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JUDICIAL MAGISTRATE'S POWER TO DIRECT FURTHER INVESTIGATION EVEN AT THE POST-COGNIZANCE STAGE

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Introduction:

The Hon'ble Supreme Court of India (Supreme Court), vide its recent judgment of Vinubhai Haribhai and Others v The State of Gujarat and Another dated 16 October 2019, (*Vinubhai Case*) arising out of a criminal appeal against an order of the High Court of Gujarat (High Court), has held that a judicial magistrate has wide powers under Section 156(3) read with Section 156(1) and Section 2(h) read with Section 173(8) of the Code of Criminal Procedure, 1973 (CrPC) to direct further investigation, upon an application or *suo moto*, even at post-cognizance stage before the commencement of trial. This judgment assumes significance in view of the earlier judgments, wherein a consistent view had been taken regarding the power accorded under Section 173(8) of the CrPC i.e., such power vested only with the investigating agency and a magistrate had no power to order investigation under the sub-section at a post-cognizance stage.

Facts & Issues:

The issue emanates from application(s) filed by the accused persons before the judicial magistrate (First Class), Surat, (Magistrate) for further investigation citing additional facts that could have incriminated the complainant. The Magistrate dismissed the said application(s) observing that the facts sought to be placed by the accused were in the nature of defence to the allegations in the FIR by the original complainant and therefore, the said facts and evidence(s) may be led during the trial. The accused persons assailed the said order before the High Court, wherein the High Court held that the Magistrate does not possess any power to order further investigation after a charge-sheet has been filed and cognizance has been taken by the concerned magistrate. The said order was challenged by way of an appeal by the accused persons before the Supreme Court (Appeal).

In the Appeal, the following question of law was to be determined by the Supreme Court:

Whether, after a charge-sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding?

Judgment:

The Supreme Court observed that a fair investigation is a pre-requisite of a fair trial and heavily relied upon Article 21 of the Constitution of India, 1950 considering it to be the guiding force for interpretation of all the provisions of the CrPC. . While determining whether a Magistrate has powers to direct such investigation, the Supreme Court held that the Magistrate under Section 156(3) of the CrPC has to ensure a proper investigation. Further, Article 21 mandates all the powers necessary, incidental or implied, are available to the Magistrate to ensure a proper investigation, which without doubt, would include the ordering of further investigation even after receipt of a report under Section 173(2) of CrPC until the trial itself commences, upon an application being made before such Magistrate or even suo moto. The Supreme Court proceeded to interpret the provisions of the CrPC to arrive at the same conclusion as above.

The Supreme Court held that, even textually, the term "investigation" referred to in Section 156(1) of CrPC would, as per the definition of "investigation" under Section 2(h), include all proceedings for collections of evidence conducted by police. Accordingly, this would undoubtedly include proceedings by way of further investigation under Section 173(8) of the CrPC. Therefore, the Magistrate empowered under Section 156 of CrPC to order investigation, shall also be empowered to order further investigation under Section 173(8) of CrPC.

To arrive at the conclusion, the Supreme Court, amongst other judgments, relied upon the judgment of *Kamlapati Trivedi v State of West Bengal (1980) 2 SCC 91*, which recognized that if the magistrate does not agree with the police report, he may order further investigation.

While arriving at the aforesaid conclusion, the Supreme Court also held that the judgment of the Supreme Court in *Devarapalli Lakshminarayana Reddy & Ors. v V. Narayana Reddy & Ors.* (Devarapalli Case) does not enunciate the correct law on the subject as Devarapalli Case did not take into consideration Section 2(h) of CrPC while reading Section 156(3) or Section 173(8) of CrPC nor has the said judgment provided any good reason to restrict a magistrate from exercising such powers. The Supreme Court further, went on to overrule the judgments of *Amrutbhai Shambhubhai Patel v Sumanbhai Kantibhai Patel (2017) 4 SCC 177*, *Athul Rao v State of Karnataka & Anr. (2018) 14 SCC 298*, *Bikash Ranjan Rout v State through Secretary (Home), Government of NCT of Delhi (2019) 5 SCC 542* and *Randhir Singh Rana v State (Delhi Administration) (1997) 1 SCC 361*, to the extent they were contrary to the law laid down in the *Vinubhai Case*.

Comments:

1. While the said judgment paves a way for *bonafide* applicants to approach the magistrate with a request to investigate further, as a corollary, it also gives liberty to the accused persons or other parties in a criminal case to delay the trial by filing applications as a means to derail the proceedings. This is furthered by the absence of specific or exceptional circumstances being prescribed for the exercise of such powers by the magistrate.
2. However, empowering the magistrates to direct further investigation (*even at a post-cognizance stage till commencement of trial*) may reduce the multiplicity of First Information Reports (FIRs) and subsequent cases by cumulative investigation in relation to complaints and counter-complaints amongst parties. This may also allow the magistrates to rectify a flawed investigation carried out by the police. While this may embolden the magistrates to rectify lacunae at a later stage of the proceedings, it may simultaneously increase the number of appellate or revisional proceedings, with each such order of the magistrate being challenged before a

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superior court by the aggrieved party thereby causing further delay as a result of these appeals / revisions / applications.

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