A VIRENDER PRASAD SINGH

v.

RAJESH BHARDWAJ & ORS.

(Criminal Appeal No. 1526 of 2010)

B AUGUST 16, 2010

[V.S. SIRPURKAR AND CYRIAC JOSEPH, JJ.]

Code of Criminal Procedure, 1973 – s. 482 – Accused charge sheeted for offences punishable u/s. 302, 201 and C *120-B IPC – Petition u/s. 482 seeking re-investigation of matter by another agency – Direction by High Court for re-examination of the completed investigation by officer of the rank of Director General of Police – On appeal, held: The Court has to decide the question of fairness of investigation* D *– Charge sheet was already filed and nothing was shown suggesting that there was a necessity of any further investigation, additional investigation or investigation by some other agency – Merely because there appeared to be no supervision of DIG level or IG level officer, High Court* E *could not have simply called for the opinion of DGP without recording any finding on any justification – Lack of bona fides on the part of accused should have put High Court on guard – Order of High Court set aside – Penal Code, 1860 – ss. 302, 201 and 120-B.*

F **Respondent no. 1 was facing charges for commission of offences punishable u/ss. 302, 201 and 120-B IPC. He filed a petition u/s. 482 Cr.P.C. seeking re-investigation of the matter by another agency. Meanwhile,** G **the chargesheet was filed. The High Court directed re-examination of the completed investigation by an officer of the rank of Director General of Police and stayed the trial of the criminal case. Therefore, the appellant-complainant filed the instant appeal.**

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Allowing the appeal, the Court A

HELD: 1.1 The High Court took a very strange and extremely unusual course, whereby the counsel for the respondent No. 1-accused, who had filed the petition under section 482 Cr.P.C. before the High Court, was B **asked to give a proposal of three names of the police officers of the DGP rank for examining the records of the completed investigation, wherein even the charge sheet was already filed. Similar choice seems to have been given even to the counsel for the appellant-informant to** C **suggest some names. The appellant-informant (respondent before the High Court) did not choose to give any name, with the result that the High Court went on to select one IPS for assistance in the matter. [Paras 2] [93-B-D]** D

1.2 Firstly, there was no basis for the parties to have suggested the names of the police officers of the DGP rank. Secondly, the opinion expressed by any such officer would not have been relevant in the decision as E **to whether the investigation was proper or not. The High Court went only on the consideration that there was no supervision report at the instance of the DIG of Police or Inspector General, Railway or DGP. Merely, because there appeared to be no supervision of the DIG level or IG level** F **officer, the High Court could not have simply called for the opinion of DGP without recording any finding on any justification. No justification is seen whatsoever nor anything was shown. The stance of the High Court in issuing direction not to take any further step in the** G **proceedings arising out of the case till 21.6.2010 is wholly unwarranted. [Paras 13, 14, and 18] [101-G-H; 102-F; 105-C-D]**

1.3 The charge sheet had already been filed. It was not necessary for the High Court to seek opinion of the H

A DGP unless the High Court had examined the charge sheet, and recorded its findings that the investigation was not properly conducted or it required further investigation under section 173 (8) Cr.P.C. The High Court did not even look into the charge sheet nor did it examine the same. B Nothing was shown before this Court or before the High Court suggesting that there was a necessity of any further investigation, additional investigation or investigation by some other agency. [Paras 15 and 18] [103-G-H; 105-B]

C 1.4 The High Court did not even consider the question of its own jurisdiction in the matter by conveniently observing that it is a matter which is to be considered at the stage of final hearing of the case. Therefore, it is clear that the High Court did not apply its D mind also and pushed the matter upto 21.6.2010 for receiving the opinion from the DGP. The same was neither permissible nor warranted. [Para 17] [104-D-E]

1.5 It is also extremely surprising that respondent no. 1 moved the High Court firstly through his mother and E secondly himself u/s. 482 Cr.P.C. instead of moving the Sessions Judge before whom the matter was pending. After all cognizance was taken by the Magistrate on the basis of the charge sheet. Thereafter, he also proceeded to commit the matter for trial by the Sessions Judge and F the matter was pending before the Sessions Judge. The High Court should have seen through the incessant efforts on the part of respondent no. 1 to stall the proceedings one way or the other and to avoid arrest. It was way back in 2008 that the anticipatory bail G application was rejected by this Court and yet the accused remained outside without being arrested. Again the investigation against him is complete, the charge sheet was filed for offence committed by him, and still he managed to remain out. The lack of bona fides on the part H

of the accused should have put the High Court on guard. The application under section 482 on the plea that the investigation is not proper, at the instance of the accused who does not choose even to appear before the Sessions Judge before whom the matter is pending, should have immediately put the High Court on guard before entertaining the petition which has no bona fides whatsoever. [Paras 16 and 18] [104-B-C; 104-E-H]

