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In The High Court Of Judicature At Allahabad
Sitting At Lucknow

Neutral Citation No. - 2025:AHC-LKO:34233

A.F.R.

Court No. - 15

Case :- APPLICATION U/S 482 No. - 4655 of 2025

Applicant :- Rohit Rajput
Opposite Party :- State Of U.P. Thru. Prin. Secy. Home Lko. And Another
Counsel for Applicant :- Dhirendra Pratap Singh
Counsel for Opposite Party :- G.A.

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Dhirendra Pratap Singh, the learned counsel for the applicant and Sri Anurag Verma, the learned AGA-I for the respondent no. 1-State of U.P.

2. By means of the instant petition filed under Section 528 B.N.S.S., the applicant has challenged the validity of an order dated 17.04.2025 passed by the learned IV Additional Chief Judicial Magistrate / Special Judge MP/MLA, Raebareli in Warrant or Summon Criminal Case No. 12609/2024, arising out of Case crime No. 415/2023, under Sections 406, 506, 420 IPC and Section 138 of the Negotiable Insruments Act, Police Station Kheeron, District Raebareli, whereby the trial court has ordered for returning the pen-drive and cheques to the Investigating Officer for getting the same examined by the Forensic Science Laboratory and submitting its report.

3. The aforesaid case has been registered on the basis of an FIR lodged on 23.09.2023 against the applicant and his brother Rahul Rajpoot and his brother-in-law Krishna Kumar Lodhi stating that the accused persons had extracted Rs. 9 lakhs from the informant for getting his brother employed in a Government Service and they had handed over a forged joining letter of Fertilizer Corporation of India. Upon coming

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to know about the fraud committed by the accused persons, the informant demanded return of his money. They gave a cheque which was returned by the bank unpaid.

4. After investigation, the Investigating Officer submitted a charge-sheet dated 12.07.2024 against the accused persons for offences under Sections 420, 406, 506 IPC and 138 of the NI Act. On 14.07.2024, the Investigating Officer submitted a supplementary charge-sheet stating that the pen-drive containing conversations between the informant and the co-accused Rahul Lodhi and the cheques in question had been sent to the Forensic Science Laboratory. Those have been received back and the same were being attached to the case diary. The investigation stands closed.

5. The trial court took cognizance of the offence on 26.07.2024 and the accused persons were summoned to face the trial.

6. On 17.04.2025, the Investigating Officer gave an application to the trial court stating that the Superintendent of Police had directed him to submit the pen-drive and the cheques relating to the present case to the Forensic Science Laboratory for obtaining a report in respect thereof. Accordingly, the Investigating Officer requested the court for making available the pen-drive and the cheques which are a part of the case diary, for being forwarded to the Forensic Science Laboratory, Lucknow and obtaining a report in respect thereof.

7. The trial court has allowed the application by means of the impugned order dated 17.04.2025 holding that the pen-drive and the cheques are important prosecution evidence and the same had been returned by the Forensic Science Laboratory because of some deficiencies in the docket. The Investigating Officer did not send the pen-drive and the cheques again to the Forensic Science Laboratory, which shows negligence on the part of the then Investigating Officer. The pen-drive contains the recording of conversations between the complainant and the accused, which is an important piece of evidence and its forensic examination is necessary for a just decision of a matter. The Investigating Officer has failed to get the same examined by the

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Forensic Science Laboratory in order to give undue advantage to the accused persons.

8. The trial court accepted the application, ordered returned of the pen-drive and the cheques to the Investigating Officer for being examined by the Forensic Science Laboratory and for submitting its report. The trial court further ordered institution of departmental proceedings against the then Investigating Officer for his negligence in conducting investigation of the case.

9. Assailing the validity of the aforesaid order, the learned counsel for the applicant has submitted that after submission of the charge-sheet and closure of investigation, the Investigating Officer had no authority to demand return of the pen-drive and cheques for carrying out further investigation. He has relied upon the decisions of the Hon'ble Supreme Court in the case of **Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel**: (2017) 4 SCC 177 and **Athul Rao v. State of Karnataka**: (2018) 14 SCC 298.

10. Replying to the aforesaid submissions, Sri Anurag Verma, the learned AGA-I has submitted that the cases relied upon by the learned counsel for the applicant have been overruled by the Hon'ble Supreme Court in its latter judgment in the case of **Vinubhai Haribhai Malaviya v. State of Gujarat :** (2019) 17 SCC 1. Sri. Verma has also relied upon a decision rendered by a Division Bench of this Court in **Jitendra Singh @ Bablu v. State of U.P. & Ors**.: 2023 (4) ACR 3507.

