



2026:AHC:160663-DB

Reserved
A.F.R.

HIGH COURT OF JUDICATURE AT ALLAHABAD

CRIMINAL MISC. WRIT PETITION No. - 3009 of 2026

Rakesh Kumar Tiwari

.....Petitioner

Versus

State of U.P. and others

.....Respondents

Counsel for the Petitioner	: Aditya Gupta, Pranav Tiwary
Counsel for the Respondents	: Pramod Kumar, G.A.

Along with:

1. **Criminal Misc. Writ Petition No. 4700 of 2026**
Rekha Verma

Versus

State of U.P. and others

And

2. **Criminal Misc. Writ Petition No. 2246 of 2026**
Raj Bahadur

Versus

State of U.P. and others

In Chamber

HON'BLE J.J. MUNIR, J.
HON'BLE TARUN SAXENA, J.

(Delivered by Hon'ble J.J. Munir, J.)

1. By this judgment, we propose to decide the present writ petition and connected Criminal Misc. Writ Petition Nos. 4700 of 2026 and 2246 of 2026.

2. This writ petition and the connected writ petitions have been instituted seeking to quash the order dated 05.12.2025 passed by the Joint Commissioner of Police, Crime and Headquarters, Kanpur Nagar in Case Crime No. 0254 of 2021, under Sections 302 and 120-B of the Indian Penal Code, 1860 (for short, 'IPC'),

Police Station Nawabganj, District West (Commissionerate Kanpur Nagar).

3. While the leading writ petition has been instituted by Rakesh Kumar Tiwari, the connected matters are those in which Rekha Verma and Raj Bahadur, co-accused in the crime, are the petitioners.

4. Heard Mr. Manish Tiwari, learned Senior Advocate assisted by Mr. Aditya Gupta, learned Counsel for the petitioner in Criminal Misc. Writ Petition Nos. 3009 of 2026 and 2246 of 2026, Mr. Gopal Swaroop Chaturvedi, learned Senior Advocate assisted by Mr. Varun Gupta, learned Counsel for the petitioner in Criminal Misc. Writ Petition No. 4700 of 2026. Mr. Sarvesh, learned Senior Advocate assisted by Mr. Pramod Kumar, learned Counsel appearing on behalf of respondent no.5 and Mr. Manish Goyal, learned Additional Advocate General assisted by Mr. Pankaj Saxena, learned AGA appearing on behalf of the State have been heard in all the three writ petitions.

5. We proceed to notice the facts from the leading case. A First Information Report ('FIR' for short) was lodged by respondent no.5, Narendra Dev, on 23.12.2021 at 01:47 hours, giving rise to Case Crime No. 0254 of 2021, under Sections 302 and 120-B IPC, Police Station Nawabganj, District West (Commissionerate Kanpur Nagar), in connection with an incident that happened on 22.12.2021 at 19:15 hours. The informant, who is respondent no.5 here, said in the FIR, that he lodged, that on 22.12.2021 at 7.15 p.m., his father Rajaraj Verma was inside his house, when he received a phone call on his mobile phone. Upon hearing the phone call, he went out of the house to the main gate. At that time, a shot rang out, hearing which the informant and other members of the family rushed towards the gate. The informant and the others, who had gone there, saw in the light on the gate that two unknown men, with country-made pistols in hand, hurriedly mounted a standing motorcycle and escaped towards

Patrakarpuram. The informant's father was lying on the ground injured with a gunshot wound to his temple. The informant, with the assistance of others, conveyed the injured to the Hallet Hospital. After primary medical aid, in a serious condition, the injured was shifted to the Regency Hospital. The doctors here declared the informant's father dead. He says that his father died on account of the gunshot injury he received. It is also said by the first informant that if confronted, he could recognize the unknown assailants. It is also said in the FIR that his father had a land dispute with the owners of N.R.I. City and Raj Bahadur son of Nand Kishor, stretching over a considerable period of time. The informant also said that he had firm faith that these N.R.I. City owners and Raj Bahadur had conspired amongst themselves to get his father murdered. The informant requested necessary action in the matter.

