

Before Manoj Bajaj, J.

PANKAJ KUMAR @ PINKI—Petitioner

versus

STATE OF PUNJAB AND ANOTHER—Respondents

CRM-M No.16013 of 2020

CRM-M No.19681 of 2020

March 18, 2021

Code of Criminal Procedure, 1973 – S.439 – Regular bail petitions filed by petitioners – After filing of report u/s 173(2) Cr.P.C. they had been declared innocent by the police after conducting inquiring and supplementary report u/s 173(8) Cr.P.C. submitted – Considering seriousness of offences and specific allegations prayer for regular bails declined – Held, Police has no power or jurisdiction to conduct fresh investigation, re-investigation or de-novo investigation – Converting inquiry report into report u/s 173 (8) Cr.P.C. is violating of the procedural laws of investigation contemplated by the Code of Criminal Procedure – Court compelled to suo moto exercise inherent powers u/s 482 Cr.P.C. – Instruction dated 04.05.2017 issued by Director, Bureau of Investigation, Punjab quashed – Directions for fair investigation issued.

Held that, the above observations made by the Hon'ble Supreme Court has clarified that the police has no power or jurisdiction to conduct fresh investigation, re-investigation or *de novo* investigation but the instructions dated 04.05.2017 empowers the police officers to enter into fresh inquiries in respect of the commission of offences. It is manifest that the procedure of converting inquiry report into a report under Section 173(8) Cr.P.C is violative of the procedural law of investigation contemplated by the Code of Criminal Procedure

(Para 46)

Further held that, therefore, this Court has no hesitation in holding that the state police has contrived to infuse a sophisticated mechanism by formulating the above policy to entertain the defence of accused, which invades lawful procedure of investigation contemplated by the Code of Criminal Procedure, and it destroys the fundamental characteristics of impartiality and free investigation. Apart from it, it is also seen that by following this procedure, inquiry officer assumes the

judicial role during the inquiry proceedings and delivers the opinion in relation to the innocence of the accused. This practice needs to be curbed and cannot be permitted to continue, therefore, this Court is compelled to *suo moto* exercise its inherent powers under Section 482 Cr.P.C.

(Para 47)

Further held that, thus, in the above conspectus, it is evident that the instructions dated 04.05.2017 (Annexure R-2) violate the process and procedure of investigation established by Code of Criminal Procedure, 1973, and further cause abuse of the process of Court by submitting the conflicting reports, which is against the cardinal principles of administration of criminal law.

(Para 53)

Further held that, resultantly, the instructions dated 04.05.2017 (Annexure R-2) attached in CRM-M-19681-2020, are hereby quashed and further, this Court deems it necessary to issue following directions:-

- (a) In every case, where FIR has been registered regarding commission of a cognizable offence, the investigation shall be conducted by the Investigating Officer, strictly in accordance with the provisions of Code of Criminal Procedure, 1973.
- (b) In every case, where after registration of FIR, investigation has commenced, no representation/request on behalf of accused to examine his/her innocence shall be entertained by police and no parallel inquiry shall be initiated.
- (c) In cases, where upon the registration of FIR and commencement of investigation, the state government or the state police orders transfer of investigation, then it shall be necessary to intimate the magistrate, before whom the special report under Section 157 (1) Cr.P.C was originally submitted. The intimation shall be given in writing with reasons for transfer of investigation.
- (d) Whenever, the investigating officer after commencement of investigation, decides to hold or stop the investigation in respect of all or any of the accused persons, for any reason, it shall be mandatory for such officer to send the report under Section 157(2) Cr.P.C to the magistrate before whom report under Section 157(1) Cr.P.C was initially submitted.
- (e) If, the trial Court upon conclusion of trial finds that the acquittal

of the accused is on account of deliberate lapses in investigation, it can pass appropriate orders for suitable departmental/penal action against the officers responsible for such lapses.

- (f) The state governments of Punjab, Haryana and U.T. Administration, Chandigarh shall ensure that the police officers and public prosecutors are properly sensitized about their responsibilities and duties and to further strictly adhere to the statutory provisions of law in respect of the investigation in crime.
- (g) The state governments of Punjab, Haryana and U.T. Administration, Chandigarh shall further ensure strict compliance of the directions issued by Hon'ble Supreme Court in "***State of Gujarat Vs. Kishan Bhai and others***",2014 (5) SCC 108.

(Para 54)

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MANOJ BAJAJ, J.

(1) The petitioners are accused in two different crime cases and have filed their separate petitions under Section 439 Cr.P.C for grant of regular bail, during the pendency of the trial. Accused-Pankaj Kumar @ Panki is an accused in FIR No.211 dated 21.08.2019 registered under Sections 302, 307, 148 and 149 Indian Penal Code, 1860 at Police Station Salem Tabri, District Ludhiana and is in custody since his arrest on 22.10.2019, whereas accused-Dalbir Singh was arrested on 22.03.2020 in FIR No.13 dated 22.03.2020 registered under Sections 302, 34 and 120-B Indian Penal Code, 1860 at Police Station Kotli, Surat Mallian, Police District Batala.

(2) Though the prayer in each petition is to be considered

independently, as the petitioners are neither the co-accused nor the two occurrences have any connection, however, during the course of hearing, the procedure of investigation adopted by state police in the above cases was found to be similar and extremely strange, which claimed the attention of the Court, therefore, the above cases are being decided through this common judgment.

(3) The facts in brief, of the above cases are noticed here below, separately:-

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(4) Petitioner-Pankaj Kumar @ Panki is an accused in FIR No.211 dated 21.08.2019 registered under Sections 302, 307, 148 and 149 IPC, at Police Station Salem Tabri, District Ludhiana (Annexure P-1), recorded on the statement of complainant-Manpreet Singh, wherein it was alleged that on 20.08.2019, complainant alongwith his friend Amandeep, uncle-Surinder Singh @ Kaka was going to Neta Nagar in their car. Then at about 8.00 p.m., 8-10 persons, namely, Jinder, Bala, Phatak, Gagu, Bedi, Gagan, Sheela, Panki, Peeta, Jiya started following them. They all were armed with baseball bats, kirpan and datar. They all stopped complainant's car and pulled them out. Panki (petitioner) exhorted and gave baseball bat blows on the head of Surinder Singh, who fell down and turned unconscious. Nitesh Bedi, Bala, Tinder, Pathak, Gaggi gave datar and baseball bat blows to complainant. Amandeep was given severe beatings by Gagan, Sheela, Peeto, Jiya with their respective weapons. On hearing the noise, people gathered there and on seeing them, the accused persons along with their weapons ran away from the spot. The complainant informed his relatives, who rushed the victims to Civil Hospital, Ludhiana, where complainant's uncle Surinder Singh was declared dead.

