

A CHANDRA BABU @ MOSES

v.

STATE THROUGH INSPECTOR OF POLICE & ORS.

(Criminal Appeal No.866 of 2015)

B

JULY 07, 2015

**[DIPAK MISRA AND V. GOPALA GOWDA, JJ.]**

C *Code of Criminal Procedure, 1973: s. 173(8) – Power of Magistrate to forward the complaint for further investigation – Magistrate had held that the Inspector, Crime branch had conducted investigation in a biased manner and the final report of the Inspector was not acceptable and directed the Additional Director General of Police to confer the power to*  
D *Inspector, CBCID to investigate the case – High Court held that there were material discrepancies in the evidence brought on record and, therefore, set aside the order of Magistrate – On appeal, held: High Court fell into error in its appreciation of the order passed by the Magistrate – The*  
E *order, in fact, presents that the Magistrate was actually inclined to direct further investigation but because he chose another agency, he used the word “reinvestigation” – Therefore, that part of the order is set aside and it is directed that the investigating agency that had investigated shall carry*  
F *on the further investigation and such investigation shall be supervised by the concerned Superintendent of Police – After the further investigation, the report shall be submitted before the Chief Judicial Magistrate who shall deal with the same in accordance with law – Investigation.*  
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*Jurisdiction: Revisional jurisdiction – Scope of.*

**Disposing of the appeal, the Court**

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**HELD: 1. The Single Judge has dwelled upon in**

great detail on the statements of the witnesses to arrive at the conclusion that there are remarkable discrepancies with regard to the facts and there is nothing wrong with the investigation. In fact, he has noted certain facts and deduced certain conclusions, which, are beyond the exercise of revisional jurisdiction. It is well settled in law that inherent as well as revisional jurisdiction should be exercised cautiously. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the Court. The High Court has adverted to the facts not to see the perversity of approach, or to see that justice is done, but analysed it from an angle as if it is exercising the appellate jurisdiction. Therefore, the High Court's conclusion with regard to the factual score is unsustainable. [Paras 12 and 13] [1009-G-H; 1010-A-D]

*Amit Kapoor v. Ramesh Chander* 2012 (7) SCR 988 :  
(2012) 9 SCC 460 – relied on.

2. A Magistrate can disagree with the police report and take cognizance and issue process and summons to the accused. Thus, the Magistrate has the jurisdiction to ignore the opinion expressed by the investigating officer and independently apply his mind to the facts that have emerged from the investigation. The High Court fell into error in its appreciation of the order passed by the Chief Judicial Magistrate. The Magistrate could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another

**A agency. [Paras 16, 19, 21] [1012-G; 1018-A-B; 1019-G]**

*Hasanbhai Valibhai Quareshi vs State of Gujarat and Ors.* 2004 (3) SCR 762: (2004) 5 SCC 347; *Hemant Dhasmana vs CBI and Anr.* 2001 (1) Suppl. SCR 646: (2001) 7 SCC 536; *Sonalai Soni vs State of Chattisgarh and Ors.* 2005 Cri. L.J.4461; **Chattishgarh**); *Uma Shankar Singh v. State of Bihar* 2010 (10) SCR 1132: (2010) 9 SCC 479; *Moti Lal Songara v. Prem Prakash* 2013 (6) SCR 496: (2013) 9 SCC 199; *Dharam Pal v. State of Haryana* (2014) 3 SCC 306; *Kishun Singh v. State of Bihar* 1993 (1) SCR 31: (1993) 2 SCC 16; *Bhagwant Singh v. Commr. of Police* 1985 (3) SCR 942 : (1985) 2 SCC 537; *Vinay Tyagi v. Irshad Ali* 2012 (13) SCR 1005: (2013) 5 SCC 762 – referred to.

