

(2025) 06 SHI CK 0686
In the High Court Of Himachal Pradesh
Case No : Cr.MMO No.904 Of 2024

Rakesh Kumar

APPELLANT

Vs

State Of H.P. & Ors

RESPONDENT

Date of Decision : 04-06-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 154, 173
Motor Vehicles Act, 1988 — Section 166, 173

Citation : (2025) 06 SHI CK 0686

Hon'ble Judges : Satyen Vaidya, J

Bench : Single Bench

Advocate : Raman Sethi, Neel Kamal Sharma, Y.P. Sood, Bhupinder Singh Kanwar

Final Decision : Disposed Of

Judgement

Virender Singh, J

1. Petitioner-Rakesh Kumar has filed the present petition, under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter referred to as 'BNSS'), for quashing and setting aside the order dated 05.10.2023, passed by the Court of learned Additional Chief Judicial Magistrate, Court No.1, Shimla, H.P. (hereinafter referred to as the 'trial Court'), in Police Challan No.449/2018, titled as 'State of H.P. Vs. Dharmender Kumar @Mahender Kumar'.

2. By way of the order dated 05.10.2023, the learned trial Court has dismissed the application, filed by the petitioner, under Section 173(8) of Code of Criminal Procedure (hereinafter referred to as the 'CrPC'), for further investigation of the matter.

3. The factual position, as pleaded, in the application, in brief, as under:-

3.1. The petitioner had filed the complaint, before the police authority, for taking action against respondents No.2 and 3, however, the police had not taken any action. Consequently, the petitioner had filed the complaint, under Section

156(3) of CrPC, under Sections 323, 324, 341, 283, 287, 288, 504 and 506, read with Section 34 of IPC and Section 5 of the Public Premises Act, before the Court of learned Chief Judicial Magistrate, Shimla, H.P., which has been registered as Case No.67-4 of 17/16, titled as 'Rakesh Kumar Vs. Dharmender @Mahinder & Anr.'.

3.2. Thereafter, the Court of learned Chief Judicial Magistrate, Shimla has directed the concerned SHO to register the case against the persons. Consequently, the police registered FIR No.27/2018, dated 26.02.2018, under Sections 283 and 323 of IPC, with Police Station Sadar, Shimla.

3.3. After registration of the said FIR, the police had filed the charge-sheet only against respondent No.2-Dharminder @Mahinder.

3.4. According to the police, respondent No.3-Uma was neither enquired, nor, associated in the investigation. Subsequently, the petitioner has filed the application, under Section 173(8) of CrPC, before the learned trial Court, highlighting the fact that no enquiry has been made and a prayer has been made to direct the police to further investigate the matter.

3.5. The said application has been dismissed by the learned trial Court, vide order dated 05.10.2023.

3.6. The said order has been assailed, before this Court, mainly on the ground that the learned trial Court, while dismissing the application, has not considered the merits of the case and the impugned order is based upon surmises and conjectures.

4. On the basis of above facts, a prayer has been made to allow the petition, by allowing the application, under Section 173(8) of CrPC, by directing the police to further investigate the matter.

5. As per the documents, annexed with the petition, after passing of the direction, under Section 156(3) of CrPC, the police has registered FIR No.27/2018, dated 26.02.2018, under Sections 283 and 323 of IPC, with Police Station Sadar, Shimla and filed the charge-sheet, only against respondent No.2-Dharmender @Mahinder, whereas, the proceedings, under Sections 107 and 150 of CrPC, were initiated against respondents No.2 and 3, on 07.10.2015.

6. By way of the application, under Section 173(8) of CrPC, reasserting the factual position, about the fact that in the charge-sheet, nothing has been stated about respondent No.3, a prayer has been made for further investigation of the matter, by some higher officials of Police Station Sadar, Shimla.

7. The order, by virtue of which, the application, under Section 173(8) of CrPC, has been dismissed, has also been assailed, on the ground that the police has ignored the direction, dated 23.01.2018, passed by the Court of learned JMFC, Court No.7, Shimla, H.P., when, a specific direction has been made to the concerned SHO to register the FIR and further to investigate the matter.

8. Perusal of the zimni orders, annexed with the petition, shows that after filing the charge-sheet, the learned trial Court has taken the cognizance. Charges have been framed against respondent No.2 and case is now listed for prosecution evidence.

9. When, the case was listed for prosecution evidence, the petitioner had filed the application, under Section 173(8) of CrPC, on the ground that the police has not investigated the matter against respondent No.3-Uma.

10. The said application has been contested by respondent No.2-Dharmender @Mahender, by taking the preliminary objections, regarding the maintainability, as well as, the fact that the application has been filed just to harass the accused and to linger on the matter. Highlighting that no involvement of respondent No.3-Uma was found, a prayer has been made to dismiss the said application.

11. Learned trial Court has dismissed the application, mainly on the ground that the charges have already been framed and at this stage, no direction, under Section 173(8) of CrPC, can be passed, directing further investigation of the matter.