6. An autopsy followed, where it is opined that death was caused due to coma, as a result of ante-mortem head injury. A solitary firearm wound of entry 1 x 1 cm, circular in shape, with inverted margins and blackening and tattooing around the wound just about the ear, was noticed.

7. The Investigating Officer recorded the statement of the first informant on 23.12.2021, where he reiterated the FIR allegations. During the course of investigation, the Investigating Officer received information that the assault had been carried out by two men, to wit, Dilanyaz @ Rehan son of Anwar Taj and Rohit Yadav son of Ramesh Singh Yadav. Both these men were arrested by the Police and a country-made pistol of 0.315 caliber recovered from the accused Dilanyaz @ Rehan. After the accused were arrested, their mobile phones were recovered and several audio recordings were also noticed. These facts are recorded in CD-3 dated 25.12.2021. During the course of investigation, the names of two other accused, Ankit Yadav and Ram Khelawan, surfaced, and, therefore, both of them were also arraigned as accused.

8. The Police recorded the statement of Vijay Laxmi, daughter of the deceased Rajaraj Verma, on 27.12.2021. There, it would be noticed that she said that the accused Ram Khelawan held enmity and grudge against her father and may be got him killed. She has also said that her father had told her that the accused Ram Khelawan spoke to a lot of people about getting him killed in order to deal with the property related disputes. A second statement of Vijay Laxmi was recorded by the Police on 13.01.2022. Amar Singh's statement was also recorded by the Investigating Officer on 13.01.2022. He is an advocate and claims to have met Rajaraj Verma in the District Court.

9. The Investigating Officer obtained orders from the Court to take voice sample of the accused Dilanyaz @ Rehan and Ankit Yadav, since the conversation relating to the murder of Rajaraj Verma was recorded in the accused Dilanyaz @ Rehan's mobile phone. This fact finds mention in CD-16 dated 18.01.2022. The statement of the informant Narendra Dev was again recorded by the Investigating Officer on 03.03.2022. A perusal of this statement shows that the accused Ram Khelawan and others conspired to murder the first informant's father. During the course of investigation, the Investigating Officer collected relevant electronic evidence and found that the call, which was made immediately before Rajaraj Verma's murder, was made by the accused Dilanyaz @ Rehan. Further, the evidence showed that after interacting with Rajaraj Verma, the accused Dilanyaz @ Rehan talked to co-accused Ankit Yadav and Ankit Yadav spoke to Ram Khelawan. Upon this material being found, the Investigating Officer concluded that all the said accused had conspired with each other to commit Rajaraj Verma's murder. These facts find mention in CD-28 dated 21.03.2022.

10. After carrying out a thorough investigation, the Investigating Officer filed a charge-sheet dated 22.03.2022 against Dilanyaz under Sections 302, 120-B and 420 IPC, against Rohit Yadav,

Ankit Yadav and Ram Khelawan under Sections 302, 120-B IPC, and the investigation against Raj Bahadur and owners of the N.R.I. City was kept pending. These facts find mention in CD-30 dated 22.03.2022. The investigation was carried out against the remaining accused, who were not charge-sheeted, but the petitioner's name never surfaced nor was he ever arrayed as an accused in this case until that time. Further, no evidence was found against Raj Bahadur and his name was also deleted from the list of accused, who were under investigation *vide* CD-34 dated 02.06.2022. The Investigating Officer took on record the Forensic Science Laboratory (FSL) Report dated 24.07.2023, where it was opined that the voice sample was found to be "optimum probable similar". The said report has been recorded in CD-49 dated 25.08.2023.

