

(2009) 08 KL CK 0086

In the High Court Of Kerala

Case No : Writ Petition (C) No. 15082 of 2009

M.R. Reghuchandrabal

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 18-08-2009

Acts Referred:

Business of the Government of Kerala Rules — Rule 22, 3, 9, 9(3)
Constitution of India, 1950 — Article 19, 21
Criminal Procedure Code, 1973 (CrPC) — Section 154, 155, 155(2), 156, 156(3)
Kerala Police Act, 1960 — Section 4, 4(1)
Police Act, 1861 — Section 12, 22, 3
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2009) 4 ILR (Ker) 260 : (2009) 3 KLJ 131 : (2009) 4 KLT 245

Hon'ble Judges : M. Sashidharan Nambiar, J

Bench : Single Bench

Advocate : N. Dharmadan, Renu D.P. and Palakkasseril Mohan Kumar, for the Appellant; P.N. Sukumaran, G.P., for the Respondent

Judgement

M. Sashidharan Nambiar, J.—Whether State Government has power of superintendence over a case being investigated by Vigilance and Anti-corruption Bureau? Whether the Government is competent to order further investigation ends? These are the important questions to be settled in this writ Petition.

2. Case of petitioner in brief is as follows: Based on an inquiry conducted by the vigilance and Anti-corruption Bureau (in short VACB) on the allegation that as Minister of Excise and as a member of the Legislative Assembly during the period 1991 to 1996, petitioner amassed wealth disproportionate to his known source of income to the tune of Rs. 6 lakhs, after getting authorization from Director of Vigilance and Anti-corruption Bureau, Crime VC4/2001 of Special Cell, Thiruvananthapuram u/s 13(1)(e) read with Section 13(2) of Prevention of Corruption Act, 1988, under Ext. P2 F.I.R, was registered. The allegation against the petitioner is that he constructed a palatial house, T.C.5/2286(1) in 9 cents property in R.S.No.254/1-4 of Randamanda Village in Thiruvananthapuram

District investing Rs. 16 lakhs, Rs.2 lakhs was spent for acquisition of furniture and had remitted Rs.70,980/- towards the housing loan availed from Kerala State Housing Board during the period and also is having 480 gms gold and inclusive of household expenditure of Rs. 2.53 lakhs, he had a total assets of Rs.20.53 lakhs but the lawful income was only 14.70 lakhs and thereby he has a disproportionate asset of Rs.5.83 lakhs rounded to Rs.6 lakhs. It is contended that after investigation it was found that there is no case against the petitioner, and still Superintendent of Police as per Ext. P3 order dated 19.7.2007, directed the Deputy Superintendent of Police-1, VACB, Special Cell, Thiruvananthapuram to take up further investigation and thereafter the case was investigated further. Finally a refer report was prepared by the Investigating Officer and sent to the Legal Advisor, VACB, for approval, as a mistake of fact. Petitioner contended that in such circumstance the only course open to the Investigating Agency is to file a final refer report before the court and they failed to discharge the duty by not submitting the report and it is illegal and unprecedented and intended only to harass the petitioner. Petitioner approached the State Public Information Officer, under the provisions of Right to Information Act to get the details of investigation. Under Ext. P4 reply petitioner was informed that after completing the investigation it was submitted to the Director of Vigilance and then forwarded to the Government and is under the consideration of the Government. When petitioner again applied for details of investigation, he received Ext. P5 information to the effect that Vigilance Director has submitted a report to the Government on 15.1.2009 and Government has directed to reinvestigate the case. Ext. P6 copy of the report submitted by the Director of VACB to the Government was also furnished to the petitioner. When petitioner applied for getting the order issued by the Government, Ext. P8 circulation note containing the notes of orders of the Home Minister who is in charge of Vigilance Department, directing reinvestigation was received. It is the case of the petitioner that under Chapter XII of Code of Criminal Procedure the power of investigation is complete vested with the Police and after completion of the investigation, it is for the Investigating Officer to submit a final report to the court and nobody else including the Minister has any right to interfere with that power and therefore Ext. P1 order issued by the Government to the Director of Vigilance to take steps to reinvestigate the case is illegal. Petitioner would contend that when the Government has no role in the investigation, Government cannot order reinvestigation and when the Director of VACB already concluded that it is a mistake of fact, Government has no locus standi or legal right to issue a direction for reinvestigation or further investigation and based on it, no further investigation could be ordered. It is contended that the monthly expense of the petitioner was accepted as Rs. 1,28,246/- and as is clear from Ext. P9 the report of the Investigation Officer, the Deputy Superintendent of Police dated 22.8.2007, petitioner married only in 2003 and his per day expenses before marriage would not have exceeded Rs. 70/- under any circumstance and after revaluation of the cost of construction of the building by the investigating agency it was only Rs. 8,04,271 and not Rs. 16 laks as roughly estimated by the

Vigilance Officer at the time of registration of the case, as is clear from Ext. P6 report submitted by the Director of Vigilance, and in such circumstance a writ or direction to quash Ext. PI order and all further proceedings taken against the petitioner for conducting reinvestigation is to be granted. Petitioner also sought a writ of mandamus directing respondents 3 and 4 Director General of Police, VACB as well as Superintendent of Police, VACB, Special Cell to submit a refer report to the court and declare that in the light of Ext. P5 to P8 and the final report petitioner has not acquired assets disproportionate to his known income.

3. Subsequently petitioner filed I.A. 6761/2009 to implead the Home Minister as an additional 5th respondent and to add an additional paragraph in the O.P. to the effect that the non filing of a refer report pursuant to the decision of the Director of Vigilance, accepting the final refer report, is only due to the interference by the Home Minister, which was due to political malice and personal prejudice against the petitioner. It was contended that as petitioner used to project the Home Minister as a failure, direction was issued to reinvestigate the case which is illegal. Petitioner contended that when the code of Criminal procedure contemplates only investigation, an order cannot be passed for reinvestigation and even under the Vigilance manual Government has no power to order a reinvestigation and decision of the Government is therefore void abinitio and consequently Ext. P1 is invalid. Petitioner also contended that a period of 12 years was taken for completing investigation and if it is to be protracts further, it would only prolong the mental torture and misery of the petitioner and it would result in injustice and hence is violative of Article 19 and 21 of the Constitution of India.