1.6 The plea raised by the accused was not for further investigation under section 173 (8) Cr.P.C. but for re-investigation by some other agency. In the circumstances of the case, the accused had not justified his plea at all for re-investigation or investigation a fresh by another agency. On its own, the High Court did not go into that exercise to decide as to whether the investigation was required to be done by any other agency. It required help of DGP level officer and his opinion to decide whether the earlier investigation was done properly or not. To decide so was the task of the court alone and no opinion could have been sought for, particularly, in the circumstances of the case. Nothing seems to have been established which would justify calling for such opinion. Once the charge sheet was filed, ordinarily it could only be the power of the court to decide upon its correctness or otherwise. [Para 22] [106-G-H; 107-A-B]

1.7 The application filed u/s. 482 Cr.P.C. firstly by the mother of respondent no. 1 and then by respondent no. 1 himself, is not at all impressive. There is no reason why the High Court should have entertained such an application at all, particularly, in view of the complete lack of bona fides on the part of respondent no. 1. Therefore, the application was liable to be dismissed straightaway. Since technically the matter is still pending before the

High Court, a direction is issued to the High Court to dismiss the same. The impugned order of the High Court is set aside. The Sessions Judge before whom the matter is pending would proceed with it in accordance with law. [Para 23] [107-C-E]

Rubabbuddin Sheikh v. State of Gujarat and Ors. **2010 (2) SCC 200 – distinguished.**

Mithabhai Pashabhai Patel and Anr. v. State of Gujarat **2009 (6) SCC 332;** *Ramachandran v. R. Udhayakumar* **2008 (5) SCC 413, referred to.**

Case Law Reference:

2010 (2) SCC 200	**Distinguished.**	**Para 19**
2009 (6) SCC 332	**Referred to.**	**Para 20**
2008 (5) SCC 413	**Referred to.**	**Para 21**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 1526 of 2010.

From the Judgment & Order dated 04.05.2010 of the High Court of Judicature at Patna in Cr. WJC. No. 394 of 2009.

U.U. Lalit, P.S. Mishra, A. Sharan, M. Khairati, Tulika Prakash (for Irshad Ahmad), Upendra Mishra, D.K. Pandey, T.H. Vardhan (for S. Chandra Shekhar), Manish Kumar (for Gopal Singh) for the appearing parties.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. Leave granted.

2. An extremely unusual order passed by the High Court has fallen for consideration in this appeal which has been filed on behalf of the appellant/complainant Virender Prasad Singh. The said order was passed on the basis of a petition filed by the respondent No. 1/accused Rajesh Bhardwaj who is facing

the charges of very serious offences like provided under Sections 302, 201 and 120 B of the Indian Penal Code (hereinafter referred to as "IPC" for short). By the impugned order, the learned Judge of the High Court has issued certain directions, whereby he has directed the re-examination of the completed investigation by an officer of the rank of Director General of Police (DGP). An extremely unusual course has been taken, whereby the counsel for the respondent No. 1/ accused, who had filed the petition under Section 482 before the High Court, was asked to give a proposal of three names of the police officers of the DGP rank for examining the records of the completed investigation, wherein even the charge sheet was already filed. Similar choice seems to have been given even to the counsel for the appellant/informant to suggest some names. The appellant/informant (respondent before the High Court) did not choose to give any name, with the result that the High Court went on to select one Mr. Manoj Nath, an IPS of 1973 Batch for assistance in the matter. The High Court observed:-

> "This Court requests Mr. Manoj Nath to examine all the records of the case in detail and submit his report to this Court preferably within a period of one month with his clear opinion as to (i) whether investigation of the case is complete from all angles and case is fit to be tried on the basis of materials and report placed on record by the Investigating Officer only or (ii) whether there are some loopholes and lacunae in the investigation which necessitates further or fresh investigation of the case and if necessary by a more experienced and specialized agency, and/or (iii) what further steps, if any, are required to be taken in the case in the ends of justice, so that the guilty may not escape and the innocent may not suffer due to laches on the part of officers of the State. For consideration of Mr. Nath, parties are directed to make available the documents and materials which they have placed on record in the form of a properly indexed paper

