(2008) 06 GAU CK 0028

Gauhati High Court

Case No: None

Rosendra Chandra Das	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision: June 4, 2008

Acts Referred:

- Constitution of India, 1950 - Article 226, 227
- Criminal Procedure Code, 1973 (CrPC) - Section 154, 155, 156, 157, 158
- General Clauses Act, 1897 - Section 21, 3, 6
- Penal Code, 1860 (IPC) - Section 120B, 304B, 34, 436

Citation: (2010) 6 GLR 261 : (2008) 4 GLT 155

Hon'ble Judges: I.A. Ansari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

I.A. Ansari, J.

This Criminal Petition, made u/s 482 of the Code of Criminal Procedure (in short; ''the Code''), puts to challenge the order, dated 17.12.2007, passed, in G R. Case No. 2292/2006 (Corresponding to Dholai P.S. Case No. 157/2006), whereby the learned Sub-Divisional Judicial Magistrate, Silchar, has turned down the informant-petitioner''s prayer for a direction to the police to further investigate the case in terms of Section 173(8) of the Code.

2. The principal question, which the present Criminal Petition raises, is this: Whether a magistrate, on his own motion or an application made by an informant, direct, ''further investigation'', into a case, by the police, u/s 173(8) of the Code, after the Magistrate has already accepted the police report (i.e., charge-sheet) submitted u/s 173(2) of the Code, whereby the police had found materials only against one or some of the accused named by the informant in the First Information Report (in short, ''the FIR'') and not against all the accused named by the informant in his F.I.R.,

and the Magistrate, having taken ''cognizance'' on the basis of such a report, had issued process to only that accused-person against whom the police had submitted charge-sheet and when, in compliance with the process, so issued, the accused has already appeared in the Court? Yet another question, which instantly arises, is this: When an informant names more than one persons, in the F.I.R., as accused and the police, upon investigation, submits its report, u/s 173(2), to the effect that it has found materials only against one or some of the persons named as accused in the FIR and not against all, who bad been named-as accused by the informant, whether a Magistrate is, before accepting such a report and/or before taking ''cognizance'' of offence(s) on the basis of such a report, bound to issue notice to the informant and, if no notice is issued to the informant in such a case, what is the remedy available to the informant or to the person, who maybe interested in effective prosecution of all the persons named insuchan F.I.R.?

3. Before dealing with the questions, posed above, let me set out the material facts and various stages, which have led to the making of the present Criminal Petition:

(i) The present petitioner, as informant, lodged an oral information, on 10.08.2006, with the Officer-in-Charge, Dholai Police Station, to the effect, inter alia, thus: On 10.05.2006, informant''s daughter, Nanda Das was given in marriage to accused No. 1, namely, Shyamal Boron Das, as per the Hindu rites and customs. Since the marriage, not only accused No. 1, but his mother, namely, Suniti Das (i.e., accused No. 3) and also their two other female relatives, namely, Smti Pranati Das and Sikha Das (i.e., accused No. 2 and 4 respectively), had started torturing Nanda physically and mentally by raising demands for gold, a colour television and cash Amount of Rs. '' 50,000/-. Though the informant gave some gold to the accused, torture continued to be heaped on his said daughter. When the informant requested the accused not to torture his daughter, they threatened to kill her. On 08.08.2006, the informant received a telephone call informing him that the accused persons might kill his daughter and, in fact, on that very day, the accused persons killed his daughter by burning her alive. After killing the informant''s daughter, accused Nos. 1 and 4 fled away from their house. On being informed by one of the co-villagers of the accused about Nanda''s death, when the informant reached Dholai village he found that his daughter''s dead body had already been cremated by the accused persons. The information, so given orally by the informant, was reduced into writing and, treating the same as F.I.R., Dholai PS. Case No. 157/2006 under Sections 120B/304B/436/34 IPC was registered.

(ii) During investigation, police arrested accused Nos. 1,2 and 4. Dissatisfied with the investigation being conducted by the police, the informant filed a petition in the Court of the Chief Judicial Magistrate, Cachar, alleging that though the offence had been committed about two months ago, some important witnesses had not been examined by the Investigating Officer. In the petition, so filed, the informant gave a list of six persons, who, according to the informant were required to be examined.

Having heard the petitioner, the learned Chief Judicial Magistrate, Cachar, passed an order, dated 02.11.2006, observing to the effect that there was no provision in the Code to direct an Investigating Officer, during the course of investigation, either to examine or not to examine anyparticular person. Be that as it may, the learned Chief Judicial Magistrate, Cachar, directed the Investigating Officer to look into the grievances of the informant and ensure examination of all important witnesses. The matter did not rest with the order, dated 02.11.2006, for, yet another petition was filed by the informant expressing grievances that despite directions given to the Investigating Officer, police had not examined all the important witnesses and, in fact, the Investigating Officer had done nothing to comply with the directions given in the order, dated 02.11.2006, aforementioned. By order, dated 02.01.2007, learned Chief Judicial Magistrate, Cachar, directed the Investigating Officer concerned to look into the matter, comply with the directions given by the order, dated 02.11.2006, aforementioned and submit compliance report within twenty days.

(iii) Having completed investigation, the police, on 10.03.2007, submitted u/s 173, a report (i.e. charge-sheet) against accused No. 1 u/s 304B IPC on the ground that the investigation had revealed prima facie case against the said accused. As regard the remaining persons, who had been named by the informant as accused, the charge-sheet stated that no evidence against them was found. The learned Chief Judicial Magistrate, Cachar, having acted upon the charge-sheet, so submitted, took ''cognizance'' of offence u/s 304B IPC and directed issuance of process against the sole accused named in the charge-sheet. Pursuant to the process, so issued, accused No. 1 aforementioned appeared in the case. The case, however, could not be committed to the Court of Sessions as the requisite materials, in terms of the provisions of Section 207 of the Code, were not ready and could not be furnished to the accused, (iv) While the matter so rested, a petition was filed by the informant alleging to the effect that the investigation, conducted by the police, was wholly unsatisfactory, because, apart from accused No. 1, those others, who had been named by the informant as accused, were also involved in subjecting his daughter to cruelty and causing her death, but the other persons, named by the informant, had been let off by the police, though they too ought to have been charge-sheeted. The informant, therefore, soughtfbr a direction to be given to the police to ''further investigate'' the case. This petition was considered and disposed of by order, dated 17.12.2007. By this order, the learned Sub-Divisional Judicial Magistrate held to the effect that the provisions, contained in Section 173(8), as regards'' further investigation'' could be resorted to by the Investigating Officer and that an informant or a complainant has no locus standi to apply to the Court seeking direction for'' further investigation'' in terms of Section 173(8), for, no Court, according to the learned Sub-Divisional Judicial Magistrate, has the power to direct ''further investigation'' after ''cognizance'' has already been taken. It is the order, dated 17.12.2007, which stands impugned in this Criminal Petition, by the informant.

