2025:PHHC:117709

(127) IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-46237-2025
Date of Decision: 26.08.2025

GURMEET SINGH

... Petitioner

Versus

STATE OF HARYANA

...Respondent

CORAM: HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Arpandeep Narula, Advocate
for the petitioner.

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JASJIT SINGH BEDI, J.

The prayer in the present petition under Section 528 of BNSS, 2023 is for quashing of the FIR No.0016 dated 18.01.2017 initially registered under Sections 120-B, 406, 420, 506 (subsequently added Sections 201 & 109 IPC) at Police Station Ellenabad, District Sirsa (Annexure P-1), the final Report No.1B dated 06.03.2025 (Annexure P-8) qua the petitioner and all consequential proceedings arising therefrom.

2. The brief facts of the case are that the petitioner who was the initial complainant got registered an FIR No.0016 dated 18.01.2017 under Sections 120-B, 406, 420, 506 (subsequently added Sections 201 & 109 IPC) at Police Station Ellenabad, District Sirsa against six accused persons alleging that the accused in connivance with each other had fraudulently induced the petitioner to pay a sum of Rs.42,00,000/- approximately under the false pretext of securing his son Amritpal Singh a job as an Assistant Sub-Inspector in the Chandigarh Police with the aid of unnamed politicians and senior

police officials. Later, when the son of the complainant was not provided employment as promised, he sought the return of the same. The accused repaid a sum of Rs.2 lakhs and sought time to repay the remaining amount. However, they did not do so and to the contrary, threatened him with false implication in cases. The copy of the FIR No.0016 dated 18.01.2017 under Sections 120-B, 406, 420, 506 (subsequently added Sections 201 & 109 IPC) Police Station Ellenabad, District Sirsa is attached as Annexure P-1 to the petition.

3. The report under Section 173(2) Cr.P.C. was presented against accused Navraj and Azadwinder Singh while stating that accused Kashmir Kaur, Nachhattar Singh, Gurbhej Singh and Balvir Singh were yet to be arrested. The copy of the first challan dated 28.07.2017 is attached as Annexure P-2 to the petition.

4. Navraj Singh and Azadwinder Singh approached this Court seeking grant of regular bail vide CRM-M-39182-2017 titled as Navraj Singh & another Vs. State of Haryana. This Court vide order dated 08.02.2018 observed as under:-

> *"Even if the version of the complainant is taken to be as gospal truth, he would be seen as a party to the scam and would be required to be nominated as an accused as well.*
>
> *Let an affidavit of the Superintendent of Police, Sirsa be filed in response to the observations made by this Court in this order."*

The copy of the order dated 08.02.2018 is attached as Annexure P-3 to the petition.

5. In compliance of the aforementioned order, the Superintendent of Police, Sirsa filed an affidavit stating before this Court that an application had

been moved before the Trial Court seeking permission for re-investigation. The copy of the order passed on 07.03.2018 containing the reference to the affidavit of the S.P., Sirsa is annexed as Annexure P-4 to the petition.

6. Subsequent thereto, the application seeking further investigation/re-investigation was dismissed by the SDJM, Ellenabad vide order dated 07.08.2019. The copy of the said order is annexed as Annexure P-5 to the petition.

7. It may be pertinent to mention here that the application for re-investigation filed by the Investigating Agency was misconceived and what was required to be filed was an application for further investigation.

8. Accused Navraj Singh and Azadwinder Singh filed a petition in this Court bearing CRM-M-44269-2022 challenging the order dated 07.08.2019 and also sought an inquiry into the role of the petitioner/complainant in the alleged incident. The said petition was disposed of with the liberty to the petitioners to file a fresh petition under Section 482 Cr.P.C. by including all prayers while clarifying that the order dated 07.08.2019 passed by the SDJM, Ellenabad dismissing the plea of further investigation/re-investigation would not come in the way of the petitioners therein while deciding the fresh petition and that the same was to be decided independently. The relevant extract of the order dated 23.09.2022 is reproduced as under:-

> *"It is clarified that the order dated 07.08.2019 shall not come in the way of the petitioners while deciding the said petition, which*

shall be decided independently without being affected by the principle of estoppel."