(5) According to the prosecution, the supplementary statement of complainant was recorded on 24.08.2019, whereupon accused Gurkamal Singh @ Tillu was arraigned as an accused and similarly Rattan Singh @ Aman was also indicted as an accused on 12.09.2019.

(6) The petitioner has pleaded that he has been falsely implicated in the above FIR as he was not involved in the alleged occurrence and the charge sheet under Section 173 (2) Cr.P.C filed on 21.11.2019 against him lost significance, in view of the subsequent inquiry report. It is the case of the petitioner that his mother, namely, Santosh wife of Kamal Kishore submitted an application bearing CR No.1655305 dated 19.09.2019 on his behalf to the Commissioner of

Police, District Ludhiana for initiating inquiry regarding his innocence and the same was marked to Additional Deputy Commissioner, Police Investigation, Ludhiana. After conclusion of inquiry, it was found that petitioner and his co-accused, namely, Deepak Kumar, Nitesh Kumar @ Bedi and Gurkamal Singh @ Tillu were not involved in the alleged occurrence and on the basis of the said inquiry report, an application dated 02.02.2020 (Annexure P-2) was filed by SHO, Police Station, Salem Tabri before the trial Court for discharge of the petitioner. The zimni orders passed by trial Court on the application are Annexures P-3 to P-5.

(7) During the course of hearing, on 17.11.2020, learned State counsel had prayed for time to seek instructions in respect of grounds raised by the petitioner, and subsequently filed affidavit dated 01.03.2021 of Gurbinder Singh, PPS, Assistant Commissioner of Police, (North) Ludhiana. As per the response, petitioner was named in FIR as a member of the unlawful assembly, who caused injuries upon the victims and in the said occurrence, Surinder Singh died. It has been explained that as per the complainant, Pankaj Kumar @ Panki raised exhortation and gave base-ball bat blow on the head of Surinder Singh. *Prima facie*, material against the petitioner has been highlighted in the said affidavit, to indicate that the Surinder Singh suffered six injuries in all, but the injury No.6 on the head caused by petitioner, resulted in his death.

(8) Lastly, the reference of the inquiry proceedings has been made to disclose that on the basis of the inquiry report approved by Commissioner of Police, Ludhiana, a supplementary report under Section 173(8) Cr.P.C was presented before the trial Court on 23.02.2021, and according to it the petitioner has no role in the occurrence, therefore, request for his discharge has been made. The reports are pending before the trial Court for consideration.

(9) Learned counsel for the petitioner has argued that though the name of the petitioner figured in the FIR, but subsequently, the representation given by his mother was thoroughly looked into by holding an inquiry, and it was found that the petitioner and other three accused were not present at the spot. He submits that the final report filed earlier on 21.11.2019 under Section 173(2) Cr.P.C stands substituted by way of supplementary final report under Section 173(8) Cr.P.C, and even the application has been filed by the SHO, for his discharge. Learned counsel states that the application is yet to be considered by the trial Court, who further invited attention of the Court

to the trial Court orders Annexures P-3 to P-5, and prayed for regular bail.

(10) On the other hand, the prayer of the petitioner is opposed by learned counsel appearing on behalf of State as well as by learned counsel for the complainant. Learned counsel for the complainant contended that the petitioner was armed with baseball bat and opened an attack upon the victims. He submitted that Surinder Pal Singh died of head injury, which has been attributed to the petitioner, and the two other injured eye-witnesses, namely, Manpreet Singh and Amandeep have specifically named the petitioner and therefore, the stand of the petitioner that he was not present at the spot would be seen during trial. He further submitted that once the FIR stood registered and investigation had commenced, there was no occasion for the police to hold the inquiry. According to Mr. Madaan, learned counsel, the offences are serious and therefore, the petitioner is not entitled for bail.

(11) Learned State counsel assisted by Inspector Gopal Krishan has argued that sufficient evidence was found during investigation, regarding involvement of the petitioner in the crime, as the weapon of offence was also recovered from him. He submits that the final report was filed against the petitioner on 21.11.2019, but does not dispute this fact that on the basis of inquiry report, a supplementary report under Section 173(8) Cr.P.C was filed on 23.02.2021, and petitioner was declared innocent.

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(12) Petitioner-Dalbir Singh is an accused in FIR No.13 dated 22.03.2020 registered under Sections 302, 34 and 120-B IPC, at Police Station Kotli, Surat Mallian, Police District Batala, which was recorded on the statement of complainant, Charanjeet Singh who alleged that on 21.03.2020, his daughter, namely, Akwinder Kaur was married to Avtar Singh and sufficient dowry was given at the time of marriage. After about 2-3 months of marriage, his son-in-law, namely, Avtar Singh went to Dubai, who used to harass and maltreat his daughter, and continued to threaten her on phone that he will not keep her and will kill her, if, she does not go to her parental home. On 2-3 occasions, complainant along with his family members went to the matrimonial home of his daughter and got the matter compromised. About 15 days back, Dalbir Singh (father-in-law), Jagir Kaur (mother-in-law), Prabhjot Kaur (Sister-in-law), Kamaljit Singh (brother-in-law) and Kiranjit Kaur (sister-in-law) of complainant's daughter had given beatings to Akwinder Kaur. They used to pressurize her to leave matrimonial home and in this regard his

daughter had informed him telephonically. As per allegations, the members of her in-laws family maltreated her and threatened to kill her, if, she does not go to her parental home. Thereafter, her father-in-law made phone call to complainant to inform that his daughter being unwell is not speaking. On receiving the call, complainant reached at Village Bariar and found that his daughter was taken to Civil Hospital, Kalauar, and upon reaching there, they saw that his daughter was lying in a car bearing No.PB-06Z-4106, with abrasions on her mouth. It was alleged by the complainant that his daughter was killed by her in-laws family by strangulating her.

(13) The petitioner has pleaded his false implication in the case, as the allegations leveled by complainant are not worth believing, because the Post Mortem Report (Annexure P-2) does not support the ocular version. According to the petitioner, his co-accused, namely, Kamaljit Singh, Prabhjot Kaur and Kiranjit Kaur gave representations dated 273/R-SSP/17.04.2020 and 378/MPC/25.04.2020 to Senior Superintendent of Police, Batala, regarding their false implication in the above FIR, whereupon an inquiry was conducted by DSP, Dera Baba Nanak, who found the applicants (co-accused) innocent vide his report No. 47-R/DSP/Dera Baba Nanak dated 21.05.2020. The SSP Batala after perusal of the said report further entrusted inquiry to Deputy Superintendent of Police, Detective Batala, who also submitted his report dated 30.05.2020 (Annexure P-4), in favour of the accused and finally SSP Batala on 02.06.2020 agreed with the said report. According to the petitioner on the basis of inquiry report, a supplementary report under Section 173(8) Cr.P.C regarding innocence of Kamaljit Singh, Prabhjot Kaur and Kirandeep Kaur was prepared and presented before the Illaqa Magistarte on 26.06.2020.