4. I have heard Mr. A.M. Borbhuyan, learned Counsel, appearing on behalf of the informant-petitioner, and Mr. K. Munir, learned Additional Public Prosecutor, Assam.

5. Presenting the case, on behalf of the informant-petitioner, it has been submitted by Mr. Borbhuyan, learned Counsel, that when police investigation is not satisfactory or impartial, the informant has a right under the law to make appropriate application to the magistrate concerned seeking the magistrate''s intervention in the matter and, if necessary, seek direction for further investigation of the case. In the present case, points out Mr. Borbhuyan, the police had not examined material witnesses and it was in such circumstances that the informant had sought for a direction for further investigation by the police, but the learned Magistrate declined to concede to the prayer of the informant. The rejection of the petitioner''s prayer for a suitable direction for further investigation was, according to Mr. Borbhuyan, a serious infraction of the provisions of Section 173(8), for, Section 173(8), which permits further investigation by the police, would be contends Mr. Borbhuyan, rendered otios if the unfair and tainted investigation, carried out by the police, is not suitably interfered with and remedied by appropriate direction(s) for further investigation in terms of the provisions of Section 173(8) merely on the ground that the Magistrate has already taken ''cognizance'' on the basis of the police report submitted u/s 173.

6. Countering the submissions, so made, it is submitted, on behalf of the State, that once, ''cognizance'' has been taken by a magistrate on the basis of a police report, the informant has no locus standi to appear in a criminal proceeding and seek ''further investigation'' into the case, which the informant might have lodged. A magistrate, according to learned Additional Public Prosecutor, has no power to direct ''further investigation'' after ''cognizance'' has already been taken and, hence, the impugned order is in conformity with law. Further investigation, contends Mr. Munir, is for the police to conduct and if the informant is of the view that further investigation is required even after the Court has taken ''cognizance'' his remedy lies in making his grievances known to the police rather than seeking directions from a magistrate.

7. The controversy, which the criminal petition raises, calls for a patient analysis of the scheme of the Code with regard to a police officer''s power to investigate an offence under the Code, the rights, if any, of the informant in the matter of investigation conducted by the police on the basis of the law set into motion by such an informant, the Magistrate''s power to take ''cognizance'', direct investigation or further investigation.

8. It is Chapter-XII of the Code, which deals with information to the police and the power of the police to conduct investigation. Ordinarily, it is the First Information Report, which sets, in motion, the machinery of law. Let me, therefore, consider, first, the provisions contained in Section 154 of the Code. Sub-Section (1) of Section 154 provides that every information relating to the commission of a cognizable

offence, if given orally to an officer-in-charge of a Police Station, shall be reduced to writing by him or under his direction and be read over to the informant and every such information, whether given in writing or reduced to writing, shall be signed by the person giving it and Sub-section (2) of Section 154 requires that a copy of such information shall be given, forthwith, free of cost, to the informant. Sub-section (1) of Section 156 vests, in the officer-in-charge of every Police Station, the power to investigate any congnizable case without the order of a Magistrate and Sub-section (3) of that Section authorizes the Magistrate, empowered u/s 190, to order an investigation as mentioned in Sub-section (1) of that section.

9. As regards the information given to an Officer-in-Charge of a Police Station of the commission of a non-cognizable offence, within the limits of such a Police Station, the duty of such an officer is to enter or cause to be entered the substance of the information in a book to be kept by such officer, in such form as the State Government may prescribe in this behalf, and refer the informant to the Magistrate, but he cannot, in the light of Section 155(2), investigate into such a case without the order of a Magistrate having the power to try such a case or commit the case for trial. When, however, a police officer receives an order from a Magistrate to investigate a non-cognizable case, his powers, according to Section 155(3), to carry out investigation will be the same as in the case of a cognizable case.

10. Coupled with what is indicated above, one should also bear in mind that Sub-section (1) of Section 157 lays down that if, from the information received or otherwise, an officer- in-charge of a Police Station has reason to suspect the commission of an offence, which he is empowered, u/s 156, to investigate, he shall, forthwith, send a report of the same to a Magistrate empowered to take ''cognizance'' of such offence upon a police report and shall proceed to the spot to investigate the facts and circumstances of the case and, if necessary, to take measures for the discovery and arrest of the offender. But there are two provisos to this sub-section. Proviso (b) states that if it appears to the officer-in-charge of a Police Station that there is no sufficient ground for entering on an investigation, he shall not investigate the case; but in such a case, Sub-section (2) of Section 157 requires that the officer shall, forthwith, notify to the informant the fact that he will not investigate the case or cause it to be investigated.

11. Thus, in a given case, in the light of the proviso to Sub-section (1) of Section 157, the police officer has the option of not investigating a case if an information, as to the commission of any offence, is given against any person by name provided that the case is not of a serious nature and if it appears to the Officer-in-Charge of the Police Station that there is no sufficient ground for entering on an investigation into the case. Section 158 contemplates sending to the Magistrate a report, as envisaged in Section 157, through such superior police officer as the State Government may, by general or special order, appoint in that behalf, and such superior police officer has the power to give such instruction as he thinks fit and such instruction shall also

be transmitted to the Magistrate along with the report. Notwithstanding the fact that Section 157 empowers the police not to investigate a case, the Magistrate, on receiving the report as contemplated in Section 157 read with Section 158, has the power to direct investigation or, if he thinks fit, at once, proceed or depute any Magistrate subordinate to him to hold preliminary inquiry or, otherwise, to dispose of the case in the manner as provided in the Code.

