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Reserved On : 21/07/2025
Pronounced On : 29/07/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CRIMINAL APPLICATION (QUASHING) NO. 834 of 2019
With
R/SPECIAL CRIMINAL APPLICATION NO. 1776 of 2019

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE J. C. DOSHI

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Approved for Reporting	Yes	No

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MANOJ KUMAR S/O BASUDEO UPADHYAY
Versus
STATE OF GUJARAT & ANR.

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Appearance:
RAHUL SHARMA(8276) for the Applicant(s) No. 1
MR RC KODEKAR(1395) for the Respondent(s) No. 2
MR TIRTHRAJ PANDYA, APP for the Respondent(s) No. 1

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CORAM:**HONOURABLE MR. JUSTICE J. C. DOSHI**

CAV JUDGMENT

1. The petitioner, by these captioned petitions, questions two different stage of investigation undertaken in the criminal offence being C.R. No.RC0292017A0003 registered by the CBI, ACB Branch, Gandhinagar for the offences punishable u/s 120B, 409 and 420 of the IPC and u/s 13(2) r/w section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988 (in short “the Act”).

2. Since the dispute involved pertains to selfsame FIR and

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questions two different stage of investigation raised by the petitioner, both the petitions are being disposed of by this common order.

3. In Special Criminal Application No.834 of 2019, the petitioner prayed for the following reliefs:-

> *"(B) Issue a writ of certiorari or any other writ, order or direction to quash and set aside the second part of the respective statements of witnesses, at ANNEXURE 'A COLLY', recorded on 08.05.2017 by the Ld. Additional Chief Judicial Magistrate, CBI Court No. 2, Ahmedabad u/s 164 of the Cr.P.C., wherein details regarding the alleged offence are given and further declare the aforesaid second part of the statement recorded U/s 164 of the Cr.P.C. by the Ld. Additional Chief Judicial Magistrate, CBI Court No. 2, Ahmedabad, as non est in the eyes of law.*
>
> *(C) Direct that the first part of the respective statements given by the witnesses, on 05.05.2017, to the Ld. Additional Chief Judicial Magistrate, CBI Court No. 2, Ahmedabad, stating that they knew nothing about the matter, be considered as the legally valid statements recorded u/s 164 of the Code of Criminal Procedure, 1973."*
>
> *(D) By way of interim relief, stay further proceedings in the trial of CBI Special Case No. 16 of 2017 and Special Case No. 7/2018 before the Ld. Special Judge, Court No. 4, CBI Cases, Ahmedabad, till the final disposal of this petition."*

3.1 In Special Criminal Application No.1776 of 2019, the petitioner prayed for the following reliefs:-

> *"(B) Issue a writ of certiorari or any other writ, order or direction to quash and set aside the impugned Supplementary Charge-sheet filed by the CBI, on*

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27.02.2018, vide Special Case No. 07/2018 in the Court of the Ld. Special Judge, CBI Court No. 4, Ahmedabad, U/s 120B, r/w 409, 420 of the IPC and U/s 13(2) r/w 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act 1988;

(C) By way of interim relief, stay further proceedings in the trial of CBI Special Case No. 16 of 2017 and Special Case No. 7/2018 before the Ld. Special Judge, Court No. 4, CBI Cases, Ahmedabad, till the final disposal of this petition."

4. Brief facts of the case are as under:-

4.1 That, RC No.03(A)/2017-GNR was registered on 07.03.2017 on the basis of a written complaint dated 22.02.2017 of Smt. Manjula A. Patel, the Asstt. Director, Vigilance, Postal Department, Gujarat Circle, Ahmedabad against the accused persons namely Shri Vinodbhai Keshabhai Darji (A-1), the than Senior Post Master, Navrangpura, Head Office, Ahmadabad, Shri RajendraSinh Chatrasinh Vaghela(A-2), the than Deputy Post Master, Navrangpura, Head Office, Ahmadabad, Shri Mohmad Sadik A. Sabuwala(A-3), the than Assistant Post Master, Navrangpura, Head Office, Ahmadabad and unknown person under section 120-B r/w 409, 420 of IPC and 13(2) r/w 13(1)(C) & (d) of the Act.

