(2019) 04 SC CK 0067

Supreme Court Of India

Case No: Criminal Appeal No. 687 Of 2019

Bikash Ranjan Rout		APPELLANT
	Vs	
State Through The Secretary (Home), Government Of Nct Of Delhi, New Delhi		RESPONDENT

Date of Decision: April 16, 2019

Acts Referred:

- Indian Penal Code, 1860 - Section 420, 468, 471
- Code Of Criminal Procedure, 1973 - Section 154(2), 156(2), 156(3), 157(2), 160, 167(2), 173(2), 173(2)(i), 173(2)(ii), 173(6), 173(8), 227, 228, 319

Citation: AIR 2019 SC 2002 : (2019) 5 SCC 542 : (2019) 4 JT 281 : (2019) 6 Scale 481 : (2019) 2 BCR(Cri) 633 : (2019) 2 SCC(Cri) 613 : (2019) 2 ACJ 575 : (2019) CriLJ 2787 : (2019) 3 ACR 2639 : (2019) 108 AllCC 327 : (2019) 2 ALT(Cri) 255 : (2019) 259 DLT 396 : (20

Hon'ble Judges: L. Nageswara Rao, J; M.R. Shah, J

Bench: Division Bench

Advocate: Debasis Misra, Vibha Datta Makhija, Praveen, Sunita Rao, B.V. Balaram Das

Final Decision: Allowed

Judgement

M. R. Shah, J

1. Leave granted.

2. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 20.08.2014 passed by the High Court of Delhi in Criminal M. C. No.

3386 of 2013 by which the High Court has dismissed the said petition and has confirmed the order passed by the learned Additional Chief Metropolitan

Magistrate (West) Delhi dated 05.02.2013, by which the learned Magistrate ordered further investigation, the original accused has preferred the

present appeal.

3. That the FIR was lodged against the appellant hereinÃ, original accused on 28.09.2007 being FIR No. 426/2007 at Police Station Janakpuri, Delhi

for the offences under Sections 420, 468 and 471 of the IPC. That on completion of the investigation, the investigating officer filed the chargeÃ‚sheet

against the accusedÃ‚appellant for the offences under Sections 420, 468 and 471 of the IPC. That at the time of framing of the charge and considering

the chargeÃ‚sheet papers, the learned Magistrate discharged the appellantÃ‚original accused vide order dated 05.02.2013. However, while discharging

the accused and/or after the accused was discharged, in the same order, the learned Magistrate directed the Additional Commissioner of Police

(West) Delhi to make appreciation of quality of the investigation done in the case and to analyse the process of efficacy of sending any charge sheet

before the prosecution branch for the purpose of scrutiny. Learned Magistrate also observed and directed that the case requires further investigation

to reach a logical conclusion and the same be done responsibly and the report be filed on 11.04.2012 (sic).

3.1 Feeling aggrieved and dissatisfied with that part of the order passed by the learned Magistrate dated 05.02.2013 by which the learned Magistrate

directed further investigation and to submit the report, the appellantÃ‚original accused approached the High Court by way of Criminal Miscellaneous

Case No. 3386 of 2013. In the meantime, following the directions issued by the learned Magistrate vide order dated 05.02.2013, the District

Investigating Unit, West District, Police Post MIG Flats, JÃ‚Block, Rajouri Garden, New Delhi issued summons dated 22.04.2013 under Section 160 of

the CrPC. The appellant also challenged the said notice/summon issued under Section 160 of the CrPC. Basically, the appellant herein challenged that

part of the order dated 05.02.2013 passed by the learned Magistrate, by which the learned Magistrate observed and directed further investigation and

also directed the investigating officer to submit the report. That by the impugned judgment and order, the High Court has dismissed the said petition

and has refused to interfere with the order dated 05.02.2013 passed by the learned Magistrate directing further investigation by observing that the

investigation was a faulty investigation and/or no proper investigation was carried out on certain aspects and, therefore, the learned Magistrate was

justified in inquiring further investigation to reach to a logical conclusion. Consequently, the High Court has dismissed the said petition. Hence, the

appellantÃ‚â€‹original accused is before this Court.