12. What the officer-in-charge of a Police Station is required to do, on completion of the investigation, is set out in Section 173, Sub-section (2)(i) of Section 173 provides that as soon as an investigation is completed, the officer-in-charge of a Police Station shall forward to the Magistrate empowered to take ''cognizance'' of the offence on a police report, a report, in the form prescribed by the State Government, setting out various particulars including whether, in the opinion of the officer, any offence appears to have been committed and if so, by whom.

13. What is, now, of utmost importance to note is that Sub-section (2)(ii) of Section 173 states that the officer shall also communicate, in such manner as may be prescribed by the State Government, to the person, if any, by whom the information relating to the commission of the offence was first given as to what action had been taken by him. Sub-section (1) of Section 190 then, proceeds to enact that any Magistrate of the First Class and any Magistrate of the Second Class, specially empowered in this behalf under Sub-section (2) of Section 190, may take ''cognizance'' of any offence: (a) upon receiving a ''complaint'' of facts, which constitute such offence, or (b) upon a ''police report'' of such facts, or (c) upon ''information'' received from any person, other than a police officer or upon his ''own knowledge'', that such offence has been committed. I am concerned, in this case, only with Clause (b), because the question, I am examining here, is whether a Magistrate is bound to issue notice to the first informant or to the injured or to any relative of the deceased, when the Magistrate is considering the police report submitted u/s 173(2).

14. The Apex Court in, Bhagwant Singh Vs. Commissioner of Police and Another, , has pointed out that when an informant lodges first information report with the officer-in-charge of a police station, he does not fade away with the lodging of the first information report; rather, he is very much concerned with what action is initiated by the officer-in-charge of the police station on the basis of the first information report lodged by him. No sooner he lodges the first information report, a copy thereof it has to be supplied to him, free of cost, under Sub-section (2) of Section 154. If, notwithstanding the first information report, the officer-in-charge of a police station decides not to investigate the case on the ground that there is no sufficient ground for entering on an investigation, he is required, under Sub-section (2) of Section 157, to notify to the informant the fact that he is not going to investigate the case or cause it to be investigated. This apart, the officer-in-charge of a police station is obligated, under Sub-section (2)(ii) of Section 173, to communicate

to the informant as to what the investigation, conducted by the police has revealed. Furthermore, the officer-in-charge of the police station is also requires to supply to the informant a copy of the report, which he has forwarded to the Magistrate u/s 173(2)(i).

15. The question, therefore, is as to why action taken by the officer-in-charge of a police station, on the first information report, is required to be communicated to the informant along with the report, which is forwarded to the Magistrate under Sub-section (2)(i) of Section 173. The reason is obvious and the reason, as pointed out in Bhagwant Singh (supra), is that the informant, who sets the machinery of investigation into motion by filing the first information report, must know what is the result of the investigation initiated on the basis of the first information report, which he had lodged. The informant, having taken the initiative of lodging the first information report with a view to initiating investigation by the police for the purpose of ascertaining whether any offence has been committed and, if so, by whom, he is vitally interested in the result of the investigation and, hence, the law requires that the action taken by the officer-in-charge of a police station, on the first information report should be communicated to the informant. This apart, even the report, forwarded by such an officer to the Magistrate under Sub-section (2)(i) of Section 173, should also be supplied to the informant. [See Bhagwant Singh Vs. Commissioner of Police and Another,].

16. 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, as pointed out in Bhagwant Singh (supra), 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: (i) he may accept the report and take ''cognizance'' of the offence and issue process or (ii) he may disagree with the report and drop the proceeding or (iii) he may direct further investigation under Sub-section (3) of Section 156 and require the police to submit a further report. The report, submitted u/s 173(2)(i), 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, according to the Apex Court, in Bhagwant Singh (supra), has, once again, the option to adopt one of three courses: (i) he may accept the report and drop the proceeding or (ii) 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 (iii) he may direct further investigation to be made by the police under Sub-section (3) of Section 156. Where, in either of those two situations, the Magistrate decides to take "cognizance" of the offence and to issue process, the informant is not prejudicially affected nor can the injured or, in case of death, any relative of the deceased really feel 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 further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, but there is no sufficient ground for proceeding against others, mentioned in the first information report, the informant as noted in Bhagwant Singh (supra), would certainly be prejudiced, because the first information report, lodged by him, would have failed 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 by h im, is clearly recognized by the provisions contained in Sub-section (2) of Section 154, Sub-section (2) of Section 157 and subsection (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes ''cognizance'' of the offence and issues process against all those, who may have been named by him in the first information report, because that would be culmination of the first information report lodged by him.

17. There can, therefore, be no doubt, as held in Bhagwant Singh (supra), that when, on a consideration of the report made by the 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 Magistrate to take ''cognizance'' of the offence and issue process.

18. It has been further clarified and authoritatively held, in Bhagwant Singh (supra), 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 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 as to why the Magistrate shall take cognizance of offence and proceed against all and not only against those, who may have been named as offenders in the first information report.

19. When a ''police report'', within the meaning of Section 2(r) of the Code, is submitted to a Magistrate for taking of ''cognizance'', the Magistrate may, in terms of Clause (b) of Section 190(1) of the Code, take ''cognizance'' if the police report discloses commission of an offence. The Magistrate, in such a case, may also, instead of taking ''cognizance'', direct, in the light of what has been held in Bhagwant Singh (supra), ''further investigation''.

20. Let me, now, turn to the most crucial question: When is ''further investigation'' possible? When can a Magistrate direct ''further investigation''? These questions, in turn, bring us, to the question as to what is an ''investigation'', how does ''reinvestigation'' differ from ''further investigation''?