11. The Court took cognizance of the charge-sheet and summoned the accused to stand their trial. The case was committed to the Sessions, where it was numbered as Sessions Trial No. 452 of 2022. Charges in Sessions Trial No. 452 of 2022 were framed against the accused, to wit, Dilanyaz @ Rehan, Ram Khelawan, Rohit Yadav and Ankit Yadav on 07.09.2022 by the learned Sessions Judge, Kanpur Nagar. After framing of charges, the informant Narendra Dev was produced by the prosecution and examined as PW-1 on 27.07.2023. After PW-1's testimony had been heard, the petitioner says, that a frivolous application under Section 319 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') was moved by the informant Narendra Dev on 06.05.2024, praying that Raj Bahadur (the petitioner in Criminal Misc. Writ Petition No. 2246 of 2026) and Smt. Rekha Verma (the petitioner in Criminal Misc. Writ Petition No. 4700 of 2026) be summoned under Section 319 Cr.P.C. to face trial. The said application under Section 319 Cr.P.C. was not pressed by the informant on 31.08.2024 with a prayer to file a fresh application.

12. An application under Section 319 Cr.P.C. dated 19.09.2024 was again filed with the same prayer to summon Raj Bahadur and Smt. Rekha to face trial. The petitioner says that the said application, to the best of his knowledge, is still pending. It is next said by the petitioner that for reasons best known to the informant, during the pendency of the application under Section 319 Cr.P.C., an application for further investigation was moved by the informant regarding the incident, subject matter of trial, on 25.04.2025. This application was again presented on 18.11.2025.

13. The petitioner comes up with a case that despite the application with a prayer before the Court to permit further investigation in the case, the Joint Commissioner of Police, Crime and Headquarters, Kanpur Nagar passed the impugned order dated 05.12.2025, ordering further investigation by respondent no.4, without taking leave or permission of the Court, where the trial is pending. The S.H.O., P.S. Moolganj, District Kanpur Nagar, in an arbitrary manner, informed the Court through an application, not at all framed as one made on the judicial side, but like a letter addressed to the Court, that the Joint Commissioner of Police, Crime and Headquarters, Kanpur Nagar, on the informant's application, has decided to order further investigation in the case under Section 173(8) Cr.P.C./ 193(9) of the Bharatiya Nagarik Suraksha Sanhita, 2023 ('BNSS' for short). There are then allegations that the petitioner is an Advocate and there is an attempt to falsely implicate him in the present crime because he appeared in the Court on behalf of Raj Bahadur son of Bhola, an accused in the trial. There are also allegations of illegal detention against the Police, harassment etc., but for the purpose of the present petitions, we are not inclined to go into those allegations.

14. The question, that appears to be central to the issue involved in these petitions, is if without seeking leave of the Court under Section 173(8) Cr.P.C. or 193(9) BNSS, a police officer could direct further investigation.

15. Learned Counsel for the parties have addressed us at length on the said issue, both on the law and facts, if the prosecution had indeed made an application to the Court seeking leave to further investigate, which the Trial Court permitted.

16. In the short counter affidavit dated 01.04.2026, our attention has been invited to the application dated 17.12.2025 moved by Pawan Kumar Singh, an Inspector of Police, and the In-charge, P.S. Moolganj, District Kanpur Nagar. The application moved by the Inspector, Moolganj reads:

"रिपोर्ट P.S. मूलगंज कमि0 कानपुर नगर

सेवा में,

न्याया ० श्रीमान ADJ-II महोदय
कानपुर नगर

महोदय,

निवेदन है कि मु० अ० सं० 254/21 धारा-302, 120-B IPC थाना नवाबगंज कानपुर नगर वादी श्री नरेन्द्र देव अधिवक्ता नि० 15 गंगानगर सहकारी आवास विकास समिति नवाबगंज कानपुर नगर द्वारा श्रीमान पुलिस आयुक्त महोदय कानपुर नगर को सम्बोधित प्रा० पत्र के माध्यम से अभियोग उपरोक्त में कतिपय बिन्दुओं पर धारा 173(8) Cr.P.C. के अन्तर्गत अग्रतर विवेचना कराये जाने हेतु अनुरोध किया है। वादी मुकदमा के प्रा० पत्र पर वर्णित तथ्यों/ आरोपों की जांच ADCP पश्चिमी महोदय द्वारा जाँच के उपरान्त उपलब्ध आख्या के आधार पर श्रीमान JCP अपराध एवं मुख्यालय कानपुर नगर महोदय द्वारा नवीन तथ्यों के आलोक में अभियोग उपरोक्त में अग्रतर विवेचना अन्तर्गत धारा-173(8) Cr.P.C./ 193(9) BNSS कराये जाने का आदेश पारित किया गया है। अभियोग उपरोक्त में तत्कालीन विवेचक द्वारा आरोप पत्र सं० 24/ 2022 दि० 22.3.22 प्रेषित कर समाप्त कर दी गयी है। जिसके समस्त प्रपत्र मा० न्या० में दाखिल हैं। श्रीमान JCP अपराध एवं मुख्यालय कानपुर नगर महोदय द्वारा अभियोग की अग्रतर विवेचना हेतु मुझ प्रभारी निरीक्षक को आदेशित किया है।