12. In this admitted background, the question, which arises for determination, before this Court, is as to whether the power, which has been vested with the Magistrate, by the Legislature, in its wisdom, can be invoked, at the instance of complainant or not. In this case, in pursuance of the direction of the Court, under Section 156(3) of CrPC, police has registered the FIR, investigated the matter and thereafter, submitted the charge-sheet, only against respondent No.2.

13. Copy of the charge-sheet, annexed with the petition, clearly demonstrates that only the involvement of respondent No.2-Dharmender @Mahender was found. Thereafter, the learned trial Court has taken the cognizance, framed the charges against respondent No.2 and listed the matter for prosecution evidence.

14. The scope of the powers, under Section 173(8) of CrPC, has elaborately been discussed by the Hon'ble Supreme Court in 'Vinubhai Haribhai Malaviya & Ors. Vs. State of Gujarat & Anr.', reported as (2019) 17 Supreme Court Cases 1. Relevant paragraph 42 of the said judgment is reproduced, as under:-

"There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri, Samaj Parivartan Samudaya, Vinay Tyagi, and Hardeep Singh; Hardeep Singh having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and

just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid- way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi* (supra). Therefore, to the extent that the judgments in *Amrutbhai Shambubhai Patel* (supra), *Athul Rao* (supra) and *Bikash Ranjan Rout* (supra) have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Administration)* (1997) 1 SCC 361 and *Reeta Nag v. State of West Bengal and Ors.* (2009) 9 SCC 129 also stand overruled."

15. Judging the facts and circumstances of the present case, in the light of the decision of the Hon'ble Supreme Court in *Vinubhai Haribhai Malaviya's* case (supra), now, this Court will proceed to ascertain the fact as to whether the new facts have been brought to the notice of the Court, by way of application, under Section 173(8) of CrPC, or not.

16. Perusal of the application, under Section 173(8) of CrPC, shows that the application, moved by the petitioner, is nothing, but, a commentary upon the manner, in which, the investigation has been conducted by the police. Nothing material has been elaborated in the application, which material fact has been ignored by the police, while conducting the investigation, after registration of the FIR, in pursuance of the direction of the Court, under Section 156(3) of CrPC.

17. After filing of the charge-sheet, the complainant has equal efficacious remedy, available with him, as, the Court may summon a person, who has not been arrayed as accused, if any evidence is found against the said person, in the evidence, so adduced by the prosecution, by resorting to the provisions of Section 319 of CrPC.

18. In a recent decision of the Hon'ble Supreme Court in '*K. Vadivel Vs. K. Shanthi & Ors.*', Neutral Citation No.2024 INSC 746, the Hon'ble Supreme Court

has again reiterated the scope of powers, under Section 173(8) of CrPC. Relevant paragraphs 33 to 35 of the said judgment are reproduced, as under:-

"33. However, the further investigation cannot be permitted to do a fishing and roving enquiry when the police had already filed a charge-sheet and the very applicant for further investigation, in this case respondent no. 1, has not whispered about anything new in her evidence as is now sought to be averred in the application. There must be some reasonable basis which should trigger the application for further investigation so that the court is able to arrive at a satisfaction that ends of justice require the ordering/permitting of further investigation. In *Hasanbhai Valibhai Qureshi vs. State of Gujarat & Ors.*, (2004) 5 SCC 347), this Court held as under:-

"13. In *Ram Lal Narang v. State (Delhi Admn.)* [1979] 2 SCC 322] it was observed by this Court that further investigation is not altogether ruled out merely because cognisance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case."

34. In *Vinay Tyagi vs. Irshad Ali alias Deepak & Ors.*, (2013) 5 SCC 762, this Court dealing with the aspect of the power of Magistrate to direct further investigation had the following to say:

"41.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."

35. It is essential to note that this Court emphasized that though power to order further investigation is a significant power it has to be exercised sparingly and in exceptional cases and to achieve the ends of justice (see *Devendra Nath Singh vs. State of Bihar & Ors.*, (2023) 1 SCC 48, para 45). Whether further investigation should or should not be ordered is within the discretion of the Magistrate and the said discretion is to be exercised on the facts of each case in accordance with law. This Court also held that in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 Cr.P.C. could be exercised to direct further investigation or even reinvestigation. This Court reiterated the principle that even under Section 482 Cr.P.C. the wide powers are to be exercised fairly with circumspection and in exceptional cases.”

(self-emphasis supplied)

19. In view of the above, the learned counsel for the petitioner could not point out the exceptional circumstances, which require further investigation, in this case, whereas, the petitioner is having a remedy/ opportunity to lead evidence, before the learned trial Court and to get respondent No.3 summoned, as an additional accused.

20. Considering all these facts, this Court is of the view that no error has been committed by the learned trial Court, while rejecting the application, under Section 173(8) of CrPC.

21. Consequently, the present petition is devoid of merit and is accordingly dismissed.

22. Pending miscellaneous application(s), if any, shall also stand disposed of.

23. Any of the observations, made hereinabove, shall not be taken, as an expression of opinion, on the merits of the case, as, these observations are confined only to the disposal of the present petition.