4. Mr. Mrinal Kanti Mandal, learned Advocate appearing on behalf of the appellantÃ‚original accused, has vehemently submitted that, in the facts and

circumstances of the case, the High Court has committed a grave error in confirming the order dated 05.02.2013 passed by the learned Magistrate for

further investigation.

4.1 Learned counsel appearing on behalf of the appellantÃ‚ original accused has vehemently submitted that the High Court has not properly

appreciated the fact that after the accused was discharged by the learned Magistrate, thereafter he has no jurisdiction to pass any order for further

investigation under Section 173(8) of the CrPC.

4.2 It is further submitted by the learned counsel appearing on behalf of the appellantÃ‚original accused that once the accused is discharged by the

learned Magistrate after considering the chargeÃ‚sheet and the material on record, thereafter the learned Magistrate becomes functus officio and has

no jurisdiction to order further investigation even under Section 173(8) of the CrPC.

4.3 It is further submitted by the learned counsel appearing on behalf of the appellantÃ‚original accused that the order passed by the learned

Magistrate for further investigation after the accused is discharged is even hit by Section 167(2) of the CrPC.

4.4 Learned counsel appearing on behalf of the appellantÃ‚ original accused has vehemently submitted that while passing the impugned judgment and

order confirming the order passed by the learned Magistrate for further investigation after the accused was discharged, the High Court has not

properly appreciated and/or considered the distinction between the powers to be exercised by the learned Magistrate at preÃ, cognizance stage and

postÃ,cognizance stage. It is submitted that the powers which may be available to the Magistrate at preÃ, cognizance stage cannot be exercised at

postÃ,â€‹cognizance stage.

4.5 In support of his above submissions, the learned counsel appearing on behalf of the appellantÃ,original accused has heavily relied upon the

decisions of this Court in the case of Bhagwant Singh v. Commissioner of Police (1985) 2 SCC 537 as well as in the case of Reeta Nag v. State of

West Bengal (2009) 9 SCC 129. Learned counsel appearing on behalf of the appellantÃ, original accused has further relied upon the decisions of this

Court in the cases of Vinay Tyagi v. Irshad Ali @ Deepak (2013) 5 SCC 762; Vasanti Dubey v. State of Madhya Pradesh (2012) 2 SCC 731; Amit

Kapoor v. Ramesh Chander (2012) 9 SCC 460 and Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361.

4.6 Relying upon the aforeÃ,stated decisions of this Court, learned counsel appearing on behalf of the appellantÃ,original accused has vehemently

submitted that the order passed by the learned Magistrate and confirmed by the High Court, ordering further investigation after the accused was

discharged was wholly impermissible. Therefore, it is prayed to allow the present appeal and quash and set aside the impugned judgment and order

passed by the High Court as well as the order passed by the learned Magistrate ordering further investigation.

5. Ms. Vibha Datta Makhija, learned Senior Advocate appearing on behalf of the respondentÃ,State, has vehemently opposed the present appeal. It is

submitted by the learned counsel appearing on behalf of the respondentÃ,State that as rightly observed by the learned Magistrate and even the High

Court that on certain aspects there was no investigation carried out at all and no evidence was collected, which will go to the root of the matter and

therefore having not satisfied with the manner in which the investigation was carried out and the chargeÃ‚sheet was submitted and thereafter when

the learned Magistrate ordered further investigation, the same is rightly not interfered with by the High Court.

