

## **POWER OF THE MAGISTRATE TO ORDER FURTHER INVESTIGATION BY OTHER INVESTIGATING AGENCIES: ITS SCOPE AND AMBIT: A STUDY**

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1. Magistrates often face two crucial issues such as to order further investigation or reinvestigation. At time, they may feel that the investigation be carried out by other agencies such as CBI and others, when they feel that such a re-investigation is necessary. In Hasan bhai Valibhai Qureshi's case<sup>1</sup> and Hemant Dhasmana,<sup>2</sup> the Supreme Court ruled: "when the Investigating Officer has examined all the witnesses, as averred by the informant and received the evidence and no new witnesses were cited to be examined, there was no justification for directing re-investigation of the case". The investigating officer can only request for further investigation<sup>3</sup> to obtain fact situation and there are no exceptional circumstances for ordering re-investigation.<sup>4</sup> Explaining the scope of revisional jurisdiction, the Supreme Court in Anil Kapoor's case,<sup>5</sup> the Supreme Court observed: "Normally a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is

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<sup>1</sup> Hasanbhai Valibhai Qureshi Vs. State of Gujarath AIR 2004 SC P.2078

<sup>2</sup> Hemant Dhasmana Vs. CBI & others AIR 2001 SC P.2721.

<sup>3</sup> See Section 173(8) of Criminal Procedure Code.

<sup>4</sup> Chandra Babu Vs. State (through Inspector of Police) 2015 Cr LJ P.4538 (SC).

<sup>5</sup> Anil Kapoor Vs. Ramesh Chander (2012) 9 SCC P.460.

required to be exercised so that justice is done and there is no abuse of power by the court”. In other words, there is no perversity of approached or justice to be done shall be the guiding factor.

2. The power of the magistrate to take cognizance of any offence is spelt out clearly in Sec 190 of the Criminal Procedure Code. According to this section, a magistrate of I class or second class specially empowered may take cognizance of any offence,

- a) Upon receiving a complaint of facts which constitute such offence;
- b) Upon a police report of such facts;
- c) Upon information received from any person other than a police officer or upon his own knowledge that such an offence has been committed.

The magistrate is not bound to accept the final report filed by the investigating agency under Sec 173(2) of the Criminal Procedure Code and is entitled to issue process against an accused even though exonerated by the said authorities as per the principle stated in Uma Shanker Singh’s case.<sup>6</sup> The principle has been explained thus:-

“... even if the investigating authority is of the view that no case has been made out against an accused, the magistrate can apply his mind independently to the materials contained in the police report

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<sup>6</sup> Uma Shanker Singh Vs. State of Bihar 2010 AIR SCW P.5868.

and take cognizance thereupon in exercise of powers under Section 190(1) (b) Criminal Procedure Code<sup>7</sup>.

3. The Supreme Court in *Dharan Pal*<sup>8</sup> favourably endorsing the view in *Kishan Singh*<sup>9</sup> held thus:-

a) The magistrate has a role to play while committing the case to the court of session upon taking cognizance on the police report submitted before him under Section 173(2) of the Criminal Procedure Code;

b) In the event, the magistrate disagrees with the police report, he has two choices:-

i) He may act on the basis of protest petition that may be filed;

or

ii) He may, while disagreeing with the police report issue process and summon the accused.

Thereafter, if he on being satisfied that a case has been made out to proceed against the person named in Col (2) of the report, proceed to try the said persons or if he was satisfied that a case has been made out which was triable by a court of sessions, he may commit the case to the court of sessions to proceed further in the matter. Thus, the magistrate may ignore the opinion expressed by the investigating officer and independently apply his mind to the facts that have merged from the investigation.<sup>10</sup>

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<sup>7</sup> Ibid Para 19. See also *Motilal Songara Vs. Prem Prasad* AIR 2013 SC P.2078 in which the principle stated in *Uma Shanker Singh's* case has been followed.

<sup>8</sup> *Dharan Pal Vs. State of Haryana* AIR 2013 SC P.3018.

<sup>9</sup> *Kishan Singh Vs. State of Bihar* (1993) AIR SCW P.771.

<sup>10</sup> See Note 4 Para 16.

4. In Bhagwant Singh's case,<sup>11</sup> the issue of magistrate disagreeing with the police report was considered and the Supreme Court ruled as follows:-

i) If the report concludes 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 the three things namely:-

a) he may accept the report and take cognizance of the offence and issue process;

(or)

b) he may disagree with the report and drop the proceedings;

(or)

c) he may direct further investigation under sub-section 3 of Sec 156 Cr Pc and require the police to make a further report.

In the event of a police report that no offence appears to have been committed and such a report is made out, the magistrate again has an option to adopt one of the three courses namely:-

i) he may accept the report and drop the proceedings;

(or)

ii) he may disagree with the report and take the view that there is sufficient ground to proceed further, take cognizance of the offence and issue process;

(or)

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<sup>11</sup> Bhagwant Singh Vs. Commissioner of Police AIR 1985 SC P.1385.

iii) he may direct further investigation to be made by the police under Sub-section 3 of Sec 156 of Criminal Procedure Code.

5. No prejudice is caused to the informant or to the injured or in the case of death to any relative of the deceased when the magistrate decides to take cognizance and to issue process. But in the case of the magistrate deciding that there is no sufficient ground for proceeding further and drop the proceedings or to take the view that there is sufficient ground to proceed against some and not against others mentioned in the FIR, the informant is prejudiced as the FIR lodged would have failed of its purpose either wholly or in part.