4. A counter affidavit was filed by the Joint Secretary of Vigilance for respondents 1 and 2 contending that petitioner the accused has no right to challenge Ext. PI at this stage and for that sole reason the writ petition is to be dismissed. It is also contended that V.C.4/2001/SCT was registered against the petitioner for the offence u/s 13(1)(e) read with Section 13(2) of prevention of Corruption Act and the Deputy Superintendent of Police conducted the investigation and he prepared a factual report and forwarded it to the Director of VACB who forwarded it to the Government for further action and as per Rule 9 of the Rules of Business of Government of Kerala, Minister in charge of the Department shall be primarily responsible for the disposal of Business, under the heading "A" General in the Rules of Business, except as otherwise provided by any other rule, cases shall ordinarily be disposed Of by or under the authority of the Minister in Charge of the Department and when dealing with a case the Minister is bound to apply mind and take decision and based on the said rules the Minister after perusal of the factual report and enclosures decided to give orders for collection of further evidence as is being done in other files of similar nature and pursuant to that Ext. PI order was issued by the Government to make a clarification regarding the expenditure of the petitioner during the said period as it appeared that what as estimated is not realistic. It is contended that though the word used is reinvestigate, it was used in the sense of collecting further evidence. It is

contended that as per paragraph 8(2) of G.O.(P) No. 65/92/vig. Dated 12.5.1992, a report giving the facts, evidence and circumstances in each case investigated by the VACB, both for and against the prosecution, is to be transmitted to the Government through the Director of VACB and the purpose of transmitting the report to the Government is for scrutiny by the Government of the facts, evidence and circumstances and to arrive at a definite conclusion regarding further course of action and under paragraph 9 of the Rules of business of the Government of Kerala, the Minister in charge of the Department has jurisdiction to order further course of action in the files forwarded from the Department to the Administrative Department and the decision of the Government for further investigation before filing a final report is legal and valid. It is contended that so long as the final report is not submitted before the court. The direction is to continue the investigation and Ext. PI order is not to conduct further investigation and instead to continue the original investigation. It is also contended that the action of the Minister is not malafide or politically motivated as alleged and the order was passed by the Minister after careful scrutiny of the records forwarded by the Director" of VACB and therefore it cannot be questioned. It is further contended that as the investigation is not over. Petitioner is not entitled to approach the court and the Writ Petition is premature and is to be dismissed.

5. Ext. P2 FIR in Crime 4/2001 of VACB, Special Cell, Thiruvananthapuram show that based on the inquiry conducted revealing that petitioner has amassed wealth disproportionate to his known sources of income, case was registered on 26-09-2001 for the offence u/s 13(1)(e) read with Section 13(2) of Prevention of Corruption Act. 1988, (hereinafter referred to as the Act). Ext. P3 proceedings dated 19-07-2007 of the Superintendent of Police, VACB, Special Cell, Thiruvananthapuram shows that V.K. Girijanathan Nair, Dy. Supdt. of Police-I VACB, Special Cell, Thiruvananthapuram was directed to take up the investigation. Ext.P6 the report submitted by the Director of VACB to the Additional Chief Secretary, who is in Charge of the Vigilance Department, shows that the Investigating Officer had prepared a factual report and on perusing the factual report and the connected records, the Director of Vigilance found that, the house which was valued at Rs. 16 lakhs in the inquiry report, was valued by the Public Works "Department only at Rs. 8,04,271. It also show that, though the load received by the petitioner found during the inquiry period was only Rs. 6,65,000/- during investigation it was found to be Rs. 10,15,000/- and thus petitioner during the relevant period had an income of Rs. 17,64,037/- as against the assets of Rs. 15,00,422/- in addition to the gold. It was found that expenditure during the said period was estimated at Rs. 1,28,246/- It was therefore found that petitioner has not amassed any disproportionate assets. The Director of Vigilance therefore recommended to submit a report to refer the case as a mistake of fact. The said report is also accompanied by the legal opinion of the Legal Advisor of VACB that as the allegation is unsubstantiated by evidence, no action is recommended against the petitioner. Ext.P8 circular note containing

the orders of the Minister, who is in charge of the Vigilance Department, show that the Minister finding that expenditure during the relevant period was not realistically calculated, directed reinvestigation. Ext.PI communication sent by the Additional Chief Secretary to the Director, VACB, dated 7-5-2009 shows that pursuant to the order, Government directed the Director of Vigilance to take steps to reinvestigate the case. The statement filed by the Deputy Superintendent of Police, VACB, Special Cell in the Writ Petition shows that pursuant to Ext.PI communication, Director of Vigilance has directed to conduct further investigation.

6. The argument of the learned senior counsel is that the question whether a refer report is to be submitted or a charge sheet is to be submitted, is to be decided by the Investigating Officer, and under the Code of Criminal Procedure, (hereinafter referred to as the Code) that prerogative of the Investigating Officer cannot be taken away by any external authority including the Minister and therefore perse the order of the Minister directing reinvestigation is illegal. It is also argued that in any case there cannot be a reinvestigation and at best there could only be a further investigation. Learned senior counsel also argued that an investigation ends with the opinion formed by the Officer in charge of the police station to refer the case as mistake of fact and thereafter neither the Director of Vigilance nor the Home Secretary could direct to conduct further investigation and irrespective of the Rules and the procedure provided under the Vigilance Manual or the Government Order G.O (P)65/92/Vig. Dated 12-5-1992. Government cannot interfere with the said decision and therefore the order for reinvestigation is to be quashed. Learned Counsel also submitted that the sword of investigation has been hanging over the head of the petitioner for the last eight years and the order for further investigation is vitiated by malafides because of the malice of the Minister against the petitioner due to political reasons and hence it is to be quashed.

7. Chapter XII of the code deals with the information to the police and their powers to investigate. Under Clause (h) of Section 2. investigation is defined "as including all proceedings under the Code for the collection of evidence conducted by a Police Officer or by any person other than a Magistrate who is authorised by a Magistrate in that behalf. "It is profitable to consider the duties and the procedure for investigation provided under Chapter XII for a proper resolution of the disputes involved in the case. Section 154 deals with information relating to the commission of a cognizable offence and the procedure to be adopted. Section 155 deals with information in respect of non-cognizable offence. Under Sub-section (2) of Section 155, a police officer is prohibited from investigating a non cognizable offence without the order of the Magistrate. Section 156 empowers an officer in charge of a police station to investigate any cognizable offence without the order of the Magistrate. As against the power to investigate a non cognizable offence, the police has wider powers to investigate a cognizable offence. Sub-section (3) of Section 156 empowers any Magistrate who is empowered u/s 190, to order investigation. Sub-section (1) of Section 157 provides that if an officer