अतः महोदय से निवेदन है कि मु० अ० सं० 254/21, धारा-302/120-B IPC, P.S. नवाबगंज कानपुर नगर से सम्बन्धित केस डायरी एवं संलग्नक की प्रति के अवलोकन करने एवं आवश्यक प्रपत्रों हेतु लिपिक को निर्देशित करने की कृपा करें।

रिपोर्ट सेवा में प्रेषित है।

ह० अपठनीय
(पवन कुमार सिंह)
प्र० नि०/ विवेचक
P.S. मूलगंज
कानपुर नगर

सत्रवाद लिपिक नियमानुसार कार्यवाही सुनिश्चित करायें।

ह० अपठनीय

17.12.25"

17. So far as the law is concerned, whether a police officer, while a case is pending in Court, is competent to direct further investigation with reference to the provisions of Section 173(8) Cr.P.C., is crystal clear. He cannot. No police officer, of howsoever high a rank, can direct further investigation in a case governed by the Cr.P.C. unless the Police obtain leave of the Court to investigate further. This position of the law under Section 173(8) Cr.P.C. has come to be settled, even though there is no express embargo under the said Code, requiring the Police to seek permission of the Court.

18. The position of the law, judicially settled, has now come to be legislatively mandated under the BNSS, where Section 193(9) of the BNSS reads:

“193. Report of police officer on completion of investigation.

(9) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (3) 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 as the State Government may, by rules, provide; and the provisions of sub-sections (3) to (8) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (3):

Provided that further investigation during the trial may be conducted with the permission of the Court trying the case and the same shall be completed within a period of ninety days which may be extended with the permission of the Court.”

19. The proviso to sub-section (9) of Section 193 Cr.P.C. places a firm statutory embargo on the power of the Police to further investigate during trial and the embargo is that further investigation can be conducted with permission of the Court trying the case. Now, to turn to the law laid down in connection with the provisions of the Cr.P.C., where the statute did not carry an embargo of the kind now engrafted in the proviso to sub-section (9) of Section 193 BNSS. No purpose would be served by tracing the entire history of the law, the way it has developed through successive pronouncements of the Supreme Court. It would suffice to refer **Pramod Kumar and others v. State of Uttar**

Pradesh and others, (2026) 5 SCC 308, where noticing all earlier developments in the law, it was held:

“Analysis

26. The power of the investigating agency to order further investigation in any criminal case is derived from the aegis of Section 173(8)CrPC [also refer to Section 193(9) BNSS], which is reproduced as follows:

“173. (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 or reports as they apply in relation to a report forwarded under sub-section (2).”

27. Thus, the powers of the investigating agency for further investigation are not in dispute herein. However, what catches attention here and which is also the crux of the controversy in the present case, is which authority can pass an order directing investigating agency to undertake further investigation under Section 173(8)CrPC.