11. In **Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel**: (2017) 4 SCC 177, a Bench consisting of two Hon'ble Judges of the Hon'ble Supreme Court held that: -

> ***"49.*** *On an overall survey of the pronouncements of this Court on the scope and purport of Section 173(8) of the Code and the consistent trend of explication thereof, we are thus disposed to hold that though the investigating agency concerned has been invested with the power to undertake further investigation desirably after informing the court thereof, before which it had submitted its report and obtaining its approval, no such power is available therefor to the learned Magistrate after cognizance has been taken on the basis of the earlier report, process has been issued and the accused has entered appearance in response*

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> *thereto. At that stage, neither the learned Magistrate suo motu nor on an application filed by the complainant/informant can direct further investigation. Such a course would be open only on the request of the investigating agency and that too, in circumstances warranting further investigation on the detection of material evidence only to secure fair investigation and trial, the life purpose of the adjudication in hand."*

12. The aforesaid ratio was followed by another Bench consisting of two Hon'ble Judges of the Hon'ble Supreme Court in **Athul Rao v. State of Karnataka**: (2018) 14 SCC 298.

13. However, in **Vinubhai Haribhai Malaviya v. State of Gujarat**: (2019) 17 SCC 1, a Bench consisting of three Hon'ble Judges of the Hon'ble Supreme Court held that: -

> ***"42.*** *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 [Sakiri Vasu v. State of U.P., (2008) 2 SCC 409], Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407], Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762], and Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92;* ***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 midway 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) CrPC, as has been noticed hereinabove, and would be available***

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> ***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 inculpating 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 [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347]. Therefore,* ***to the extent that the judgments in Amrutbhai Shambhubhai Patel, Athul Rao and Bikash Ranjan Rout have held to the contrary, they stand overruled****. Needless to add, Randhir Singh Rana v. State (Delhi Admn.) [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] and Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129] also stand overruled."*

14. The learned Counsel for the applicant has cited two judgments of the Hon'ble Supreme Court, both of which stand expressly overruled in **Vinubhai Haribhai Malaviya v. State of Gujarat**: (2019) 17 SCC 1 decided on 16.10.2019.

15. In **State of Orissa v. Nalinikanta Muduli**: (2004) 7 SCC 19, faced with a similar situation, the Hon'ble Supreme Court observed that: -

> ***"6.*** *It is strange that a decision which has been overruled by this Court nearly a quarter of a century back was cited by the Bar and the Court did not take note of this position and disposed of the matter placing reliance on the said overruled decision. It does not appear that the decision of this Court reversing the judgment of the High Court was brought to the notice of the learned Single Judge who was dealing with the matter.* ***It is a very unfortunate situation that learned counsel for the accused who is supposed to know the decision did not bring this aspect to the notice of the learned Single Judge. Members of the Bar are officers of the court. They have a bounden duty to assist the court and not mislead it. Citing judgment of a court which has been overruled by a larger Bench of the same High Court or this Court without disclosing the fact that it has been overruled is a matter of serious concern.*** *...* ***We can only express our anguish at the falling standards of professional conduct****..."*

16. In present times, when the judgments are available on online portals, checking whether a judgment has been overruled, is very easy

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compared to the previous times when the judgments were available only in journals published in book forms and there was a possibility of a person missing the subsequent judgment overruling a previous judgment. Nowadays, the online portals prominently highlight that a particular judgment has been overruled and, in these circumstances, citing an overruled judgment is a matter of even greater concern. The learned Counsel for the applicant is cautioned to be careful in future and not repeat this conduct.

17. Sri. Anurag Verma has also relied upon a judgment rendered by a Division Bench of this Court in **Jitendra Singh v. State of U.P.**: 2023 SCC OnLine All 2328 = 2023 (4) ACR 3525, wherein it was held that: -

> ***"32.*** *...it is settled principles of law that the police has a right to further investigate the matter even after the submissions of the charge-sheet/report before the learned Magistrate and even after the Magistrate had taken cognizance of the report/charge-sheet. In exercise of power under Section 173(8) CrPC of the Code, it has been statutorily recognised that there is no statutory requirement that before initiating further investigation, investigation agency must take permission of the Magistrate concerned. Further, investigation is very distinct from the reinvestigation/de novo investigation or fresh investigation. Further investigation is the continuance of the investigation, which has already been done and on discovery of new facts or the facts which were left out during the investigation. Whereas in the case of the fresh, denovo or reinvestigation, the investigation already done is required to be wiped out and investigation is required to begun from its inception. Further investigation can be carried out even without any permission from the Magistrate concerned. However, fresh, de-novo or reinvestigation cannot be done without the specific orders by the competent court."*

18. Keeping in view the law as clarified by the Hon'ble Supreme Court in in **Vinubhai Haribhai Malaviya** (Supra) and by a Division Bench of this Court in **Jitendra Singh** (Supra), I am of the considered view that the trial court has acted well within its jurisdiction to order examination of the pen-drive and cheques in question by the Forensic Science Laboratory, Lucknow so as to enable it to arrive at a just decision in the matter.

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19. The inherent powers of this Court under Section 582 BNSS are meant to be exercised to make such orders as may be necessary to prevent abuse of the process of any court or otherwise to secure the ends of justice. Any interference in the impugned order dated 17.04.2025 passed by the trial court would not secure the ends of justice, rather it will create unwarranted hurdle in securing the ends of justice.

20. The impugned order does not suffer from any illegality warranting interference by this Court.

21. The application under Section 582 BNSS lacks merit and the same is accordingly ***dismissed***.

(Subhash Vidyarthi, J.)

Order Date: 30.05.2025
Pradeep/-