The copy of the order dated 23.09.2022 is annexed as Annexure P-6 to the petition.

9. In view of the observations made by this Court, accused Navraj Singh and Azadwinder Singh filed a second petition bearing CRM-M-48689-2022 praying therein for a fair and impartial investigation. The aforementioned petition was disposed of with the directions to the concerned Commissioner of Police to consider any application moved by the petitioners seeking fair and impartial investigation. The copy of the order dated 29.10.2022 is annexed as Annexure P-7 to the petition.

10. In furtherance of the aforementioned order, Azadwinder Singh sent an email dated 23.12.2024 to the S.P., Sirsa containing a reference to the order dated 29.10.2022 passed in CRM-M-48689-2022. In compliance with the aforementioned order, the ADGP, Hisar Range, Hisar vide order No.353/8-4 dated 03.01.2025 directed the constitution of a Special Investigation Team (SIT) for further investigation. The S.P., Sirsa constituted an SIT for further investigation of the case vide order No.1158-63 dated 08.01.2025. In compliance with the orders of the S.P., Sirsa, an SIT comprising of Deputy Superintendent of Police, Ellenabad, Station House Officer, P.S. Ellenabad, Incharge Crime Branch Ellenabad, Incharge Cyber Jail Sirsa and L/Sub Inspector Saroj Bala filed a supplementary report under Sections 120-B, 201, 406, 420 & 506 IPC (Section 109 of IPC added later on) inculpating the complainant as an accused with the aid of Section 109 of the

IPC. The copy of the supplementary challan dated 06.03.2025 under Sections 120-B, 201, 406, 420 & 506 IPC (Section 109 of IPC added later on) is annexed as Annexure P-8 to the petition.

11. It is the FIR No.16 dated 18.01.2017 (Annexure P-1) and the supplementary challan dated 06.03.2025 (Annexure P-8) to the extent that the petitioner has been nominated as an accused which are under challenge in the present petition.

12. The learned counsel for the petitioner contends that the report under Section 173(8) Cr.P.C. has been submitted on the basis of a further investigation by the Investigating Agency on its own without there being any order for the same. The petitioner was a complainant in the case and his subsequent conversion to him being an accused in the supplementary challan is in violation of Article 20(3) of the Constitution of India inasmuch as material supplied by him during the course of the investigation is sought to be used against him which would amount to self-incrimination. No offence under Sections 406/420 IPC is made out as the complainant who is now accused cannot be convicted for having committed cheating or criminal misappropriation of himself and in the absence of any invocation of the provisions of the Prevention of Corruption Act, 1988 the question of the culpability of the petitioner does not arise. He, therefore, prays that the FIR (Annexure P-1) and the supplementary challan (Annexure P-8) to the extent that inculpates the petitioner is liable to be quashed.

13. I have heard the learned counsel for the petitioner.

14. The first contention raised by the petitioner is that the supplementary challan (Annexure P-8) could not have been submitted without there being any directions of either this Court or the Magistrate for further investigation and in any case further investigation could not have taken place at a belated stage when evidence was already being recorded in the Trial based on the first challan.

15. Before examining this contention of the petitioner, it would be apposite to refer to the judgment in ***Vinay Tyagi Versus Irshad Ali @ Deepak & others, 2013(2) RCR (Criminal) 197***. The relevant extract is as under:-

> "*13. Having noticed the provisions and relevant part of the scheme of the Code, now we must examine the powers of the Court to direct investigation. Investigation can be ordered in varied forms and at different stages. Right at the initial stage of receiving the FIR or a complaint, the Court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Code. Investigation can be of the following kinds :*
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> *(i) Initial Investigation.*
>
> *(ii) Further Investigation.*
>
> *(iii) Fresh or de novo or re-investigation.*
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> *14. The initial investigation is the one which the empowered police officer shall conduct in furtherance to registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.*

15. 'Further investigation' is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation.

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 v. State (NCT of Delhi), [(2010)6 SCC 1], 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 & Ors. v. Union of India & Ors., [(1992)1 SCC 397], 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 specialised 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 instil confidence in public mind, it may become necessary to pass such orders. Further, in the case of R.S. Sodhi, Advocate v. State of U.P., [1994 SCC Supp. (1) 142], 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 extra- ordinary 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.