5.1 It is further submitted by the learned counsel appearing on behalf of the respondentÃ‚State that, as such, the learned Magistrate is vested with the

power to order further investigation if he comes to the conclusion that the investigation was not proper and/or the investigation was made in

perfunctory manner and the benefit would go to the accused. It is further submitted that the powers of the Magistrate to order further investigation

has been recognized by law under Section 173(8) of the CrPC as well as by this Court in a catena of decisions, including the decisions of this Court in

Bhagwant Singh (supra) and even in Reeta Nag (supra). It is submitted that therefore, in the facts and circumstances of the case, the learned

Magistrate was justified in ordering further investigation.

5.2 Relying upon the decision of this Court in Kishan Lal v. Dharmendra Bafna (2009) 7 SCC 685, it is submitted by the learned counsel appearing on

behalf of the respondentÃ‚State that, as observed and held by this Court, learned Magistrate can take cognizance on the basis of the materials placed

on record by the investigating agency. It is also observed that it is also permissible for the Magistrate to direct further investigation. It is submitted that,

as observed by this Court, the Magistrate has a duty to see that the investigation is carried out in a fair manner. It is submitted that it is observed that

an order of further investigation can be made at various stages including the stage of the trial, that is even after taking cognizance of the offence.

5.3 Relying upon the decision of this Court in Hemant Dhasmana v. Central Bureau of Investigation (2001) 7 SCC 536, it is further submitted that

when the learned Magistrate passed an order of further investigation for the ends of justice, the same is not required to be interfered with by the High

Court in exercise of its revisional jurisdiction.

5.4 Learned counsel appearing on behalf of the respondentÃ, State has also heavily relied upon the decision of this Court in Sajjan Kumar v. Central

Bureau of Investigation (2010) 9 SCC 368. It is submitted that even after the chargeÃ‚sheet is filed, still the Magistrate is free to direct the accused to

appear and try the offence, even at the stage of Sections 227 and 228 of the CrPC.

5.5 Making the above submissions and relying upon the above decisions of this Court, it is prayed to dismiss the present appeal.

6. Heard learned counsel appearing on behalf of the respective parties at length. At the outset, it is required to be noted that the challenge in the

present appeal is to the order passed by the High Court, confirming the order passed by the learned Magistrate of further investigation passed at the

time/after the accused was discharged by the learned Magistrate. It is required to be noted that, in the present case, the investigating officer after

concluding the investigation, submitted the report/chargeÃ‚sheet before the learned Magistrate. Thereafter, the matter before the learned Magistrate

was at the stage of framing of the charge, as provided under Sections 227 and 228 of the CrPC. After considering the material on record submitted

along with the chargeÃ‚sheet, the learned Magistrate at the first instance discharged the accused. However, simultaneously, while discharging the

accused, learned Magistrate also passed an order for further investigation and directed the investigating officer to further investigate in the matter and

submit the report. That part of the order, by which the learned Magistrate ordered further investigation is the subject matter of dispute. Therefore, the

short question which is posed for consideration by this Court is whether once the learned Magistrate passes an order of discharge of the accused,

whether thereafter is it permissible for the Magistrate to order further investigation and direct the investigating officer to submit the report?

6.1 While considering the aforesaid issue/question, few decisions of this Court on the procedure to be followed by the learned Magistrate when the

investigating officer submits the report under Section 173(2) of the CrPC and what are the powers of the learned Magistrate and/or what are the

options available to the learned Magistrate at a time when the investigating officer after concluding the investigation submits the

report/challan/chargeÃ‚â€‹sheet before the learned Magistrate, are required to be referred to and considered.