(14) Similarly, another complaint/representation bearing No.470-OPC/BR dated 18.08.2020 was given to the Inspector General of Police, Border Range, Amritsar on behalf of the petitioner by his brother, namely, Murta Singh son of Buta Singh, whereupon the Superintendent of Police, (Investigation) Batala conducted separate inquiry, who submitted his report bearing No.3459/SP/Inv. Dated 19.09.2020 (Annexure P-10) and declared the petitioner and his wife (Jagir Kaur) as innocent. The Senior Superintendent of Police, Batala approved the said report also.

(15) During the course of hearing, on 09.02.2021, learned State counsel sought time to seek instructions and this Court directed the Director General of Police, Punjab to file his own affidavit to justify the

acceptance of representation on behalf of the accused and holding an inquiry during the pendency of investigation in the FIR.

(16) In deference to the order dated 09.02.2021, Director General of Police, Punjab filed his affidavit dated 25.02.2021 and relied upon the report (Annexure R-1) sought from Inspector General of Police, Border Range, Amritsar in respect of the subject matter. As per the reply, no inquiry was conducted during the investigation of the above mentioned case, as the matter was only got verified/examined regarding the averments made by accused in their complaints/representation as per the instructions dated 04.05.2017 (Annexure R-2), issued by Director, Bureau of Investigation, Punjab.

(17) Learned counsel for the petitioner has argued that the petitioner was falsely implicated in the above FIR and though earlier charge sheet under Section 173(2) Cr.P.C was filed against the petitioner on 19.06.2020, but subsequently the Superintendent of Police, Investigation Batala, in his report (Annexure P-10) found the petitioner innocent. He submits that the other co-accused were also found innocent on the basis of separate inquiry report (Annexure P-4). Learned counsel further argued that as the SIT consisting of three officers is still carrying on the investigation, therefore, further detention of the petitioner is not necessary. He prays for bail.

(18) The prayer is opposed by learned State counsel as well as by learned counsel appearing on behalf of the complainant. Learned counsel for the complainant has submitted that victim-Akwinder Kaur died of smothering, therefore, the death of the victim was homicidal. In this regard, he has invited the attention of the Court to the Postmortem report (Annexure P-2) and argued that the police has not fairly investigated the case and have conducted different inquiries through different officers and declared them innocent illegally. According to him, as the investigation by Special Investigation Team is going on, therefore, the petitioner does not deserve the concession of regular bail.

(19) Learned State counsel assisted by SI Mohinder Singh has argued that the investigation and inquiry in a crime fall within the domain of the police and therefore, there is nothing wrong in holding the inquiries. He has invited the attention of the Court to the instructions Annexure R-2 and submitted that paragraphs 4 and 5 specifically deal with the procedure with complaints/representations received in registered cases. However, it is not disputed by him that the investigation qua the petitioner was completed in June, 2020, when charge sheet against him was filed under Section 173 (2) Cr.P.C. It is

also not disputed by him that supplementary report under Section 173(8) Cr.P.C was filed on 11.12.2020 regarding innocence of the co-accused of the petitioner. Learned State counsel on instructions further stated that Senior Superintendent of Police, Batala vide his order dated 07.10.2020 has directed further probe, and constituted a Special Investigation Team consisting of:

1. Superintendent of Police, PBI Batala (Supervision)
2. Deputy Superintendent of Police, Dera Baba Nanak (Member)
3. SHO Police Station Kotli Surat Mallian (Member).

(20) According to learned State counsel, the investigation by SIT is in progress.

(21) After hearing learned counsel for the parties and examining the case files, this Court finds that both the learned counsel for the petitioners have mainly set up a common ground on merits by placing reliance upon the respective supplementary report(s) filed under Section 173 (8) Cr.P.C, whereby they were declared innocent. Besides, the learned counsel for petitioners have also pointed out the length of custody of each petitioner, and contended that the trial in the above background may consume considerable time to conclude and pressed the prayer for admitting the petitioners on regular bail.

(22) This Court does not find any merit in the argument that in view of supplementary reports under Section 173(8) Cr.P.C filed in favour of petitioners, the charge sheet under Section 173 (2) Cr.P.C filed earlier against them is wiped off, particularly when the reports are pending consideration before the respective trial Courts. Even in case of petitioner-Dalbir Singh, notwithstanding the supplementary report in his favour, the Special Investigation Team is still seized of the investigation. In *Vinay Tyagi* versus *Irshad Ali @ Deepak Kumar*¹ similar issue arose before the Apex Court, when accused prayed for discharge on the strength of the subsequent report filed by CBI exonerating the accused, though previously Delhi Police had filed charge sheet under Section 173(2) Cr.P.C against the accused. The Hon'ble Supreme Court after examining the law on the subject observed that the trial Court is duty bound to consider the entire record, including both the reports i.e. filed by Delhi Police under Section 173(2) Cr.P.C and CBI under Section 173(8) Cr.P.C, as the first report

¹ 2013 (5) SCC 762

was never set aside by the High Court, while entrusting investigation to CBI.

(23) Resultantly, considering the seriousness of the offences and the fact that the specific allegations have been levelled against the petitioners in the respective FIRs, this Court without meaning any expression of opinion on the merits of the cases, declines the prayer(s) for grant of regular bail to the petitioners, at this stage.

(24) At this juncture, this Court deems it appropriate to examine and address the issue of procedure of investigation followed by the state police, after registration of First Information Reports.

(25) The Code of Criminal Procedure, 1973 provides for two modes of criminal prosecution, one based upon police investigation report, whereas the other is founded on directly instituted private complaint before the magistrate, and these procedures are contained in Chapter XII and XV respectively. The prosecution in a complaint case begins with the filing of complaint directly before the Court and police has no role in the said procedure, except to hold an inquiry under Section 202 Cr.P.C, if directed by the magistrate, who has already taken cognizance of the complaint. The said inquiry is also only for extremely limited purpose of ascertaining the truth in the allegations made in the complaint.

(26) Unlike the complaint case, the prosecution based upon police report consists of two stages: First-upon an information to the police, a First Information Report is registered, regarding alleged commission of cognizable offence, followed by submission of special report to the concerned magistrate as envisaged under Section 157 Cr.P.C and thereafter, thorough investigation is conducted. After completion of investigation, the final report is prepared as contemplated under Section 173 (2) Cr.P.C. for submission before the Court of competent jurisdiction, for consideration. Second- the trial Court examines the final report and if, a *prima facie* case is made out against the accused, the cognizance of offence(s) is taken by framing charges, followed by examination of prosecution witnesses. After discharge of onus by prosecution, the accused is called upon for explanation, in case the incriminating evidence is on record. Thereafter, the trial Court records the defence evidence, if any, and delivers the final judgment of conviction or acquittal.