in charge of a police station from the information received by him or otherwise has reason to suspect the commission of an offence which he is empowered u/s 156 to investigate, shall forthwith send a report to the Magistrate empowered to take cognizance of such offence upon a police report and shall proceed to the spot either by himself or by deputing any officer subordinate to the officer not below such rank, as the State Government may, by General or special order prescribe in that behalf, to investigate the facts and circumstance of the case and if necessary take measures for the discovery and arrest of the offender. Section 157 deals with the procedure to be adopted in the matter of a report to be sent to the Magistrate u/s 157. Under Sub-section (1) if the State government so directs every report sent to the Magistrate u/s 157 shall be submitted through such superior officer of police as the State Government by general, or special order appoints in that behalf. Under Sub-section (2) such superior officer may give such instructions to the officer in charge of the police station as he thinks fit and shall after recording such instructions on such report, transmit the same without delay to the Magistrate. Section 159 gives power to a Magistrate on receiving a report u/s 157, either to direct an investigation or to hold a preliminary inquiry into the matter or otherwise dispose the case in accordance with the code. Section 160 - 162 deal with the powers of the police to require attendance of witnesses, recording of their statements and the procedures as to how the statements are to be recorded and their effect. Section 163 provides that no police officer or other person in authority shall offer or make, or cause to be offered or made, any such inducement; threat or promise but no police officer shall prevent by any caution or otherwise, any person from making any statement which he may be disposed to make of his own free will in the course of any investigation. Section 164 deals with recording of confessions and statements by the Magistrate. Section 165 and 166 deal with powers of police officers in the matter of conducting searches, during the investigation, in the circumstances provided therein. Section 167 provides the procedure to be adopted by a police officer when investigation cannot be completed in twenty four hours. Section 168 provides that when any subordinate police officer has made any investigation under the said Chapter. He shall report the result of such investigation to the officer in charge of the police station. u/s 169, if upon such investigation it appears to the officer in charge of the police station that, there is no sufficient evidence or reasonable ground of suspicion to justify forwarding of the accused to a Magistrate, the officer shall release him on executing a bond without sureties and may direct him to appear if and when so required, before a Magistrate empowered to take cognizance of the offence on a police report and to try the accused or commit him for trial. Section 170 empowers the officer in charge of a police station, if on investigation under the said chapter finds that there is sufficient evidence or reasonable ground, he shall forward the accused under custody to the Magistrate empowered to take cognizance of the offence upon a police report and to try or commit him for trial or if the offence is bailable and the accused is able to take security for his appearance before the Magistrate on a day fixed and for his attendance from day to day before the Magistrate until

otherwise directed Section 171 provides that complainant and witnesses not to be required to accompany the police officer and not to be subjected to unnecessary restraint. Section 172 makes it mandatory for every police officer making an investigation to maintain a diary recording the various particulars mentioned therein. Section 173 deals with the report of police officer. On completing the investigation. Under Sub-section (1) every investigation under the Chapter shall be completed without unnecessary delay. Under Sub-section (2) as soon as an investigation is completed, the officer in charge of the police station shall forward to a Magistrate, empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government stating the details provided therein. Sub-section (3) provides that where a superior officer of police, has been appointed u/s 158, the report shall be submitted through that officer and pending orders of the Magistrate that superior officer may direct the officer in charge of the police station to make further-investigation. Sub-section (8) of Section 173 provides that nothing in the section shall be deemed to preclude further investigation in respect of an offence, after report under Sub-section (2) has been forwarded to the Magistrate, if upon such investigation, an officer in charge of the police station obtains further evidence, either oral or documentary. He shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed and the provisions of Sub-section (2) to (6) of Section 173 shall apply, in relation to such report or reports as they apply in relation to a report forward under Sub-section (2). It is thus clear that it is the officer in charge of the police station or a superior officer as provided u/s 158 who has to investigate the case and after completing the investigation to submit the report as provided under Sub-section 2 of Section 173 of the code. Section 36 of the code provides that police officers superior in rank to an officer in charge of a police station, can exercise the same powers throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station. Therefore though Chapter XII provides for investigation by the officer in charge of the police station and submitting a final report u/s 173(2), by the officer in charge of the police station or by the Superior Officer as provided u/s 158, Section 36 empowers any police officer superior in rank to an officer in charge of the police station, to exercise the same powers throughout the local area to which they are appointed. So also it is for the officer in charge of the police station or the superior officer as provided u/s 36 of the Code who investigate the case, to decide on the materials collected during the course of investigation whether there is sufficient evidence or reasonable ground of suspicion to justify forwarding of the accused to the Magistrate as provided u/s 170 or as no sufficient evidence or reasonable ground of suspicion justifying forwarding of the accused to the Magistrate as provided u/s 169. Under the code this power can only be exercised by the officer in charge of the police station.

8. Speaking for the Judicial Committee in AIR 1945 18 (Privy Council) Lord Porter observed:

Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with police in matters which are within their province and into which the law impose on them the duty of inquiry. In India as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime, without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the court to intervene in an appropriate case when moved u/s 491 of the Criminal Procedure Code to give directions in the nature of habeas corpus. In such a case as the present, however, the court's functions begin when a charge is preferred before it, and not until then.

The observations were quoted with approval by the Apex Court in *State of West Bengal Vs. S.N. Basak*, . In *H.N. Rishbud and Inder Singh Vs. The State of Delhi*, it was held:

Investigation usually starts on information relating to the commission of an offence given to an Officer in-Charge of a police station and recorded u/s 154 of the Code. If from information so received or otherwise, the officer in charge of the police station has reason to suspect the commission of an offence, he or some other subordinate officer deputed by him, has 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. Thus investigation primarily consists in the ascertainment of the facts and circumstances of the case. By definition, it includes all the proceedings under the Code for the collection of evidence conducted by a police officer.

It was also held that under the code investigation consists generally of proceeding to the spot ascertainment of the facts and circumstances of the case, discovery and arrest of the suspected offender, collection of evidence relating to the commission of offence which may consist of examination of various persons including the accused and reduction of their statements into writing, search of places of seizure of things considered necessary for the investigation and to be produced at the trial, formation of the opinion as to whether on the materials collected, there is case to place the accused before a Magistrate for trial and if so taking the necessary steps for the same by filing of a charge sheet u/s 173. It was finally held:

The scheme of the code also shows that while it is permissible for an officer in charge of a police station to depute some subordinate officer to conduct some of these steps in the investigation, the responsibility for every one of these steps is

that of the person in the situation of the officer in charge of the police station, it having been clearly provided in Section 168 that when a subordinate officer makes an investigation he should report the result to the officer in charge of the police station. It is also clear that the final step in the investigation, viz., the formation of the opinion as to whether or not there is a case to place the accused on trial is to be that of the officer in charge of the police station. There is no provision permitting delegation thereof but only a provision entitling superior officers to supervise or participate u/s 551.

The position was again considered in *Abhinandan Jha and Others Vs. Dinesh Mishra*, . After analyzing Chapter XIV of the Code (Corresponding to Chapter XII of 1973 code) and the observations of the Judicial, Committee in *Nazir Ahmed's* case (supra) and the decision in *H.N. Rishbud's* case (supra) it was held:

the formation of Opinion as to whether or not there is a case to place the accused on trial before the Magistrate is left to the officer in charge of the police station. There is no express power, so far as we can see which gives jurisdiction to pass an order of the nature under attack nor can any such powers be implied. There is certainly no obligation, on the magistrate, to accept the report, if he does not agree with the opinion formed by the police. Under those circumstances, if he still suspects that an offence has been committed, he is entitled? notwithstanding the opinion of the police, to take cognizance, u/s 190(1) (c) of the code. That provision in our opinion, is obviously intended to secure that offences may not go unpunished and justice may be invoked even where persons individually aggrieved are unwilling or unable to prosecute, or the police, either wantonly or through bona fide error, fail to submit a report, setting out the facts constituting the offence. Therefore, a very wide power is conferred on the Magistrate to take cognizance of an offence, not only when he receives information about the commission of an offence from a third person, but also where he has knowledge or even suspicion that the offence has been committed. It is open to the Magistrate to take cognizance of the offence, u/s 190(1)(c), on the ground that, after having due regard to the final report and the police records placed before him, he has reason to suspect that an offence has been committed. Therefore these circumstances will also clearly negative the power of a Magistrate to call for a charge-sheet from the police, when they have submitted a final report. The entire scheme of chapter XIV clearly indicates that the formation of the opinion, as to whether or not there is a case to place the accused for trial, is that of the officer in-charge of the police station and that opinion determines whether the report is to be u/s 170, being a charge sheet or u/s 169, a final report. It is no doubt open to the Magistrate, as we have already pointed out, to accept or disagree with the opinion of the police and, if he disagrees, he is entitled to adopt any one of the courses indicated by us. But he cannot direct the police to submit a charge sheet, because the submission of the report depends upon the opinion formed by the police, and not on the opinion of the Magistrate. The Magistrate cannot compel the police to form a particular opinion on the investigation, and to submit a report, according to such opinion.

