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**(2015) 05 SHI CK 0124**  
**In the High Court Of Himachal Pradesh**  
**Case No : CWP No. 2526 of 2015-C**

Raj Pal Singh

APPELLANT

Vs

Central Bureau of Investigation and Others

RESPONDENT

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**Date of Decision :** 30-05-2015

**Acts Referred:**

Constitution of India, 1950 — Article 14, 20, 21, 22, 226  
Criminal Procedure Code, 1973 (CrPC) — Section 154, 154, 155, 156, 156(2)  
Penal Code, 1860 (IPC) — Section 302, 364

**Citation :** (2015) ALLMR(Cri) 515 : (2015) 4 CCR 6 : (2015) CriLJ 3032

**Hon'ble Judges :** Mansoor Ahmad Mir, C.J.;Tarlok Singh Chauhan, J

**Bench :** Division Bench

**Advocate :** Hamender Chandel, for the Appellant; Sandeep Sharma, Senior Advocate and Prashant Sharma, Advocates for the Respondent

**Final Decision :** Dismissed

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## Judgement

Mansoor Ahmad Mir, C.J.—Petitioner has invoked the jurisdiction of this Court by the medium of the writ petition in hand seeking transfer of the investigation of FIR No. 128 of 2014, registered at Police Station Dharampur, District Solan, H.P. to the Central Bureau of Investigation (for short "CBI"); for declaring the cancellation report, if any filed by the police during the pendency of the writ petition, to be illegal and in the alternative, has also sought transfer of investigation of the said FIR to Delhi, on the grounds taken in the memo of writ petition.

2. It is averred that deceased-Satish Bosaya, a businessman, was having some dispute with respondent No. 5 and were trying to arrive at a settlement. On 08.08.2014, the petitioner received information that Shri Satish Bosaya sustained injuries in a car accident on 07.08.2014 at 7.45 p.m. at Dharampur, District Solan, H.P., constraining him, his friend and the driver to rush to Dharampur. In the post-mortem report conducted at Indira Gandhi Medical College and Hospital, Shimla (for short "IGMC") (Annexure P-1), it is recorded

that the deceased died due to firearm injury. A complaint was lodged on 10.08.2014 at Amar Colony Police Station, Delhi (Annexure P-2) and representation was also made to the Director General of Police, Himachal Pradesh on 11.08.2014 (Annexure P-3) for registration of a case. Accordingly, FIR No. 128 of 2014 was registered under Section 302 of the Indian Penal Code (for short "IPC") at Police Station Dharampur, District Solan, on 12.08.2014 (Annexure P-4) and FIR No. 673 of 2014 was registered at Amar Colony Police Station, South East District, New Delhi on 14.08.2014 (Annexure P-5). On 21.08.2014, the Deputy Commissioner of Police, South East District, New Delhi, issued a letter to the SSP, District Solan, Himachal Pradesh for transfer of the investigation of FIR No. 128 of 2014 from Dharampur to Delhi (Annexure P-6). The petitioner also filed various representations to the authorities in Himachal Pradesh for transferring the investigation of the said FIR to Delhi (Annexure P-8). However, the Investigating Officer at Dharampur, District Solan, H.P. conducted the investigation and reported that it was a case of suicide. Accordingly, the Superintendent of Police, Solan, vide its letter, dated 14.11.2014 (Annexure P-9) informed the Director General of Police, Shimla that no case for transfer of the investigation to Delhi was made out, constraining the petitioner to file a writ petition before the Hon'ble High Court of Delhi being W.P. (CRL) No. 1847 of 2014, which was withdrawn on 16.04.2015 (Annexure P-10).

3. We have heard learned counsel for the petitioner.

4. The following questions arise for consideration in this writ petition:

"(i) Whether after submission of the final report in terms of Section 173 of the Code of the Criminal Procedure (for short "CrPC") before the Court of competent jurisdiction, a writ can be filed for transferring the investigation?

(ii) Whether this Court has the jurisdiction to transfer the investigation of a case from Police Station Dharampur, District Solan, H.P. to Delhi?

(iii) Whether in the given circumstances, investigation can be entrusted to any other agency, i.e. CBI?

(iv) Whether this Court is having power to declare the closure report submitted in terms of Section 173(2) CrPC as illegal?"