4.2 That, during demonetization, old currency was exchanged by post office also. It is revealed during inspection by Department of Post (Vigilance), Ahmadabad that Navrangpura HO, post office has acted against the guidelines issued in this behalf by the Government and in contravention

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to the circulars issued in this behalf by the Directorate of postal services. Following irregularities were reported by the Vigilance Team.

a. It is alleged that during an amount of Rs. 6,59,800/- have been found exchanged between on 09.11.2016, though 09.11.2016 was a non-financial day and HO had received currency from Sub Post Offices.

b. There is contradiction in reporting of exchanged/withdrawn old series (WOS), in the records of Navrangpura HO, SPO's City Division and record of entry made in excel sheet as Rs. 2,52,37,500/-, Rs. 1,90,34,000/- and Rs. 2,16,17,500 respectively.

4.3 The petitioner was controlling officer at Ahmadabad Circle. He abused his official power and exchanged old currency during demonetization to the tune of Rs. 1,04,03,500/- from the different Post Offices/persons under his jurisdictions. (As per para No. 2 at page no. 159 and as per flow chart page no. 156 of Charge Sheet.

4.4 After completion of investigation, charge sheet was filed by the CBI in the Court of learned Special Judge, CBI Court No. 4, Ahmedabad, vide Special Case No. 16/2017 on 14.06.2017. Subsequently, a supplementary charge- sheet was filed by the CBI on 27.02.2018 vide Special Case No. 07/2018.

4.5 That altogether eight witnesses had given their

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statements to the Ld. Additional Chief Judicial Magistrate (ACJM), CBI Court No. 2, Ahmedabad (in short “learned trial Court”) . These eight witnesses had been forwarded to the Ld. ACJM on 05.05.2017 by the CBI for recording their statements U/s 164 of the Code of Criminal Procedure, 1973 (in short “the Code”). During preliminary enquiries by the Ld. ACJM, all these eight witnesses informed the Ld. ACJM that they knew nothing about the matter. However, the Ld. ACJM did not record their statements and directed them to appear before him on 08.05.2017 at 3:00 pm and consider giving their statements without any fear, inducement or promise.

4.6 Accordingly, as per directions of the Ld. ACJM, all the eight witnesses appeared before the Ld. Magistrate at 3:00 pm on 08.05.2017 and their statements were recorded one after another on the same day within a space of less than three hours. Hence, Special Criminal Application No.834 of 2019.

4.7 So far as Special Criminal Application No.1776 of 2019 is concerned, first charge-sheet was filed in the case on 14.06.2017 while a supplementary charge-sheet was filed on 27.02.2018 in the same case. The impugned supplementary charge-sheet only has statements and other documents collected by the CBI prior to 14.06.2017, the date of filing the first charge-sheet.

4.8 The basis for "further investigation" under S. 173(8) of the Code is the discovery of fresh evidence and in continuance

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of the same offence and chain of events relating to the same occurrence incidental thereto, however, with prior permission of Judicial Magistrate. Therefore, a supplementary charge-sheet can only be submitted in respect of additional evidence collected during the course of further investigation, which evidence was not available during the course of investigation conducted earlier and further, if prior permission of the Judicial Magistrate is obtained to continue investigation.

4.9 Hence, Special Criminal Application No.1776 of 2019 is filed by the petitioner to quash and set aside the Supplementary Charge-sheet filed in the aforesaid case.

5. As far as relief claimed in Special Criminal Application No.834 2019 is concerned, learned advocate, Mr. Rahul Sharma appearing for the petitioner would submit that the Judicial Magistrate recorded the statement of witnesses under section 164 of the Code without following proper procedure and therefore, the evidentiary value of the statement recorded under section 164 of the Code are *non est*. He would further submit that all the statements are placed at Annexure A. He would further submit that the witnesses first of all remained present before the learned Judicial Magistrate on 5.5.2017, the primary interaction was made on that day and they have deposed that they know about the facts. However, the learned Judicial Magistrate has not recorded the statement on that day and given reflection time to the witnesses and then recorded the statement under section 164 of the Code on 8.5.2017, thereby has permitted the investigating officer to

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win over the witnesses. He would further submit that grant of three days time by the learned Judicial Magistrate in recording statement u/s 164 of the Code is not permissible by provisions of law. The statement, which was recorded in the first part i.e. interaction on 5.5.2017 only could be treated as statement under section 164 of the Code and rest part of the statement recorded subsequently on 8.5.2017 could be treated as win over statement. He would further submit that since the investigating officer as well as learned Judicial Magistrate has not followed due procedure laid down in Section 164 of the Code, the statement of the witnesses produced at Annexure A could not be considered as part of charge sheet and they are *non est* in the eyes of law.