28. The issue regarding the procedure to be followed for directing further investigation in a case has been dealt with by this Court in *Vinay Tyagi* [*Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762: (2013) 4 SCC (Cri) 557] wherein this Court while dealing with the contours of Section 173(8)CrPC relating to further investigation, propounded that the police ought to follow the procedure of seeking permission from the Court to conduct “further investigation” and file a supplementary charge-sheet. The relevant paragraphs from the judgment are reproduced as under: (SCC p. 790, para 40)

“40. Having analysed the provisions of the Code and the various judgments as aforeindicated, 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:

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

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

40.3. The view expressed in sub-para 40.2 above is in conformity with the principle of law stated in *Bhagwant Singh case* [*Bhagwant Singh v. Commr. of Police*, (1985) 2 SCC 537: 1985 SCC (Cri) 267] by a three-Judge Bench and thus in conformity with the doctrine of precedent.

40.4. 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).

40.5. 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.

40.6. It has been a procedure of propriety that the police has to seek permission of the court to continue “further investigation” and file supplementary charge-sheet. 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.”

(emphasis supplied)

29. In this very judgment, this Court while noting that although there is no explicit mandate under Section 173(8)CrPC to seek leave of the Court before conducting further investigation, nevertheless, over the time, a practice has been developed to seek permission of the Court. Therefore, the practice of seeking the leave of the Court will have to be read into the provisions of Section 173(8)CrPC, and it is essentially a prerequisite for directing further investigation. This Court therein held as follows: (*Vinay Tyagi case* [*Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762: (2013) 4 SCC (Cri) 557] SCC p. 793, paras 49-50)

“49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct “further investigation” or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct “further investigation” and file “supplementary report” with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct “further investigation” and/or to file a “supplementary report” will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.

50. Such a view can be supported from two different points of view: firstly, through the doctrine of precedent, as aforenoticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of contemporanea expositio. Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused.”

(emphasis supplied)

30. The proposition of the law laid down in *Vinay Tyagi* [*Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762: (2013) 4 SCC (Cri) 557] has been further affirmed by the three-Judge Bench of this Court in *Vinubhai Haribhai Malaviya v. State of Gujarat* [*Vinubhai Haribhai Malaviya v. State of Gujarat*, (2019) 17 SCC 1: (2020) 3 SCC (Cri) 228] .

31. This Court has dealt with a similar situation in *Peethambaran v. State of Kerala* [*Peethambaran v. State of Kerala*, (2024) 16 SCC 65] wherein the District Police Chief i.e. Superintendent of Police, ordered further investigation. This Court therein, while quashing the order passed by the District Police Chief, held that the power to order further investigation rests either with the Magistrate concerned or a higher court, but not with the investigating agency. The relevant paragraphs from the judgment are reproduced as follows: (SCC pp. 74 & 77, paras 19-20 & 28)

“19. The Chief Police Officer of a district is the Superintendent of Police who is an officer of the Indian Police Service. Needless to state, an order from the District Police Chief is not the same as an order issued by the Magistrate concerned. Referring to Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762: (2013) 4 SCC (Cri) 557] this Court in Devendra Nath Singh v. State of

Bihar [Devendra Nath Singh v. State of Bihar, (2023) 1 SCC 48: (2023) 1 SCC (Cri) 270] noted that there is no specific requirement to seek leave of the court for further investigation or to file a supplementary report but the investigating agencies, have not only understood it to be so but have also adopted the same as a legal requirement. The doctrine of contemporanea expositio aids such an interpretation of matters which have been long understood and implemented in a particular manner to be accepted into the interpretive process. *In other words, the requirement of permission for further investigation or to file a supplementary report is accepted within law and is therefore required to be complied with.*

20. In the facts at hand, it is clear that such a permission was never taken, granted or ordered. Consequently, FR-II is without basis. In FR-I it has been stated that in the absence of any documents in respect of the financial transactions, the instant case may be treated as a false case. This, then would necessarily imply that after due investigation conducted by a duly authorised person, the conclusion is that the ingredients of the section mentioned in the FIR have not been met and no case is made out.

28. In terms of second question, the above discussion makes clear that the District Police Chief, Kottayam could not have ordered further investigation, as that power rests either with the Magistrate concerned or with a higher court and not with an investigating agency.”