5. The writ petition merits to be dismissed in limine for the following reasons:

6. Chapter XII of the CrPC contains Sections 154 to 176, which provide the mechanism how to conduct investigation. It provides that in case a report is made about commission of any offence, First Information Report (for short "FIR") is to be registered in terms of Section 154 CrPC, which sets the investigating agency into motion, investigation is to be conducted in terms of the mandate of the said Chapter and on completion, report is to be submitted in terms of Section 173 CrPC before the Court of competent jurisdiction. The final report is to be considered by the Court of competent jurisdiction in order to pass appropriate orders after perusal of the record. In case, closure report is made, it is for the

Magistrate/Court of competent jurisdiction either to accept the report or to direct further investigation or to take cognizance and issue process. But, in case the Magistrate decides not to take cognizance and accepts the closure report, then it has to hear the informant.

7. Admittedly, in the case in hand, closure report has been submitted to the Court of competent jurisdiction and it is for that Court/Magistrate to decide whether the closure report is to be accepted or otherwise. Thus, the alternate remedy is available to the writ petitioner. In the given circumstances, the writ Court cannot interfere.

8. A similar matter came up for consideration before the Apex Court in a case titled as Bhagwant Singh Vs. Commissioner of Police and Another, AIR 1985 SC 1285 : (1985) CriLJ 1521 : (1985) 1 Crimes 994 : (1985) 1 SCALE 1194 : (1985) 2 SCC 537 : (1985) 3 SCR 942 : (1985) 17 UJ 820 , wherein it has been held that in case the Magistrate decides not to take cognizance of offence or to drop the proceedings against some persons mentioned in the FIR, the Magistrate must give notice and hear the informant. It is apt to reproduce relevant portion of para 4 of the judgment herein:

"4.....But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-sec. (2) of S. 154, sub-sec. (2) of S. 157 and sub-sec. (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of S. 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of S. 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting

service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of S. 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate."

9. The same principle has been laid down by the Apex Court in a case titled as Chittaranjan Mirdha Vs. Dulal Ghosh and Another, (2009) CriLJ 3430 : (2009) 13 JT 198 : (2009) 8 SCALE 40 : (2009) 6 SCC 661 : (2009) 8 SCR 412 : (2009) AIRSCW 3873 : (2009) 5 Supreme 111 . It is apt to reproduce paras 14 and 17 of the judgment herein:

"14. When a report forwarded by the police to the Magistrate under Section 173(2)(i) is placed before him several situations arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceeding, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. The report may on the other hand state that according to the police, no offence appears to have been committed. When such a report is placed before the Magistrate, he has again the option of adopting one of the three courses open i.e., (1) he may accept the report and drop the proceeding; or (2) he may disagree with the report and take the view that there is sufficient ground for further proceeding, take cognizance of the offence and issue process; or (3) he may direct further investigation to be made by the police under Section 156(3). The position is, therefore, now well-settled that upon receipt of a police report under Section 173(2) a Magistrate is entitled to take cognizance of an offence under Section 190(1)(b) of the Code even if the police report is to the effect that no case is made out against the accused. The Magistrate can take into account the statements of the witnesses examined by the police during the investigation and take cognizance of the offence complained of and order the issue of process to the accused. Section 190(1)(b) does not lay down that a Magistrate can take cognizance of an offence only if the Investigating Officer gives an opinion that the investigation has made out a case against the accused. The Magistrate can ignore the conclusion arrived at by the Investigating Officer and independently apply his mind to the facts emerging from the investigation and take cognizance of the case, if he thinks fit, exercise of his powers under Section 190(1)(b) and direct the issue of process to the accused. The Magistrate is not bound in such a situation to follow the procedure laid down in Sections 200 and 202 of the Code for taking cognizance of a case under Section 190(1)(a) though it is open to him

to act under Section 200 or Section 202 also. [See India Carat Pvt. Ltd. Vs. State of Karnataka and Another, (1989) ACJ 427 : AIR 1989 SC 885 : (1989) 2 Crimes 483 : (1989) 1 JT 308 : (1989) 1 SCALE 370 : (1989) 2 SCC 132 : (1989) 1 SCR 718 : (1989) 1 UJ 616 . The informant is not prejudicially affected when the Magistrate decides to take cognizance and to proceed with the case. But where the Magistrate decides that sufficient ground does not subsist for proceeding further and drops the proceeding or takes the view that there is material for proceeding against some and there are insufficient grounds in respect of others, the informant would certainly be prejudiced as the First Information Report lodged becomes wholly or partially ineffective. Therefore, this Court indicated in Bhagwant Singh's case (supra) that where the Magistrate decides not to take cognizance and to drop the proceeding or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, notice to the informant and grant of opportunity of being heard in the matter becomes mandatory. As indicated above, there is no provision in the Code for issue of a notice in that regard.