21. ''Investigation'', it maybe noted, has been denned in Section 2(h) of the Code. The Supreme Court, in H.N. Rishbud and Inder Singh Vs. The State of Delhi, , dealt

with the definition of "investigation" under the Code of Criminal Procedure, 1898, which is same under the new Code and after analyzing the provisions of Chapter-IV of the that Code (which corresponds to Chapter-XII of the new Code) described "investigation" thus:

...under the Code investigation consists generally of the following steps: (1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Information of the opinion as to whether on the material collected there is a case to place the accused before a Magistrate for trial and it so taking the necessary steps for the same by the filing of charge-sheet u/s 173.

22. Before proceeding further, what needs to be noted is that on completion of investigation, when police submits report, in terms of Section 173(2)(i), informing the Magistrate that no incriminating material has been found against the person named as an accused in the FIR or that the materials, unearthed during investigation, are inadequate to warrant prosecution of the person named as an accused in the FIR, such! a report is popularly known as" final report"; whereas a report, which the police submits in terms of the provisions of Section 173(2)(i), stating to the effect that materials, warranting prosecution of all or of some of the persons, named in the FIR, have been unearthed on investigation, such a report, suggesting prosecution of any person, as an accused, is commonly known as" charge-sheet". 23.On completion of investigation, conducted by police or any other agency, when either no incriminating material is found against a person or the investigation, so conducted, is unsatisfactory or improper and, in such a case, when an investigation is directed or commenced by an agency, which is not only distinct and different from the agency, which had conducted the earlier investigation, but is also an agency, which is under the control of an authority, other than the one, which had control over the agency, which had conducted the earlier investigation, it becomes a case of "re-investigation". Say, for instance, when an investigation, conducted by the local police, has resulted into submission of final report or charge-sheet and some allegations are made that the investigation conducted was not proper and when, in such circumstance, the State Government entrusts the case for "investigation", to its any other or superior agency, such as, Criminal Investigation Department (in short, "the CID"), such an investigation can be regarded as "further investigation" and not "re-investigation", for, the police and the CID come under one and the same Government; but on completion of investigation by the local police or the CID or without completion thereof, an investigation is commenced by an agency, say for instance by the Central Bureau of Investigation (i.e. CBI), which comes under an authority, which is distinct and

different from the State Government, it becomes a case of ''re-investigation ''. (See State of A.P. Vs. A.S. Peter,).

24. In this criminal petition, we are concerned with a case of ''further investigation''. A ''further investigation'' is neither ''fresh investigation'' nor it is ''re-investigation''. A ''further investigation'' really means an additional investigation, for, it is a continuation of the earlier investigation and not a ''fresh'' or ''re-investigation'', which starts ab initio wiping the earlier investigation altogether. Distinction between ''fresh investigation'' and ''re-investigation'', on the one hand, and '' further investigation'', on the other, has been dealt with, and succinctly described, in K. Chandrasekhar Vs. The State of Kerala and Others, , wherein an investigation was conducted by the CBI, but the State withdrew its consent given earlier for investigation of the case by the CBI. The question arose as to whether withdrawal of consent by the State is permissible? This question was answered in the negative. While holding that the investigation must be directed to be completed by the CBI, the Apex Court observed:

24. From a plain reading of the above section it is evident that even after submission of police report under Sub-section (2) on completion of investigation, the police has a right of "further" investigation under Sub-section (8) but not "fresh investigation" or "reinvestigation". That the Government of Kerala was also conscious of this position is evident from the fact that though initially it stated in the Explanatory Note of their notification dated 27.06.1996 (quoted earlier) that the consent was being withdrawn in public interest to order a ''reinvestigation'' of the case by a special team of State Police Officers, in the amendatory notification (quoted earlier) it made it clear that they wanted a "further investigation of the case" instead of "reinvestigation of the case". 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. Once it is accepted and it has got to be accepted in view of the judgment in Kazi Lhendup Dorji that an investigation undertaken by CBI pursuant to a consent granted u/s 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that "further investigation" is a continuation of such investigation which culminates in a further police report under subsection (8) of Section 173. it necessarily means that withdrawal of consent in the instant case would not entitle the State Police, to further investigate into the case. To put it differently, if any further investigation is to be made it is the CBI alone which can do so, for it was entrusted to investigate into the case by the State Government. Resultantly, the notification issued withdrawing the consent to enable the State

Police to further investigate into the case is patently invalid and unsustainable in law. In view of this finding of ours we need not go into the questions, whether Section 21 of the General Clauses Act applies to the consent given u/s 6 of the Act and whether consent given for investigating into Crime No. 246 of 1994 was redundant in view of the general consent earlier given by the State of Kerala.

25. Before coming into force of the Code of Criminal Procedure, 1973, there was no specific provision in the Code of Criminal Procedure, 1898, authorizing or empowering the police to conduct "further investigation". There was, therefore, difference of opinion on this aspect of law in the pronouncement of various High Courts. On the suggestion of the law Commission, provisions have been made in the Code of Criminal Procedure, 1973, empowering stptutorily the police to conduct ''further investigation'' by incorporating Section 173, which reads:

Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of Sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under Sub-section (2).

26. In State of A.P. Vs. A.S. Peter, , it was pointed out that it was not correct to contend that ''investigation'', when handed over to the CID, was an ''investigation'' by a different agency, for, points out the Supreme Court, in A.S. Peter (supra), the CID is a part of the investigating authoriti es of the State and it was, therefore, permissible for the higher authority of the State to direct'' further investigation'' by the CED. Reliance, in this regard, has been placed by the Apex Court, in A. Section Peter (supra) at para 13, on the case of State of Bihar and Another Vs. J.A.C. Saldanha and Others, . The relevant observations, at para 13, in A.S. Peter (supra), read:

13. This aspect of the matter is covered by a decision of this Court in State of Bihar v. JAC Saldanha wherein it was held:

19. ...This provision does not in any way effect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). Therefore, the High Court was in error in holding that the State Government in exercise of the power of superintendence u/s 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section 156(2) that an investigation by an officer in-charge of a police station, which expression includes police officer superior in rank to each officer, cannot be questioned on the ground that such investigating officer had no jurisdiction to carry on the investigation;

otherwise that provision would have been a short answer to the contention raised on behalf of the respondent No. 1.