17. Here, we will also have to examine the kind of reports that can be filed by an investigating agency under the scheme of the Code. Firstly, the FIR which the investigating agency is required to file before the Magistrate right at the threshold and within the time specified. Secondly, it may file a report in furtherance to a direction issued under Section 156(3) of the Code. Thirdly, it can also file a 'further report', as contemplated under Section 173(8). Finally, the investigating agency is required to file a 'final report' on the basis of which the Court shall proceed further to frame the charge and put the accused to trial or discharge him as envisaged by Section 227 of the Code.

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 v. State of Kerala, [1998(2) RCR (Criminal) 719 : (1998) 5 SCC 223]; Ramachandran v. R. Udhayakumar [(2008) 5 SCC 413], Nirmal Singh Kahlon v State of Punjab & Ors. [2009(1) RCR (Criminal) 3 : 2008(6) Recent Apex Judgments (R.A.J.) 555 : (2009) 1 SCC 441]; Mithabhai Pashabhai Patel & Ors. v. State of Gujarat [2010(1) RCR (Criminal) 171 : 2009(6) Recent Apex Judgments (R.A.J.) 600 : (2009) 6 SCC 332]; and Babubhai v. State of Gujarat [2010(4) RCR (Criminal) 311 : 2010(5) Recent Apex Judgments (R.A.J.) 267 : (2010) 12 SCC 254].

19. Now, we come to the former question, i.e., whether the Magistrate has jurisdiction under Section 173(8) to direct further investigation.

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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 (supra) 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 proprietary 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.

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.

32. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the Court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these reports, the Court shall discharge an accused in compliance with the provisions of Section 227 of the Code.

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. We have deliberated at some length on the issue that the powers of the High Court under section 482 of the Code do not control or limit, directly or impliedly, the width of the power of Magistrate under Section 228 of the Code. Wherever a charge sheet has been submitted to the Court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in the case of Disha v. State of Gujarat & Ors., [2011(3) RCR (Criminal) 694 : 2011(4) Recent Apex Judgments (R.A.J.) 190 : (2011) 13 SCC 337]. Vineet Narain & Ors. v. Union of India & Anr., [1998(1) RCR (Criminal) 357 : (1998) 1 SCC 226], Union of India & Ors. v. Sushil Kumar Modi & Ors., [1996(6) SCC 500] and Rubabbuddin Sheikh v. State of Gujarat & Ors., [2010(1) RCR (Criminal) 738 : (2010)2 SCC 200].

35. The power to order/direct 'reinvestigation' or 'de novo' investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the Court may, by declining to accept such a report, direct

'further investigation', or even on the basis of the record of the case and the documents annexed thereto, summon the accused.

36. The Code does not contain any provision which deals with the court competent to direct 'fresh investigation', the situation in which such investigation can be conducted, if at all, and finally the manner in which the report so obtained shall be dealt with. The superior courts can direct conduct of a 'fresh'/'de novo' investigation, but unless it specifically directs that the report already prepared or the investigation so far conducted will not form part of the record of the case, such report would be deemed to be part of the record. Once it is part of the record, the learned Magistrate has no jurisdiction to exclude the same from the record of the case. In other words, but for a specific order by the superior court, the reports, whether a primary report or a report upon 'further investigation' or a report upon 'fresh investigation', shall have to be construed and read conjointly. Where there is a specific order made by the court for reasons like the investigation being entirely unfair, tainted, undesirable or being based upon no truth, the court would have to specifically direct that the investigation or proceedings so conducted shall stand cancelled and will not form part of the record for consideration by the Court of competent jurisdiction.

37. The scheme of Section 173 of the Code even deals with the scheme of exclusion of documents or statements submitted to the Court. In this regard, one can make a reference to the provisions of Section 173(6) of the Code, which empowers the investigating agency to make a request to the Court to exclude that part of the statement or record and from providing the copies thereof to the accused, which are not essential in the interest of justice, and where it will be inexpedient in the public interest to furnish such statement. The framers of the law, in their wisdom, have specifically provided a limited mode of exclusion, the criteria being no injustice to be caused to the accused and greater public interest

being served. This itself is indicative of the need for a fair and proper investigation by the concerned agency. What ultimately is the aim or significance of the expression 'fair and proper investigation' in criminal jurisprudence? It has a twin purpose. Firstly, the investigation must be unbiased, honest, just and in accordance with law. Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.