(emphasis supplied)

32. In light of the legal position as settled by this Court through the above judgments, it is safe to say that the power to direct further investigation in a case rests solely at the discretion of the Magistrate/Court concerned. In the event, the police/investigating agency is of the opinion that further investigation is necessary in any particular case to cull out complete facts and truth in the case, it is binding upon them to file an appropriate application before the Magistrate/Court, without directing an order for further investigation by themselves. Once such an application is filed by the investigating agency, the Magistrate/Court would apply its judicial mind, in light of the facts and circumstances of the particular case and the reasons demonstrated by the investigating agency, in order to exercise its discretion for exercise of its power to decide whether or not further investigation is to be ordered under the purview of Section 173(8)CrPC.

33. In the present case, the Under Secretary to the State of Uttar Pradesh, *vide* its Letter dated 6-6-2019, directed that the investigation in the matter would be conducted by CBCID. The Under Secretary also recommended that further investigation under Section 173(8)CrPC be conducted through its letter addressed to NHRC dated 12-2-2021. Consequently, the investigating officer of CBCID wrote a letter dated 22-4-2021 to the Judicial Magistrate, Firozabad, requesting to grant permission to conduct further investigation under Section 173(8)CrPC and provide a copy of the case diary. However, the Court did not pass any order to the extent of requisitioning the investigating officer to conduct further investigation.

34. Further, *vide* letter dated 26-4-2021, the Superintendent of Police informed the Additional Superintendent of Police/Divisional Officer, Crime Branch, AAD, Agra, about the nomination of the IO in the present case and directed him to complete the investigation expeditiously, submit monthly progress reports, and forward the final report upon completion of the investigation.

35. Thus, it is amply clear that the Superintendent of Police acted in complete defiance of the procedure laid down under the law while passing orders directing further investigation without seeking leave of the Court. It is an unbecoming conduct from the officer of such a rank to exercise unfettered powers, in excess of its jurisdiction, thereby undermining the authority vested in the court of law.

36. The learned AAG relied upon the judgment of this Court in *Dharam Pal* [*Dharam Pal v. State of Haryana*, (2016) 4 SCC 160: (2016) 2 SCC (Cri) 259] to suggest that the investigating agency has unrestricted powers to conduct further investigation and is only required to inform the Court about the same. However, we find the reliance placed by the learned AAG to be misplaced as the facts of the said case are completely in contrast with the present one. In *Dharam Pal* [*Dharam Pal v. State of Haryana*, (2016) 4 SCC 160: (2016) 2 SCC (Cri) 259] this Court was dealing with a situation wherein the complainant sought transfer of the investigation to the CBI, alleging several lapses in the investigation. The High Court declined such a transfer, noting that the trial had already commenced and several witnesses had been examined. This Court, therein, while setting aside the judgment of the High Court, transferred the investigation (*de novo*) to the CBI and held that the Constitutional Courts can direct fresh/de novo/reinvestigation. Additionally, in *Dharam Pal* [*Dharam Pal v. State of Haryana*, (2016) 4 SCC 160: (2016) 2 SCC (Cri) 259] this Court, while referring to *Vinay Tyagi* [*Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762: (2013) 4 SCC (Cri) 557] has held that the Magistrate is empowered to direct “further investigation” as per its discretion based upon the facts and circumstances of the case.”

20. The principles of law adumbrated in **Pramod Kumar** (*supra*) leave no manner of doubt that the Police have no power to direct further investigation through the pen of a superior officer unless leave of the Court, trying the case, or even the Magistrate, is obtained for the purpose.