**D**

**Case Law Reference**

	2004 (3) SCR 762	Referred to.	Para 5
	2001 (1) Suppl. SCR 646	Referred to.	Para 5
	2005 Cri. L.J.4461 (Chattishgarh)	Referred to.	Para 7
<b>E</b>	2012 (7) SCR 988	Relied on.	Para 12
	2010 (10) SCR 1132	Referred to.	Para 14
	2013 (6) SCR 496	Referred to.	Para 14
	(2014) 3 SCC 306	Referred to.	Para 15
	1993 (1) SCR 31	Referred to.	Para 15
<b>F</b>	1985 (3) SCR 942	Referred to.	Para 16
	2012 (13) SCR 1005	Referred to.	Para 18

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 866 of 2015.

**G**

From the Judgment and Order dated 13.12.2011 in Criminal Revision Case (MD) No. 790 of 2011 of the Madurai Bench of Madras High Court.

**H**

K. V. Vishwanathan, B. Ragunath, Mehul G. Gupta,

Vijay Kumar for the Appellant.

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M. Yogesh Kanna, A. Santha Kumaran, Vanita C. Giri,  
S. Thananjayan for the Respondents.

The Judgment of the Court was delivered by

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**DIPAK MISRA, J.** 1. Leave granted.

2. In this appeal, by special leave, the informant-appellant calls in question the defensibility of the order dated 13.12.2011 passed by the learned Single Judge of the High Court of Judicature of Madras at Madurai in Criminal Revision No. 790/2011 whereby he has annulled the order dated 2.9.2010 passed by the learned Chief Judicial Magistrate, Nagercoil directing further investigation in exercise of power under Section 173(8) of the Code of Criminal Procedure (CrPC) and also directing the investigation to be carried out by C.B.C.I.D.; on the foundation that in the obtaining fact situation there are no exceptional circumstances for ordering re-investigation.

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3. As the facts would unfurl, the appellant filed an FIR with the Sub-Inspector of Police, Kulasekaram Police Station, upon which Crime No. 119/2007 was registered u/s 147, 148, 341, 324, 323 and 307 of Indian Penal Code (IPC). The informant had alleged that on 05.06.2007 about 2 p.m., Manikandan, Jegan, Murugan, Vijayan, Sunil and some others attacked him with 'Vettu Kathi', knife and iron rod and in the said attack he sustained multiple injuries. The motive behind the assault, as per the FIR, was due to business rivalry that existed between the appellant and Manikandan, as both are contractors. The Inspector of Police, Kulasekaram Police Station conducted the initial investigation and subsequently the case was transferred to the District Crime Branch Police, Kanyakumari and thereafter, the

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A Inspector of Police, District Crime Branch filed a final report before the learned Judicial Magistrate, Padmanabhapuram stating that the case was a mistake of fact. The learned Judicial Magistrate on intimation to the informant accepted the final report.

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4. In the meantime, the appellant had filed a protest petition dated 5.1.2009 forming the subject matter of CrI. M.P. no. 1974/2009 on the file of the learned Judicial Magistrate praying therein to direct CBCID to re-open the case and file a fresh report. However, as the final report had already been accepted before disposing the protest petition, the appellant preferred CrI. O.P. no. 1727/2009 before the Madurai Bench of the Madras High Court. The High Court called for the report from the Magistrate's Court and, thereafter, set aside the order accepting the final report and directed the Magistrate to consider the final report along with the protest petition.

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5. The learned Magistrate vide order dated 29.07.2009 dismissed the protest petition. It took note of the decisions in *Hasanbhai Valibhai Quareshi vs State of Gujarat and Ors.*<sup>1</sup> and *Hemant Dhasmana vs CBI and Anr.*<sup>2</sup>, and held that as the investigation officer had examined all the witnesses as averred by the informant and received the evidence and as no new witnesses were cited to be examined, there was no justification for directing reinvestigation of the case. It further directed that the protest petition to be treated as a separate private complaint.