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17. Therefore, the stress is on the issue of notice by the Magistrate at the time of consideration of the report. If the informant is not aware as to when the matter is to be considered, obviously, he cannot be faulted, even if protest petition in reply to the notice issued by the police has been filed belatedly. But as indicated in Bhagwant Singh's case (supra) the right is conferred on the informant and none else."

10. It would also be profitable to reproduce paras 17 and 20 of the judgment rendered by the Apex Court in a case titled as Samaj Parivartan Samudaya and Others Vs. State of Karnataka and Others, AIR 2012 SC 2326 : (2012) 5 SCALE 525 : (2012) 7 SCC 407 : (2012) AIRSCW 3323 : (2012) 3 Supreme 656 , herein:

"17. The machinery of criminal investigation is set into motion by the registration of a First Information Report (FIR), by the specified police officer of a jurisdictional police station or otherwise. The CBI, in terms of its manual has adopted a procedure of conducting limited pre- investigation inquiry as well. In both the cases, the registration of the FIR is essential. A police investigation may start with the registration of the FIR while in other cases (CBI, etc.), an inquiry may lead to the registration of an FIR and thereafter regular investigation may begin in accordance with the provisions of the CrPC. Section 154 of the CrPC places an obligation upon the authorities to register the FIR of the information received, relating to commission of a cognizable offence, whether such information is received orally or in writing by the officer in- charge of a police station. A police officer is authorised to investigate such cases without order of a Magistrate, though, in terms of Section 156(3) Cr.P.C. the Magistrate empowered

under Section 190 may direct the registration of a case and order the police authorities to conduct investigation, in accordance with the provisions of the CrPC. Such an order of the Magistrate under Section 156(3) CrPC is in the nature of a pre-emptory reminder or intimation to police, to exercise their plenary power of investigation under that Section. This would result in a police report under Section 173, whereafter the Magistrate may or may not take cognizance of the offence and proceed under Chapter XVI CrPC. The Magistrate has judicial discretion, upon receipt of a complaint to take cognizance directly under Section 200 CrPC, or to adopt the above procedure. [Ref Gopal Das Sindhi and Others Vs. The State of Assam and Another ; Mohd. Yousuf Vs. Smt. Afaq Jahan and Another ; and Smt. Mona Panwar Vs. The Hon'ble High Court of Judicature at Allahabad and Others, (2011) CriLJ 1619 : (2011) 1 Crimes 272 : (2011) 2 JCC 969 : (2011) 2 JT 75 : (2011) 1 RCR(Criminal) 856 : (2011) 2 SCALE 150 : (2011) 3 SCC 496 : (2011) 1 SCC(Cri) 1181 : (2011) 2 SCR 413 : (2012) AIRSCW 870 : (2011) AIRSCW 1185 : (2011) 5 Supreme 613 : (2011) 1 Supreme 663 .

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20. Thus, the CrPC leaves clear scope for conducting of further inquiry and filing of a supplementary charge sheet, if necessary, with such additional facts and evidence as may be collected by the investigating officer in terms of Sub-sections (2) to (6) of Section 173 CrPC to the Court."

11. The Apex Court also discussed this issue in the judgment rendered in a case titled as Vinay Tyagi Vs. Irshad Ali @ Deepak and Others, (2013) 2 ABR 36 : (2013) 1 AD 157 : (2013) CriLJ 754 : (2013) 1 JT 97 : (2013) 2 RCR(Criminal) 197 : (2012) 12 SCALE 343 : (2013) 5 SCC 762 . It is apt to reproduce para 21 of the judgment herein:

"21. Referring to the provisions of Section 173 of the Code, the Court observed that the police has the power to conduct further investigation in terms of Section 173(8) of the Code but also opined that even the Trial Court can direct further investigation in contradistinction to fresh investigation, even where the report has been filed. It will be useful to refer to the following paragraphs of the judgment wherein the Court while referring to the case of Mithabhai Pashabhai Patel and Others Vs. State of Gujarat, (2009) 7 JT 666 : (2009) 7 SCALE 559 : (2009) 6 SCC 332 : (2009) 7 SCR 1126 : (2009) 6 UJ 2891 Mithabhai Pashabhai Patel and Others Vs. State of Gujarat, (2009) 7 JT 666 : (2009) 7 SCALE 559 : (2009) 6 SCC 332 : (2009) 7 SCR 1126 : (2009) 6 UJ 2891 (supra) held as under:

