

(2026) 08 CAL CK 2993
In the Calcutta High Court
Case No : C.R.R. No.1033 of 2026

Anisur Rahaman

APPELLANT

Vs

The State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 03-08-2026

Acts Referred:

Bharatiya Nagarik Suraksha Sanhita, 2023 — Section 180, 183, 193(9), 193, sub-section (3)

Bharatiya Nyaya Sanhita, 2023 — Sections 329(4), 115(2), 117(2), 324(4), 118(2), 109 and 351(2)

Code of Criminal Procedure, 1973 — Section 173(8)

Citation : (2026) 08 CAL CK 2993

Hon'ble Judges : Kausik Chanda, J

Bench : Single Bench

Advocate : Mr. Biswajit Manna, Adv., Mr. Kallol Mandal, Adv., Mr. Subir Ganguly, Adv.

Final Decision : Disposed Of

Judgement

Kausik Chanda, J.:-

The petitioner seeks quashing of the criminal proceeding arising out of Amdanga Police Station Case No.597 of 2024 dated 28th August, 2024 insofar as it relates to him. The challenge is principally directed against Supplementary Charge Sheet No.3 of 2025 dated 7th January, 2025, which, according to the petitioner, is founded entirely upon materials collected during an investigation conducted without the authority of law. The submission is that after the learned Magistrate had already taken cognizance upon the original police report, the Investigating Officer proceeded to record fresh statements of witnesses under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023, caused a fresh judicial statement of the victim to be recorded under Section 183 of the said Sanhita, and ultimately submitted a supplementary charge-sheet without obtaining prior leave of the Court to undertake further investigation. According to the petitioner, every investigative act undertaken after cognizance was without jurisdiction and the

supplementary charge-sheet, being the direct consequence thereof, cannot be permitted to survive.

2. The facts giving rise to the present proceeding are not in serious dispute.

3. A written complaint was lodged by one Taslima Bibi before the Officer-in-Charge, Amdanga Police Station, on 28th August, 2024 alleging an incident of violent assault by several persons. On the basis of the said complaint, Amdanga Police Station Case No.597 of 2024 came to be registered under Sections 329(4), 115(2), 117(2), 324(4), 118(2), 109 and 351(2) of the Bharatiya Nyaya Sanhita, 2023 and investigation commenced in accordance with law.

4. During the course of the original investigation, the Investigating Officer examined several witnesses under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Amongst the witnesses so examined were Surabuddin Mondal and Taslima Bibi, whose statements were recorded respectively on 6th September, 2024 and 7th September, 2024. The statement of the victim, Nasiruddin Mondal, was also recorded under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 on 23rd October, 2024.

5. The Investigating Officer submitted Charge Sheet No.821 of 2024 on 5th December, 2024 arraigning thirteen persons as accused. The petitioner was shown as Accused No.13. Simultaneously, the Investigating Officer prayed for liberty to submit a supplementary report after receipt of the opinion of the State Forensic Science Laboratory, sanction from the District Magistrate and authentication of the Subscriber Detail Record (SDR) and Call Detail Record (CDR).

6. The learned Magistrate received the police report and, by order dated 8th December, 2024, took cognizance of the offences disclosed therein.

7. In the charge sheet, the petitioner was shown as absconding and prayer was also made for issuance of proclamation of attachment order against him. It must be mentioned that while by an order dated December 8, 2024, the learned Magistrate took cognizance of the offences no express permission was granted for filing the supplementary charge sheet.

8. The subsequent events constitute the foundation of the present challenge.

9. The petitioner, after filing of the charge-sheet, approached the learned Sessions Judge, North 24-Parganas at Barasat, by filing an application seeking anticipatory bail on 16th December, 2024.

10. On the very next day, namely 17th December, 2024, the Investigating Officer once again examined the victim, Nasiruddin Mondal, under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023. On the same day, statements of three additional witnesses, namely Alamgir Hossain, Sukurjan Bibi and Abbas Uddin Mondal, were also recorded under the same provision. The witnesses stated that the petitioner had remained concealed behind a bamboo grove

situated near the place of occurrence and was allegedly exhorting or instigating the principal assailants to continue the assault.

11. On the very same date, namely 17th December, 2024, the Investigating Officer filed an application before the learned Magistrate praying that the victim be examined afresh under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

12. Pursuant thereto, another learned Magistrate recorded another statement of the victim under Section 183 on 19th December, 2024.

13. Eventually, the Investigating Officer submitted Supplementary Charge Sheet No.3 of 2025 dated 7th January, 2025.

14. Learned counsel appearing on behalf of the petitioner has contended that although Section 193(9) of the Bharatiya Nagarik Suraksha Sanhita, 2023 preserves the statutory power of the investigating agency to conduct further investigation after submission of the police report, the said power is no longer exercisable at the unilateral discretion of the investigating agency once the competent court has taken cognizance of the offences disclosed in the original report. It is argued that the consistent line of authority rendered by the Hon'ble Supreme Court leaves no manner of doubt that after cognizance is taken, further investigation can be undertaken only after obtaining the express leave of the Court before whom the proceedings are pending.