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6. Being aggrieved by the said order, the appellant preferred Criminal Revision Petition, i.e., CrI. R.C. No. 458 of 2009 in the High Court. Before the High Court, the appellant contended that the order of the Magistrate was based on the acceptance of the final report submitted by the

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<sup>1</sup> (2004) 5 SCC 347

<sup>2</sup> (2001) 7 SCC 536

police and the order did not reflect any application of mind A  
on his part. It was further urged that the order was bereft of  
discussion of the evidence gathered by the Investigating  
Officer, and that apart there was total non-application of mind  
either for acceptance or rejection of the statements of the B  
witnesses filed along with the final report. The High Court  
while setting aside the order of learned Magistrate observed  
that the lower court fell into error by neither discussing the  
material available, nor clearly spelling out the reasons and  
shirked its duty by merely permitting the petitioner, therein, C  
to pursue his cause by way of private complaint. The learned  
Single Judge, accordingly, allowed the revision and  
concluded thus:-

“This Court has resisted from entering upon a D  
discussion on the merits of the case or on the materials  
before it so as to avoid prejudice to either side. With  
the aim is to avoid prejudice and alleged bias, as rightly  
submitted by the learned senior counsel, it would be  
better that the reconsideration of the final report and E  
also the materials towards arriving at a finding of  
whether the case is one calling for further proceedings  
against the accused or otherwise, be left to the judicial  
discretion of another Court. Accordingly, the Judicial  
Magistrate, Padmanabhapuram, is directed to forward F  
all records pertaining to Crime no. 119 of 2007 on the  
file of the respondent police to the Court of the Chief  
Judicial Magistrate, Nagercoil within a period of two  
weeks from the date of receipt of a copy of this order.  
The Chief Judicial Magistrate, Nagercoil is in turn G  
directed to consider the 173 report as also the materials,  
hear both the public prosecutor and the de-facto  
complainant who has filed the protest petition and pass  
orders in accordance of law.”

7. After the remit, the Chief Judicial Magistrate, H

A Nagercoil, took up the case for further enquiry. The Court  
after hearing both the appellant and the Assistant Public  
Prosecutor came to the conclusion that the investigation by  
the Inspector of Police, District Crime Branch had been  
B laboured hard to save the accused persons and hence, the  
final report submitted by the investigating officer was not  
acceptable. Thereafter, it took note of the judgments in  
*Hemant Dhasmana (supra)*, *Sonalai Soni vs State of*  
*Chattisgarh and Ors.*<sup>3</sup>, and *Hasanbhai Valibhai Quareshi*  
C *(supra)*, and came to hold that in terms of the said judgments  
there is power under S. 173 (8) of CrPC to forward the  
complaint for further investigation and resultantly by order  
dated 02.09.2010 directed the Additional Director General  
of Police, CBCID to confer the power on the Inspector,  
D CBCID, Nagercoil to investigate the case in Crime no. 119/  
2007 and file a report.

8. Being aggrieved by the said order, one of the  
accused, Jegan, filed Criminal Revision No. 790 of 2011.  
E The High Court, vide the impugned order, after discussing  
the evidence on record, came to hold that there were material  
discrepancies in the evidence brought on record and,  
therefore, in the present fact situation there were no  
F exceptional circumstances for ordering re-investigation, and  
that apart, the scheme of Section 173(8) CrPC only enables  
the investigating officer to request for further investigation.  
The High Court, accordingly, set aside the order of the Chief  
Judicial Magistrate and further observed that as the learned  
G Judicial Magistrate in his order dated 13.07.2009 had directed  
that the protest petition was to be treated as a private  
complaint, the de-facto complainant still had an opportunity  
for presenting the case before the Court and no prejudice  
was caused to him.

H <sup>3</sup> 2005 Cr.L.J. 4461 (Chattishgarh)

9. We have heard Mr. K.V. Vishwanathan, learned senior counsel, for the appellant and Mr. M. Yogesh Kanna, learned counsel for the State and Mr. S. Thananjayan, learned counsel for the respondent no.3. A

10. It is submitted by Mr. Vishwanathan, learned senior counsel that the High Court has absolutely flawed by entering into the merits of the case when the learned Chief Judicial Magistrate had only directed for reinvestigation by different investigating agency. It is urged by him that if the order passed by the Chief Judicial Magistrate is read in entirety, it would convey that he in actuality has directed for further investigation, but has used the expression "reinvestigation" as it was directing investigation to be carried out by another agency. It is his further submission that in view of the earlier order passed by the High Court, the order impugned in this appeal is wholly unsustainable. B C D