That will be really encroaching on the sphere of the police and compelling the police to form an opinion so as to accord with the decision of the Magistrate and send a report either u/s 169, or u/s 170, depending upon the nature of the decision, such a function has been left to the police under the Code.

18. We have already pointed out that the investigation, under the code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed out earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority.

9. Sri. Dharmadhan the learned senior counsel strongly placed reliance on paragraph 18 of the judgment to canvass the submission that investigation ends with the formation of the opinion whether a report u/s 169 or 170 is to be submitted. The submission is that as the investigating officer has formed the opinion to submit a report u/s 169 and sent the report to the Superintendent of Police who in turn sent it to the Director of Vigilance the investigation stage is over and even the Director of Vigilance has approved the same and thus nobody else can interfere with that decision as investigation is already completed. Reliance was placed on the commentary vigilance Management in Government and Public Sector by M.K. Chakrabarti where in Chapter 8 dealing with investigation and complaints, where submission of investigation report is shown as "last stage of investigation". The argument is that by forwarding the report after forming the opinion to submit a report as provided u/s 169 of the code, the last stage of investigation was also completed and thereafter none in the Government has a right to interfere and hence Ext. P1 order is bad in law.

10. Though the formation of an opinion on the investigation whether there is sufficient evidence or reasonable ground to place the accused on trial before the Magistrate u/s 170 or there is no sufficient evidence or reasonable ground of suspicion to justify placing the accused for trial before the Magistrate is to be taken by the Officer in Charge of the Police Station, it cannot be said that before submission of a report incorporating the opinion to the Magistrate either u/s 169 or 170 as provided u/s 173(2) of the Code. The investigation though technically ends by the formation of opinion can it be said that investigation is terminated or the stage of investigation is over. Is it possible to say that investigation stage ended before the submission of a report u/s 173(2) of the Code. Take for example, after forming an opinion as provided u/s 169 or 170 of the Code and before the final report u/s 173(2) is filed, the officer in charge of a police station or his superior officer gets some material or evidence to satisfy that the opinion so formed is not correct or conclusive, is not necessary to continue the investigation? Will it be proper or correct to say that even in such a case, a final report based on the earlier formation of opinion is to be submitted before the

magistrate ? If the police officer of his own can continue the investigation, as he is bound to, is it not continuation of the original investigation and thus perfectly legal. If the other argument is to be accepted, in spite of receipt of materials or evidence to show that the formation of the earlier opinion was not correct, a report u/s 173(2) of the Code is to be filed and the case is to be investigated further u/s 173(8) of the Code. I cannot accept such a proposition as it is not what is provided under the Code or conducive for proper administration of criminal justice. So also take the case of an officer in charge of the police station. He either due to lack of knowledge or experience or for the worst on extraneous considerations formed an opinion to file a report either u/s 169 or 170 and before the report is filed, another officer superior in rank, as provided u/s 36 of the code, directs him not to file the report, but to continue the investigation, can it be said that as that officer has already formed an opinion worst to file a report 169 either u/s 169 or 170 or in a case prepared a report to the Magistrate to be filed u/s 173(2) of the code but not filed, the officer superior in rank cannot direct the officer in charge of the police station either to conduct proper investigation or not to file the report and take over the investigation. If we are to hold that an officer superior in rank has no such power and the officer in charge of the police stations is to be permitted to file the report, irrespective of the weakness of the investigation or the tainted investigation or formation of opinion, for the reason that it is for the officer in charge of the police station to form an opinion and nobody else has a right to interfere with the investigation! That cannot be the case. If that be the case, it can only be found that stage of investigation will not end, till a final report as provided u/s 169 or 170, in accordance with Section 173(2) is filed before the Court. As the stage of investigation is to continue, till the final report is filed, at any stage before the report as provided u/s 173(2) is submitted before the Magistrate, the investigation could be continued. If that be so, even if continuation of the investigation is after forming an original opinion, it cannot be treated as a further investigation. Instead it could only be continuation of the original investigation. The investigation which starts on registration of the FIR will terminate end only on submission of a report to the Magistrate u/s 173(2). The stage of investigation will continue till the submission of the report u/s 173(2) of the Code. Therefore for the reason that Investigating Officer has formed an opinion and submitted a report to the Superintendent of police, as Provided under the Vigilance Manual or the Government Orders, it cannot be said that the investigation was completed, because of the opinion originally formed or the report forward to the Superintendent of Police or the Director of Vigilance.

11. True, the Code does not provide for a reinvestigation. Sub-section 3 of Section 173 enables a Superior Officer of Police appointed u/s 158, to direct the officer in charge of the police station to make "further investigation". Sub-section 3 reads:

(3) Where a superior officer of police has been appointed u/s 158, the report, shall, in any case in which the State Government by general or special order so

directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

Sub-section 8 also contemplates only further investigation are not reinvestigation. Sub-section (8) reads:

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

What is provided under Sub-section (3) and (8) is only a further investigation and not reinvestigation.

12. Supreme Court in K. Chandrasekhar Vs. The State of Kerala and Others, made the position clear.

25. From a plain reading of the above Section it is evident that even after submission of police report under Sub-section (2) on completion of investigation, the police has a right of "further investigation under Sub-section (8) but not "fresh investigation" or "re-investigation". That the Government of Kerala was also conscious of this position is evident from the fact that though initially if stated in the Explanatory Note Of their notification dated June 27, 1996 (quoted earlier) that the consent was being withdrawn in public interest to order a "reinvestigation" of the case by a special team of State Police Officers, in the amendatory notification (quoted earlier) it made it clear that they wanted a further investigation of the case instead of reinvestigation of the case. The dictionary meaning of "further" (when used as an adjective) is "additional, more supplemental. Further "investigation therefore is the continuation of the earlier investigation and not a fresh investigation or re-investigation to be started abinitio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that Sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a "further report or reports and not fresh report or report-regarding the "further" evidence obtained during such investigation.

The legal position was reiterated in Ramachandran Vs. R. Udhayakumar and Others, holding that u/s 173(8) there can only be further investigation and not reinvestigation.