A book within two weeks. This Court expects from Mr. Nath that he will not get swayed away by any opinion of any officer or agency which may be available on record and shall completely ignore the pleadings of the parties. He will examine the documents and evidence of the witnesses B available on record and form his independent opinion in the matter. If necessary, under the authority of this Court, he may requisition any other documents and material connected with the case, in original or in the form of its carbon copy, from any other source or authority and upon C his requisition, the same shall be made available to him by all concerned, default of which shall be treated as contempt of this Court."

In the last paragraph of its order, the High Court held:-

D "Till 21st June, 2010, the Court concerned shall not take any further steps in the proceeding arising out of Arrah Rail GRP Case No. 73 of 2007."

The concerned criminal case was initiated by a First E Information Report registered on 6.12.2007. It is an admitted position that the investigation had been completed and the police was going to submit the charge sheet dated 18.6.2009, but before that, the mother of the respondent No. 1/accused filed Crl. WJC No. 394 of 2009 before the High Court. In this petition, the prayer was for re-investigation of the matter by F another agency. Eventually, the mother of the respondent No. 1/accused died and the respondent No. 1/accused was substituted for her, and it is only on that basis that the order has been passed.

G 3. The First Information Report refers to the incident which took place on 30.11.2007, according to which at 10 p.m. on that day, the accused went to the house of the deceased Sonu, the daughter of the appellant/complainant and left with the deceased on his motorcycle in presence of the witnesses. H Since the deceased did not return home, the family members

started searching for both. It has come on record that subsequently at about 12.30 a.m., the deceased Sonu had talked to her mother's sister Dr. Anita and informed her that she was with the accused and would come back after getting married with him. On the very next day i.e. on 1.12.2007, at 7.15 a.m., the family members of the deceased were informed by the Railway Police that the dead body of the girl is lying on the side of the Railway track at Karisath Railway Station and her Mobile set bearing No. 9304915589 was also lying there. The complainant's brother Dr. Sanjeev reached the Railway Station and identified the body of the deceased. The deceased had injuries on her head and a portion of her leg was cut. Inquest Panchnama was executed by the Railway Police and the dead body was sent for postmortem. At this time, the complainant/ father of the deceased was out of station. After he returned home, he was informed about the deceased having been taken by the respondent No. 1/accused at night on 30.11.2007. On 6.12.2007, a written complaint was filed. It was disclosed in the said complaint that the deceased was in love with Rajesh Bhardwaj, (respondent No. 1/accused) and wanted to get married with him and was persuading him for the last six months for marriage; However, the accused wanted to get rid of her, as he was having an affair with some other girl and it was due to this reason that the accused committed the murder of the deceased and threw her dead body near the Railway track at Karisath Railway Station, with the intention to create a false impression that the deceased had died in an accident. The Railway Police registered the case as GRP Case No. 73 of 2007 for offences punishable under Sections 364, 302, 201 and 120B IPC. An application for orders under Section 438 of the Criminal Procedure Code (Cr.P.C.) was moved by the respondent No. 1/accused before the Sessions Court, Arrah, which was dismissed by the Court vide order dated 18.3.2008. Needless to mention that the respondent No. 1/accused was not in the custody of the police till then. He has not been arrested even till date. Be that as it may, on finding that the accused was absconding, a proclamation under Section 82 Cr.P.C. was

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A issued on 20.3.2008 by the Judicial Magistrate. It was also pasted on the residence of the respondent No. 1/accused on 27.3.2008. The respondent No. 1/accused, after about four months i.e. on 1.7.2008, moved a petition before the High Court for the same relief under Section 438, which was registered
B as Criminal Misc. No. 33158 of 2008. That was dismissed by the High Court vide order dated 1.7.2008. The respondent No. 1/accused did not stop there and moved to this Court by way of a Special Leave Petition (Crl.) No. 5140 of 2008. It came before this Court on 28.7.2008 and this Court dismissed the
C same. However, it was observed that:-

> "If the petitioner surrender before the concerned Court and move for bail, the Court would do well to dispose of the application on the day it is presented."