38. 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.

39. Such a view can be supported from two different points of view. Firstly, through the doctrine of precedence, as afore-noticed, 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.

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 further, re-investigation 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 v. State represented by Inspector of Police, [2012(1) RCR (Criminal) 317 : 2011(6) Recent Apex Judgments (R.A.J.) 467 : (2010) 12 SCC 29]. In light of the above discussion, we answer the questions formulated at the opening of this judgment as follows :

Answer to Question No. 1

40.1. 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 're-investigation' or any part of it be excluded, struck off the court record and be treated as non est.

Answer to Question No. 2

> *40.2. No investigating agency is empowered to conduct a 'fresh', 'de novo' or 're-investigation' 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."*
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> (Emphasis supplied)

16. The aforementioned judgment has been relied upon by the Hon'ble Supreme Court in ***Amrutbhai Shambhubhai Patel Versus Sumanbhai Kantibhai Patel & others, 2017(1) RCR (Criminal) 1030***.

17. A perusal of the aforementioned judgments would show that while 're-investigation' means a 'de novo investigation' virtually washing off the investigation so conducted 'further investigation' would mean some additional evidence has been found against the existing accused or some other person is to be nominated as an accused to face Trial along with the existing accused and therefore, some additional investigation is required to be conducted.

18. For the purposes of 're-investigation'/'de novo investigate' directions for the same must be issued by a superior Court such as the High Court and no such directions can be issued by a Magistrate. As regards 'further investigation', it is the domain of the Investigating Agency but it is desirable that prior intimation of the same is given to the Magistrate as the primary report under Section 173(2) Cr.P.C. already stands submitted. Further, in the case of multiple reports under Section 173(2) Cr.P.C. and

173(8) Cr.P.C., it is only a superior court such as the High Court that can direct the exclusion of any of the reports for the purposes of framing of charges. If not so done, it is the domain of the Trial Court to consider all the reports under Sections 173(2) Cr.P.C. and 173(8) Cr.P.C to either frame charges or discharge the accused.

19. Coming back to the facts of the instant case, the order of this Court dated 08.02.2018 (Annexure P-3) in the prayer for regular bail filed by Navraj Singh and Azadwinder Singh would be in the nature of a direction for further investigation. However, it was the Investigating Agency that had erroneously moved an application for 're-investigation' which obviously was to be declined and has rightly been done so vide order dated 07.08.2018. Be that as it may, when the order dated 07.08.2019 (Annexure P-5) was challenged before this Court, on 23.09.2022 this Court permitted Navraj Singh and Azadwinder Singh to file an appropriate petition under Section 482 Cr.P.C. seeking further investigation and clarified that the order dated 07.08.2019 would not come in the way of this Court to decide such petition on merits. Thereafter, vide order dated 29.10.2022 in CRM-M-48689-2022, this Court permitted the petitioners therein to seek a fair and impartial investigation by representing to the concerned Commissioner of Police. In furtherance thereof, an email was sent by Azadwinder Singh to the S.P., Sirsa which ultimately led to the formation of an SIT and subsequent to a further investigation, the petitioner/complainant came to be nominated as an accused and a supplementary challan was submitted against him as well under Sections 120-B, 201, 406, 420 & 506 IPC (Section 109 of IPC added later

on). I may also add that 'further investigation' can be conducted at any stage and the only requirement is that some more evidence must have been brought to the notice of the Investigating Agency. Therefore, the contention of the petitioner that the supplementary challan could not have been submitted cannot be accepted.

20. The second contention of the petitioner is that he was initially a complainant. His subsequent conversion to the status of being an accused would be in violation of Article 20(3) of the Constitution of India.

21. **Before examining this contention, it would be apposite to refer to the judgment** in ***State of Bombay Versus Kathi Kalu Oghad, 1961 AIR Supreme Court 1808***. The relevant extract is as under:-

> "*16. In view of these considerations, we have come to the following conclusions :-*
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> *1. An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.*
>
> *2. The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'.*
>
> *3. 'To be a witness' is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making*

of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused.

4. Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showings parts of the body by way of identification are not included in the expression 'to be a witness'.

5. 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in Court or otherwise.

6. 'To be a witness' in its ordinary grammatical sense means giving oral testimony in Court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in Court or out of Court by a person accused of an offence, orally or in writing.

7. To bring the statement in question within the prohibition of Article 20 (3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made."

(Emphasis supplied)

22. In ***Veera Ibrahim Versus The State of Maharashtra, 1976 AIR Supreme Court 1167***, it was held as under:-

"5. Clause (3) of Article 20 provides :

"No person accused of any offence shall be compelled to be a witness against himself."

6. From an analysis of this clause, it is apparent that in order to claim the benefit of the guarantee against testimonial compulsion embodied in this clause, it must be shown, firstly, that the person who made the statement was "accused of any offence", secondly,

> *that he made this statement under compulsion. The phrase "accused of any offence" has been the subject of several decisions of this Court so that by now it is well settled that only a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in his prosecution, would fall within its ambit."*
>
> (Emphasis supplied)

23. A perusal of the aforementioned judgments would establish beyond doubt that for the protection under Article 20(3) of the Constitution of India the person concerned must be formally arrayed as an accused in order to claim the benefit of the guarantee against testimonial compulsion. Any evidence provided by a person to the Investigating Agency during the course of an investigation can certainly be used against the said person in case he had not yet attained the status of an accused which can only be attained when there is a formal accusation against him.

24. In the instant case, the formal accusation against the petitioner was levelled only when the supplementary challan (Annexure P-8) was submitted against him on 06.03.2025. Therefore, any material supplied by the petitioner prior to him attaining the status of an accused would not amount to self-incrimination and therefore, he cannot claim protection under Article 20(3) of the Constitution of India.

25. The third contention raised by the petitioner is that no offence under Sections 406/420 IPC R/w Section 109 IPC is made out as the complainant/petitioner who has now attained the status of an accused cannot be convicted for having cheated/committed criminal misappropriation of

himself and in the absence of any invocation of the provisions of the Prevention of Corruption Act, 1988 the prosecution must fail. Consequently, the FIR and the supplementary challan qua the petitioner are liable to be quashed.

26. In view of the contentions raised, it would be worthwhile to examine Section 8 of the Prevention of Corruption Act,1988 and the same is reproduced below:-

> ***8. Offence relating to bribing of a public servant****. —(1) Any person who gives or promises to give an undue advantage to another person or persons, with intention—(i) to induce a public servant to perform improperly a public duty; or*
> *(ii) to reward such public servant for the improper performance of public duty;*
> *shall be punishable with imprisonment for a term which may extend to seven years or with fine or with both:*
> *Provided that the provisions of this section shall not apply where a person is compelled to give such undue advantage:*
> *Provided further that the person so compelled shall report the matter to the law enforcement authority or investigating agency within a period of seven days from the date of giving such undue advantage:*
> *Provided also that when the offence under this section has been committeed by commercial organisation, such commercial organisation shall be punishable with fine.*

Illustration.—A person, 'P' gives a public servant, 'S' an amount of ten thousand rupees to ensure that he is granted a license, over all the other bidders. 'P' is guilty of an offence under this sub-section.

Explanation.—It shall be immaterial whether the person to whom an undue advantage is given or promised to be given is the same person as the person who is to perform, or has performed, the public duty concerned, and, it shall also be immaterial whether such undue advantage is given or promised to be given by the person directly or through a third party.

(2) Nothing in sub-section (1) shall apply to a person, if that person, after informing a law enforcement authority or investigating agency, gives or promises to give any undue advantage to another person in order to assist such law enforcement authority or investigating agency in its investigation of the offence alleged against the later.