5.1 In support of his submission, learned advocate Mr. Sharma referred to the following judgments:-

1. Jogendra Nahak and others Vs. State of Orissa and others, (2000) 1 SCC 272, more particularly para 11 thereof, which reads as under:-

> *"11. The proviso to the sub-sec. and sub-sections (2) to (4) are not material for this purpose as they relate only to recording of confessions. Sub-section (5) says that a statement of the witness shall be recorded in the manner in which evidence is recorded under law."*

2. J. Jayalalithaa and others Vs. State of Karnataka and others, (2014) 2 SCC 401, more particularly, para 34 and 35 thereof, which reads as under:-

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> *"34. There is yet an uncontroverted legal principle that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. In other words, where a statute requires to do a certain thing in a certain way, the thing must be done in that way and not contrary to it at all. Other methods or mode of performance are impliedly and necessarily forbidden. The aforesaid settled legal proposition is based on a legal maxim "Expressio unius est exclusio alterius", meaning thereby that if a statute provides for a thing to be done in a particular way, then it has to be done in that manner and in no other manner and following any other course is not permissible.*
>
> *35. In State of Uttar Pradesh V/s. Singhara Singh & Ors., AIR 1964 SC 358, this court held as under:*
>
> > *"8. The rule adopted in Taylor V/s. Taylor (1876) 1 Ch D 426 is well recognised and is founded on sound principle. Its result is that if a statute has conferred a power to do an act and has laid down the method in which that power has to be exercised, it necessarily prohibits the doing of the act in any other manner than that which has been prescribed. The principle behind the rule is that if this were not so, the statutory provision might as well not have been enacted."*
> >
> > *(See also: Accountant General, State of Madhya Pradesh V/s. S.K. Dubey & Anr., (2012) 4 SCC 578)*

3. State of Odisha and another Vs. Satish Kumar Ishwardas Gajbhiye and others, 2021 SCC Online 1238.

5.2 Referring to the above stated judgments, learned advocate, Mr. Sharma would submit that if the statute permits a particular way, one cannot do it other way.

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5.3 In view of above, as far as Special Criminal Application No.834 of 2019 is concerned, learned advocate Mr. Sharma prays to allow this petition.

5.4 Insofar as Special Criminal Application No.1776 of 2019 is concerned, learned advocate Mr. Sharma would submit that report under section 173(2) of the Code was placed before the concerned jurisdictional Court (Annexure C) on 14.6.2017. He would further submit that thereafter the investigating officer without seeking or taking any permission from the concerned court continued investigation of the offence and filed further final report under section 173(8) (Annexure A) on 27.2.2018. He would further submit that filing of second and subsequent report in form of supplementary final report, without obtaining permission of the learned jurisdictional Court, would prejudice the very provision of law and would be prejudicial to the right of fair investigation and fair trial of the accused. He would therefore, submit that filing of subsequent charge sheet in form of supplementary charge sheet at Annexure A since is not permissible, should be quashed.

5.5 In support of his contention, learned advocate Mr. Sharma has referred to and relied upon judgment in case of Peethambaran Vs. State of Kerala and others, 2023 SCC Online 553.

5.6 By making above submissions, learned advocate Mr. Sharma urges to allow both the petitions.

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6. *Per contra*, learned advocate Mr. RC Kodekar appearing for the CBI firstly would submit that plain reading of section 164 of the Code does not contemplate that learned Judicial Magistrate is required to record statement of witnesses under section 164 of the Code as soon as he comes. He would further submit that there is no statutory bar to give him time and come to the court on a particular time. Therefore, in absence of any statutory bar, recording of statement on subsequent date by the learned Judicial Magistrate under section 164 of the court is not bad in law. Secondly, it is argued by learned advocate Mr. Kodekar that whether statement under section 164 of the Code recorded by the learned trial court holds evidentiary value or otherwise can be appreciated during the trial only.. The evidentiary value of the statement recorded under section 164 of the Code cannot be assessed and evaluated in quashing proceedings. Therefore, he would submit that submission of learned advocate Mr. Sharma that the statement recorded under section 164 of the Code, more particularly second part thereof, is *non est*, explicitely cannot be accepted and this is reprehensive to the settled provision of law. As far as filing of second and subsequent charge sheet is concerned, he would submit that the final report under Section 173(2) at Annexure C was filed on 14.6.2017. He would further submit that in the charge sheet, apart from the offence under sections 409 and 420 of the IPC, it is alleged that the accused has committed offence under section 13(2) r/w section 13(1)(c) and 13(1)(d) of the Act. He would further submit that prior to taking of