11. Learned counsel for the private respondent no.3 in support of the decision of the High Court has submitted that the learned Magistrate has no power for directing reinvestigation, and hence, the order passed by the High Court is absolutely impregnable. It is also his submission that when a protest petition is filed and it has been directed to be treated as a private complaint, the appellant, in no manner, is prejudiced and, therefore, there is no warrant for interference in this appeal. E F

12. First, we shall dwell upon the issue whether the High Court, in exercise of the revisional jurisdiction, should have adverted to the merits of the case in extenso. As the factual matrix would reveal, the learned Single Judge has dwelled upon in great detail on the statements of the witnesses to arrive at the conclusion that there are remarkable discrepancies with regard to the facts and there is nothing wrong with the investigation. In fact, he has noted G H

A certain facts and deduced certain conclusions, which, as we find, are beyond the exercise of revisional jurisdiction. It is well settled in law that inherent as well as revisional jurisdiction should be exercised cautiously. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the Court. (see *Amit Kapoor v. Ramesh Chander*<sup>4</sup>).

C 13. Judging on the aforesaid premises, we have no shadow of doubt that the High Court has adverted to the facts not to see the perversity of approach, or to see that justice is done, but analysed it from an angle as if it is exercising the appellate jurisdiction. Therefore, the High Court's conclusion with regard to the factual score is unsustainable.

D 14. Presently to the thrust of the matter, the controversy before the learned Single Judge was basically two-fold, namely, whether the learned Chief Judicial Magistrate could have directed for reinvestigation and secondly, whether it could have directed for reinvestigation by another investigating agency. To appreciate the said issues, it is necessary to analyse the scheme of Section 190 of the CrPC. The said provision reads as follows:-

E "190. **Cognizance of offences by Magistrates.**  
 – (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence\_

G (a) upon receiving a complaint of facts which constitute such offence.

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<sup>4</sup> (2012) 9 SCC 460

(b) upon a police report of such facts; A

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try." B

In *Uma Shankar Singh v. State of Bihar*<sup>5</sup>, a two-Judge Bench was considering the issue pertaining to the power of the Magistrate under Section 190(1)(b) of CrPC. The Court, scanning the anatomy of the provision, opined that the Magistrate is not bound to accept the final report filed by the investigating agency under Section 173(2) of the Code and is entitled to issue process against an accused even though exonerated by the said authorities. The principle stated by the two-Judge Bench reads as follows:- C D

"19. ... even if the investigating authority is of the view that no case has been made out against an accused, the Magistrate can apply his mind independently to the materials contained in the police report and take cognizance thereupon in exercise of his powers under Section 190(1)(b) CrPC." E F

The said principle was followed by another two-Judge Bench in *Moti Lal Songara v. Prem Prakash*<sup>6</sup>.

15. In *Dharam Pal v. State of Haryana*<sup>7</sup>, the Constitution-Bench, while accepting the view in *Kishun Singh v. State of Bihar*<sup>8</sup>, has held thus:- G

<sup>5</sup> (2010) 9 SCC 479

<sup>6</sup> (2013) 9 SCC 199

<sup>7</sup> (2014) 3 SCC 306

<sup>8</sup> (1993) 2 SCC 16

A “35. In our view, the Magistrate has a role to play while  
committing the case to the Court of Session upon taking  
B cognizance on the police report submitted before him  
under Section 173(2) CrPC. In the event the Magistrate  
disagrees with the police report, he has two choices.  
C He may act on the basis of a protest petition that may  
be filed, or he may, while disagreeing with the police  
report, issue process and summon the accused.  
D Thereafter, if on being satisfied that a case had been  
made out to proceed against the persons named in  
column 2 of the report, proceed to try the said persons  
or if he was satisfied that a case had been made out  
which was triable by the Court of Session, he may  
commit the case to the Court of Session to proceed  
further in the matter.