15. It has further been contended that the acts undertaken by the Investigating Officer on 17th December, 2024 unmistakably constitute "further investigation" within the meaning of Section 193(9) of the Bharatiya Nagarik Suraksha Sanhita, 2023. It is strenuously submitted that the recording of the statement of the victim, Nasiruddin Mondal, under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023, was preceded by the recording of his statement under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023. Learned counsel submits that the examination of witnesses under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023 and the forwarding of the victim for recording a further judicial statement under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023 are not independent proceedings divorced each other but are integral and inseparable. Consequently, if the investigation could not lawfully recommence without obtaining leave of the Court, every subsequent step undertaken in continuation thereof necessarily suffers from the same legal infirmity.

16. According to the petitioner, it was only after the petitioner had approached the Court seeking anticipatory bail that fresh statements implicating him, for the first time, came to be recorded on 17th December, 2024. Such circumstances, according to the petitioner, further reinforce the necessity of insisting upon strict compliance with the requirement of obtaining prior judicial leave before permitting any further investigation after cognizance has been taken.

17. Reliance has been placed on the judgments of the Hon'ble Supreme Court

reported at **(2024) 16 SCC 65 (Peethambaran v. State of Kerala)**, **(2026) INSC 120 (Pramod Kumar v. State of Uttar Pradesh)**, and **(2026) INSC 561 (Paliniswamy Veeraraja v. The State of Karnataka)**, wherein the necessity of obtaining leave of the competent Court before embarking upon further investigation after submission of the police report has been reiterated. It has also been argued that the earlier decisions of the judgments reported at **(2013) 5 SCC 762 (Vinay Tyagi v. Irshad Ali)**, **(1998) 5 SCC 223 (K. Chandrasekhar v. State of Kerala)**, and **(1954) 2 SCC 934 (H.N. Rishbud v. State of Delhi)**, consistently recognise that the recording of witness statements forms an intrinsic component of investigation and that "further investigation" is merely a continuation of the earlier investigation.

18. The learned advocate, appearing on behalf of the State, has opposed the revisional application. It is submitted that the statutory power of the police to conduct further investigation has been expressly preserved under Section 193(9) of the Bharatiya Nagarik Suraksha Sanhita, 2023 and that the object of the provision is to ensure that the investigating agency is not rendered powerless if fresh evidence comes to light after submission of the police report.

19. The precise issue that arises for consideration in the present case is whether the exercise undertaken by the investigating agency in recording statements under Sections 180 and 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023, can be construed as further investigation without obtaining the permission of the learned Magistrate.

20. Section 193 of the Bharatiya Nagarik Suraksha Sanhita, 2023 deals with the report of police officer on completion of investigation. Sub-section (9), corresponding substantially to Section 173(8) of the erstwhile Code of Criminal Procedure, preserves the power of the investigating agency to undertake further investigation even after forwarding the report contemplated under sub-section (3). The legislative object underlying the provision is evident. Criminal investigation is not intended to terminate merely because a police report has been submitted. Discovery of fresh evidence may legitimately necessitate collection of additional material so that the Court is ultimately placed in possession of the entire factual canvas before the commencement of trial.

21. The evolution of this principle has been noticed in the judgment reported at **(2013) 5 SCC 762 (Vinay Tyagi v. Irshad Ali)**. The Supreme Court therein undertook an exhaustive examination of the concept of "further investigation", "fresh investigation" and "reinvestigation". The Court held that further investigation is nothing but a continuation of the earlier investigation. It neither wipes out nor supersedes the earlier investigation but supplements it by collection of additional oral or documentary evidence. The supplementary report submitted after such investigation has to be read conjointly with the primary police report and both together constitute the material before the Court.

22. While recognising the statutory competence of the investigating agency to

undertake further investigation, the Supreme Court observed that the accepted legal practice has always been to seek leave of the Court before embarking upon such exercise once the police report has already been filed. The Court noted that such a course preserves the comity between the investigating agency and the Court and eliminates avoidable controversies regarding the legality of the subsequent investigation.

23. In **Peethambaran (supra)**, the Supreme Court had occasion to examine the legality of an order whereby further investigation had been directed at the instance of superior police authorities without obtaining leave of the jurisdictional Magistrate. While considering the scope of Section 173(8) of the Code, the Court referred to the earlier decisions including **Vinay Tyagi (supra)**, their Lordships observed that although the statute may not in express words prescribe prior leave of the Court, the consistent judicial understanding and long-standing legal practice have accepted such permission as an indispensable requirement. Invoking the doctrine of *contemporanea expositio*, the Court held that an interpretation consistently accepted and acted upon by investigating agencies as well as criminal courts furnishes a valuable guide in understanding the legislative intent.