27. **In the context of Section 8 of the Prevention of Corruption Act in *State through CBI New Delhi Versus Jitender Kumar Singh, 2014(1) RCR (Criminal) 908***, the Hon'ble Supreme Court held as under:-

"*27. Thus, an offence under Sections 8, 9 or 12 can be committed by any person, who need not necessarily be a public servant. Such an offence can, therefore, be committed by a public servant or by a private person or by a combination of the two. It is thus clear that an offence under the PC Act can be committed by either a public servant or a private person or a combination of both and in view of the mandate of Section 4(1) of the PC Act, read with Section 3(1) thereof, such offences can be tried only by a Special Judge.*

For example :

- A private person offering a bribe to a public servant commits an offence under Section 12 of Act. This offence can be tried only by the Special Judge, notwithstanding the fact that only a private person is the accused in the case and that there is no public servant named as an accused in that case.

- A private person can be the only accused person in an offence under Section 8 or Section 9 of the said Act. And it is not necessary that a public servant should also be specifically named as an accused in the same case. Notwithstanding the fact that a private person is the only accused in an offence under Section 8 or Section 9, it can be tried only by a Special Judge.

28. Thus, the scheme of the PC Act makes it quite clear that even a private person who is involved in an offence mentioned in Section 3(1) of the PC Act, is required to be tried only by a Special Judge, and by no other Court. Moreover, it is not necessary that in every offence under the PC Act, a public servant must necessarily be an accused. In other words, the existence of a public servant for facing the trial before the Special Court is not a must and even in his absence, private persons can be tried for PC as well as non-PC offences, depending upon the facts of the case."

(Emphasis supplied)

28. In ***Sandeep Deshwal alias Sanju Versus State of Govt. of NCT of Delhi, CRL.A. No.168 of 2013, decided on 04.05.2020***, the Hon'ble Delhi High Court held as under:-

"10. Learned counsel for the appellant contended that the prosecution has failed to prove the basic ingredients of Section 8 of the P.C. Act, as no officer/public servant has been mentioned at whose behest, the appellant is alleged to have accepted the money. He submitted that the appellant himself not being a public servant, it was incumbent upon the prosecution to name some public servant to prove the case under Section 8 of the P.C. Act. It was further contended that there were material contradictions in the testimony of Panch witness and the Raid Officer on the manner of recovery of the bribe amount. While, Jagdish Prasad, the Panch witness stated that it was Insp. Jai Prakash who seized the bribe amount from the hands of the

appellant, on the other hand, the Raid Officer deposed that the GC notes were seized by the Panch witness. It was also contended that whereas the Panch witness stated that they had gone to the Office of Food & Civil Supply, the Raid Officer stated that they went to a PCO booth. It was also contended that the Panch witness admitted to be part of as many as 40-45 raid proceedings. He was a stock witness of the ACB and hence his testimony was wrongly relied upon by the trial court.

*** **** ***

14. The contention raised by learned counsel for the appellant that a public servant needs to be named for maintaining a case under Section 8 of PC Act is fallacious and no longer res integra. The Supreme Court in State through CBI, New Delhi v. Jitender Kumar Singh reported as (2014) 11 SCC 724 held as under:

> *"28..... Thus, an offence under Sections 8, 9 or 12 can be committed by any person, who need not necessarily be a public servant. Such an offence can, therefore, be committed by a public servant or by a private person or by a combination of the two.*
>
> *29. It is thus clear that an offence under the PC Act can be committed by either a public servant or a private person or a combination of both and in view of the mandate of Section 4(1) of the PC Act, read with Section 3(1) thereof, such offences can be tried only by a Special Judge. For example:*
>
> *(i) A private person offering a bribe to a public servant commits an offence under Section 12 of Act. This offence can be tried only by the Special Judge, notwithstanding the fact that only a private person is the accused in the case and that there is no public servant named as an accused in that case.*
>
> *(ii) A private person can be the only accused person in an offence under Section 8 or Section 9 of the said Act. And it is not necessary that a public servant should also be specifically named as an accused in the same case. Notwithstanding the fact*

that a private person is the only accused in an offence under Section 8 or Section 9, it can be tried only by a Special Judge.

30. Thus, the scheme of the PC Act makes it quite clear that even a private person who is involved in an offence mentioned in Section 3(1) of the PC Act, is required to be tried only by a Special Judge, and by no other Court. Moreover, it is not necessary that in every offence under the PC Act, a public servant must necessarily be an accused. In other words, the existence of a public servant for facing the trial before the Special Court is not a must and even in his absence, private persons can be tried for PC as well as non-PC offences, depending upon the facts of the case. We, therefore, make it clear that it is not the law that only along with the junction of a public servant in array of parties, the Special Judge can proceed against private persons who have committed offences punishable under the PC Act."