27. Though there was no express provision - like Sub-section (8) of Section 173 of the new Code - statutorily empowering the police to conduct'' further investigation'' into an offence in respect of which a charge-sheet had already been filed and cognizance had already been taken u/s 190(1)(b), existence of such a power was recognized, in respect of cases covered by the old Code, in Ram Lal Narang Vs. State (Delhi Administration), , wherein the Supreme Court, observed, at para 22,asfollows:

22. As observed by us earlier, there was no provision in the Cr.P.C. 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view-notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted u/s 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the Court by seeking its formal permission to make further investigation.

(Emphasis is supplied)

28. Exemplifying the situations, which may warrant ''further investigation'' by police, and the procedure, which the Court may have to follow on receipt of supplemental report of such ''further investigation'', the Apex Court, in Ram Lal Narang (supra), observed at para 21, as follows:

21. Anyone acquainted with the day-to-day working of the criminal Courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualize a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case,

it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the Magistrate.

29. In the light of what has been observed and held in Ram Lal Narang (supra), what becomes crystal clear is that a ''further investigation'' is not necessarily aimed at finding out materials against the accused. A ''further investigation'' may subserve the interest of the prosecution and, at times, even of the defence. There may be fresh materials, which on coming to light, necessitate ''further investigation'' either for strengthening the case against the accused or for exonerating him. Say, for instance, an accused takes the plea of alibi and the subsequent materials, coming to the notice of the police, disclose that the defence, so taken by the accused, may have some credence. In such circumstances too, ''further investigation'' is possible.

30. Coupled with the above, what also needs to be noted is that in Ram Lal Narang (supra), the Court had observed that

...It would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come into light.

31. The word ''ordinarily'', appearing in the observations, made in Ram Lal Narang (supra), clearly indicate that in all cases and in all circumstances, it is not necessary for the police to obtain formal permission from the Magistrate to conduct ''further investigation'', for, Sub-section (8) of Section 173 gives statutory power to the police to conduct '' further investigation''.

32. While dealing with the question as to whether prior permission from the Magistrate for ''further investigation'', is always, and in every case or circumstances, necessary, it may be pointed out that in State of A.P. Vs. A.S. Peter, , the Supreme Court has made it clear, at para 9, that the law does not mandate taking of prior permission from the Magistrate for further investigation, for, conducting a ''further investigation'', even after filing of charge-sheet, is a statutory right of the police. The Supreme Court has also pointed out, in A.S. Peter (supra), that in a case, where ''re-investigation'' and not ''further investigation'' is required to be conducted by police or any other investigating agency, it would require prior permission of the Court. The observations, made in this regard, in A.S. Peter (supra), read as under:

9. Indisputably, the law does not mandate taking of prior permission from Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police. A distinction also

exists between further investigation and reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not.

33. Further explaining the circumstances in which the Court had observed, in Ram Lai Narang''s Case (supra), that it would be, ordinarily, desirable that the police should inform the Court and seek formal permission to make ''further investigation'', when fresh facts come to light, the Supreme Court has pointed out, in State of A.P. Vs. A.S. Peter, , that Ram Lal Narang (supra) was a case, where two conspiracies were alleged and two investigations were carried out and it is in such circumstances that the Supreme Court, while holding that ''further investigation'' was permissible in law held that the Magistrate had the discretion in the matter to direct ''further investigation'' even when he had taken cognizance of the offence.

34. Explaining as to why the Court had directed, in Ram Lal Narang (supra), ''further investigation'' and had observed that, ordinarily, it would be desirable that police should inform the Court and seek formal permission to make ''further investigation'', the Supreme Court, in A.S. Peter (supra), observed:

14. In Ram Lal Narang, this Court was concerned with a case where two conspiracies were alleged; one being part of a larger conspiracy. Two investigations were carried out. This Court, while opining that further investigation is permissible in law, held that the Magistrate has a discretion in the matter to direct further investigation, even if he had taken cognizance of the offence, stating:

*** *** ***

*** *** ***

21. ...The criticism that a further investigation by the police would trench upon the proceeding before the Court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light.

35. In Union Public Service Commission Vs. S. Papaiah and others, , the CBI, on completion of investigation, submitted ''final report'' u/s 173 of the Code. This ''final report'' was accepted by the Magistrate without any notice to the informant. It was

in the backdrop of these facts that the informant, namely, Union Public Service Commission (in short, ''the UPSC) filed an application seeking direction for re-investigation. The Court rejected the prayer for reinvestigation on the ground that an order, accepting ''final report'', is ajudicial order and not an administrative order and, hence, an order, accepting ''final report'', passed wrongly or rightly, could not have been reviewed. Dealing with this situation, the Supreme Court, referring to Section 173(8), observed that the Magistrate could, have, in exercise of powers u/s 173(8), directed the CBI to ''further investigate'' the case.

36. There are two parts of the decision in S. Papaih (supra), namely, (i) that a ''final report'' ought not to have been accepted by the Magistrate without notice to the informant and (ii) that the Magistrate, in the larger public interest, in exercise of his powers u/s 173(8), ought to have in the facts of the given case, directed the CBI to further investigate the case. Thus, Section Papaih (supra) recognizes the power of the Magistrate to give direction for "further investigation" u/s 173(8) if the fact situation in a given case, so warrant. What is, however, extremely important to note is that Section Papaih''s case (supra) is a case, wherein the ''final report'' had been accepted, the case against the accused had been closed and it is not a case, where cognizance of offence having been taken, process against the accused had been issued and pursuant to such a process issued, the accused had appeared in the Court.