"13. It is, however, beyond any cavil that "further investigation" and "reinvestigation" stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence

investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in Ramachandran Vs. R. Udhayakumar and Others, AIR 2008 SC 3102 : (2008) 3 CLT 1 : (2008) CriLJ 4309 : (2008) 6 JT 582 : (2008) 7 SCALE 609 : (2008) 5 SCC 413 : (2008) AIRSCW 5469 : (2008) 4 Supreme 305 opined as under: (SCC p. 415, para 7) : (Para 6 of AIR, AIR SCW)

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under Sub-section (8), but not fresh investigation or reinvestigation." A distinction, therefore, exists between a reinvestigation and further investigation.

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15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The precognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

12. Admittedly, in this case, closure report has been submitted, the matter is sub judice and if this Court interferes, that will amount to take over the jurisdiction and powers of the Magistrate, who is having the power and jurisdiction in terms of the mechanism contained in the CrPC, as discussed hereinabove. The first question is answered accordingly.

13. It is worthwhile to record herein that the writ petitioner had also filed a Writ Petition (Criminal) on 09.09.2014 before the Hon"ble High Court of Delhi, which was withdrawn on 16.04.2015, i.e. after a lapse of more than seven months.

14. Learned counsel for the writ petitioner has filed copy of the said writ petition, made part of the file. The writ petitioner had sought almost the same relief in the said writ petition, which he has sought in the present writ petition. It is apt to reproduce the prayer clause of the said writ petition herein:

"It is therefore most respectfully prayed that this Hon"ble Court may be pleased to:

a) issue a Writ, Order or Direction in the nature of mandamus or any other Writ, Order or Direction that the FIR No. 128/2014 dated 12.08.2014 under Section 302 of the Indian Penal Code 1860 registered in the State of Himachal Pradesh at Police Station Dharampur, Solan, Himachal Pradesh be transferred to New Delhi and investigated along with FIR No. 673/2014 registered under Section 364 IPC at Delhi, Amar Colony Police Station or

b) Alternatively issue a Writ, Order or Direction in the nature of mandamus or any other Writ, Order or Direction that the FIR No. 128/2014 dated 12.08.2014 under Section 302 of the Indian Penal Code 1860 registered in the State of Himachal Pradesh at Police Station Dharampur, Solan, Himachal Pradesh and FIR No. 673/2014 registered under Section 364 IPC at Delhi, Amar Colony Police Station, both be investigated by an Independent Agency.

c) Pass such other further Order(s) as deemed fit and proper in the facts and circumstances of the case and in the interest of justice."

15. In that writ petition, learned counsel for the State had brought to the notice of the Hon"ble High Court that investigations were complete and cancellation report had been prepared. Thereafter, the writ petitioner withdrew the writ petition with liberty to take other legal remedies.

16. It is apt to reproduce the relevant portion of the order made by the Hon"ble High Court of Delhi in the said writ petition (Annexure P-10) herein:

"Learned counsel for respondent No. 2 submits that investigations are complete and cancellation report has been prepared which is likely to be filed in the Court. In view of this statement, learned counsel for the petitioner seeks leave to withdraw present writ petition with liberty to take other legal remedies as may be available to the petitioner under the law. Writ petition is disposed of as withdrawn."

17. A perusal of the order (supra) reveals that the writ petitioner has withdrawn the said writ petition with liberty to seek other legal remedies. The words "other legal remedies" mean "the remedies other than the writ petition". Thus, the writ petition is not maintainable.

18. The next question is - when the investigation is already complete, can the High Court direct further investigation and transfer the investigation to other agency? The answer is in the negative for the following reasons:

19. Investigation has been completed and it is yet to be determined by the Court of competent jurisdiction as to whether the closure report is to be accepted or otherwise? So, it is the domain of the Magistrate to pass appropriate orders and the Writ Court cannot interfere at this stage.

20. The writ petition is not maintainable for the reason that the writ petitioner had sought the same relief before the Hon"ble High Court of Delhi by the medium of writ petition (supra), at the cost of repetition, which was withdrawn.

21. Whether further investigation is permissible, is also to be thrashed out by the Magistrate/Court of competent jurisdiction in terms of Section 173(8) CrPC. Re-investigation is unknown to law.