(emphasis added)

29. In ***Ghansyam Sharma Versus Surendra Kumar Sharma & others, 2014(4) RCR (Criminal) 135***, the Hon'ble Supreme Court in the context of quashing of an FIR held as under:-

"*10. We do not propose to examine the correctness of the findings recorded by the High Court in an enquiry that there was no entrustment of money. The fact remains that the appellant lost money which was kept in the car of the first respondent. Even according to the High Court , the case would fall under Section 379 I.P.C. The High Court , in our opinion, grossly erred in quashing the proceedings against the respondents with a certificate that it is one of the rarest cases where the court is required to quash the proceedings.*

11. Whether the respondents are guilty under Section 379 I.P.C. or not is a matter of evidence. The fact that the police chose to file a

> *chargesheet under Section 406 and 420 I.P.C. is not conclusive regarding the offences for which the respondents-accused are to be tried. The trial Court can always frame an appropriate charge if there is sufficient material from the report of the police available before it. In case where the material is insufficient to frame a charge, the trial Court may either discharge the accused or may direct further investigation in the matter. Before deciding as to which one of the three courses of action mentioned above is to be resorted to, the trial Court must examine the content of the complaint, the evidence gathered by the investigating agency and also scrutinise whether the investigating agency proceeded in the right direction."*
>
> (Emphasis supplied)

30. A combined reading of the aforementioned judgments in ***State through CBI New Delhi*** (supra), ***Sandeep Deshwal alias Sanju*** (supra) and ***Ghanshyam Sharma*** (supra) would reveal that an offence under Section 8 IPC can be committed by any person who need not necessarily be a public servant. Such an offence can therefore be committed by a public servant or by a private person or by a combination of the two. Further, question of quashing of an of an FIR would not arise where a reading of the FIR would reveal the commission of other offences though the FIR/Challan have been submitted regarding different offences for which quashing is sought.

31. In the instant case, merely because there is no public servant involved does not mean that the petitioner and accused Navraj Singh and Azadwinder Singh cannot be chargesheeted for offences under Section 8 of the Prevention of Corruption Act. The petitioner can also not claim any benefit of the first and second proviso of Section 8 of Prevention of

Corruption Act as he was not compelled to give such undue advantage and nor did he inform the investigating agency within 7 days from the date of giving such undue advantage that it was under duress or compulsion. To the contrary, he only lodged a complaint leading to the registration of the FIR when the accused did not get his son employed as an Assistant Sub Inspector with the Chandigarh Police and refused to return the money. Further, the question of quashing of the FIR would not arise for the offences under Sections 406/420 IPC as Section 8 of the Prevention of Corruption Act is *prima facie* made out and it would be the Trial Court which shall examine the various investigation reports and come to the conclusion as to what offences, if any, are made out.

32. In view of the aforementioned discussion, the question of quashing of the FIR No.0016 dated 18.01.2017 initially registered under Sections 120-B, 406, 420, 506 (subsequently added Sections 201 & 109 IPC) at Police Station Ellenabad, District Sirsa (Annexure P-1) and the final report No.1B dated 06.03.2025 under Section 120-B, 201, 406, 420 & 506 IPC (Section 109 of IPC added later on) (Annexure P-8) qua the petitioner does not arise and the instant petition stands dismissed with the following directions:-

i. The first order framing charges based on the first report under Section 173(2) Cr.P.C. against Navraj Singh and Azadwinder Singh and all subsequent proceedings arising therefrom stand quashed.

ii. The police shall conduct a further investigation in the light of Section 8 of the Prevention of Corruption Act or any other offence which appears to have been committed and submit a final report to the Court concerned.

iii. The first report under Section 173(2) Cr.P.C. (Annexure P-2), the second report under Section 173(8) (Annexure P-8) and the final report as directed to be submitted by this Court shall be considered by the concerned Court for framing of charges, if any.

(JASJIT SINGH BEDI)
JUDGE

26.08.2025
JITESH

Whether speaking/reasoned:- Yes/No

Whether reportable:- Yes/No