D Needless to mention that the respondent No. 1/accused never surrendered. On 6.4.2009, one more petition came to be filed before the High Court being Cr. WJC No. 352 of 2008, wherein the High Court was pleased to direct the Magistrate to dispose of the objection petition filed by the complainant
E after hearing both the parties and it was directed that till then the issuance of process of attachment under Section 83 Cr.P.C. would remain stayed. Very strangely, in this order, the High Court observed:-

> F "the parents of the accused, would endeavour and do all within their prowess to prevail upon and persuade, their son Rajesh Bhardwaj to surrender before the court of law as his anticipatory bail has been rejected up to the Hon'ble Apex Court."

G 4. On 15.5.2009, another petition being Crl. WJC No. 394 of 2009 came to be filed before the High Court by the mother of the accused. On that date, the investigation was in progress, but the final report had not been submitted by the police. It was expressed in this petition that the investigation was being
H influenced from the complainant's side.and there was a prayer

for direction to the State Government to get the case investigated by an independent investigating agency such as Central Bureau of Investigation. On 18.6.2009, police came to the conclusion that the offences alleged against the accused were committed by him and, therefore, the charge sheet came to be filed for the offences punishable under Sections 302, 201 and 120 B IPC.

5. Needless to mention that the respondent No. 1/accused was still not arrested nor did he ever bother to appear before the Magistrate.

6. On 25.6.2009, after the charge sheet was filed, the father of the accused moved an application before the learned Judicial Magistrate, Arrah, saying that he did not have faith in the said Court and wanted to move a petition for transfer of this case before the District Judge, Arrah, and, therefore, the proceedings of the case be stayed. All this was probably done as the Magistrate had already initiated the proceedings under Sections 82 and 83 Cr.P.C., finding that the accused was absconding. The Magistrate took the view that the father of the accused had no locus standi to file the said application and also came to the conclusion that there appeared to be good reasons for proceeding against the accused. The Magistrate, therefore, took cognizance of the offences. Then again, for some inexplicable reasons, nothing happened for five months and again on 10.11.2009, an application was moved before the Sessions Judge, Bhojpur, Arrah for an order under Section 438 Cr.P.C. for anticipatory bail. The learned Sessions Judge noticed that the respondent No. 1/accused was already asked by this Court to surrender before the court below and move the bail application. It was also noted that the respondent No. 1/ accused thereafter never bothered to appear though more than one year's time had elapsed. On that reasoning, the application was dismissed. Undaunted by this dismissal, the respondent No. 1/accused moved another application being Crl. Misc. Application No. 41823 of 2009 before the High Court on

A 21.12.2009, i.e. after more than one month of the dismissal of the earlier bail application. It was contended before the High Court that the charge sheet was filed only for the offences punishable under Section 306 IPC and not under Sections 302, 201 and 120 B IPC. A very novel statement was made that his B father's kidney had failed and that the accused was going to donate the kidney and he should be granted provisional anticipatory bail. What flabbergasts us is that on this broad plea, the High Court granted eight months' provisional anticipatory bail to the respondent No. 1/accused. Very C strangely, all this was on the backdrop of the rejection of all the applications made by the accused under Section 438 Cr.P.C. before all the Courts including this Court. Again, to say that we are surprised by this order, would be an under-statement. We also did not understand as to why eight months' time was D required by the accused and granted by the High Court for donating the kidney. The respondent No. 1/accused again moved an application on 13.1.2010, stating that there was a typing error in the order dated 21.12.2009 passed by the High Court where he was wrongly described as Rakesh Bhardwaj instead of Rajesh Bhardwaj. It was also submitted that the E charge sheet was filed under Sections 302, 201 and 120 B IPC and not under Section 306 IPC as was represented to the High Court. The matter then pended for another four months and came for hearing only on 4.5.2010. However, by that time, Dr. Vijay Laxmi, the mother of the respondent No. 1/accused had F already expired. After her death, the respondent No. 1/accused was substituted in her place. It was during the course of arguments on Misc. Application No. 41823 of 2009 that the subject of the investigation not being properly done, cropped up, and it was urged that the matter should be re-investigated, G though it was informed to the Court that the charge sheet was already filed about eight months prior to this date and the matter was also committed to the Court of Sessions for trial. The High Court ultimately passed the impugned order. The case was then fixed for hearing before the High Court on 21.6.2010 as H the first case in the list. However, the trial has been stayed and

the High Court has gone to the extent of selecting a new investigating officer. A