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cognizance of the offence under the Act, it is necessary to have the prosecution sanction under section 19 of the Act and therefore, while filing the report under section 173(2) of the Code on 14.6.2017, investigating officer has reserved his right to file sanction under section 19 of the Act. In this regard, he drew the attention of this Court towards para 10 of the final report at Annexure C (page 38). He would further submit that in case on hand, no fresh investigation has been carried out, no re-investigation has been carried out, even no further investigation is carried out except to file prosecution sanction under Section 19 of the Act by way of supplementary charge sheet.

6.1 Learned advocate Mr. Kodekar would further submit that the allegations when levelled against the petitioner are about misuse of powers when he was DPS and old currency notes were exchanged after it being demonetized. The subsequent charge sheet reveals the source of the currency received by the petitioner in addition to procure prosecution sanction. So no reinvestigation or *de novo* investigation has been carried out, for which permission of the court essentially is required.

6.2 Learned advocate Mr. Kodekar, in support of his submission, relied upon recent judgment of the Hon'ble Apex Court in case of State through CBI Vs. Hemendra Reddy and another, (2023) 16 SCC 779.

6.3 Upon making above submissions, learned advocate Mr.

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Kodekar would submit that it is one more fallout attempt on the part of the petitioner to stall the trial against him and therefore it is submitted to dismiss the petitions with heavy cost.

7. I have heard learned advocates for both the sides and also paid anxious thoughts to the rival submissions, as well to the records of the case.

8. In substance, the petitioner raised two questions. Firstly, the statement recorded under section 164 of the Code and produced at Annexure A are not in conformity with the provisions of section 164 of the Code. The learned trial court while recording statement of witness under section 164 of the Code is not empowered to give time to the witnesses, and therefore giving of time to the witnesses by the learned trial court is bad in law, as it gives time to the CBI to win over the witnesses. Secondly, without the permission of the learned trial court, the investigating officer cannot continue further investigation in the offence and cannot submit supplementary charge sheet.

9. To appreciate submission canvased by learned advocate, Mr. Sharma, at the outset let refer section 164 of the Code, which reads as under:-

> *"(1) Any Metroplitan Magistrateor Judicial Magistrate may, whether or not he has jurisdiction in the case, record any confession or statement made to him in the course of an investigation under this*

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Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial:
[Provided that any confession or statement made under this sub-section may also be recorded by audio-video electronic means in the presence of the advocate of the person accused of an offence:
Provided further that no confession shall be recorded by a police officer on whom any power of a Magistrate has been conferred under any law for the time being in force.]

(2) The Magistrate shall, before recording any such confession, explain to the person making it that he is not bound to make a confession and that, if he does so, it may be used as evidence against him; and the Magistrate shall not record any such confession unless, upon questioning the person making it, he has reason to believe that it is being made voluntarily.

(3) If at any time before the confession is recorded, the person appearing before the Magistrate states that he is not willing to make the confession, the Magistrate shall not authorise the detention of such person in police custody.

(4) Any such confession shall be recorded in the manner provided in section 281 for recording the examination of an accused person and shall be signed by the person making the confession; and the Magistrate shall make a memorandum at the foot of such record to the following effect:-

"I have explained to (name) that he is not bound to make a confession and that, if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Signed)

A.B. Magistrate".

(5) Any statement (other than a confession) made under sub-section (1) shall be recorded in such manner hereinafter provided for the recording of evidence as is, in the opinion of the Magistrate, best fitted to the circumstances of the case; and the Magistrate shall have power to administer oath to the person whose statement is so recorded.

