima facie can apply its mind to find out as to whether a person, who can be an accused, has been erroneously omitted from being arraigned or has been deliberately excluded by the prosecuting agencies. This is all the more necessary in order to ensure that the investigating and the prosecuting agencies have acted fairly in bringing before the court those persons who deserve to be tried and to prevent any person from being deliberately shielded when they ought to have been tried. This is necessary to usher faith in the judicial system whereby the court should be empowered to exercise such powers even at the stage of inquiry and it is for this reason that the legislature has consciously used separate terms, namely, inquiry or trial in Section 319 CrPC."

36. *Despite the aforesaid judgments, some discordant notes were sounded in three recent judgments. In Amrutbhai Shambubhai Patel v. Sumanbhai Kantibai Patel (2017) 4 SCC 177, 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. But instead of resting its judgment on this simple fact, this Court from paragraphs 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. In particular, Devarapalli Lakshminarayana Reddy (supra) was strongly relied upon by the Court. We have already seen how this judgment was rendered without adverting to the definition of "investigation" in Section 2(h) of the CrPC, and cannot therefore be relied upon as laying down the law on this aspect correctly. The Court therefore concluded:

*"**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."

37. *This judgment was followed in a recent Division Bench judgment of this Court in Athul Rao v. State of Karnataka and Anr. (2018) 14 SCC 298 at paragraph 8. In Bikash Ranjan Rout v. State through the Secretary (Home), Government of NCT of Delhi (2019) 5 SCC 542, after referring to a number of decisions this Court concluded as follows:*

"7. Considering the law laid down by this Court in the aforesaid decisions and even considering the relevant provisions of CrPC, namely, Sections 167(2), 173, 227 and 228 CrPC, what is emerging is that after the investigation is concluded and the report is forwarded by the police to the Magistrate under Section 173(2)(i) CrPC, the learned Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceedings, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. If the Magistrate disagrees with the report and drops the proceedings, the informant is required to be given an opportunity to submit the protest application and thereafter, after giving an opportunity to the informant, the Magistrate may take a further decision whether to drop the proceedings against the accused or not. If the learned Magistrate accepts the objections, in that case, he may issue process and/or even frame the charges against the accused. As observed hereinabove, having not been satisfied with the investigation on considering the report forwarded by the police under Section 173(2)(i) CrPC, the Magistrate may, at that stage, direct further investigation

and require the police to make a further report. However, it is required to be noted that all the aforesaid is required to be done at the pre-cognizance stage. Once the learned Magistrate takes the cognizance and, considering the materials on record submitted along with the report forwarded by the police under Section 173(2)(i) CrPC, the learned Magistrate in exercise of the powers under Section 227 CrPC discharges the accused, thereafter, it will not be open for the Magistrate to suo motu order for further investigation and direct the investigating officer to submit the report. Such an order after discharging the accused can be said to be made at the post-cognizance stage. There is a distinction and/or difference between the pre- cognizance stage and post-cognizance stage and the powers to be exercised by the Magistrate for further investigation at the pre-cognizance stage and post- cognizance stage. The power to order further investigation which may be available to the Magistrate at the pre-cognizance stage may not be available to the Magistrate at the post-cognizance stage, more particularly, when the accused is discharged by him. As observed hereinabove, if the Magistrate was not satisfied with the investigation carried out by the investigating officer and the report submitted by the investigating officer under Section 173(2)(i) CrPC, as observed by this Court in a catena of decisions and as observed hereinabove, it was always open/permissible for the Magistrate to direct the investigating agency for further investigation and may postpone even the framing of the charge and/or taking any final decision on the report at that stage. However, once the learned Magistrate, on the basis of the report and the materials placed along with the report, discharges the accused, we are afraid that thereafter the Magistrate can suo motu order further investigation by the investigating agency. Once the order of discharge is passed, thereafter the Magistrate has no jurisdiction to suo motu direct the investigating officer for further investigation and submit the report. In such a situation, only two remedies are available: (i) a revision application can be filed against the discharge or (ii) the Court has to wait till the stage of Section 319 CrPC. However, at the same time, considering the provisions of Section 173(8) CrPC, it is always open for the investigating agency to file an application for further investigation and thereafter to submit the fresh report and the Court may, on the application submitted by the investigating agency, permit further investigation and permit the investigating officer to file a fresh report and the same may be considered by the learned Magistrate thereafter in accordance with law. The Magistrate cannot