37. In Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh and Others, , the Supreme Court has, once again, made it clear that Section 173(8) recognizes the power of the police to conduct ''further investigation'' and in exercise of is powers, the police can conduct ''further investigation'' even after the Court had taken cognizance on the basis of the report already submitted to the police. The Court, in Bhagwan Samardha (supra), pointed out that the only rider, which has been imposed by Ram Lal Narang (supra), is that it would be desirable that the police should inform the Court and seek formal permission to conduct'' further investigation''. The Supreme Court has further held, in Bhagwan Samardha (supra), that there is nothing in Section 173(8), which suggests that the Court is required to hear the accused before any direction for ''further investigation is made. While considering the case of Bhagwan Samardha (supra), it is necessary to bear in mind, as already indicated above, that formal permission, in the light of the decision, in Section Peter (supra), is required only inacase.of''reinvestigation'' and not ''further investigation''.

38. In Hemant Dhasmana (supra), the CBI, on completion of investigation, submitted a ''final report''. The Special Judge (Anti Corruption), Lucknow, issued a notice to the informant and, after hearing, ordered the CBI to re-investigate the case. It was in the backdrop of these facts that the Court pointed out, in Hemant Dhasmana (supra), that even when ''final report'' belies the allegations made by the complainant, it is open to the Court to accept the report after hearing the

complainant at whose behest investigation had commenced; but when the Court feels, on perusal of such a report, that the alleged offence has, in fact, been committed by some persons, the Court has the power to ignore the contrary conclusions reached by the investigating agency in the ''final report'' and take cognizance of such offence(s) the materials on records really disclose. The Court has also pointed out, in Hemant Dhasmana (supra), that it is open to the Court to independently apply its mind to the facts emerging from the report and it can even take cognizance of offences, which appear to have been committed, the taking of such cognizance being in exercise of power u/s 190(1)(b) of the Code and the third option is the one, which is adumbrated in Section 173. The Court has further pointed out, in Hemant Dhasmana (supra), that though subsection (8) of Section 173 does not, in specific terms, mention that the Court has the power to order ''further investigation'', as envisaged in Section 173(8), the police can be triggered in motion at the instance of the Court too. In a case of''further investigation'', so ordered, the investigating agency may either reach the same conclusion or reiterate its earlier conclusion or it can reach a different conclusion. During such extended investigation, the investigating agency can either act on the same materials or on other materials, whichmay come to theirnotice, and it is really for the investigating agency to exercise its powers, when it is put back on its right track.

39. In T.T. Antony Vs. State of Kerala and Others, , at para 23, the Supreme Court, referring to the Privy Council''s decision, in AIR 1945 18 (Privy Council) has made it clear that the right of the police to investigate a cognizable offence has been held to be statutory right over which the Court does not possess any supervisory jurisdiction. Where the police transgress its statutory power of investigation, the High Court, in exercise of its powers u/s 482 Cr.P.C. or under Articles 226 or 227, may step in.

40. Hasanbhai Valibhai Qureshi Vs. State of Gujarat and Others, , too recognizes the police''s power to conduct ''further investigation'' de horse any direction from the Court even after the Court has already taken cognizance.

41. While considering the question as to whether a Court, upon appearance of the accused, direct, of its own, ''further investigation'', is a question, which was pointedly raised and specifically answered by the Supreme Court in Randhir Singh Rana Vs. The State Being the Delhi Administration, . In Randhir Singh Rana (supra), the Court took note of the fact that the Code has compartmentalized the powers to be exercised at different stages of a case, namely, (i) at the time of taking cognizance, (ii) after cognizance is taken, (iii) after appearance of the accused and (iv) after commencement of trial on the charges being framed. It was urged, in Randhir Singh Rana (supra), that the power of the Court to direct ''further investigation'', undoubtedly, exists at the first stage, i.e., at the time of taking cognizance, it may exists at the second stage, i.e., after the cognizance is taken, but no such power exist in the intermediate, i.e., third stage. After taking of cognizance, when an

accused has appeared, pursuant to the process issued against him, what the Court is required to do, at that stage, is to look into the materials, already on record, and either frame charge or discharge the accused depending upon the nature and adequacy of the materials on record and the relevant provisions of the Code and that at the third stage, it is the power given to the Court, u/s 311, which permits it, on commencement of the trial, to examine any witness, at any stage, before the judgment is pronounced. This contention was upheld by the Court in Randhir Singh Rana (supra) and it was held that a Magistrate, of his own, cannot order ''further investigation'', after an accused, pursuant to the process issued against him, has already appeared in the case. These aspects of the matter become abundantly clear if one takes note of Paras-4 and 11 of Randhir Singh Rana (supra), which read as under:

4. Shri Vasdev has, however, strongly pressed into service the summing up of law as to the powers of the Magistrate relating to ordering of investigation before and after taking cognizance as finding place in para 15 of Tula Ram and Others Vs. Kishore Singh, , in which Fazal Ali, J. speaking for a two Judge Bench called out the following legal proposition in this regard:

1. That a Magistrate can order investigation u/s 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance u/s 190, 200 and 204 and where a Magistrate decides to take cognizance under the provisions of Chapter 14 he is not entitled in law to order any investigation u/s 156(3) though in cases not falling within the proviso to Section 202 he can order an investigation by the police which would be in the nature of an enquiry as contemplated by Section 202 of the Code.

2. Where a Magistrate chooses to take cognizance he can adopt any of the following alternatives:

(A) He can peruse the complaint and if satisfied that there are sufficient grounds for proceeding he can straightway issue process to the accused but before he does not so he must comply with the requirements of Section 200 and record the evidence of the complainant or his witnesses.

(B) The Magistrate can postpone the issue of process and direct an enquiry by any other person or an investigation by the police.

3. In case the Magistrate after considering the statement of the complainant and the witnesses or as a result of the investigation and the enquiry ordered is not satisfied that there are sufficient grounds for proceeding he can dismiss the complaint.

4. Where a Magistrate orders investigation by the police before taking cognizance u/s 156(3) of the Code and receives the report thereupon he can act on the report and discharge the accused or straightway issue process against the accused or apply his mind to the complaint filed before him and take action u/s 190 as described above. "The aforesaid does show that after cognizance has been taken

and accused has made appearance pursuant to the process issued against him, the Magistrate was not conceded the power to order investigation. It may, however, be added that the point under consideration had not come up for direct examination in Tula Ram and Others Vs. Kishore Singh,

**** **** **** ****

**** **** **** ****

11. The aforesaid being the legal position as discernible from the various decisions of this Court and some of the High Courts, we would agree, as presently advised, with Shri Vasdev that within the grey area to which we have referred the Magistrate of his own; cannot order for further investigation. As in the present case the learned Magistrate had done so, we set aside his order and direct him to dispose of the case either by framing the charge or discharge the accused on the basis of materials already on record. This will be subject to the caveat that even if the order be of discharge, further investigation by the police on its own would be permissible, which could even end in submission of either fresh charge-sheet.