When 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 could make submissions to persuade the magistrate to take cognizance. Equally so in the case when the magistrate decides to proceed against some and not against others mentioned in the FIR, the informant must be given the opportunity of being heard.

6. The Supreme Court also examined the question whether the delay in the service of the notice on the informant could be a justification for depriving the opportunity of being heard at the time when the report is considered by the magistrate and stated that it cannot be so. In order to justify this, the court said that in any case the action taken by the police on FIR has to be communicated to the informant and also a copy of the police report has to be supplied to him under the provisions of 2 (1) of Sec 173 of the Criminal Procedure Code. When there is no difficulty in supplying the above copies, there cannot be any difficulty in serving notice to the informant. Thus, the

opportunity of being heard is an important requirement of natural justice and has to be complied with, as a part of fair trial requirement.

7. The scope and ambit of power of the magistrate to order further investigation has been considered by the Supreme Court in Vinay Tyagi's case<sup>12</sup> and it was observed thus:- "That magistrate cannot suo motto direct further investigation under Sec 173 (8) of the code of Criminal Procedure or direct reinvestigation into a case on account of the bar contained in Sec 167 (2) of the code of Criminal Procedure". Further it was held by the Supreme Court in a series of cases<sup>13</sup> "that a magistrate could direct filing of a charge-sheet when the police submit a report that no case had been made out for sending an accused person for trial". The essence of the above decisions bring home the settled law that the magistrate cannot direct re-investigation and cannot suo motu direct further investigation. Further as laid down in Bhagwant Singh's case<sup>14</sup> that the magistrate before whom a report under Sec 173 (2) of the Criminal Procedure Code is filed, is empowered in law to direct "further investigation" and requires the police to submit a further or supplementary report.
8. The law laid down by the Supreme Court in the recent case<sup>15</sup> can be summarised thus:-

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<sup>12</sup> Vinay Tyagi Vs. Irshad Ali AIR 2013 SC (Cri) P.292. See Para 37.

<sup>13</sup> Reeta Nag Vs. State of WB AIR 2010 SC (Cri) P.401; Ram Naresh Prasad Vs. State of Jharkhand AIR 2009 (Suppl) P.219; Randhvi Singh Rana Vs. State AIR 1997 SC P.639.

<sup>14</sup> See Note 11.

<sup>15</sup> See Note 4 Para 40.

- a) The magistrate has no power to direct “re-investigation” or ‘fresh investigation’ (de novo) in the case initiated on the basis of a police report;
- b) Magistrate has the power to direct “further investigation” after filing of the police report in terms of Sec 173 (6) of the Code of Criminal Procedure;<sup>16</sup>
- c) Neither the scheme of the Code of Criminal Procedure nor any specific provision therein bars exercise of such jurisdiction by the magistrate (to order further investigation). The language of Sec 173(2) cannot be construed so restrictively as to deprive the magistrate of such powers particularly in face of the provisions of powers 156(3) and the language of Sec 173(8) of the Code of Criminal Procedure itself;  
In fact, such powers would have to be read with the language of Sec 173 (8).
- d) The Code of Criminal Procedure 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 for ‘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 ends of justice even demand, the court can still not

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<sup>16</sup> See ratio in Bhagwant Singh’s case Note 11.

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

- e) As explained in Vinay Tyagi,<sup>17</sup> the power of the magistrate to direct ‘further investigation’ is a significant power which has to be exercised sparingly in exceptional cases to achieve the ends of justice;
- f) To provide fair, proper, unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same;
- g) Further investigation conducted under the orders of the court, including that of the magistrate, or by the police of its own accord for valid reasons would lead to the filing of a supplementary report;
- h) Such supplementary report shall be dealt with as part of the primary report, as it would be clear from Sec 173(3) and Sec 173(6) would apply to such reports in terms of Sec 173(8) of the code of Criminal Procedure.

However, the superior courts under Sec 482 of Criminal Procedure Code or under Art 226 of the Constitution can exercise the power to direct ‘further investigation’ or ‘fresh’ or (‘de novo) and even reinvestigate. They also have the power to transfer from one agency to another investigative agency provided the ends of justice so demand. This

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<sup>17</sup> See Note 12.



powers of the superior courts have to be exercised sparingly and with great circumspection.

9. The ratio in Chandra Balu's case<sup>18</sup> makes it clear that 'further investigation' does not include investigation by other agencies or re-investigation'. Further investigation has to be conducted under the supervision of the Superintendent of Police (SP).

10. In conclusion, it may be pointed out when the magistrate feels that the investigation has been badly conducted and in gross violation of law and against all canons of fair investigation, a power to order reinvestigation may be necessary for the ends of justice. Further, when the magistrate has ample evidence on record to show that the investigation has been unfair and conducted in an atmosphere of prejudice and biased and partial in many respects, there is no reason why the magistrate should be deprived of the power to order re-investigation by another agency such as CBI etc. The strong foundation of criminal justice system should begin at the point of trial courts and should not depend upon superior courts intervention. After all the main object to be achieved is 'justice'. It does not matter whether the investigation is by A agency or B agency provided the investigation is 'fair'. An appropriate amendment to Sec 173 of the Code of Criminal Procedure is necessary in the following terms:-

"Provided for special reasons to be recorded in writing, the magistrate may have the power to direct 're-investigation' or investigation by an agency

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<sup>18</sup> See Note 4.

other than the agency which had investigated for the purpose of doing complete justice or meet the ends of criminal justice”.

The sooner the amendment is made, it could be better for the criminal justice system in the Country.