24. The principle received further and more authoritative exposition in the judgment reported at **(2026) INSC 120 (Pramod Kumar v. State of Uttar Pradesh)**. The Supreme Court undertook an elaborate survey of the earlier authorities and unequivocally declared that the discretion to permit further investigation rests exclusively with the Court before whom the proceedings are pending. The investigating agency may form an opinion that additional investigation is necessary in order to discover the truth, but such opinion by itself does not authorise unilateral recommencement of investigation after cognizance has already been taken.

25. The record of the present case has, therefore, to be scrutinised in the light of the aforesaid principles.

26. It is an admitted position that Charge Sheet No. 821 of 2024 was submitted on 5th December, 2024 and cognizance was taken by the learned Magistrate on 8th December, 2024. It is equally undisputed that no application seeking leave to undertake further investigation under Section 193(9) of the Bharatiya Nagarik Suraksha Sanhita, 2023 was filed by the Investigating Officer before recommencing investigative activity on 17th December, 2024. The record placed before this Court also does not disclose any judicial order whereby the learned Magistrate permitted further investigation after taking cognizance.

27. The only application moved by the Investigating Officer on 17th December, 2024 was one requesting the learned Magistrate to record a further judicial statement of the victim under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

28. Section 180 of the of the Bharatiya Nagarik Suraksha Sanhita, 2023

authorises a police officer "making an investigation under this Chapter" to examine orally any person supposed to be acquainted with the facts and circumstances of the case and to reduce such statement into writing. The statutory language leaves no room for doubt that the examination of witnesses is itself an integral component of the process of investigation.

29. The expression "investigation" has been judicially interpreted on numerous occasions. In **H.N. Rishbud (supra)**, the Constitution Bench authoritatively explained the various stages that constitute investigation. The Court observed that investigation ordinarily consists of several steps, namely, proceeding to the spot, ascertainment of the facts and circumstances, discovery and arrest of the suspected offender, collection of evidence relating to the commission of the offence, examination of persons acquainted with the facts, search and seizure wherever considered necessary, and finally the formation of opinion as to whether sufficient material exists for placing the accused before the competent court. The examination of witnesses and recording of their statements were thus recognised as essential ingredients of investigation itself.

30. Once these principles are borne in mind, the character of the acts performed by the Investigating Officer on and after 17th December, 2024 admits of little controversy. The Investigating Officer could not have again recorded fresh statements of the witnesses under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023, without the express permission of the learned Magistrate. The controversy regarding the recording of the statement of the victim under Section 183, however, must be examined separately.

31. Section 183 permits a Magistrate to record a statement "in the course of an investigation or at any time afterwards before the commencement of the inquiry or trial." Thus, the provision itself contemplates recording even after the police report has been filed, provided the stage of inquiry or trial has not commenced.

32. Further, when the Investigating Officer produces a witness before the Magistrate and the Magistrate, after satisfying himself of the statutory safeguards, records the statement, it is difficult to contend that the act is without judicial sanction. The Magistrate's decision to record the statement is itself a judicial act. Therefore, the Magistrate's permission is inherent in the act of recording the statement.

33. Accordingly, the Section 183 statements cannot be attacked as being illegal merely because no separate order granting permission for further investigation was obtained.

34. I am also not inclined to accept that the Section 183 statement is vitiated because the preceding Section 180 statement was unauthorized.

35. The reason is that the Magistrate derives authority directly from Section 183, not through Section 180. If Section 183 authorizes the Magistrate to record the statement at that stage, then even if one assumes some procedural defect in the

police's decision to examine the witness under Section 180 first, it does not necessarily follow that the Magistrate's independent judicial act is invalid.

36. Nothing in Section 183 requires that a witness must first be examined under Section 180. Indeed, in practice there are situations where a witness is taken directly to the Magistrate for recording a Section 183 statement without any prior written Section 180 statement. The Section 180 statement was not a statutory prerequisite for the Section 183 statement.

37. Accordingly, the petitioner's challenge against the Investigating Officer's assumption of investigative authority after cognizance, by recording statements under Section 180, succeeds, but fails against the Magistrate's exercise of power under Section 183.

38. This Court refrains from expressing any opinion on the truthfulness or otherwise of the allegations introduced in the subsequent statements. That would be a matter falling within the province of the trial Court if the materials were otherwise legally admissible.

39. For the reasons aforesaid, this Court is of the considered opinion that the fresh statements under Section 180 of the Bharatiya Nagarik Suraksha Sanhita, 2023, recorded by the Investigating Officer, cannot be relied upon, as they were recorded during an unauthorised investigation.

40. The statement under Section 183 of the Bharatiya Nagarik Suraksha Sanhita, 2023, should remain on record. Its admissibility, evidentiary value, and effect should be left to the Trial Court.

41. Accordingly, **C.R.R. No.1033 of 2026** is disposed of.

42. Let a copy of this judgment be forthwith transmitted to the learned Court below for information and necessary action.

43. Urgent certified website copy of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.