22. This issue has been discussed in a series of judgments by the Apex Court.

23. The Apex Court in a case titled as State of Bihar and Another Vs. J.A.C.



Saldanha and Others, AIR 1980 SC 326 : (1980) CriLJ 98 : (1980) 1 SCC 554 : (1980) SCC(Cri) 272 : (1980) 2 SCR 16 , held that power of the police to investigate into a cognizable offence is ordinarily not to be interfered with. It is apt to reproduce paras 19, 25 and 26 of the judgment herein:

"19. The power of the Magistrate under Section 156(3) to direct farther investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). Therefore, the High Court was in error in holding that the State Government in exercise of the power of superintendence under S. 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section 156(2) that an investigation by an officer-in-charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on the ground that such investigating officer had no jurisdiction to carry on the investigation; otherwise that provision would have been a short answer to the contention raised on behalf of respondent 1.

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25. There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department, the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its bounden duty to investigate into the offence and bring the offender to book. Once it investigates and finds an offence having been committed it is its duty to collect evidence for the purpose of proving the offence. Once that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudicatory function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This has been recognised way back the Emperor

vs. Khwaja Nazir Ahmad AIR 1945 18 (Privy Council) , where the Privy Council observed as under:

"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 under Section 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".

26. This view of the Judicial Committee clearly demarcates the functions of the executive and the judiciary in the field of detection of crime and its subsequent trial and it would appear that the power of the police to investigate into a cognizable offence is ordinarily not to be interfered with by the judiciary."

24. The Apex Court in a cases titled as Ramachandran Vs. R. Udhayakumar and Others, AIR 2008 SC 3102 : (2008) 3 CLT 1 : (2008) CriLJ 4309 : (2008) 6 JT 582 : (2008) 7 SCALE 609 : (2008) 5 SCC 413 : (2008) AIRSCW 5469 : (2008) 4 Supreme 305 , and Reeta Nag Vs. State of West Bengal and Others, (2010) CriLJ 2245 : (2009) 11 SCALE 395 : (2009) 9 SCC 129 : (2009) 14 SCR 276 : (2009) 8 UJ 3984 : (2010) AIRSCW 476 , held that there can be further investigation if required, but not fresh investigation or re-investigation. It is apt to reproduce para 19 of the judgment in Reeta Nag's case (supra) herein:

"19. What emerges from the above-mentioned decisions of this Court is that once a charge-sheet is filed under Section 173(2) Cr.P.C. and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173(8). The Magistrate cannot suo motu direct a further investigation under Section 173(8) Cr.P.C. or direct a re-investigation into a case on account of the bar of Section 167(2) of the Code."

25. The Apex Court in Samaj Parivartan Samudaya's case (supra) held that further investigation is permissible, however, re-investigation is prohibited. It is apt to reproduce para 18 of the judgment herein:

"18. Once the investigation is conducted in accordance with the provisions of the CrPC, a police officer is bound to file a report before the Court of competent jurisdiction, as contemplated under Section 173 CrPC, upon which the Magistrate can proceed to try the offence, if the same were triable by such Court or commit the case to the Court of Sessions. It is significant to note that the provisions of

Section 173(8) CrPC open with non-obstante language that nothing in the provisions of Section 173(1) to 173(7) 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. Thus, under Section 173(8), where charge-sheet has been filed, that Court also enjoys the jurisdiction to direct further investigation into the offence. {Ref., Hemant Dhasmane Vs. Central Bureau of Investigation and Another, AIR 2001 SC 2721 : (2001) CriLJ 4190 : (2001) 4 Crimes 183 : (2001) 6 JT 473 : (2001) 5 SCALE 312 : (2001) 7 SCC 536 : (2001) AIRSCW 3064 : (2001) 6 Supreme 217 . This power cannot have any inhibition including such requirement as being obliged to hear the accused before any such direction is made. It has been held in Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh and Others, AIR 1999 SC 2332 : (1999) CriLJ 3661 : (1999) 3 Crimes 117 : (1999) 4 JT 537 : (1999) 4 SCALE 86 : (1999) 5 SCC 740 : (1999) 3 SCR 870 : (1999) 2 UJ 1270 : (1999) AIRSCW 2429 : (1999) 6 Supreme 47 that the casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all potential accused to be afforded with the opportunity of being heard."