6.2 In the celebrated judgment of this Court in the case of Bhagwant Singh (supra) which has been subsequently followed consistently, this Court had

the occasion to consider the procedure to be followed by the learned Magistrate and/or the options which are available to the learned Magistrate at the

time when the report/challan/chargeÃ‚sheet is filed by the investigating officer before him. In that judgment, this Court in para 4 has observed and held

as under:

Ã¢â‚¬Å“4. Now, when the report forwarded by the officerÃ‚inÃ‚ charge of a police station to the Magistrate under subÃ‚ 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 subÃ‚ 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 subÃ‚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 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 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, 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 by him is clearly recognized by the provisions contained in

subÃ‚section (2) of Section 154, subÃ‚section (2) of Section 157 and subÃ‚ section (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, 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 officerÃ‚inÃ‚charge of a

police station under subÃ‚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. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under subÃ‚â€‹ 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. 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 subÃ‚â€‹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.Ã¢â‚¬â€‹

6.3 In the case of Vinay Tyagi (supra), after considering catena of decisions of this Court, including the decisions of this Court in Bhagwant Singh

(supra) and Reeta Nag (supra), ultimately in para 40, this Court concluded as under:

Ã¢â‚¬Å“40. Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to

the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

40.1. The Magistrate has no power to direct Ã¢â‚¬Å“reinvestigationÃ¢â‚¬ or Ã¢â‚¬Å“fresh investigationÃ¢â‚¬ (de novo) in the case initiated on the basis of a police

report.

40.2. A Magistrate has the power to direct Ã¢â‚¬Å“further investigationÃ¢â‚¬â€‹ after filing of a police report in terms of Section 173(6) of the Code.

40.3. The view expressed in SubÃ‚para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case[Bhagwant Singh v.

Commr. of Police, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a threeÃ‚â€‹Judge Bench and thus in conformity with the doctrine of precedent.

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section

173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the

language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought

to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but

intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not

direct the investigating agency to conduct further investigation which it could do on its own.

40.6. It has been a procedure of propriety that the police has to seek permission of the court to continue Ã¢â‚¬Å“further investigationÃ¢â‚¬ and file

supplementary chargeÃ‚â€‹ sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we

are taking in the present case.Ã¢â‚¬â€‹

6.4 In the case of Minu Kumari v. State of Bihar (2000) 4 SCC 359, it is observed by this Court that when a report forwarded by the police to the

Magistrate under Section 173(2)(i) is placed before him, several situations 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 either (1) accept the report and take cognizance of the offence

and issued process, or (2) may disagree with the report and drop the proceedings, or (3) may direct further investigation under Section 156(3) and

require the police to make a further report.

7. Considering the law laid down by this Court in the aforesaid decisions and even considering the relevant provisions of the CrPC, namely Sections

167(2), 173, 227 and 228 of the CrPC, what is emerging is that after the investigation is concluded and the report is forwarded by the police to the

Magistrate under Section 173(2)(i) of the CrPC, the learned Magistrate may either (1) accept the report and take cognizance of the offence and issue

process, or (2) may disagree with the report and drop the proceedings, or (3) may direct further investigation under Section 156(3) and require the

police to make a further report. If the Magistrate disagrees with the report and drops the proceedings, the informant is required to be given an

opportunity to submit the protest application and thereafter, after giving an opportunity to the informant, the Magistrate may take a further decision

whether to drop the proceedings against the accused or not. If the learned Magistrate accepts the objections, in that case, he may issue process and/or

even frame the charges against the accused. As observed hereinabove, having not satisfied with the investigation on considering the report forwarded

by the police under Section 173(2)(i) of the CrPC, the Magistrate may, at that stage, direct further investigation and require the police to make a

further report. However, it is required to be noted that all the aforesaid is required to be done at the preÃ‚â€‹cognizance stage.