(27) The procedure for investigation starts with the submission of a report relating to the commission of offence, to the magistrate,

empowered to take cognizance of such offence upon police report as envisaged in Section 157 Cr.P.C., which reads as under:-

“157. Procedure for investigation preliminary inquiry.

(1) If, from 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 under section 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 in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to 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; Provided that-

(a) when information as to the commission of any such offence is given against any person by name and the case is not of a serious nature, the officer in charge of a police station need not proceed in person or depute a subordinate officer to make an investigation on the spot;

(b) 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.

(2) In each of the cases mentioned in clauses (a) and (b) of the proviso to sub- section (1), the officer in charge of the police station shall state in his report his reasons for not fully complying with the requirements of that sub- section, and, in the case mentioned in clause (b) of the said proviso, the officer shall also forthwith notify to the informant, if any, in such manner as may be prescribed by the State Government, the fact that he will not investigate the case or cause it to be investigated.”

(28) A careful reading of the above Section makes it abundantly clear that Sub-Section (1) contemplates intimation to the concerned magistrate regarding commencement of investigation, as the concerned investigating officer has “reasons to suspect” that “cognizable offence” has been committed. This part of above Section appears to be formal, but is followed by two provisos (a) & (b), which deal with the different situations: As per proviso (a) the In-charge of Police Station, is

empowered to depute a subordinate officer to investigate the offence, if, he feels that the offence is not serious in nature; whereas proviso (b) empowers the officer In-charge of Police Station to drop the investigation, if, he finds that no sufficient ground exists to enter into investigation and in both these eventualities, the concerned officer is required to submit a report before the magistrate, and also to send intimation to the informant, as the case may be, in terms of Section 157(2) Cr.P.C.

(29) Apart from the above, the language contained in Sub-Section (2) makes it abundantly clear that the officer In-charge of the Police Station, after commencement of investigation, if, decides to hold or stop the investigation for any reason, in respect of all or any of the accused persons, then it is mandatory for such officer to furnish the report to the magistrate describing the reasons for not fully complying with the requirements of Sub-Section (1) of Section 157 Cr.P.C. The kind of obligation conferred upon the In-charge of Police Station makes it clear that this compliance is mandatory in nature.

(30) Section 157 Cr.P.C was considered by the Hon'ble Supreme Court in its judgment rendered in *Pala Singh and another versus State of Punjab*² wherein it was observed that this provision has been designed to keep magistrate informed of the investigation of such cognizable offence in order to control the investigation, and if necessary, to give appropriate direction under Section 159 Cr.P.C. This view was followed by Hon'ble Supreme Court in *State of West Bengal versus Swapan Kumar Guha and others*³ and the relevant observation is extracted below:-

“21.The position which emerges from these decisions and the other decisions which are discussed by brother A.N.Sen is that the condition precedent to the commencement of investigation under Section 157 of the Code is that the FIR must disclose, prima facie, that a cognizable offence has been committed. It is wrong to suppose that the police have an unfettered discretion to commence investigation under Section 157 of the Code. Their right of enquiry is conditioned by the existence of reason to suspect the commission of a cognizable offence and they cannot, reasonably, have reason so to suspect unless the FIR, prima

² 1972 AIR SC 2679

³ 1982(1) SCC 561

facie, discloses the commission of such offence. If that condition is satisfied, the investigation must go on and the rule in Khwaja Nazir Ahmad will apply. The court has then no power to stop the investigation, for to do so would be to trench upon the lawful power of the police to investigate into cognizable offences. On the other hand, if the FIR does not disclose the commission of a cognizable offence, the court would be justified in quashing the investigation on the basis of the information as laid or received.”

(31) Again Section 157 Cr.P.C., its nature and the law on the subject were examined threadbare by the Hon’ble Apex Court in *State of Haryana versus Bhajan Lal*⁴, and the relevant observations relating to the powers of police to investigate are reproduced below:-

“42. The core of the above sections namely 156, 157 and 159 of the Code is that if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded with by his subordinate, that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within which the domain of the investigating agencies over which the Courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

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64. The sum and substance of the above deliberation results to a conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to

⁴ 1992 (Sup1) SCC 335

investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the Court on being approached by the person aggrieved for the redress of any grievance has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. Needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of 'Divine Power' which no authority on earth can enjoy.”

(32) In the light of the above, it is evident that the procedure of investigation in the crime by police is elaborated in this chapter, and it casts a statutory duty upon police to investigate the alleged offence by collecting the evidence in order to prepare the final report under Section 173 Cr.P.C. Undoubtedly the field of investigation in a crime is occupied by police and the Courts have always shown reluctance in interfering with the police investigation, unless there are extraordinary circumstances warranting judicial interference or for monitoring the investigation. Therefore, the task of investigation in a First Information Report acquires significance, as it lays down foundation for criminal prosecution of an accused, and promptness in investigation, facilitates the collection of evidence against the accused, whereas delay or lapse may cause disappearance of the evidence, which may result in miscarriage of justice to the victim.

(33) Article 21 Constitution of India guarantees fundamental right to life and by flexible interpretation, the Hon'ble Supreme Court has expanded its purview by including within its sweep the right of an accused to have just, fair and speedy trial. At the same time, this fundamental right would by interpretation also include complainant's right to speedy justice.

(34) On the same analogy, it is imperative for the Investigating officer to act in accordance with law and in a truthful manner to carry out investigation without any influence. Thus, it is clear that the investigation in an offence, being a delicate and important exercise, so it must be conducted fairly with due care, caution and prudence.

(35) Needless to observe here that upon registration of FIR, the accused in the alleged offence is not treated as guilty, who is presumed to be innocent till the charges are established by the prosecution. Therefore, it is obligatory for the investigating officer to proceed with the investigation in an impartial and honest manner to collect the evidence in connection with the crime, who is guided by the said material to identify the suspect. In case, the sufficient incriminating evidence is collected during investigation, the accused is sent to face the trial along with the final report under Section 173(2) Cr.P.C, and on the contrary, if, the evidence is not available, the investigating officer is supposed to declare the suspect as innocent. The Code of Criminal Procedure also contains provisions to safeguard and secure the interest, rights of the accused at various stages during trial to ensure fair trial, and that no prejudice is caused to the accused.