26. It is also apt to reproduce paras 16, 18, 22, 23, 30, 31, 33 and 40 of the judgment rendered by the Apex Court in Vinay Tyagi's case (supra) herein:

"16. However, in the case of a "fresh investigation", "reinvestigation" or "de novo investigation" there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct "fresh investigation". This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of "fresh "/"de novo" investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a "fresh investigation". In the case of Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi), AIR 2010 SC 2352 : (2010) 4 JT 107 : (2010) 4 SCALE 1 : (2010) 6 SCC 1 : (2010) 4 SCR 103 : (2010) 3 UJ

1650 , the Court stated that it is not only the responsibility of the investigating agency, but also that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society. The maxim *contra veritatem lex nunquam aliquid permittit* applies to exercise of powers by the courts while granting approval or declining to accept the report. In the case of Gudalure M.J. Cherian and Others Vs. Union of India (UOI) and Others, (1992) 1 Crimes 2 : (1991) 4 JT 535 : (1991) 2 SCALE 1305 : (1992) 1 SCC 397 : (1991) 3 SCR 251 Supp , this Court stated the principle that in cases where charge-sheets have been filed after completion of investigation and request is made belatedly to reopen the investigation, such investigation being entrusted to a specialized agency would normally be declined by the court of competent jurisdiction but nevertheless in a given situation to do justice between the parties and to instill confidence in public mind, it may become necessary to pass such orders. Further, in the case of R.S. Sodhi Vs. State of U.P. and others, AIR 1994 SC 38 : (1994) CriLJ 111 : (1994) 1 SCC 143 Supp , where allegations were made against a police officer, the Court ordered the investigation to be transferred to CBI with an intent to maintain credibility of investigation, public confidence and in the interest of justice. Ordinarily, the courts would not exercise such jurisdiction but the expression "ordinarily" means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. "Ordinarily" excludes extraordinary or special circumstances. In other words, if special circumstances exist, the court may exercise its jurisdiction to direct "fresh investigation" and even transfer cases to courts of higher jurisdiction which may pass such directions.

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18. Next question that comes up for consideration of this Court is whether the empowered Magistrate has the jurisdiction to direct "further investigation" or "fresh investigation". As far as the latter is concerned, the law declared by this Court consistently is that the learned Magistrate has no jurisdiction to direct "fresh" or "de novo" investigation. However, once the report is filed, the Magistrate has jurisdiction to accept the report or reject the same right at the threshold. Even after accepting the report, it has the jurisdiction to discharge the accused or frame the charge and put him to trial. But there are no provisions in the Code which empower the Magistrate to disturb the status of an accused pending investigation or when report is, filed to wipe out the report and its effects in law. Reference in this regard can be made to K. Chandrasekhar Vs. The State of Kerala and Others, (1998) 4 AD 657 : AIR 1998 SC 2001 : (1998) CriLJ 2897 : (1998) 2 Crimes 300 : (1998) 3 JT 612 : (1998) 3 SCALE 294 : (1998) 5 SCC 223 : (1998) 3 SCR 72 : (1998) 1 UJ 778 : (1998) AIRSCW 1852 : (1998) 4

Supreme 374 ; Ramachandran Vs. R. Udhayakumar and Others, AIR 2008 SC 3102 : (2008) 3 CLT 1 : (2008) CriLJ 4309 : (2008) 6 JT 582 : (2008) 7 SCALE 609 : (2008) 5 SCC 413 : (2008) AIRSCW 5469 : (2008) 4 Supreme 305 , Nirmal Singh Kahlon Vs. State of Punjab and Others, AIR 2009 SC 984 : (2009) CriLJ 958 : (2008) 12 JT 331 : (2008) 14 SCALE 639 : (2009) 1 SCC 441 : (2009) 2 SLJ 371 : (2009) AIRSCW 60 ; Mithabhai Pashabhai Patel and Others Vs. State of Gujarat, (2009) 7 JT 666 : (2009) 7 SCALE 559 : (2009) 6 SCC 332 : (2009) 7 SCR 1126 : (2009) 6 UJ 2891 ; and Babubhai Vs. State of Gujarat and Others, (2010) 9 JT 177 : (2010) 12 SCC 254 : (2010) 10 SCR 651 : (2010) 8 UJ 3896 .

19 to 21.....

22. In the case of Minu Kumari and Another Vs. The State of Bihar and Others, AIR 2006 SC 1937 : (2006) 101 CLT 821 : (2006) CriLJ 2468 : (2006) 4 JT 569 : (2006) 4 SCALE 329 : (2006) 4 SCC 359 this Court explained the powers that are vested in a Magistrate upon filing of a report in terms of Section 173(2)(i) and the kind of order that the Court can pass. The Court held that when a report is filed before a Magistrate, he may either (i) accept the report and take cognizance of the offences and issue process; or (ii) may disagree with the report and drop the proceedings; or (iii) may direct further investigation under Section 156(3) and require the police to make a further report.