Once the learned Magistrate takes the cognizance and, considering the materials on record submitted along with the report forwarded by the police

under Section 173(2)(i) of the CrPC, learned Magistrate in exercise of the powers under Section 227 of the CrPC discharges the accused, thereafter,

it will not be open for the Magistrate to suo moto order for further investigation and direct the investigating officer to submit the report. Such an order

after discharging the accused can be said to be made at the postÃ‚cognizance stage. There is a distinction and/or difference between the preÃ‚â€■

cognizance stage and postÃ‚cognizance stage and the powers to be exercised by the Magistrate for further investigation at the preÃ‚cognizance stage

and postÃ‚cognizance stage. The power to order further investigation which may be available to the Magistrate at the preÃ‚cognizance stage may not

be available to the Magistrate at the postÃ‚cognizance stage, more particularly, when the accused is discharged by him. As observed hereinabove, if

the Magistrate was not satisfied with the investigation carried out by the investigating officer and the report submitted by the investigating officer

under Section 173(2) (i) of the CrPC, as observed by this Court in catena of decisions and as observed hereinabove, it was always open/permissible

for the Magistrate to direct the investigating agency for further investigation and may postpone even the framing of the charge and/or taking any final

decision on the report at that stage. However, once the learned Magistrate, on the basis of the report and the materials placed along with the report,

discharges the accused, we are afraid that thereafter the Magistrate can suo moto order the further investigation by the investigating agency. Once

the order of discharge is passed, thereafter the Magistrate has no jurisdiction to suo moto direct the investigating officer for further investigation and

submit the report. In such a situation, only two remedies are available: (i) a revision application can be filed against the discharge or (ii) the Court has

to wait till the stage of Section 319 of the CrPC. However, at the same time, considering the provisions of Section 173(8) of the CrPC, it is always

open for the investigating agency to file an application for further investigation and thereafter to submit the fresh report and the Court may, on the

application submitted by the investigating agency, permit further investigation and permit the investigating officer to file a fresh report and the same

may be considered by the learned Magistrate thereafter in accordance with law. The Magistrate cannot suo moto direct for further investigation under

Section 173(8) of the CrPC or direct the reÃ, investigation into a case at the postÃ,cognizance stage, more particularly when, in exercise of powers

under Section 227 of the CrPC, the Magistrate discharges the accused. However, Section 173(8) of the CrPC confers power upon the officerÃ,inÃ,â€■

charge of the police station to further investigate and submit evidence, oral or documentary, after forwarding the report under subÃ,section (2) of

Section 173 of the CrPC. Therefore, it is always open for the investigating officer to apply for further investigation, even after forwarding the report

under subÃ,section (2) of Section 173 and even after the discharge of the accused. However, the aforesaid shall be at the instance of the investigating

officer/police officerÃ, inÃ,charge and the Magistrate has no jurisdiction to suo moto pass an order for further investigation/reinvestigation after he

discharges the accused.

7.1 In the instant case, the investigating authority did not apply for further investigation and that the learned Magistrate suo moto passed an order for

further investigation and directed the investigating officer to further investigate and submit the report, which is impermissible under the law. Such a

course of action is beyond the jurisdictional competence of the Magistrate. Therefore, that part of the order passed by the learned Magistrate ordering

further investigation after he discharges the accused, cannot be sustained and the same deserves to be quashed and set aside. Consequently, the

impugned judgment and order passed by the High Court confirming such an order passed by the learned Magistrate also deserves to be quashed and

set aside. At the same time, it will always be open for the investigating officer to file an appropriate application for further investigation and undertake

further investigation and submit a further report in exercise of powers under Section 173(8) of the CrPC.

8. In view of the above and for the reasons stated above, the present appeal succeeds. The impugned judgment and order dated 20.08.2014 as well as

that part of the order dated 05.02.2013 passed by the learned Magistrate directing the investigating officer for further investigation and submit the

report, is hereby quashed and set aside.

8.1 However, considering the observations made by the learned Magistrate and the deficiency in the investigation pointed out by the learned

Magistrate and the ultimate goal is to book and/or punish the real culprit, it will be open for the investigating officer to submit a proper application

before the learned Magistrate for further investigation and conduct fresh investigation and submit the further report in exercise of powers under

Section 173(8) of the CrPC and thereafter the learned Magistrate to consider the same in accordance with law and on its own merits.

9. The present appeal is allowed with the above observations and the liberty reserved in favour of the investigating officer, as above.