(36) Now turning to the facts and circumstances of the cases in hand and upon analyzing, this Court finds that when investigation in both these FIRs was in progress, the separate representations on behalf of the various accused persons or through their relatives were entertained by Senior Police Officers, who ordered simultaneous inquiries to examine their innocence only. The Inquiry officers upon conclusion of the inquiries submitted their reports in favour of accused (applicants), and that too without even examining the final report under Section 173(2) Cr.P.C. The inquiry reports were subsequently decorated as supplementary reports under Section 173(8) Cr.P.C and were placed before the trial Court. In this way, the trial Courts in both these cases are seized of two conflicting conclusions of investigation & inquiry carried by different functionaries of state police.

(37) At this stage, it would be appropriate to examine the instructions (Annexure R-2) relied upon by the Director General of

Police, Punjab in his affidavit dated 04.05.2017 to justify the abovesaid manner of inquiries, and the same is reproduced below:-

1. Please refer to the Notification No.5/184/15-5H4/610277/1, dated 15.10.2015 issued by Department of Home Affairs & Justice, Punjab and for separation of Investigation from Law & Order functions in Punjab Police.

2. Detailed instructions on conduction of Preliminary Enquiries and procedure to deal with complaints /representations received in registered cases are to be issued as per the abovesaid Notification for separation of Investigation from Law & Order functions in Punjab Police which came into force w.e.f.15.10.2015. The detailed instructions on conduction of Preliminary Enquiries and procedure to deal with complaints/representations received in registered cases are as under:

3. CONDUCTION OF PRELIMINARY ENQUIRIES

The Notification has laid down that the following officers are authorized to order Preliminary Enquiries (P.E.s):-

- i) Director, Bureau of Investigation.
- ii) ADGP/I.V.C. & H.R.
- iii) ADGP GRP/IGP, GRP
- iv) Zonal IGP/IGP NRI Affairs
- v) Commissioners of Police
- vi) Range DIGs
- vii) District SSPs/DCPs of Police Commissionerates
- viii) SP (Investigation)/ADCP (Investigation)
- ix) Dy.SP.s.of Sub Divisions
- x) S.H.Os

It has also been particularly mentioned that “No officer other than aforementioned shall order any Preliminary Enquiry”. It is clarified that the abovesaid officers can order Preliminary Enquiries on the complaints pertaining to their area of jurisdiction or charter of duties only.

It has also been mentioned in the Notification that the record

of all Preliminary Enquiries ordered pertaining to any particular district/unit should be maintained in the office of SSP/DCP/AIF concerned. The relevant portion of the Notification is reproduced below:-

“The district level register maintained in the office of SSP/DCP shall have record of all PEs being conducted in the unit. Officers superior to the SSP/DCP should send the PEs ordered by them to the office of SSP/DCP for entry into the district level register before it is entrusted to any specific officer to enquiry. Similarly, intimation of PEs ordered at the Police Station level or by SP/ADCP Investigation shall be sent to the office of the SSP/DCP for entry into the district level register.”

It has also been laid down in the Notification that “SSP/DCP should workout the modalities for maintenance of this record and review the status and outcome of the PEs on a monthly basis.”

It is reiterated that (a) no officer other than those mentioned in the Notification is authorized to order or mark any Preliminary Enquiry; and (b) the record of all enquiries pertaining to a particular unit should be maintained in the office of SSP/DCP, preferably in the electronic form (software).

3.2 In view of the above, the following is ordered:-

(i) District SSPs, CPs/DCPs and AIGs should immediately take a review of all Preliminary Enquiries pertaining to their districts/units and various sub-units of their districts/units like the CAW, EOW, Saanjh Kendras, CIA etc.

(ii) Wherever it is found that any Preliminary Enquiry is being conducted on the orders of officers other than those mentioned in the Notification, the SSPs/DCPs/AIGs should personally review such cases and mark those enquiries (wherever required) strictly in accordance with the provisions of the Notification and this order. The past discrepancies and errors should be rectified by the SSPs/DCPs/AIGs. In case, any complaint has not been marked for enquiry by the officer mentioned in the Notification, the same shall be reviewed and marked by the competent officer mentioned in the Notification. Secondly,

entry regarding the same be made in the district/unit level records/software maintained in the office of SSP/DCP/AIG concerned.

(iii) The existing practice of giving a UID number by Saanjh Kendras generated with the help of Saanjh software to the complaint should continue. All complaints received in the Saanjh Kendras or by the DCPO from public or from senior officers shall be sent to the SSP/DCP/AIG of the concerned unit and Preliminary Enquiries in such complaints shall be marked by the SSP/DCP/AIG concerned as per the provisions of the Notification and this Order.

(iv) Wherever complaints are received directly (i.e. not through Saanjh Kendras), a UID number be assigned with the help of Saanjh software, and disposal of such complaints be also done in accordance with provisions of the Notification and this Order. For the purpose of assigning a UID number, provision for Saanjh software be made in all the offices, if not available already, of the authorities competent to order Preliminary Enquiries.

(v) SSPs/CPs are Chairpersons of District Saanjh Kendras. They are expected to maintain record and supervise disposal of applications being dealt within the Saanjh Kendras of their respective unit. In particular, the following may be ensured:-

a) SSP/DCP can mark Preliminary Enquiry to the Saanjh Kendras, only if the complaint discloses commission of non-cognizable offence or matrimonial/family dispute, and the SSPs/DCPs (i.e. Chairpersons of the Saanjh Kendras) are personally satisfied that the particular dispute could be resolved with intervention of members of the Saanjh.

b) The DCPO (District Community Policing Officer) shall send all the reports regarding 'dispute resolution' matters to the SSP/DCP concerned for final decisions.

4. PROCEDURE TO DEAL WITH COMPLAINTS/REPRESENTATIONS RECEIVED IN REGISTERED CASES

4.1 It has been noticed that in many cases, where FIRs had been registered, complaints/representations are received from

complainants/accused/any other person alleging improper investigation. In all such cases, where complaints/representations are received, the following officers are authorized in the above-said Notification, to order examination/verification of averments made in such complaints/representation:-

- i) Director, Bureau of Investigation
- ii) ADGP/I.V.C & H.R.
- iii) ADGP GRP/IGP, GRP
- iv) Zonal IGP/IGP NRI Affairs
- v) Commissioner of Police
- vi) Range DIGs
- vii) District SSPs/DCPs
- viii) SP (Investigation)/ADCP (Investigation).

4.2 It has been provided in the Notification that “complaints received regarding investigation of any particular case should normally in the first instance be entrusted to DSP/ACP (Investigation) or SP/ADCP (Investigation) (if ordered by an officer superior to SP/Investigation) for verification and report. After the verification so conducted, if warranted, necessary remedial action should be ordered. In such cases (where remedial action is ordered) transfer of investigation from the I.U. conducting that particular investigation should normally be done along with appropriate disciplinary action against the officer(s) of investigation unit.”