13. The question than is how far a superior officer or the Government could give directions to the Investigating Officer regarding the investigation. As stated earlier, Section 36 of the Code empowers a police officer superior in rank to an

officer in charge of a police station to exercise, the same powers of the Officer in charge of the police station, provided it is within the local area to which he is appointed. So also Sub-section (1) of Section 158 of the Code provides that if the State Government so directs every report to a Magistrate u/s 157 shall be submitted through such superior officer of police as the State Government by general or special order appoints in that behalf. Sub-section (2) empowers such superior officer to give such instructions as he thinks fit to the officer in charge of the police station. It mandates that he shall after recording such instruction on such report transmit it to the Magistrate.

14. G.O. (P) 65/92/Vigilance dated 12.5.1992 was issued by the State Government regarding the set up, working and .procedure relating to the investigation/enquiries by the Vigilance Department in supersession of G.O.(P) 14/83/Vig dated 7.10.1983 and G.O.(P) 150/90/Vig.dated 5.10.1990. Under Clause 4 of Part I, investigation of cases coming under the Prevention of Corruption Act and the Indian Penal Code is to be undertaken, by the vigilance Department under the provisions of the Code. Under Clause 7, a time limit of three months is fixed for completing the investigation/enquiry and if it is not completed within that period, the Director of Vigilance Investigation is to forward a special report to that Government in the Vigilance Department, showing the result of investigation/enquiry so far made and indicating the probable time required for completing the investigation. After completing that enquiry the Deputy Superintendent of Police of the concerned Unit has to forward a detailed report, showing the allegations", the evidence, collected and the result of the enquiry on each item, to the Superintendent of Police, Vigilance Department concerned who has to scrutinize it and forward the same with his report to the Director of Vigilance Investigation through the Inspector General of Police/ Deputy Inspector General of Police" concerned for transmission to the Government. Along with the report the statement of witnesses shall also be sent. Report of investigation/enquiry thus received by the Director of Vigilance Investigation, after his examination and approval is to be forwarded to the Government in the Vigilance Department under Clause 7(3). On receipt of the report, the Government will decide what further action should be taken in the matter. Clause 7 reads:

Enquiry report (1) A time limit of three months is fixed for completing an investigation/enquiry. If the investigation/enquiry is not completed within this period, the Director of Vigilance Investigation will forward a special report to Government in the Vigilance Department showing the result of the investigation/enquiry so far made and indicating the probable time required for completing the investigation.

(2) After completion of an enquiry, the Deputy Superintendent of Police of the Units concerned shall forward a detailed report showing the allegations, the evidence collected and the result of the enquiry on each item to the Superintendent of Police, Vigilance Department concerned who will scrutinise it

and forward the same with his report to the Director of Vigilance Investigation through the Inspector General of Police/Deputy Inspector General of Police concerned for transmission to Government, Statements of witnesses questioned shall be recorded.

(3) All investigation/enquiry reports of the Vigilance Department after examination and approval by the Director of Vigilance Investigation shall be forwarded by him to Government in the Vigilance Department. On receipt of the report the Government will decide what further action should be taken in the matter. The case shall be referred to the Vigilance Tribunal or for departmental enquiry, according to merits for further action as provided for in the relevant rules.

(i) Where there recommendation in a factual report is for prosecution the Director of Vigilance Investigation will also forward along with the report.

(a) First Information Report.

(b) Statements of witnesses, mahazars and all other connected documents relied upon for the proposed prosecution.

(ii) Where the recommendation in a report is for prosecution or for a Vigilance Tribunal enquiry, the opinion of the Legal Adviser to the Vigilance Department will also be attached. A draft-charge with a statement of allegations will also be attached to the enquiry report besides forwarding all documents rejied upon for the proposed Tribunal enquiry.

Clause 8 deals with the registration of cases. Under Sub-clause (1) if at any stage during the preliminary enquiry conducted by the Vigilance Department there are reasonable grounds to believe that the accused government servant has committed an offence under the Prevention of Corruption Act, the preliminary enquiry will be stopped and a crime is to be registered and investigated after obtaining sanction from the Director of Vigilance Investigation. Sub-clause to 4 deal with the procedure to be followed thereafter. They read:

(2) After completion of the investigation, a report giving the facts evidence and circumstances in each case both for and against the prosecution shall be forwarded by the Deputy Superintendent of Police concerned to the Superintendent of Police concerned who will submit the same to the Director of Vigilance Investigation through the Inspector General of Police/Deputy . Inspector General of Police concerned for transmission to Government. In cases personally investigated by the Superintendent of Police or other Senior Officers the factual report will be prepared by them.

(3) In cases where it is decided to prosecute an officer for the above offences, a charge sheet will be laid before the Special Judge after obtaining the necessary legal sanction.

(4) When it is considered necessary to transfer a crime case from local police

station/unit to the vigilance Department, the concerned Superintendent of Police of the District/Unit should forward the same to the Director of Vigilance Investigation, Thiruvananthapuram, who will decide whether it is a fit, case to be investigated by the Vigilance Department and if so take further action by re-registering the case in the Vigilance Department or otherwise return the case to the Local Police/Units.

The Government Order does not provide that the final report so forwarded by the Investigating Officer through the Superintendent of Police, DIG of Police and Director of Vigilance Investigation to the Government under Clause 8(2) needs the approval of the Government to submit a report u/s 173(2) or that a report can be submitted only after getting the approval or permission from the Government. Sub-clause (3) only provides for obtaining necessary legal sanction for submitting the charge u/s 173(2).

15. Ext. P6 is the report forwarded to the Government. G.O.(P) 65/92/Vig. does not provide for the procedure, to be followed by the Government, oh getting the report from the Director of Vigilance as provided under Sub-clause (3) of Clause (8). Sub-rule (3), of Clause 7 only shows that on receipt of the report, which cannot be the report after investigation but only the report after preliminary enquiry before die registration of the case, the Government will decide what further action should be taken in the matter.

16. Even if it is taken that as per the procedure provided under GO (P)65/92/Vig decision is to be taken by the Government, can it be said that it is for the Government to decide whether a report as provided. u/s 169 or 170 is to be submitted before the court and not by the officer in charge of the police station? Even if there are materials in evidence to satisfy that the accused committed the offence, on receipt of the report, can the Government decide or dictate that a report as provided u/s 169 need alone be submitted to the Court by deciding to proceed against the accused before the Vigilance Tribunal or finding that a departmental enquiry is sufficient and instruct not to file a report u/s 170, If such a power is to be given to the Government, it would be fatal to the very system of criminal administration of justice. If such a power is granted to the Government, Government may decide to protect a corrupt Government servant for political reasons inspite of the fact that investigation reveals that there is evidence sufficient enough to place him for trial before the court. The Government cannot be permitted to interfere with administration of criminal justice by granting such power, which is not provided under the Code as it would only destroy the criminal justice system.