36. This brings us to the third question as to the  
procedure to be followed by the Magistrate if he was  
satisfied that a prima facie case had been made out to  
go to trial despite the final report submitted by the police.  
E In such an event, if the Magistrate decided to proceed  
against the persons accused, he would have to proceed  
on the basis of the police report itself and either inquire  
into the matter or commit it to the Court of Session if  
F the same was found to be triable by the Sessions  
Court.”

16. We have referred to the aforesaid authorities to  
reiterate the legal position that a Magistrate can disagree  
with the police report and take cognizance and issue process  
G and summons to the accused. Thus, the Magistrate has the  
jurisdiction to ignore the opinion expressed by the  
investigating officer and independently apply his mind to the  
facts that have emerged from the investigation.

H 17. Having stated thus, we may presently proceed to

deal with the facet of law where the Magistrate disagrees with the report and on applying his independent mind feels there has to be a further investigation and under that circumstance what he is precisely required to do. In this regard, we may usefully refer to a notable passage from a three-Judge Bench decision in *Bhagwant Singh v. Commr. of Police*<sup>9</sup>, which is to the following effect:-

“4. Now, when the report forwarded by the officer in charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process, or (2) he may disagree with the report and drop the proceeding, or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding, or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process, or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the

<sup>9</sup> (1985) 2 SCC 537

A injured or in case of death, any relative of the deceased  
aggrieved, because cognizance of the offence is taken  
by the Magistrate and it is decided by the Magistrate  
that the case shall proceed. But if the Magistrate  
decides that there is no sufficient ground for proceeding  
B further and drops the proceeding or takes the view that  
though there is sufficient ground for proceeding against  
some, there is no sufficient ground for proceeding  
against others mentioned in the first information report,  
C the informant would certainly be prejudiced because  
the first information report lodged by him would have  
failed of its purpose, wholly or in part. Moreover, when  
the interest of the informant in prompt and effective  
action being taken on the first information report lodged  
D by him is clearly recognised by the provisions contained  
in sub-section (2) of Section 154, sub-section (2) of  
Section 157 and sub-section (2)(i) of Section 173, it  
must be presumed that the informant would equally be  
interested in seeing that the Magistrate takes  
E cognizance of the offence and issues process, because  
that would be culmination of the first information report  
lodged by him. There can, therefore, be no doubt that  
when, on a consideration of the report made by the  
F officer in charge of a police station under sub-section  
(2)(i) of Section 173, the Magistrate is not inclined to  
take cognizance of the offence and issue process, the  
informant must be given an opportunity of being heard  
so that he can make his submissions to persuade the  
G Magistrate to take cognizance of the offence and issue  
process. We are accordingly of the view that in a case  
where the Magistrate to whom a report is forwarded  
under sub-section (2)(i) of Section 173 decides not to  
take cognizance of the offence and to drop the  
proceeding or takes the view that there is no sufficient  
H ground for proceeding against some of the persons

mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the first information report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.”

18. Relying on the said paragraph, a two-Judge Bench in *Vinay Tyagi v. Irshad Ali*<sup>10</sup>, has opined thus:-

“37. In some judgments of this Court, a view has been advanced, [amongst others in *Reeta Nag v. State of W.B*<sup>12</sup>, *Ram Naresh Prasad v. State of Jharkhand*<sup>11</sup> and *Randhir Singh Rana v. State (Delhi Admn.)*<sup>13</sup>] that a Magistrate cannot suo motu direct further investigation under Section 173(8) of the Code or direct reinvestigation into a case on account of the bar contained in Section 167(2) of the Code, and that a

<sup>10</sup> (2013) 5 SCC 762

<sup>11</sup> (2009) 9 SCC 129

<sup>12</sup> (2009) 11 SCC 299

<sup>13</sup> (1997) 1 SCC 361

A Magistrate could direct filing of a charge-sheet where the police submits a report that no case had been made out for sending up an accused for trial. The gist of the view taken in these cases is that a Magistrate cannot direct reinvestigation and cannot suo motu direct further investigation.

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* has, in no uncertain terms, stated that principle, as aforenoticed.