23. This judgment, thus, clearly shows that the Court of Magistrate has a clear power to direct further investigation when a report is filed under Section 173(2) and may also exercise such powers with the aid of Section 156(3) of the Code. The lurking doubt, if any, that remained in giving wider interpretation to Section 173(8) was removed and controversy put to an end by the judgment of this Court in the case of Hemant Dhasmane Vs. Central Bureau of Investigation and Another, AIR 2001 SC 2721 : (2001) CriLJ 4190 : (2001) 4 Crimes 183 : (2001) 6 JT 473 : (2001) 5 SCALE 312 : (2001) 7 SCC 536 : (2001) AIRSCW 3064 : (2001) 6 Supreme 217 where the Court held that although the said order does not, in specific terms, mention the power of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by the court, which has the jurisdiction to do so, then such order should not even be interfered with in exercise of a higher court's revisional jurisdiction. Such orders would normally be of an advantage to achieve the ends of justice. It was clarified, without ambiguity, that the magistrate, in exercise of powers under Section 173(8) of the Code can direct the CBI to further investigate the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the new report to be submitted by the Investigating Officer, would be governed by Sub-section (2) to Sub-section (6) of Section 173 of the Code. There is no occasion for the court to interpret Section 173(8) of the Code restrictively. After filing of the final report, the learned Magistrate can also take cognizance on the basis of the material

placed on record by the investigating agency and it is permissible for him to direct further investigation. Conduct of proper and fair investigation is the hallmark of any criminal investigation.

24 to 29.....

30. Having analysed the provisions of the Code and the various judgments as afore-indicated, we would state the following conclusions in regard to the powers of a magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

1. The Magistrate has no power to direct "reinvestigation" or "fresh investigation" (de novo) in the case initiated on the basis of a police report.

2. A Magistrate has the power to direct "further investigation" after filing of a police report in terms of Section 173(6) of the Code.

3. The view expressed in (2) above is in conformity with the principle of law stated in Bhagwant Singh's case by a three Judge Bench and thus in conformity with the doctrine of precedence.

4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the Court to the extent that even where the facts of the case and the ends of justice demand, the Court can still not direct the investigating agency to conduct further investigation which it could do on its own.

6. It has been a procedure of propriety that the police has to seek permission of the Court to continue "further investigation" and file supplementary chargesheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case.

31. Having discussed the scope of power of the Magistrate under Section 173 of the Code, now we have to examine the kind of reports that are contemplated under the provisions of the Code and/or as per the judgments of this Court. The first and the foremost document that reaches the jurisdiction of the Magistrate is the First Information Report. Then, upon completion of the investigation, the police are required to file a report in terms of Section 173(2) of the Code. It will be appropriate to term this report as a primary report, as it is the very

foundation of the case of the prosecution before the Court. It is the record of the case and the documents annexed thereto, which are considered by the Court and then the Court of the Magistrate is expected to exercise any of the three options afore-noticed. Out of the stated options with the Court, the jurisdiction it would exercise has to be in strict consonance with the settled principles of law. The power of the magistrate to direct "further investigation" is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the Court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the Court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.

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33. At this stage, we may also state another well-settled canon of criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct "further investigation", "fresh" or "de novo" and even "reinvestigation". "Fresh", "de novo", and "reinvestigation" are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

34 to 39.....

40. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct "further investigation" on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct "further

investigation" to clear its doubt and to order the investigating agency to further substantiate its charge sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct "further investigation" or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct "further investigation" or "reinvestigation" as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct farther, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this court in the case of Sivanmoorthy and Others Vs. State rep. by Inspector of Police, (2011) 1 SCC(Cri) 295 . In light of the above discussion, we answer the questions formulated at the opening of this judgment as follows:

#### Answer to Question No. 1

The court of competent jurisdiction is duty bound to consider all reports, entire records and documents submitted therewith by the Investigating Agency as its report in terms of Section 173(2) of the Code. This Rule is subject to only the following exceptions;

- a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;
- b) Where an order is passed by the higher courts in exercise of its extra-ordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on "fresh investigation" or "reinvestigation" or any part of it be excluded, struck off the court record and be treated as non est.

#### Answer to Question No. 2

No investigating agency is empowered to conduct a "fresh", "de novo" or "reinvestigation" in relation to the offence for which it has already filed a report in terms of Section 173(2) of the Code. It is only upon the orders of the higher courts empowered to pass such orders that aforesaid investigation can be conducted, in which event the higher courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the court of the learned magistrate."