17. Learned Government pleader relying on the decision of the Apex Court in State of Bihar and Another Vs. J.A.C. Saldanha and Others, and in M.C. Mehta Vs. Union of India (UOI) and Others, argued that Government has power of superintendence over the police and as the identical provisions in the CBI Manual was upheld in M.C. Merita's case (supra) the provisions in the Vigilance Manual which empowers the Government to give necessary instructions regarding the

investigation are valid. It was argued that under paragraph 9 of the Rules of Business of the Government of Kerala, Minister in charge of a Department shall be primarily responsible for disposal of the business appertaining to that Department and under Rule 22 of the said Rule coming u/s 3 regarding departmental disposal of business, except as otherwise provided by any other rule, cases shall ordinarily be disposed of by or under the authority of the Minister in charge who may by means of standing orders give such directions as he thinks fit for the disposal of cases in the department and as the Minister of Home is in charge of the Vigilance Department, Home Minister is competent to give a direction for proper investigation.

18. Learned senior counsel appearing for the petitioner on the other hand submitted that decision of the Apex Court in Saldanna's case (supra) has no application, because Section 3 of Indian Police Act which was considered by the Apex Court in that case is not in para materia with Section 4 of the Kerala Police Act and under the Kerala Police Act, the Government has no power of superintendence and therefore based on the decision in Saldanna's case the Minister cannot exercise the power. It was also argued that even if the Minister has power over the Department, that power cannot be exercised as against the specific provisions in the Code and when under the Code it is the satisfaction of the Officer in charge of the police station which "matters nobody else could decide whether a report is to be submitted u/s 169 or 170 and hence the direction of the Minister is illegal.

19. In Saldanna's case (supra) Supreme Court was considering whether the State Government was precluded from directing further investigation, in the case in which one Investigating Officer has submitted a report u/s 173(2) but the court had not passed an order. It was found that the officer directed by the State Government, to carry on the investigation, is the Inspector General of Police who is undoubtedly an officer superior in rank. Following the decision in R.P. Kapur and Others Vs. Sardar Pratap Singh Kairon and Others, where it was observed that Additional Inspector General of Police, without doubt is a police officer superior in rank to an officer in charge of a police station, it was held that Inspector General of Vigilance is an officer superior in rank to an officer in charge of a police station and in view of Section 36 of the Code he could exercise the powers of an officer in charge of a police station throughout, the local area to which he was appointed meaning thereby the whole of Bihar State. Finding that State of Bihar has not enacted any Police Act of its own, it was held that the State of Bihar is thus governed by Indian Police Act 1861, and Section 3 of the Act provides that superintendence of the Police shall be exercised by the State Government and Section 12 confers power on the Inspector General of Police, subject to the approval of the State-Government, to make rules and in exercise of the powers Bihar Police Manual has been issued and Section 22 provides that every police officer for all purpose in the Act shall be considered to be always on duty and may at any time be employed as a police officer in any part of general police district and thus it is open to the State Government in exercise of its

executive administrative function to take over investigation of a cognizable offence and the general power of superintendence as conferred u/s 22 would comprehend the power to exercise effective control over the actions, performance and discharge of duties of the police force throughout the general district. Section 3 of Indian Police Act reads:

3. The superintendence of the police throughout a general police district shall vest in and, shall be exercised by the State Government to which such district is subordinate; and except as authorised under the provisions of this Act, no person, officer or Court shall be empowered by the State Government to supersede or control any police functionary.

It was held that though the High Court construed the expression "superintendence" in Section 3 of the Act to mean "general supervision of the management of the police department and does not vest the State Government with authority to decide what the police alone is authorised to decide, such a narrow construction is not acceptable. Their Lordships held:

There is nothing in the Act to indicate such a narrow construction of the word "superintendence". Nothing was pointed out to us to put a narrow construction on this general power of superintendence conferred under the Act on the State Government and there is no justification for limiting the broad spectrum of power comprehended in power of superintendence. Accordingly superintendence would comprehend the power to direct further investigation, if the circumstances so warrant and there is nothing in the Code providing to the contrary so as to limit or fetter this power. Sub-section (8) of Section 173 was pressed into service to show that the power of further investigation after the submission of a report u/s 173(2) would be with the officer in charge of a police station. Sub-section (8) of Section 173 is not the source of power of the State Government to direct further investigation. Section 173(8) enables an officer in charge of a police station to carry on further investigation even after a report u/s 173(2) is submitted to Court. But if State Government has otherwise power to direct further investigation it is neither curtailed, limited nor denied by Section 173(8), more so, when the State Government direct at officer superior in rank to an officer in charge of police station thereby enjoying all powers of an officer in charge of a police Station to further investigate the case. Such a situation would be covered by, the combined reading of Section 173(8) with Section 36 of the code. Such power is claimed as flowing from the power of superintendence over police to direct a police officer to do or not to do a certain thing because at the stage of investigation the power is enjoyed as executive power untrammelled by the judiciary.

Though it was canvassed before the Apex Court that there is no warrant for invoking that principle because of specific provisions u/s 5 of the Code, their Lordships held:

18. There is no warrant for invoking this principle because Section 5 of the Code

provides that nothing in the Code shall, in the absence of a specific provision to the contrary, effect any special or local law for the time being in force, or any special jurisdiction or power conferred or any special form of procedure prescribed by any other law for the time being in force. Section 3 of the Act does not prescribe any special procedure for investigation contrary to one prescribed in the Code. It merely provides for conferment of certain power which when exercised, would project into the provisions of the code which confers power on the officer in charge of a police station to carry on further investigation u/s 173(8) after submission of a report and that too without any permission of the Magistrate. There is no conflict between the two provisions. Power to direct investigation or further investigation is entirely different from the method and procedure of investigation and the competence of the person to investigate. Section 3 of the Act as interpreted by us deals with the powers of the State Government to direct further investigation into the case. Undoubtedly, such direction will be given to a person competent to investigate the offence and as has been pointed out, the police officer in rank superior to the police officer in charge of the police station, to wit, Inspector-General, Vigilance has been directed to carry on further investigation. An officer superior in rank to an officer in-charge of a police station could as well exercise the power of further investigation u/s 173(8) in view of the provision embodied in Section 36 of the Code. If that be so, such superior officer could as well undertake further investigation on his own and it is immaterial and irrelevant that he does it at the instance or on the direction of the State Government. Such a direction in no way corrodes his power to further investigate on his own.

20. A later three Judge Bench of the Apex Court had considered the scope of superintendence as provided in Section 3 Of the Indian Police Act as held in Sadanna's case (supra) in the light of Section 4(1) of Delhi Special Act which provides that the superintendence of the Delhi Special Police Establishment shall vest in the Central Government and held:

41. There can be no doubt that the overall administration of the said force i.e. CBI vests in the Central Government, which also includes by virtue of Section 3, the power to specify the offences or class of offences which are to be investigated by it. The general superintendence over the functioning of the (Department and specification of the offences which are to be investigated by the agency is not the same as and would not include within it the control of the initiation and the actual process of investigation i.e. direction. Once the CBI is empowered to investigate an offence generally by its specification u/s 3, the process of investigation, including its initiation, is to be governed by the statutory provisions which provide for the initiation and manner of investigation of the offence. This is not an area which can be included within the meaning of "superintendence" in Section 4(1).