7. Shri U.U. Lalit, learned Senior Counsel appearing on behalf of the appellant/complainant pointed out that this case is nothing, but travesty of criminal justice and it amounts to total abuse of the process of law. The learned Senior Counsel pointed out that though an offence punishable under Section 302 was registered as back as on 6.12.2007, still even after two and half years, the respondent No. 1/accused has not been arrested. The learned Senior Counsel pointed out that even now, the period of eight months which would ordinarily have ended in August, is extended by the High Court by one month. The learned Senior Counsel pointed out that there was no justification, whatsoever, to find out any fault in the investigation and indeed the order of the High Court is wholly silent on the aspect of necessity of transferring the investigation or to do a *de novo* investigation. According to the learned Senior Counsel, the reasons, if any given in the order of the High Court, are wholly irrelevant. The learned Senior Counsel suggested that very unusual and disturbing orders have been passed by the High Court in this case, such as granting the provisional bail for eight months on the spacious ground that the accused had to donate his kidney to his father. According to the learned Senior Counsel, the sole objective on the part of the accused has been to hoodwink the process of law to avoid his arrest. B C D E F

8. As against this, Shri P.S. Mishra and Shri A. Sharan, learned Senior Counsel appearing on behalf of the respondents supported the order of the High Court and contended that the whole investigation was bad and tainted in this case, since the investigating officers were influenced by the informant who was a senior officer in Railways, as also by order of a Minister in the Cabinet of Bihar Government. The learned Senior Counsel appearing on behalf of the respondents stated that there was nothing wrong in ordering the investigation by other agency even after the charge sheet was filed and for this G H

A proposition, the learned Senior Counsel heavily relied on the decision in *Rubabbuddin Sheikh v. State of Gujarat & Ors.* [2010 (2) SCC 200].

9. It is on the backdrop of these rival contentions that it has to be seen that whether the impugned order is justified or not.

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10. The basic contention of Shri Lalit, learned Senior Counsel appearing on behalf of the appellant is that there is a total absence of reasons in the impugned order of the High Court whereby the High Court has directed the change of investigating agency. The learned Senior Counsel pointed out that nothing has been shown either from the charge sheet which is already filed against the accused or from any other circumstance which justified the change of the investigating agency.

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11. A glance at the impugned order suggests that the criticism is quite justified. The Learned Single Judge referred to the report of the Superintendent of Police dated 27.3.2008 wherein it was allegedly found that the investigation was not properly done and it required to be further investigated by the investigating officer from the angles reported in the supervision report. A letter dated 29.4.2008 by the IG of Police to the Additional DG is also referred to wherein it was suggested that the father of the deceased had raised objections to the supervision report of the SP, Railways. Lastly, the Learned Judge has referred to the supervision report of the Dy. SP,CID dated 04.06.2008 wherein it was allegedly mentioned that the investigation was lacking on some counts and this was probably on account of the fact that the investigation was influenced by the father-in-law of the informant. The Learned Judge has also referred to the further argument that there could have been no motive on the part of the accused to murder the girl who was in love with him. The circumstance is also referred to that father of the accused who was a Senior Advocate practicing in the same Court had also consented to the said marriage between the accused and the deceased. The Learned Judge has also

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taken stock of the argument that the girl herself had written a letter expressing that she apprehended danger from her family members, meaning the family members of the informant. We must, however, express that the Learned Judge has not given any findings on these arguments. The Learned Judge has not referred to the arguments on behalf of the informant and has expressed that there was a counter affidavit on behalf of the informant.

12. A very strange course thereafter seems to have been taken by the Court (in view of the voluminous documents produced on record by both the parties). The Court observed:-

> "this Court considers it appropriate to take assistance by getting the matter examined by a senior police official of the rank of DGP to put the controversy, as to whether proper investigation has been done in the case or not, at rest. Therefore, this Court suggested to each of the Learned Counsel for the parties to propose three names of DGP rank officers of the State for this Court to extend request to anyone of them to assist this Court by examining all the documents and records connected with the case and submit his view to this Court for consideration."