27. Applying the test to the instant case, it can be safely said that it is the domain of the Magistrate/Court of competent jurisdiction to pass appropriate orders, while examining the report filed by the Investigating Agency.

28. Now, the next question is - whether second FIR is permissible on the same allegations for the same cause, one at P.S. Dharampur, District Solan and second



at Delhi?

29. The Apex Court in the case titled as Anju Chaudhary Vs. State of U.P. and Another, (2013) CriLJ 776 : (2013) 1 CTC 714 : (2012) 12 JT 582 : (2013) 1 RCR(Criminal) 686 : (2012) 12 SCALE 619 : (2013) 6 SCC 384 : (2013) AIRSCW 245 , held that second FIR for the same incident is not permissible. It is apt to reproduce para 23 of the judgment herein:

"23. The First Information Report is a very important document, besides that it sets the machinery of criminal law in motion. It is a very material document on which the entire case of the prosecution is built. Upon registration of FIR, beginning of investigation in a case, collection of evidence during investigation and formation of the final opinion is the sequence which results in filing of a report under Section 173 of the Code. The possibility that more than one piece of information is given to the police officer in charge of a police station, in respect of the same incident involving one or more than one cognizable offences, cannot be ruled out. Other materials and information given to or received otherwise by the investigating officer would be statements covered under Section 162 of the Code. The Court in order to examine the impact of one or more FIRs has to rationalise the facts and circumstances of each case and then apply the test of "sameness" to find out whether both FIRs relate to the same incident and to the same occurrence, are in regard to incidents which are two or more parts of the same transaction or relate completely to two distinct occurrences. If the answer falls in the first category, the second FIR may be liable to be quashed. However, in case the contrary is proved, whether the version of the second FIR is different and they are in respect of two different incidents/crimes, the second FIR is permissible, This is the view expressed by this Court in the case of Babubhai Vs. State of Gujarat and Others, (2010) 9 JT 177 : (2010) 12 SCC 254 : (2010) 10 SCR 651 : (2010) 8 UJ 3896 . This judgment clearly spells out the distinction between two FIRs relating to the same incident and two FIRs relating to different incident or occurrences of the same incident etc."

30. In another case titled as Amitbhai Anilchandra Shah Vs. The Central Bureau of Investigation and Another, (2013) 3 ABR 1116 : (2013) 4 AD 449 : AIR 2013 SC 3794 : (2013) CriLJ 2313 : (2013) 2 Crimes 171 : (2013) 4 JT 333 : (2013) 2 RCR(Criminal) 819 : (2013) 5 SCALE 407 : (2013) 6 SCC 348 : (2013) AIRSCW 2353 : (2013) 2 Supreme 705 , the Apex Court has laid down the same law. It is apt to reproduce relevant portion of para 52 and para 53 of the judgment herein:

"52.....

d) Further, on receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering FIR in the Station House Diary, the officer-in-charge of the police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 of

the Code. Sub-section (8) of Section 173 of the Code empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report (s) to the Magistrate. A case of fresh investigation based on the second or successive FIRs not being a counter case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is underway or final report under Section 173(2) has been forwarded to the Magistrate, is liable to be interfered with by the High Court by exercise of power under Section 482 of the Code or under Articles 226/227 of the Constitution.

e) First Information Report is a report which gives first information with regard to any offence. There cannot be second FIR in respect of the same offence/event because whenever any further information is received by the investigating agency, it is always in furtherance of the first FIR.

...

53. In the light of the specific stand taken by the CBI before this Court in the earlier proceedings by way of assertion in the form of counter affidavit, status reports, etc. we are of the view that filing of the second FIR and fresh charge sheet is violative of fundamental rights under Article 14, 20 and 21 of the Constitution since the same relate to alleged offence in respect of which an FIR had already been filed and the court has taken cognizance. This Court categorically accepted the CBVs plea that killing of Tulsiram Prajapati is a part of the same series of cognizable offence forming part of the first FIR and in spite of the fact that this Court directed the CBI to "take over" the investigation and did not grant the relief as prayed, namely, registration of fresh FIR, the present action of CBI filing fresh FIR is contrary to various judicial pronouncements which is demonstrated in the earlier part of our judgment."

31. Admittedly, now, the investigation is complete and the Hon''ble High Court of Delhi has dismissed the writ petition as withdrawn while directing the writ petitioner to take recourse to the other legal remedies available. Thus, we deem it proper not to decide the issue.

32. Having said so, the writ petition is misconceived and is dismissed in limine.