[(5A)

(a) In cases punishable under section 354, section 354A, section 354B, section 354C, section 354D, sub-section (1) or sub-section (2) of section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB, section 376E or section 509 of the Indian Penal Code, 1860 (45 of 1860), the Judicial Magistrate shall record the statement of the person against whom such offence has been committed in the manner prescribed in sub-section (5), as soon as the commission of the offence is brought to the notice of the police:

Provided that if the person making the statement is temporarily or permanently mentally or physically disabled, the Magistrate shall take the assistance of an interpreter or a special educator in recording the statement:

Provided further that if the person making the statement is temporarily or permanently mentally or physically disabled, the statement made by the person, with the assistance of an interpreter or a special educator, shall be videographed;

(b) A statement recorded under clause (a) of a person, who is temporarily or permanently mentally or physically disabled, shall be considered a statement in lieu of examination-in-chief, as specified in section 137 of the Indian Evidence Act, 1872 (1 of 1872) such that the maker of the statement can be cross-examined on such statement, without the need for recording the same at the time of trial.]

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> *(6) The Magistrate recording a confession or statement under this section shall forward it to the Magistrate by whom the case is to be inquired into or tried. "*

10. Plain reading of the provisions of law indicates that regardless of territorial jurisdiction, Metropolitan Magistrate or Judicial Magistrate was empowered to record any confession or statement made to him in the course of an investigation under this Chapter or under any other law for the time being in force, or at any time afterwards before the commencement of the inquiry or trial. Thus the power of JMFC or Metropolitan Magistrate is not confined to its jurisdiction, not confined to inquiry or investigation, he can record before commencement of trial. Sub sections (2), (3) and (4) of Section 164 of the Code are related to confession of accused. In the present case, the issues are not in-fray. In sub section (5) of section 164 of the Code, the Legislature has used words "in the opinion of the Magistrate, best fitted to the circumstances of the case" indicates that it is a complete discretion of Judicial Magistrate or Metropolitan Magistrate, who is recording statement to find out best fitted circumstances and to form opinion. Learned Judicial Magistrate or Metropolitan Magistrate has to decide best fitted circumstances to record statement of witnesses. By no means, section 164(5) of the Code curtails power of the Judicial Magistrate or Metropolitan Magistrate to postpone recording of statement of witness when he comes and differs to some other day. The contention of learned advocate Mr. Sharma that statement of witness has to be recorded no

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sooner appears before Judicial Magistrate or Metropolitan Magistrate and not on subsequent date, therefore, is belligerent to the settled principles of law and cannot be accepted. It is equally well settled that in a quashing proceedings, the court is not expected to hold mini trial to evaluate evidentiary value of the statements recorded during the investigation / inquiry. The court has to take statements of the witnesses as it is. The assistance can be taken from the judgments of Hon'ble Apex Court in cases of Kaptan Singh Versus State Of Uttar Pradesh, 2021 (9) SCC 35.

11. The Apex Court yet in another case holds that while exercising inherent jurisdiction u/s 482 of the Code, the High Court should not hold mini trial. In case of Dharambeer Kumar Singh Versus State Of Jharkhand, (2025) 1 SCC 392, in para 17 to 19 held as under:-

> *"17. This Court in a series of judgements has held that while exercising inherent jurisdiction under Section 482 of Criminal Procedure Code, 1973, the High Court is not supposed to hold a mini trial. A profitable reference can be made to the judgment in the case of* ***CBI vs Aryan Singh (2023 SCC Online SC 379*** *.*
>
> *Relevant paragraph from the judgment is extracted here under:*
>
> > "*Para 10...As per the cardinal principle of law, at the stage of discharge and/or quashing of the criminal proceedings, while exercising the powers under Section 482 Cr. P.C., the Court is not required to conduct the mini trial.*
> >
> > *At the stage of discharge and/or while exercising the powers under Section 482 Cr. P.C., the Court has a very limited jurisdiction and is required to consider "whether any sufficient material is*

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> *available to proceed further against the accused for which the accused is required to be tried or not".*
>
> *18. In the instant case, the High Court has delved into an aspect which was absolutely not warranted and has exceeded its jurisdiction. The aspect about complicity of a person who was involved in the forgery is a disputed question of fact and the same will have to be addressed after a proper appreciation of evidence which can be done only during trial and not at such a nascent stage when summons is served. The Magistrate while considering the fact that the Respondent No. 2 -Santosh Kumar Choudha, was a beneficiary and after considering the scope of summons order had rightly observed that a prima facie case is made out and the same required an adjudication through a trial.*
>
> *19. The High Court ought to have considered the complicity of the accused in case of forgery, which will have to be addressed after a proper appreciation of evidence and such appreciation of evidence can be done only by undertaking the initial process i.e. by conducting the trial on the aspect of forgery. The summons order was only at an initial stage and at such a nascent stage, the High Court ought not to have recorded the finding on the aspect of forgery.*

12. In the aforesaid exposition of law, the contention of learned advocate Mr. Sharma in Special Criminal Application No.834 of 2019 is found to be preposterous and pointless.