42. While considering the question as to whether it is legally permissible for the Court to direct ''further investigation'', at the instance of the complainant or informant, after the accused has already entered appearance, pursuant to the process issued against him, what is of utmost importance to note is that the scheme of the Code shows that the Public Prosecutor, Additional or Assistant Public Prosecutor, who is in charge of the case, may appear and plead, without any authority, before any Court in which the case is under enquiry, trial or appeal. If, in any such case, any private person instructs a pleader to prosecute any person in any Court the Public Prosecutor, Additional or Assistant Public Prosecutor, as the case may be, who is in charge of the case, shall conduct the prosecution and the pleader, who may have been instructed by any person including the complainant or informant, shall act, in the case, under the directions of the Public Prosecutor, Additional or Assistant Public Prosecutor, as the case may be; but such a pleader may, with the permission of the Court, submit written argument after evidence is closed.

43. Thus, from the scheme of the Code, as delineated above, it becomes clear that once an accused appears in the Court, pursuant to the summons issued to him, it is the State, which assumes the role of the prosecutor and conducts the prosecution. A private party, ordinarily, has got no role to play in a case instituted by the State. In all such cases, the prosecution is conducted by the State and a private party, howsoever interested maybe in such prosecution, has to act under the directions of the Public Prosecutor, for, there cannot be a situation, where prosecution of a person can be allowed to be conducted by two persons or agencies having two different or conflicting interests. The State, in a case of prosecution of an accused, however grave the charge maybe, has to be impartial and it is no part of the duty of

the Public Prosecutor to obtain conviction of an accused facing trial; rather, the solemn role of a Public Prosecutor is to lay before the Court all such materials, which the State maybe capable of producing, in terms of the provisions of law and in the context of the facts of a given case, in order to ensure that justice is done in the case, no matter as to whether the case ends in conviction or acquittal; whereas an informant or a complainant being an interested party at the instance of such a person, a prosecution, launched by the State, cannot be allowed to be derailed.

44. The observations made by the Punjab and Haryana High Court, while dealing with the provisions of Section 301, in Kuldip Singh Vs. State of Haryana, throw some light in the above direction, in Kuldip Singh (supra), the Court has, at Para-4, observed as under:

Sub-section (1) of Section 301, deals with the Public Prosecutor and the Assistant Public Prosecutor in charge of a case. Under subsection (2) a private person can instruct a pleader to prosecute any person in any Court, but such pleader can only act under the directions of the Public Prosecutor or the Assistant Public Prosecutor. The Court comes in the picture only if the pleader so engaged wishes to submit written arguments after the evidence is closed. It is thus clear that the Court is unconcerned in the matter of the engagement of a pleader by a private party and of the conduct of the trial by such pleader under the direction of the Public Prosecutor. This matter is exclusively between the party, pleader and the Public Prosecutor.... The application filed by the petitioner to the learned Additional Sessions Judge for permission to allow his counsel to conduct the trial or to participate therein was misplaced.

45. In Thakur Ram Vs. The State of Bihar, , the Apex Court has made it clear, at Para-9, that in a case, which proceeds on a ''police report'', aprivate party has no locus standi and that the criminal law cannot be allowed to be used as an instrument of wrecking private vengeance by an aggrieved party against the person, who, according to such a party, had caused injury to the party, who feels aggrieved. The Court has made it clear, in Thakur Ram (supra), that barring few exceptions, it is the State, which is the custodian of social interests of the community at large, and so, it is the State, which has to take all steps, which may be necessary, to bring to book the person, who has acted against the social interest of the community and it is for this reason that in criminal matters, the party, who is treated as aggrieved party, is the State. The relevant observations, in Thakur Ram (supra), read asunder:

In case which has proceeded on a police report a private party has no locus standi. No doubt, the terms of Section 435, are very wide and he can even take up the matter suo motu. The criminal law is not, however, to be used as an instrument of wrecking private vengeance by an aggrieved party against the person who, according to that party, had caused injury to it. Barring a few exceptions, in criminal matters the party who, is treated as aggrieved party is the State which is the custodian of the social interests of the community at large and so it is for the State

to take all the steps necessary for bringing the person who has acted against the social interests of the community to book....

46. What surfaces from the discussion, held as a whole, is that in a case, where an accused appears, pursuant to process issued by the Court upon taking cognizance of offences, following submission of ''police report'' u/s 172(3)(i), neither the Court, on its own, direct ''further investigation'' nor has the informant or aggrieved party any right to obtain a direction for ''further investigation'', for, the prosecution agency, in such a case, remains the State and if any ''further investigation'' has to be conducted, it has to be at the instance of the State and, in fact, in an appropriate case, even the State must seek formal permission from the Court to re-start investigation if the investigation, conducted earlier, was improper or perfunctory. The remedy of the informant, therefore, lies in making application, u/s 482 Cr.P.C., to the High Court seeking appropriate direction in the matter. What, indeed, a Court can do, when a petition, as in the present case, is made seeking proper or ''further investigation'' after the accused has already entered appearance, is that the Court can and, in a befitting case, must, direct the State, i.e., the Public Prosecutor, to look into the grievances of the informant or the aggrieved party, as the case may be, and do the needful in accordance with law. If, in such a case, the Public Prosecutor, on a dispassionate and legally permissible examination, takes the view that the matter needs to be further investigated, the State can commence ''further investigation''; but, ordinarily, it would be in the fitness of the things if the State obtains formal permission from the Court, where the trial is being conducted.