4.3 In addition, references are received from various Hon’ble Court and commissions e.g.NHRC, PSHRC, Women Commissions, Punjab State Commission for NRIs, National and State Commissions for SCs and STs, with regard to investigation of registered case(s). Such complaints are also marked to officers for enquiry/examination/verification of the facts. The concerned officer shall submit the report of enquiry /examination/verification to the competent authority for approval. In all such cases, where complaints/representations are marked to officers for enquiry

/examinations/verifications of facts, the following procedure shall be adopted by the said officers:-

(i) Before marking an enquiry, the officer should check from the database of SAANJH, if previously any enquiry is pending in the same complaint. This would ensure that there are no multiple enquiries in the same case.

(ii) The concerned officer shall call for the Police File of the case and scrutinize the same, for the purpose of enquiry/examination/verification of facts.

(iii) Where a complaint/representation has been marked to the officer for enquiry/examination/verification of facts, the said officer may call the complainant/representationist to ascertain his/her specific grievance alongwith supporting evidence, if available with the complainant /representationist; and is ready to produce the same.

(iv) Upon scrutiny of the Police File and/or hearing the complainant/representationist, the concerned officer may take any of the following steps:-

(a) If the investigation is being conducted properly, he/she may recommend in the report, continuation of investigation by the same investigation unit /investigation officer.

(b) If the concerned officer comes to the conclusion that investigation is being conducted properly, but certain aspects need to be investigated, he/she may record points of investigation for the Investigation Unit, who shall conduct investigation on such points also.

(c) If the investigation is not being conducted properly, he/she may recommend transfer of investigation, in the report, to some other I.U.

(d) If the concerned officer finds any mala fide on the part of the Investigating Officer (Incharge of IU concerned), he/she shall recommend suitable action as deemed fit against the delinquent Investigating Officer(s).

(e) The concerned officer may also summon witnesses, if necessary, examine them and record their statements as per procedure prescribed under Sections 161 (Examination of witnesses by police) & 162 (Statements to police not to be

signed) of Cr.P.C, 1973 and record Case Diary(ies) with respect to the same.

(v) The said officer shall put up Enquiry/Examination/Verification report to the competent authority (the police officer, who passed order for enquiry/examination/verification) for approval, preferably within a period of 30 days and in any case not later than 03 months. In case if the Enquiry/Examination/Verification cannot be completed within 03 months time, permission of the Competent Authority should be obtained duly explaining the reasons for the delay.

(vi) The Competent Authority shall convey either approval to the report or points for further verification, preferably within a period of 30 days from the day of receipt of the report. In case the competent authority decides not to accord approval, reasons for doing so be mentioned in writing on the concerned filed and the report shall be kept in the records of the office of the Competent Authority, duly marking on the report as 'Not approved'. The Competent Authority shall convey to all concerned that the Examination/Verification report is not approved, and investigation of the case be conducted strictly as per law and facts.

(vii) Upon receipt of approval of Competent Authority to the Enquiry/Examination/Verification report, the officer who conducted the Enquiry/Examination/Verification shall record 'Case Diary(ies)' regarding Enquiry/Examination/Verification conducted by him/her and encloses the same to the Report.

(viii) The Enquiry/Examination/Verification Report alongwith 'Case Diary(ies) and Police File shall be returned to the concerned head of unit e.g. Commissioner of Police, Senior Superintendent of Police, IGP/NRI Affairs, ADGP/GRP etc, who should ensure compliance of the recommendations made in the report.

(ix) In case the Police File is required by the Investigation Unit(I.O), during pendency of enquiry/examination/verification, for any purpose other than investigation e.g. bail matters listed before Hon'ble Courts etc., he/she may obtain the Police File from the concerned Enquiry/

Examination/Verification officer. [NOTE:-The word 'enquiry' (inquiry) shall be used for examination /verification ordered by Hon'ble Courts and Commissions only, if 'enquiry' (inquiry) is ordered by them in registered cases.]

5. PROCEDURE TO DEAL WITH COMPLAINTS/REPRESENTATIONS RECEIVE3D, IF ANY, SUBSEQUENT TO EXAMINATION /VERIFICATION OF FIRST COMPLAINT /REPRESENTATION IN REGISTERED CASES (FIRs).

5.1 Once an examination/verification of facts has been conducted on the orders of any of the officers competent to do so, as mentioned at Point No.4.1 above, the second examination/verification of facts, can be ordered only by the following officers senior to the officer who had ordered the first examination/verification, with the approval of DGP, Punjab only:-

(i) ADGP-GRP/IGP-NRI Affairs/Commissioner of Police/Range DIG/Zonal IGP

(ii) Director, Bureau of Investigation.

(iii)Note:-

(I) As it is possible that the officer who marks an examination/verification of facts may not know about earlier examination/verification already been conducted in the case, it shall be incumbent upon the officer to whom such examination/verification is marked, to ensure that examination/verification is conducted in consonance with the provisions of the Notification and this detailed ordered only.

(II) While doing so, the concerned officer will keep the provision of para 4.3 (i) of this circular in consideration, regarding cross checking of the receipt of complaint with the database of SAANJH KENDRA.

6. If multiple complaints/representations are received from different parties in the same matter, all those complaints/representations shall be sent to the same officer who is already looking into the matter, and the officer who

is conducting enquiry/examination/verification shall look into the allegations/averments made in all the complaints/representations as part of the ongoing enquiry/examination/verification.

5. It is clarified that the supervisory officers shall continue to exercise powers vested with them as per the provisions of Cr.P.C., 1973 and Punjab Police Rules, 1934 and any other law in force for the time being. The supervisory officers can call for any case file, scrutinize the same, issue points for investigation and order transfer of investigation within their jurisdiction. The transfer of investigation shall be subjected to the following:-

(i) Transfer of Investigation of a case from one I.O/Investigation Unit to some other I.O/I.U should be done sparingly and in exceptional cases only.

(ii) While transferring investigation, the supervisory officer shall record in writing, the reasons for transfer of investigation from one I.O/Investigation Unit to some other I.O/I.U.

(iii) Any transfer of investigation on the grounds of improper investigation/mala fide on the part of investigating officer (head of investigation unit concerned) should invariably be followed by fixation of responsibility of the delinquent officer/investigation officer, and action taken in this regard.

8. It is clarified that the Director General of Police, Punjab can order any Preliminary Enquiry, and Examination/Verification of facts of any registered case on any complaint/representation or information.

Sd/- Director,
Bureau of Investigation, Punjab,
Chandigarh”.