21. Confronted with the above situation, the learned Additional Advocate General laid great emphasis on the application dated 17.12.2025 moved by the Investigating Officer saying that this was an application seeking leave to further investigate and it was allowed. We do not think so. Rather, a reading of the application shows that the Investigating Officer informed the Court that the Joint Commissioner of Police, Crime and Headquarters, Kanpur Nagar, considering the new facts that have come to light, has passed orders under Section 173(8) Cr.P.C./ 193(9) BNSS to further investigate the matter. The application then says that in connection with the said crime, the former Investigating Officer has filed a charge-sheet dated 22.03.2022 and concluded the investigation. Under orders of the Joint Commissioner of Police, the investigation had now been entrusted to the Investigating Officer making the application, who has been ordered to further investigate the case. It is on the basis of these averments that Pawan Kumar Singh, Inspector, P.S. Moolganj, District Kanpur Nagar, the newly appointed I.O., all made in compliance

with the order impugned passed by the Joint Commissioner of Police, without leave of the Court to further investigate, has come up with a prayer that he may be permitted to peruse the case diary, its annexures and necessary documents, and for the purpose, direction may be given to the Clerk. It is on this application that the Court passed the order dated 17.12.2025, directing the Sessions Clerk to take steps according to law.

22. In our considered opinion, the application dated 17.12.2025 is not at all an application seeking permission to further investigation made to Court. Rather, it is a very arrogantly worded application, which informs the Court that the Joint Commissioner of Police has already taken a decision to direct further investigation under Section 173(8) Cr.P.C./ 193(9) BNSS, and in compliance with the said direction, the person making the application had been appointed the Investigating Officer. This Investigating Officer has sought permission of the Court to peruse the case diary, its annexures and documents, in order to discharge his duties of further investigation, which he derives from the impugned order dated 05.12.2025 passed by the Joint Commissioner of Police, Crime and Headquarters, Kanpur Nagar. This application is by no means an application moved by the Investigating Officer to the Court, seeking permission to further investigate the crime on the basis of some information subsequently coming to his knowledge. It is rather an application conveying to the Court orders of further investigation passed by the Joint Commissioner of Police, with a prayer to facilitate the Investigating Officer applying, in doing his duty of further investigation.

23. We are of clear opinion that bearing in mind the law laid down in **Pramod Kumar** and the consistent chain of authority in **Vinay Tyagi v. Irshad Ali**, (2013) 5 SCC 762; **Vinubhai Haribhai Malaviya v. State of Gujarat**, (2019) 17 SCC 1; and,

Peethambaran v. State of Kerala, (2024) 16 SCC 65, the Joint Commissioner of Police had no authority or jurisdiction to pass the impugned order. If the Joint Commissioner of Police was of opinion that further investigation was necessary, he should have made a humble application to the learned Trial Judge, may be through the Investigating officer, seeking permission to further investigate, whether referable to Section 173(8) Cr.P.C. or 193(9) BNSS. The impugned order passed by the Joint Commissioner of Police, Crime and Headquarters, Kanpur Nagar dated 05.12.2025 is absolutely without jurisdiction and fit to be quashed.

24. It goes without saying that if the Joint Commissioner of Police or Police Officer of any rank, having concern with the matter, is of opinion that further investigation is necessary, a proper application has to be made to the Trial Judge and it is only if and after the learned Judge grants permission that the Police can further investigate the matter; not otherwise.

25. In the result, all the three writ petitions succeed and are **allowed**. The impugned order dated 05.12.2025 passed by the Joint Commissioner of Police, Crime and Headquarters, Kanpur Nagar is hereby **quashed**. It will be open to the Police to make an application to the learned Trial Judge seeking permission to further investigate the matter, either under the provisions of Section 173(8) Cr.P.C. or 193(9) BNSS, whichever is attracted, and it is only after the learned Judge grants permission that the Police can hold further investigation. It goes without saying that any investigation that has been held so far pursuant to the impugned order passed by the Joint Commissioner of Police, Crime and Headquarters, Kanpur Nagar dated 05.12.2025 would be *non est* and struck off the record.

26. Let this judgment be communicated to the learned Sessions Judge, Kanpur Nagar, the Commissioner of Police, Kanpur Nagar,

the Joint Commissioner of Police, Crime and Headquarters,
Kanpur Nagar by the Registrar (Compliance).

(Tarun Saxena,J.) (J.J. Munir,J.)

Anoop

This judgment has been pronounced in terms of sub-Rule
(2) of Rule 1 of Chapter VII of the Rules of the Court, 1952.

(Tarun Saxena,J.)

August 03 2026

Anoop