42. It is, therefore, the notification made by the Central Government u/s 3 which confers and determines the jurisdiction of the CBI to investigate an offence; and

once that jurisdiction is attracted by virtue of the notification u/s 3, the actual investigation is to be governed by the statutory provisions under the general law applicable to such investigations. This appears to us the proper consecution of Section 4(1) in the context, and it is in harmony with the scheme of the Act and Section 3 in particular. The word "superintendence" in Section 4(1) cannot be construed in a wider sense to permit supervision of the actual investigation of an offence by the CBI contrary to the manner provided by the statutory provisions. The broad proposition urged on behalf of the Union of India that it can issue any directive to the CBI to curtail or inhibit its jurisdiction to investigate an offence specified in the notification issued u/s 3 by a directive u/s 4(1) of the Act cannot be accepted. The jurisdiction of the CBI to investigate an offence is to be determined with reference to the notification issued u/s 3 and not by any separate order not having that character.

43. This view does not conflict with the decision in J.A.C Saldanna AIR 1998 SC 326 (supra) as earlier indicated. In Saldanna, the question was whether an unsatisfactory investigation already made could be undertaken by another officer for further investigation of the offence so that the offence was properly investigated as required by law, and it was not to prevent the investigation of an offence. The Single Directive has the affect of restraining recording of FIR and initiation of investigation and not of proceeding with investigation, as in Saldanna. No authority to permit control of statutory powers exercised by the police to investigate an offence within its jurisdiction has been cited before us except K. Veeraswami which we have already distinguished. The view we take accords not only with reason but also with the very purpose of the law and is in consonance with the basic tenet of the rule of law.

44. Once the jurisdiction is conferred on the CBI to investigate an offence by virtue of notification u/s 3 of the Act. The powers of investigation are governed by the statutory provisions and they cannot be estopped or curtailed by any executive instruction issued u/s 4(1) thereof. This result follows from the fact that conferment of jurisdiction is u/s 3 of the Act and exercise of powers of investigation is by virtue of the statutory provisions governing investigation of offences. It is settled that "statutory jurisdiction cannot be subject to executive control.

It is thus clear that though the Government has power to give broad policy directions regarding investigation and prosecution of classes of cases and has even power to appraise the quality of the work of Head of the agency as well as other senior officers it does not extend to interfere with the investigation of individual cases.

21. Apex Court in *Vinaet Narain*'s case (supra) held:

it is sufficient to say that the Minister's general power to review the working of the agency and to give broad policy directions regarding the functioning of the agencies and to appraise the quality of the work of the Head of the agency and

other officers as the executive head is in no way to be diluted. Similarly, the Minister's power to call for information generally regarding the cases being handled by the agencies is not to be taken away. However, all the powers of the Minister are subject to the condition that none of them would extend to permit the Minister to interfere with the course of investigation and prosecution in any individual case and in that respect the concerned officers are to be governed entirely by the mandate of law and the statutory duty cast upon them.

22. But as distinct from State of Bihar, in the State of Kerala the Kerala Police Act 1960 is in force with effect from 14.2.1961. Therefore undoubtedly, it is not the provisions of Indian Police Act but the provisions of Kerala Police Act 1960 which governs the police in Kerala. As distinct from Section 3 of the Indian Police Act, Section 4 of the Kerala Police Act reads:

4(1) Inspector General of Police-The administration of the police throughout the State shall, subject to the control of the Government, be vested in an officer to be styled the Inspector General of Police (herein after referred to as the Inspector-General) and in such superior police officers as the Government shall deem fit.

The argument of the learned senior counsel is that as distinct from Section 3 of Indian Police Act which provides that superintendence of the police does not vest with the State Government u/s 4 of the Kerala Police Act, the section only provides that subject to the control of the State Government, administration of the police shall be vested in the Inspector General of Police and therefore under the Kerala Police Act superintendence of the police does not vest with the State Government.

23. Relying on the Division Bench decision of this Court in *N. Srinivasan v. State* AIR 1968 Ker 158 the learned Counsel argued that the control which is provided with u/s 4 of the Kerala Police Act is only control over the administrative set up and not superintendence over the investigation.

24. True, Section 4 of Kerala Police Act does not specifically provide for superintendence. Under Sub-section (1) subject to the control of the Government, administration of the police throughout the State shall vest in the Inspector General of Police and in such superior police officer as the Government shall deem fit. The administration thus vested in the Inspector General of Police is subject to the "control of the Government". Section 16 empowers the Inspector General to control the force and make rules. u/s 16 also from time to time the Inspector General, "subject to the approval of the Government, may frame such orders and rules not inconsistent with the Act, as he may deem expedient relating to the general government and distribution of the police force, the place of residence, the classification, rank and particular service and duties of the members thereof; their inspection, the description of arms, accouterments, and other necessities to be furnished to them," the collecting and communicating intelligence and information, for preventing abuse or neglect, and

for rendering such force efficient in discharge of all its duties.

25. The question is, is it possible to give a narrow construction of the powers provided to the government in Section 4 for the omission of the word "superintendence". In the absence of the word superintendence Section 4 of Kerala Police Act provides that the administration vested in the Inspector General of Police is not absolute, but subject to the control of the Government. The word "control" in Section 4 cannot be given a restricted meaning as canvassed by the learned senior counsel, relying on the Division Bench decision in Srinivasan's case (supra). The word "control" by plain Dictionary means "the power to direct, manage, oversee and or restrict the affairs or to exercise the power of control. It would thus mean the authority to manage or direct". Hence an authority, having control, has the full command over the activities of the subordinate. If so, it cannot be said that the power available with the Government u/s 4 of the Kerala Police Act is less than the power of superintendence available to the Government u/s 3 of the Indian Police Act.

26. As declared by the Apex Court in Saldanna's case, the word superintendence would imply administrative control enabling the authority enjoining such power to give directions to the subordinate to discharge, his administrative duties and functions in the manner indicated in the order though it does not extend to control the statutory power of the police to investigate the offence as provided under the Code. The power of control vested with the Government u/s 4 of Kerala Police Act, cannot be less than the power of superintendence available with the Government u/s 3 of Indian Police Act. If that be so, it cannot be said that the Government has no power, to direct further investigation of a case as canvassed by the learned senior counsel.

27. The Division Bench of this Court in Prabhavathiamma v. State of Kerala 2007(4) KLT 601 while considering the power of the court to order investigation by a Special Investigating Agency held:

We are of the view that power of the State to refer the matter to CBI, for further investigation u/s 5 and 6 of the Delhi Special Police Act or power of the court to refer the matter to CBI for further investigation is in no , way restricted by Section 173(8).