(38) A close examination of these instructions reveals that this procedure of inquiries has been devised purportedly with an object to tackle improper investigation, in cases where FIR has been registered, and officers higher in rank have been authorized to accept such representation(s) and for further entrustment of the same to the competent officer for inquiry/verification/examination of facts etc. After completion of inquiry, a report is submitted to the competent

authority, who further has variety of options to choose from i.e. either to approve the report or to order further verification; or alternatively to order investigation strictly in accordance with law. It is apparent that in the garb of these instructions, inquiry officers proceed with parallel investigation by recording statements of witnesses etc and submit their own independent report. Strangely, the provisions of Section 161 Cr.P.C relating to the recording of the statements of witnesses by investigating officer and its limited use defined under Section 162 Cr.P.C has been stretched to be made applicable in such inquiries also, to mess around with the settled procedure of investigation. This procedure of inquiry has no legitimate sanctity to dislodge the police report under Section 173(2) Cr.P.C, but such reports certainly add burden upon the judicial process of criminal trial.

(39) Thus, it is evident that the prosecuting agency of the state has injected elasticity in the field of investigation through the above instructions by over-riding the statutory provisions contained in Chapter XII of the Code and have created ambiguity. The provisions laid down by the Code are meant to secure the ends of justice and not to abuse the procedural law by formulating instructions, which stand in stark contradiction to the mandatory provisions of law.

(40) In the recent past, the above pattern of several inquiries has emerged in the state of Punjab, and has encouraged the accused persons to promptly seek their exoneration in criminal cases registered against them. On numerous occasions, the accused persons instead of even availing the remedy of anticipatory bail, apply for an inquiry and it oftenly interdicts the ongoing investigation in an offence. Many a times, the investigating officer is not even aware about the process of simultaneous enquiry initiated by his superior officers. This kind of multiple probes complicates the task of trial Court to trace the culprits, who oftenly hide themselves behind the bushes of favourable inquiry reports, and at times they succeed in escaping the punishment, because the disintegrated procedure of investigation throws doubts on the prosecution case and makes it fragile. These procedures of investigation & inquiries are unheard in the annals of criminal jurisprudence and do not find support from statutory provisions.

(41) In other words, this innovation of parallel inquiry introduces the rule of *audi alteram partem* for an accused and creates a remedy during pendency of investigation, by vesting discretion with the superior police officers, which is not in consonance with the principles of administration of criminal law, and it gives rise to a possibility of

building an escape route for criminals.

(42) Here, it will be relevant to note that during investigation, accused has no right to be heard and reference can be made to decision of Hon'ble Supreme Court rendered in *Dinubhai Boghabhai Solanki* versus *State of Gujarat and others*⁵, wherein it was held as under:-

“The High Court had quashed and set aside the order passed by the Special Judge in charge of CBI matters issuing the order rogatory, on the application of a named accused in the FIR, Mr. W.N.Chadha. The High Court held that the order issuing letter rogatory was passed in breach of principles of natural justice. In appeal, this court held as follows:

“89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alterma partem is implicit, but whether the occasion for its attraction exists at all.

92. More so, the accused has not right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has not participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173 (2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has not right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code,

⁵ 2014 (4) SCC 626

the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to given an opportunity of being heard under certain specified circumstances.

98. If prior notice and an opportunity of hearing are to be given to an accused in every criminal case before taking any action against him, such a procedure would frustrate the proceedings, obstruct the taking of prompt action as law demands, defeat the ends of justice and make the provisions of law relating to the investigation lifeless, absurd and self-defeating. Further, the scheme of the relevant statutory provisions relating the procedure of investigation does not attract such a course in the absence of any statutory obligation to the contrary.”

(43) The above view was again reiterated by Hon'ble Supreme Court in *Romila Thapar and others* versus *Union of India and others*⁶, and the relevant observation is extracted below:-

“32.A fortiori, it must follow that the writ petitioners, who are strangers to the offence under investigation (in FIR No.4/2018); and since they are merely espousing the cause of the arrested five accused as their next friends, cannot be heard to ask for the reliefs which otherwise cannot be granted to the accused themselves. What cannot be done directly, cannot be allowed to be done indirectly even in the guise of public interest litigation.

33. We find force in the argument of the State that the prayer for changing the Investigating Agency cannot be dealt with lightly and the Court must exercise that power with circumspection. As a result, we have no hesitation in taking a view that the writ petition at the instance of the next friend of the accused for transfer of investigation to independent Investigating Agency or for Court monitored investigation cannot be countenanced, much less as public interest litigation.”

⁶ 2018 (10) SCC 753

(44) Undoubtedly, by virtue of The Punjab Police Act, 2007, the power to prosecute vests with the State Police Department, whereas the state enjoys the power of superintendence upon it. The power of superintendence vested with the state is meant to exercise administrative control freely in order to supervise, check and ensure that the officers of the Police Department are discharging their role, duties and responsibilities in accordance with law to achieve the object of the Act. The Punjab Police Act, 2007 further contains provisions for accountability of the police officers to inquire into the allegations of misconduct etc against them. The directions in this regard are already in place through the judgment by the Hon'ble Supreme Court in *State of Gujarat versus Kishan Bhai and others*⁷, whereby all the states and Union Territories were directed to find out the lapses resulting in acquittal of the accused, after conclusion of trial, and if, it is found that the reasons were blame worthy, the necessary disciplinary/penal action is required to be initiated against the guilty police officers.

(45) Of course, the superior officers of the state have the prerogative to transfer the investigation, if, there are justifiable reasons, but in such an eventuality the investigation is to be transferred as a 'whole'. It is clarified here that after transfer of the investigation, the newly appointed Investigating Officer or agency would continue the investigation from the stage of transfer, as fresh or *de novo* investigation is not permissible. In this regard, observations of Hon'ble Supreme Court in *Vinay Tyagi versus Irshad Ali @ Deepak and others*⁸, are reproduced:-

“21. The initial investigation is the one which the empowered police officer shall conduct in furtherance to registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.

22. ‘Further investigation’ is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It

⁷ 2014 (5) SCC 108

⁸ 2013 (5) SCC 762

is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency.

This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation.

23. However, in the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation' there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct 'fresh investigation'. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts

would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a ‘fresh investigation.’”

(46) The above observations made by the Hon'ble Supreme Court has clarified that the police has no power or jurisdiction to conduct fresh investigation, re-investigation or *de novo* investigation but the instructions dated 04.05.2017 empowers the police officers to enter into fresh inquiries in respect of the commission of offences. It is manifest that the procedure of converting inquiry report into a report under Section 173(8) Cr.P.C is violative of the procedural law of investigation contemplated by the Code of Criminal Procedure.