47. In the backdrop of the position of law, as indicated hereinabove, let me, now, turn to the case of Sakiri Vasu Vs. State of U.P. and Others, , wherein the Apex Court has pointed out that the power given to a Magistrate, u/s 156(3), is an independent power and does not affect, because of the provisions of Section 173(8), the power of the investigating officer to'' further investigate'' a case even after submission of the police report. The Court has also pointed out, in Sakiri Vasu (supra), relying upon its earlier decision in A.C. Saldanha (supra), that the Magistrate can reopen an ''investigation'' even after the police has submitted ''final report''. The Apex Court has further pointed out, in Sakiri Vasu (supra), that the power given to a Magistrate, u/s 156(3), is wide enough to include all such powers, which may be necessary for a Magistrate to ensure proper investigation and that the powers, given to a Magistrate u/s 156(3), include the power to order registration of an FIR and also to order proper investigation if the Magistrate is satisfied that proper investigation has not been done or is not being done. The relevant observations made, in this regard, in Sakiri Vasu (supra), read, ''Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary in ensuring proper investigation''.

48. While considering the case of Sakiri Vasu (supra), it is important to bear in mind that when a power is given to an authority to do something, it includes such

incidental or implied powers, which would ensure proper doing of that thing. It is, in this sense, that the Apex Court has pointed out, in Sakiri Vasu (supra), that when any power is expressly granted by a statute, there is impliedly included in the grant, even without special mention, every power and every control, the denial of which would render the grant itself ineffective. It is, thus, in the light of the doctrine of implied power, that the Court has held, in Sakiri Vasu (supra), that Section 156(3) is wide enough to include allsuch powers, which are necessary for a Magistrate to ensure proper investigation of a case.

49. It is, now, noteworthy that the case of Sakiri Vasu (supra) was a case, where a Court of Enquiry, was convened by the Army authorities, into the case of death of Major Ravi Shankar. This Court of Enquiry concluded that it was a case of suicide. This finding came to be challenged by way of a writ petition, wherein deceased Major Ravi Shankar''s mother, Sakiri, prayed for a direction to the CBI to investigate the case. This prayer was rejected by the High Court and the matter was carried by the mother of the said deceased to the Supreme Court and it is in this factual scenario that the Court has observed that Section 156(3) empowers a Magistrate to direct registration of an FIR and also ensure proper investigation of the case.

50. What is of utmost importance to note, while considering the case of Sakiri Vasu (supra), is that it is case, which relates to ''investigation'' or ''further investigation'' as conceived in Section 156(3) and not in respect of ''further investigation'' as envisaged by the provisions of Section 173(8). The power of the Magistrate to direct ''further investigation'' would, ordinarily, end, when the ''police report'' is accepted, cognizance of offence is taken and the accused, pursuant to the process issued, appears in the Court. From this stage onward, in the light pf the authorities cited above, and, particularly, in the face of the decision in Randhir Singh Rana (supra), the Magistrate cannot, on the basis of a complaint made by the informant, direct ''further investigation'' to be conducted by the police or any other investigating agency.

51. What crystallizes from the above discussion is thus: A Magistrate can, in exercise of powers, u/s 156(3), direct registration of an FIR and investigation of a case and the power to direct investigation would include the power to ensure proper investigation. When, on completion of investigation, the police submits ''final report'', the Magistrate may, if the facts of the case so warrant, decline to accept the ''final report''; but if the Magistrate decides to accept the report, he cannot do so without giving a notice to the informant and, upon hearing the informant, the Magistrate may direct ''further investigation'' if necessary or accept ''final report'' and close the case. If, in a given case, the FIR names more than one person as accused and the police submits charge-sheet only against one or some of them, the Magistrate is duty bound to give a notice to the informant before accepting such a report of exoneration of those persons, who were named as accused, in the FIR, by the informant, but the ''police report'' indicates no material having been found

against them. Independent of the objection raised by an informant, the Magistrate has the duty to apply his mind to the facts of every given case and determine whether or not a ''final report'' or ''charge-sheet'', which exonerates some of the accused, shall or shall not be accepted in its entirety. If the Magistrate, upon hearing the informant, decides to accept the ''final report'' or a ''charge-sheet'', which exonerates some of the persons named as accused in the FIR, it is necessary that the Magistrate records the reasons, in writing, so that the correctness of the reasons, for taking such a decision, can, if necessary, be examined by the Superior Court. It is possible for a Magistrate, in exercise of its powers u/s 156(3), to order ''further investigation''. By virtue of the powers given to the police u/s 173(8), a ''further investigation'' by police is possible after filing of charge-sheet and even after commencement of trial. The Magistrate cannot, however, on his own, direct ''further investigation'' in exercise of powers, u/s 173(8), after the accused has already appeared pursuant to the process issued against him. The Magistrate cannot, for the reasons discussed above, direct, at the instance of an informant, ''further investigation'' after appearance of the accused.

52. In the light of the law discussed above, when one turns to the facts of, the present case, there can be no escape from the conclusion that at the instance of the informant, the learned Court below could not have directed the police to conduct ''further investigation'', for, the accused had already appeared. Viewed thus, it becomes clear that the impugned order cannot be interfered with and this criminal petition must fail.

53. Having held as indicated above, it is, now, time to point out that the informant had named, in the FIR, as many as four persons as accused involved in the commission of offences under Sections 120B/304(B)/436/34 IPC, and when the police, upon investigation, submitted report (that is, charge-sheet), u/s 173(2)(i), against one of the persons named as accused in the FIR, the learned Sub-Divisional Judicial Magistrate ought not to have accepted such a report without giving the informant a notice to have his say as to why the report, so submitted by police, be not accepted. No such notice was, admittedly, given to the informant. Situated thus, it becomes clear that the informant still has the right, if he so deems necessary, to challenge the order, whereby process against one of the persons, named as accused in the FIR, was directed to be issued.

54. The informant shall, therefore, remain at liberty to take recourse to appropriate provisions of law for remedy of his grievances, if any.

55. For the above observations and conclusions reached, this Criminal Petition, being not sustainable on the ground on which the impugned order, dated 17.12.2007, stands challenged, is hereby dismissed.