28. Apex Court in M.C. Mehta Vs. Union of India (UOI) and Others, has elaborately considered the action of the Director of CBI who has not given his own independent opinion but referred the matter to the opinion of Attorney General of India, when the entire investigation team was of the opinion that a charge sheet is to be filed and the Director of Prosecution alone was dissenting. Analysing the earlier decisions in H.N. Rishbud's case (supra), Abhinandan Jha and Others Vs. Dinesh Mishra, , Union of India and others Vs. Sushil Kumar Modi and others, , Vineet Narain's case (supra), Union of India (UOI) Vs. Prakash P. Hinduja and Another, Apex Court in M.C. Mehta Vs. Union of India (UOI) and Others, held:

26. Analysis of the above judgments shows that there is clear-cut and well-demarcated sphere of activities in the field of crime detection and crime5 punishment. Investigation of an offence is the field reserved for the executive through the Police Department, the Superintendence over which vests in the State Government. The executive is charged with a duty to keep vigilance over the law and order situation. It is obliged to prevent crime. If an offence is committed allegedly, it is the State's duty to investigate into the offence and bring the offender to book. Once it investigates through the Police Department and finds an offence having been committed, it is its duty to collect evidence for the purposes of proving the offence. Once that is completed* the investigating officer submits report to the court requesting the court to take cognizance of the offence u/s 190 Cr.P.C. and his duty comes to an end. Therefore, there are well defined and well demarcated functions in the field of crime detection and their subsequent adjudication by the court. Lastly, the terms investigation u/s 173(2) of the Criminal Procedure Code includes opinion of the officer in charge of the police station as to whether there is sufficient evidence or reasonable ground of suspicion to justify the forwarding of the case to the court concerned or not. This opinion is not legal evidence. At the stage of Section 173(2) the question of interpretation of legal evidence does not arise. In any event, that function is that of the courts.

29. The legal position is not that State Government has no power to order further investigation. Inappropriate cases the Government can order further-investigation. But neither the Government nor the Minister has power to interfere in the course of investigation. The opinion as to whether a report u/s 169 or 170 is to be filed can only be taken by the Investigating Officer. The Government has no role whatsoever to decide whether a report as provided u/s 169 or 170 is to be filed. Once such a final report is submitted to the court, on forming an opinion u/s 169 or 170, as provided u/s 173(2) of Code, it is for the concerned Magistrate to decide whether the report is to be accepted or a further investigation is to be ordered u/s 156(3) or cognizance is to be taken on the report either under Sub-clause (a) or Sub-clause (b) of Section 190 of the Code.

30. As the Investigating Officer in this case has only prepared a report and not submitted the final report to the court, as provided u/s 173(2) , as provided under the Vigilance Manual and G.O(P) the Director of Vigilance is definitely competent to give a direction to investigate the case further. Though the Home Minister incharge of the Vigilance Department, has directed a reinvestigation, as stated earlier there is no power to order reinvestigation. Though, as directed by the Home Minister, the Director of Vigilance ordered a further investigation, the order of the Minister or consequent decision of the Director of Vigilance is not overturning the opinion of the Investigating Officer, to submit a report u/s 170 instead of a final report u/s 169. By the order the Minister has not directed to file a report u/s 170 instead of a report u/s 169. Instead the Minister has only directed a reinvestigation, which could only mean, a further investigation. In such circumstance, I do not find that in the interest of justice either to give effect

to any order under the Code or to prevent abuse of process of court or to secure the ends of justice, this Court is to interfere with the order for further investigation. As the final report u/s 173(2) is not so far filed in court, the investigation ordered would only mean, continuation of the original investigation, as no final report was submitted u/s 173(2) of the Code.

31. Even otherwise, the question is whether an accused is entitled to approach this Court u/s 482 to stifle the investigation. As held by the Supreme Court in *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh and Others*, the accused has no right to be heard for ordering a further investigation u/s 173(8) of the Code. The right of an accused to have any say as regards the manner and method of investigation was considered by the Supreme Court in *Union of India and another Vs. W.N. Chadha*, and held:

More so, the accused has no 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 no 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 u/s 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued u/s 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding the said offence is triable by a Magistrate or triable exclusively by the Court of Session, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated u/s 202 of the Code, 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 give an opportunity of being heard under certain specified circumstances.

32. The position is reiterated in *Narendra G. Goel Vs. State of Maharashtra and Another*, as follows:

It is well settled that the accused has no right to be heard at the stage of investigation. The prosecution will however have to prove its case at the trial when the accused will have full opportunity to rebut/question the validity and authenticity of the prosecution case.

33. The facts of the case will reveal that petitioner who was a former Minister and member of Legislative Assembly has approached this Court to stifle the investigation which is only continuation of the investigation, harping on the opinion originally formed by the Investigating Officer, which did not culminate in filing a report u/s 173(2) of Code. As provided under the Vigilance Manual and G.O.(P) 65/92 Investigating Officer is bound to submit to the Director of Vigilance his opinion along with the materials, through the Superintendent of Police and Director General of Police. Though the Director of Vigilance forwarded

the report to the Government, Director of Vigilance accepting the opinion of the Government, has ordered a farther investigation. Though learned senior counsel challenged the order of the Minister as malafide due to the alleged malice against him and argued that inspite of the application filed to implead the Minister as an additional respondent alleging malice against him, no affidavit was filed. Relying on the decision of the Apex Court in R.P. Kapur and Others Vs. Sardar Pratap Singh Kairon and Others, and S. Pratap Singh Vs. The State of Punjab, it was argued that as no counter affidavit is filed by the Minister malice is to be found. But I cannot agree with the submission that because of the malice alleged in the application malafide is to be inferred and the investigation shifted. Though learned senior counsel relied on the decision of the Apex Court in Mariam Rasheeda v. State of Kerala 1998 (1) KLT 833 where a direction for reinvestigation was found to be vitiated and liable to be quashed on the ground of malafide exercise of power, that was based on proof of malafides in that case, which is not the case herein. The allegation that the Minister is not on good terms with the petitioner, as he had criticized the Home Department for the inefficiency of the Minister is not proved. Even if it is proved, it is not a sufficient ground to infer malafides vitiating the order passed by the Minister. The result of the order for further investigation, is only that a proper investigation would be held on the allegation raised against the petitioner. It does not mean that the Investigating Agency, by the said investigation, would bolster up the prosecution case by suppressing the truth As held in Jamuna Chaudhary and Others Vs. State of Bihar, the duty of the Investigating Officer is not merely to bolster up a prosecution case with such evidence as may enable the court to record a conviction, but to bring out the real unvarnished truth. On the facts. I find no justification for inferring malice or to believe that the investigation so ordered, would not enable the Investigating Agency to bring out the real unvarnished truth. On the materials placed, the case warrants as proper investigation. Inspite of the fact that corruption is in the increase, attempts are made to justify it as global phenomenon, the fact that the higher-ups are not being caught in the net, eventhough corruption is spreading like cancer, cannot be ignored. In this case the preliminary report shows that the loan availed of by the petitioner during the relevant period was found to be only Rs. 6,65,000. It is seen that at the Stage of investigation it is increased to Rs. 10,15,000/-. The genuiness of this inflated amount definitely warrants serious consideration. Viewed from all angles, I find it justifiable to have a proper investigation. In any event, interest of justice does not warrant guillotining a proper investigation. In such circumstance, the petition is dismissed. In view of the above findings, I find it not necessary to implead the Minister as an additional respondent. Hence I.A. 6761 /2009 filed for that purpose is also dismissed.