suo motu direct for further investigation under Section 173(8) CrPC or direct reinvestigation into a case at the post-cognizance stage, more particularly when, in exercise of powers under Section 227 CrPC, the Magistrate discharges the accused. However, Section 173(8) CrPC confers power upon the officer in charge of the police station to further investigate and submit evidence, oral or documentary, after forwarding the report under sub-section (2) of Section 173 CrPC. Therefore, it is always open for the investigating officer to apply for further investigation, even after forwarding the report under sub-section (2) of Section 173 and even after the discharge of the accused. However, the aforesaid shall be at the instance of the investigating officer/police officer in charge and the Magistrate has no jurisdiction to suo motu pass an order for further investigation/reinvestigation after he discharges the accused." Realising the difficulty in concluding thus, the Court went on to hold:

"10. However, considering the observations made by the learned Magistrate and the deficiency in the investigation pointed out by the learned Magistrate and the ultimate goal is to book and/or punish the real culprit, it will be open for the investigating officer to submit a proper application before the learned Magistrate for further investigation and conduct fresh investigation and submit the further report in exercise of powers under Section 173(8) CrPC and thereafter the learned Magistrate to consider the same in accordance with law and on its own merits."

38. *There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. 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 mid-way 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) of the 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. 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. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled."

38. By a Judgment **dated 12.10.2022** the Supreme Court in Criminal ***Appeal No. 1768 of 2022 (Devendra Nath Singh Vs State of Bihar & Ors.)*** relying upon several precedents including ***Vinubhai Haribhai Malaviya Vs The State of Gujarat (Supra)*** held:-

*"**12.5.** The case of **Divine Retreat Centre** (supra) has had the peculiarity of its own. Therein, the Criminal Case bearing No. 381 of 2005 had been registered at Koratty Police Station on the allegations made by a female remand prisoner that while taking shelter in the appellant-Centre, she was subjected to molestation and exploitation and she became pregnant; and thereafter, when she came out of the Centre to attend her sister's marriage, she was*

implicated in a false theft case and lodged in jail. Parallel to these proceedings, an anonymous petition as also other petitions were received in the High Court, which were registered as a suo motu criminal case. In that case, the High Court, while exercising powers under Section 482 CrPC, directed that the said Criminal Case No. 381 of 2005 be taken away from the investigating officer and be entrusted to the Special Investigating Team ('SIT'). The High Court also directed the said SIT to investigate/inquire into other allegations levelled in the anonymous petition filed against the appellant-Centre. However, this Court did not approve the order so passed by the High Court and in that context, while observing that no unlimited and arbitrary jurisdiction was conferred on the High Court under Section 482 CrPC, explained the circumstances under which the inherent jurisdiction may be exercised as also the responsibilities of the investigating officers, inter alia, in the following words: -

"27. In our view, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 of the Code. The power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the section itself. It is well settled that Section 482 does not confer any new power on the High Court but only saves the inherent power which the Court possessed before the enactment of the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely, (i) to give effect to an order 29 under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice."

39. The order under revision, in spite of being passed with the observation that there were financial irregularities as fiscal norms of the society were violated, is clearly not in accordance with law and is thus liable to be set aside.

40. CRR 1001 of 2019 is accordingly allowed.

41. The Officer-in-Charge, Park Street Police Station will hand over the investigation of Park Street Police Station Case No.310/2016 dated

29.12.2016 under Sections 409/120B of the Indian Penal Code, pending before the Court of the learned Chief Metropolitan Magistrate, Calcutta, for Re-investigation to the **CID, WEST BENGAL, within 7 days from the date of this order. The CID shall submit a report on re-investigation before the trial court within six months of taking up the investigation.**

42. All connected applications, if any, stands disposed of.

43. Interim order, if any, stands vacated.

44. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

45. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)