13. We are extremely surprised by this course undertaken. Firstly, we don't know on what basis would the parties have suggested the names of the police officers of the DGP rank. Secondly, we also don't understand as to in what manner would the opinion expressed by any such officer have been relevant in the decision as to whether the investigation was proper or not. It was the task of the Court and it was the Court who would have decided the question of the fairness of the investigation. The High Court proceeded, though this course was not acceptable to the complainant's party, and considered the arguments on behalf of the complainant. Unfortunately, we don't see any findings recorded or any active consideration of the questions raised by the informant/ complainant. It was suggested by the appellant/complainant that there was another

A supervision report of the SP dated 30.4.2009 which supported the filing of the charge sheet and it was in pursuance of that report that the charge sheet came to be filed. The complainant had also urged that the so-called earlier supervision report dated 27.3.2008 was a concocted document. The learned Senior B Counsel appearing on behalf of the appellant/complainant challenged the genuineness of the document and contended that it was fabricated. The complainant went to the extent of saying that the father of the accused who was a Senior Advocate of the Court was trying to influence the investigation C and in fact even the report of the Forensic Science Laboratory regarding the handwriting and the genuineness of the letter of the deceased was not genuine. Ultimately, it was urged before the High Court that at the stage, particularly, after the charge sheet was already filed, the High Court would not be justified D in interfering under Section 482, Cr.P.C. The only reason that we find for the unusual course that the High Court has taken is that there was no supervision report at the instance of the DIG of Police or Inspector General, Railway or DGP. The High Court has recorded a finding:-

E "thus, it is clear that the case has been supervised till now only by the officers up to the rank of SP and none else. Even the said report of the CID is also by an officer below the rank of SP (CID)."

F 14. Thus, the High Court went only on the consideration that there was no supervision report of a particular level of DIG, IG or DGP of Police.

15. It is only on the basis of that reason that the High Court wanted to get the assistance of DGP level police officer to G advise it on the correctness or otherwise of the investigation. The High Court went on to record:-

"however, at this stage, in view of the submissions advanced by Mr. Madhup on behalf of the informant, this H Court is all the more convinced that, to put the controversy

at rest once for all, matter should be examined by any officer of the rank of DGP so that this Court may get assistance from an experienced senior police officer of the highest rank to come to some conclusion with regard to merits of this application, if at all it is required to be done at the final stage of hearing." A B

It is then that the High Court went on to select one Manoj Nath and gave him the task of forming his opinion in respect of:-

"(i) whether investigation of the case is complete from all angles and the case is to be tried on the basis of materials and report placed on record by the investigating officer only or; C

(ii) whether there are some loopholes and lacunae in the investigation which necessitates further or fresh investigation of the case and if necessary by a more experienced and specialized agency, and/or; D

(iii) what further steps, if any, are required to be taken in the case in the ends of justice, so that the guilty may not escape and the innocent may not suffer due to laches on the part of the officers of the State." E

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We really fail to understand as to under what provision the High Court acted, more particularly, when the charge sheet has already been filed. We are not on the question of the High Court seeking opinion of the DGP. In our opinion, such a course was not necessary unless the High Court had examined the charge sheet which was filed and recorded its findings that the investigation was not properly conducted or it required further investigation under Section 173 (8), Cr.P.C. The High Court has not even looked into the charge sheet nor has it examined the same. G H

A 16. It is also extremely surprising that the respondent No. 1/accused should have moved the High Court instead of moving the Sessions Judge before whom the matter was pending after all cognizance was taken by the Magistrate on the basis of the charge sheet. Thereafter he also proceeded B to commit the matter for trial by the Sessions Judge and the matter was pending before the Sessions Judge. Under such circumstance, we completely fail to understand the propriety of the accused moving the High Court, firstly through his mother and secondly himself, more particularly, under Section 482, C Cr.P.C. instead of going before Sessions Judge where the prosecution was pending and claiming further investigation under Section 173(8) Cr.P.C.

17. The High Court has not even considered the question of its own jurisdiction in the matter by conveniently observing D that it is a matter which is to be considered at the stage of final hearing of the case. Therefore, it is clear that the High Court has not applied its mind also and had pushed the matter up to 21.6.2010 for receiving the opinion from the DGP. In our opinion, all this was not permissible nor was it warranted.