(47) Therefore, this Court has no hesitation in holding that the state police has contrived to infuse a sophisticated mechanism by formulating the above policy to entertain the defence of accused, which invades lawful procedure of investigation contemplated by the Code of Criminal Procedure, and it destroys the fundamental characteristics of impartiality and free investigation. Apart from it, it is also seen that by following this procedure, inquiry officer assumes the judicial role during the inquiry proceedings and delivers the opinion in relation to the innocence of the accused. This practice needs to be curbed and cannot be permitted to continue, therefore, this Court is compelled to *suo moto* exercise its inherent powers under Section 482 Cr.P.C.

(48) This Court is cognizant of the scope of the exercise of the inherent powers enshrined under Section 482 Cr.P.C, as it has been deliberated upon by the Hon'ble Supreme Court as well as by the High Courts on many occasions. In *State of Karnataka versus L.Muniswamy and others*⁹, it was observed that the ends of justice are higher than the ends of mere law though justice has to be administered according to laws made by legislature. The compelling necessity for making these observations is that without a proper realization of the object and the purpose of the provision, which seeks to save the inherent powers of the

⁹ 1977 (2) SCC 699

High Court to do justice, between the state and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.

(49) In *Dinesh Dutt Joshi* versus *State of Rajasthan and another*¹⁰, it has been held as under:-

“Section 482 of the Code of Criminal Procedure confers upon the High Court inherent powers to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of the any Court or otherwise to secure the ends of justice. It is well established principle of law that every Court has inherent power to act *ex debito justitiae* - to do that real and substantial justice for the administration of which alone it exists or to prevent abuse of the process of the Court. The principle embodied in Section is based upon the maxim: *Quando lex aliquid alicuiconcedit, concedere videtur id quo res ipsa esse non potest* i.e. when the law gives anything to anyone, it gives also all those things, without which the thing itself would be unavailable. Section does not confer any new power, but only declares that the High Court possesses inherent powers for the purposes specified in the Section. As Lacunae are sometimes found in procedural law, the Section has been embodied to cover such Lacunae wherever they are discovered. The use of extraordinary powers conferred upon the High Court under this Section are however required to be reserved, as far as possible, for extraordinary cases.”

(50) In *State of Karnataka* versus *M.Devendrappa*¹¹, the Hon'ble Supreme Court again defined the scope of Section 482 Cr.P.C, which reads as under:-

“Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The Section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely,

¹⁰ (2001) 8 SCC 570

¹¹ 2002 (3) SCC 89

(i) to give effect to an order under the Code,

(ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognizes and preserves inherent powers of the High Courts. All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle "quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest" (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice".

(51) The above view was further reiterated by the Hon'ble Supreme Court in its decision rendered in *M/S Zandu Pharmaceuticles Works Ltd. and others* versus *Md. Sharaful Haque and another*¹².

(52) Taking overall view of the matter, this Court comes to the conclusion that in holding simultaneous inquiry, either during investigation or post submission of final report under Section 173(2)

¹² 2005 (1) SCC 122

Cr.P.C is incomprehensible under the Code of Criminal Procedure. Such inquiries by police officers are sheer and blatant interference with the process of justice and cannot stand the test of justification. It is unfair for the prosecution also to forward inconsistent reports, expressing diverse opinions with respect to the same facts, and that too without any other material or evidence. Once the investigation is complete and report is submitted before the Court of law, police has no authority to deal with another line of inquiry, without intimating the court. By following the instructions dated 04.05.2017, the police officers higher in rank have violated the procedural law of investigation contained in Code of Criminal Procedure.

(53) Thus in the above conspectus, it is evident that the instructions dated 04.05.2017 (Annexure R-2) violate the process and procedure of investigation established by Code of Criminal Procedure, 1973, and further cause abuse of the process of Court by submitting the conflicting reports, which is against the cardinal principles of administration of criminal law.

(54) Resultantly, the instructions dated 04.05.2017 (Annexure R-2) attached in CRM-M-19681-2020, are hereby quashed and further, this Court deems it necessary to issue following directions:-

- (a) In every case, where FIR has been registered regarding commission of a cognizable offence, the investigation shall be conducted by the Investigating Officer, strictly in accordance with the provisions of Code of Criminal Procedure, 1973.
- (b) In every case, where after registration of FIR, investigation has commenced, no representation /request on behalf of accused to examine his/her innocence shall be entertained by police and no parallel inquiry shall be initiated.
- (c) In cases, where upon the registration of FIR and commencement of investigation, the state government or the state police orders transfer of investigation, then it shall be necessary to intimate the magistrate, before whom the special report under Section 157 (1) Cr.P.C was originally submitted. The intimation shall be given in writing with reasons for transfer of investigation.
- (d) Whenever, the investigating officer after commencement of investigation, decides to hold or

stop the investigation in respect of all or any of the accused persons, for any reason, it shall be mandatory for such officer to send the report under Section 157(2) Cr.P.C to the magistrate before whom report under Section 157(1) Cr.P.C was initially submitted.

- (e) If, the trial Court upon conclusion of trial finds that the acquittal of the accused is on account of deliberate lapses in investigation, it can pass appropriate orders for suitable departmental/penal action against the officers responsible for such lapses.
- (f) The state governments of Punjab, Haryana and U.T. administration, Chandigarh shall ensure that the police officers and public prosecutors are properly sensitized about their responsibilities and duties and to further strictly adhere to the statutory provisions of law in respect of the investigation in crime.
- (g) The state governments of Punjab, Haryana and U.T. Administration, Chandigarh shall further ensure strict compliance of the directions issued by Hon'ble Supreme Court in "*State of Gujarat versus Kishan Bhai and others*", 2014 (5) SCC 108.

(55) Before parting with the judgment, it would not be out of place to note that on 09.02.2021, this Court directed the Director General of Police, Punjab to justify acceptance of representation on behalf of accused and holding an inquiry during investigation, and in response, the head of the state police department filed his affidavit dated 25.02.2021 and stated that no inquiry was conducted during investigation of the case. But, this Court finds that in relation to the query, a report was sought by him from the Inspector General of Police, Border Range Amritsar, which is appended with the affidavit as Annexure R-1. The said report, clearly mentions that indeed the inquiries were conducted upon the representations received on behalf of accused and further the relevant details have also been furnished. Therefore, it is evident that the Director General of Police, Punjab has responded to the issue raised by this Court in a casual and inattentive manner without realizing its sensitivity. However, this Court refrains from making any other adverse observation, with an expectation that in future the officer would act carefully.

(56) A copy of this judgment be sent to the respective Home

Secretaries of the States of Punjab, Haryana and Union Territory, Chandigarh, for its strict compliance.

(57) Let a copy of this judgment be sent to all the District and Sessions Judges in the States of Punjab, Haryana and Union Territory, Chandigarh for further circulation amongst the judicial officers posted in their respective Sessions Division.

(58) With the above conclusions and observations, both the petitions are disposed off.

J.S. Mehndiratta