39. The contrary view taken by the Court in *Reeta Nag* and *Randhir Singh* do not consider the view of this Court expressed in *Bhagwant Singh*. The decision of the Court in *Bhagwant Singh* in regard to the issue in hand cannot be termed as an obiter. The ambit and scope of the power of a Magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three-Judge Bench concluded as aforenoticed. Similar views having been taken by different Benches of this Court while following *Bhagwant Singh*, are thus squarely in line with the doctrine of precedent. To some extent, the view expressed in *Reeta Nag*, *Ram Naresh* and *Randhir Singh*, besides being different on facts, would have to be examined in light of the principle of stare decisis."

And eventually the Division Bench ruled:-

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:

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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.

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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.

C

40.3. The view expressed in Sub-para 40.2 above is in conformity with the principle of law stated in *Bhagwant Singh case* by a three-Judge Bench and thus in conformity with the doctrine of precedent.

D

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).

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40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own."

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A            19. We have reproduced the conclusion in extenso as  
we are disposed to think that the High Court has fallen into  
error in its appreciation of the order passed by the learned  
Chief Judicial Magistrate. It has to be construed in the light  
of the eventual direction. The order, in fact, as we perceive,  
B            presents that the learned Chief Judicial Magistrate was really  
inclined to direct further investigation but because he had  
chosen another agency, he has used the word  
"reinvestigation". Needless to say, the power of the  
Magistrate to direct for further investigation has to be  
C            cautiously used. In *Vinay Tyagi* (supra) it has been held:

                 "The power of the Magistrate to direct "further  
investigation" is a significant power which has to be  
exercised sparingly, in exceptional cases and to achieve  
the ends of justice. To provide fair, proper and  
unquestionable investigation is the obligation of the  
investigating agency and the court in its supervisory  
capacity is required to ensure the same. Further  
investigation conducted under the orders of the court,  
including that of the Magistrate or by the police of its  
own accord and, for valid reasons, would lead to the  
filing of a supplementary report. Such supplementary  
report shall be dealt with as part of the primary report.  
E            This is clear from the fact that the provisions of Sections  
173(3) to 173(6) would be applicable to such reports in  
terms of Section 173(8) of the Code."  
F           

                 20. In the said case, the question arose, whether the  
Magistrate can direct for reinvestigation. The Court, while  
G            dealing with the said issue, has ruled that:-

                 "At this stage, we may also state another well-settled  
canon of the criminal jurisprudence that the superior  
courts have the jurisdiction under Section 482 of the  
Code or even Article 226 of the Constitution of India to  
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direct "further investigation", "fresh" or "de novo" and A  
even "reinvestigation". "Fresh", "de novo" and  
"reinvestigation" are synonymous expressions and their B  
result in law would be the same. The superior courts  
are even vested with the power of transferring  
investigation from one agency to another, provided the C  
ends of justice so demand such action. Of course, it is  
also a settled principle that this power has to be  
exercised by the superior courts very sparingly and with  
great circumspection."

And again:-

"Whether the Magistrate should direct "further D  
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 E  
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, F  
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."

21. We respectfully concur with the said view. As we G  
have already indicated, the learned Chief Judicial Magistrate  
has basically directed for further investigation. The said part  
of the order cannot be found fault with, but an eloquent one,  
he could not have directed another investigating agency to H  
investigate as that would not be within the sphere of further  
investigation and, in any case, he does not have the  
jurisdiction to direct reinvestigation by another agency.  
Therefore, that part of the order deserves to be lanced and  
accordingly it is directed that the investigating agency

- A** that had investigated shall carry on the further investigation and such investigation shall be supervised by the concerned Superintendent of Police. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with
- B** law. We may hasten to add that we have not expressed any opinion relating to any of the factual aspects of the case.

- C** 22. In view of the aforesaid analysis and conclusion, the order passed by the High Court is set aside except where it has held that the learned Magistrate could not have allowed another agency to investigate. We have clarified the position in the preceding paragraph.

23. The appeal stands disposed of accordingly.

**D**

Devika Gujral

Appeal disposed of.