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18. The High Court should have seen through the incessant efforts on the part of the respondent No. 1/accused to stall the proceedings one way or the other and to avoid arrest. It was way back in 2008 that the anticipatory bail application was F rejected by this Court and yet the accused has remained outside without being arrested. Again the investigation against him is complete, the charge sheet has been filed for offence committed by him, and still he has managed to remain out. In fact, the lack of *bona fides* on the part of the accused should have put the High Court on guard. A Section 482 application G on the plea that the investigation is not proper at the instance of the accused who does not choose to even appear before the Sessions Judge before whom the matter is pending, should immediately have put the High Court on guard before entertaining the petition which has no *bona fides* whatsoever.

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Be that as it may, we desist from saying anything about the quality of investigation, necessity of further investigation or the necessity of the further investigation at the hands of some other agency, particularly, in view of the fact that the charge sheet has already been filed in this matter and at least nothing was shown before us or before the High Court suggesting that there was a necessity of any further investigation, additional investigation or investigation by some other agency. Merely, because there appeared to be no supervision of the DIG level or IG level officer, the High court could not have simply called for the opinion of DGP without recording any finding on any justification. We do not see any justification whatsoever nor was anything shown to us. We will, therefore, not go into that question, but the stance of the High Court in issuing direction not to take any further step in the proceedings arising out of Arrah Rail G.R.P. Case No. 73/2007 till 21.6.2010 is wholly unwarranted.

19. Heavy reliance was placed on *Rubabbuddin Sheikh v. State of Gujarat & Ors.* [2010 (2) SCC 200]. However, we do not find any factual similarity. That was a case where the extreme step was taken by this Court, particularly, in view of the fact that the police officers who were investigating officers, themselves came under the cloud because of the allegations against them. Such is not the position here. This is apart from the fact that factually we do not see any reason why the extreme step is required to be taken in this case even after the charge sheet has been filed.

20. This Court had taken that unusual course in *Rubabbuddin Sheikh's case (cited supra),* in the words of the Court:-

> "'in the facts and circumstances of the present case and to do complete justice in the matter and to instill confidence in the public mind."

Before this course was undertaken, the Court had found

A out factual discrepancies apparent on the face in the eight Action Taken Reports and the charge sheet. It was also noted that the crime was committed by the police personnel themselves while investigation conducted was not at all satisfactory. We do not find any such circumstance in the B present case. We may also refer to the observations made in another ruling reported as *Mithabhai Pashabhai Patel & Anr. V. State of Gujarat* [2009 (6) SCC 332]. In paragraph 13 of the said decision, this Court has observed:-

> C "it is beyond any cavil that 'further investigation' and 'reinvestigation' stand on different footing. It may be that in a given situation a superior Court in exercise of its Constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a D different agency. Direction of a reinvestigation, however, being forbidden in law, no superior Court would ordinarily issue such a direction."

21. The Court further referred a decision in E *Ramachandran v. R. Udhayakumar* [2008 (5) SCC 413] and observed therein:-

> "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 F 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 re-investigation."

22. The plea raised by the accused herein was not for G further investigation under Section 173 (8) but for re-investigation by some other agency. In the circumstances of this case, the accused had not justified his plea at all for re-investigation or fresh investigation by another agency. On its own, the High Court did not go into that exercise to decide as H to whether the investigation was required to be done by any

other agency. It required help of DGP level officer and his opinion to decide whether the earlier investigation was done properly or not. We are afraid that was not the task. To decide so was the task of the Court alone and no opinion could have been sought for, particularly, in the circumstances of this case. Nothing seems to have been established which would justify calling for such opinion. However, we are not going into that question as we have already stated earlier. Once the charge sheet was filed, ordinarily it could only be the power of the Court to decide upon its correctness or otherwise.

23. We are not at all impressed by the Section 482 application firstly filed by the mother of the respondent No. 1/ accused and then by the respondent No. 1/accused himself. We do not see any reason why the High Court should have entertained such application at all, particularly, in view of the complete lack of *bona fides* on the part of the respondent No. 1/accused. That application was, therefore, liable to be dismissed straightaway. Since technically the matter is still pending before the High Court, we only issue a direction to the High Court to dismiss the same. The impugned order of the High Court is set aside and, therefore, this appeal succeeds. The Sessions Judge before whom the matter is pending shall proceed with it in accordance with law.

N.J. Appeal allowed.