13. As far as judgments upon which learned advocate Mr. Sharma has relied upon, it does not render any assistance to him.

14. The second question raised by learned advocate Mr. Sharma that without obtaining permission from the

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jurisdictional Magistrate/court, the investigating officer cannot continue investigation and file subsequent charge sheet thereof.

15. Let refer sections 156(3), 173 and 190 of the Code of Criminal Procedure, 1973, which reads as under:-

> "***156 : Police officer's power to investigate cognizable case***
> *(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned.*
>
> ***173. Report of police officer on completion of investigation.***
> *(1) Every investigation under this Chapter shall be completed without unnecessary delay.*
> *[(1A) The investigation in relation to [an offence under sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or 376E of the Indian Penal Code (45 of 1860) shall be completed within two months] from the date on which the information was recorded by the officer in charge of the police station.*
> *(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-*
> *(a) the names of the parties;*
> *(b) the nature of the information;*
> *(c) the names of the persons who appear to be acquainted with the circumstances of the case;*
> *(d) whether any offence appears to have been committed and, if so, by whom;*
> *(e) whether the accused has been arrested;*
> *(f) whether he has been released on his bond and, if so, weather with or without sureties;*
> *(g) whether he has been forwarded in custody under section 170.*
> *[(h) whether the report of medical examination of the woman has been attached where investigation relates*

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to an offence under [sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB] or 376E of the Indian Penal Code.

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

(3) Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in charge of the police station to make further investigation.

(4) Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order- for the discharge of such bond or otherwise as he thinks fit.

(5) When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate alongwith the report-

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) the statements- recorded under section 161 of all the persons whom the prosecution proposes to examine as its witnesses.

(6) If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interests of justice and is inexpedient in the public interest, he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for making such request.

(7) Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub- section (5).

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> *(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).*
>
> ***190. Cognizance of offences by Magistrates.*** *(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-*
> *(a) upon receiving a complaint of facts which constitute such offence;*
> *(b) upon a police report of such facts;*
> *(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.*
> *(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.*"

16. The introduction of section 173(8) of the Code in the Legislature has recognized the right of the investigating agency to conduct the further investigate in the matter, collect further evidence and forward it to the learned Magistrate u/s 190 of the Code. Section 190 of the Code empowers Magistrate to take cognizance of the offence upon receiving a complaint constituting offences or upon a police report or upon information received from any person other

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than the police officer or upon his own knowledge that such offence has been committed. Section 156(3) of the Code permits Magistrate, who is empowered with section 190 of the Code, to direct police to investigate into a cognizable offence.

17. The conjoint reading of aforesaid provisions lead to establish that investigation in the offence can be continued even after first report u/s 173 of the Code is filed. Therefore, the solitary contention raised by learned advocate Mr. Sharma that the investigating officer cannot further investigate the offence and file further report to the learned Magistrate without seeking prior permission of the Magistrate or Court has no force.

18. In Ram Lal Narang vs. State (Delhi Administration), (1979) 2 SCC 322, the Hon'ble Apex Court noted all the previous judgments including diverse views taken by the different High Courts and has noted the developments and inclusion of new provisions as Section 173(8) in the Code on the basis of the 41st report of the Law Commission. The Law Commission, in its 41st report has recognized the well settled position and recommended that the right of the police to make further investigation should be statutorily affirmed. Relevant observations are extracted as under:-

> *"""15. The police thus had the statutory right and duty to "register" every information relating to the commission of a cognizable offence. The police also had the statutory right and duty to investigate the facts and circumstances of the case where the*

commission of a cognizable offence was suspected and to submit the report of such investigation to the Magistrate having jurisdiction to take cognizance of the offence upon a police report. These statutory rights and duties of the police were not circumscribed by any power of superintendence or interference in the Magistrate; nor was any sanction required from a Magistrate to empower the Police to investigate into a cognizable offence. This position in law was well-established. In King Emperor v. Khwaja Nazir Ahmad [AIR 1945 PC 18 : 71 IA 203 : 46 Cri LJ 413] the Privy Council observed as follows:

"Just as it is essential that everyone accused of a crime should have free access to a Court of justice, so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry. In India, as has been shown, there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as Their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rules by an exercise of the inherent jurisdiction of the Court. The functions of the judiciary and the police are complementary, not overlapping, and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always of course, subject to the right of the Courts to intervene in an appropriate case when moved under Section 491 of the Criminal Procedure Code to give directions in the nature of Habeas Corpus. In such a case as the present, however, the Court's functions begin when a charge is preferred before it and not until then ... In the present case, the police have under Sections 154 and 156 of the Criminal Procedure Code, a statutory right to investigate a cognizable offence without requiring the sanction of the Court ...."

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Ordinarily, the right and duty of the police would end with the submission of a report under Section 173(1) CrPC upon receipt of which it was up to the Magistrate to take or not to take cognizance of the offence. There was no provision in the 1898 Code prescribing the procedure to be followed by the police, where, after the submission of a report under Section 173(1) CrPC and after the Magistrate had taken cognizance of the offence, fresh facts came to light which required further investigation. There was, of course, no express provision prohibiting the police from launching upon an investigation into the fresh facts coming to light after the submission of the report under Section 173(1) or after the Magistrate had taken cognizance of the offence. As we shall presently point out, it was generally thought by many High Courts, though doubted by a few, that the police were not barred from further investigation by the circumstance that a report under Section 173(1) had already been submitted and a Magistrate had already taken cognizance of the offence. The Law Commission in its 41st report recognized the position and recommended that the right of the police to make further investigation should be statutorily affirmed. The Law Commission said:

"14.23. A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears, however, that Courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence

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and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused."

Accordingly, in the CrPC, 1973, a new provision, Section 173(8), was introduced and it says:

"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)."

20. Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously accused or absolve persons already accused. When it comes to the notice of the investigating agency that a person already accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate- After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to

decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the CrPC in such situations is a matter best left to the discretion of the Magistrate. The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of such administration, it would ordinarily be desirable that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light.

21. As observed by us earlier, there was no provision in the CrPC, 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the

> *Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.*"

19. Perusal of the aforesaid observations and findings of the Hon'ble Apex Court though the same were with regard to old provisions of section 173 of the Code of Criminal Procedure, 1898, it has categorically recognized right of police to further investigate into the matter even after submission of charge sheet and held that right of the police to further investigate is not exhausted or discontinued after submission of charge sheet.

20. After addition of section 173(8) of the Code of Criminal Procedure, 1973, the position of law has become statutorily clear. Apt to note that even in old Code of Criminal Procedure, there was no fetter on the right of further investigation by the police. But the normal practice is that the police used to seek formal permission for further investigation, but the new amendment by way of section 173(8) in Code of Criminal Procedure, 1973 has statutorily

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recognized the right of the police to further investigate and to submit supplementary charge sheet. Bare reading of section 173(8) of the Code does not contemplate specific requirement to seek any permission from the learned Magistrate.

21. In the case of State of Bihar and Another vs. J.A.C. Saldanha and Others, (1980) 1 SCC 554, the Constitutional Bench of the Apex Court while examining the power of the senior police officers of superintendence under the Police Act, has held that there is no conflict between the powers under the Police Act as well as Section 173(8) of the Code, to carry on the further investigation without any permission of the learned Magistrate. In para 18 and 19, the Hon'ble Apex Court held as under:-

> "*18. There is no warrant for invoking this principle because Section 5 of the Code provides that nothing in the Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force. Section 3 of the Act does not prescribe any special procedure for investigation contrary to one prescribed in the Code. It merely provides for conferment of certain power which, when exercised, would project into the provisions of the Code which confers power on the officer in charge of a police station to carry on further investigation under Section 173(8) after submission of a report and that too without any permission of the Magistrate. There is no conflict between the two provisions. Power to direct investigation or further investigation is entirely different from the method and procedure of investigation and the competence of the person to investigate. Section 3 of the Act as interpreted by us deals with the powers of the State*

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Government to direct further investigation into the case. Undoubtedly, such direction will be given to a person competent to investigate the offence and as has been pointed out, the police officer in rank superior to the police officer in charge of the police station, to wit, Inspector General, Vigilance, has been directed to carry on further investigation. An officer superior in rank to an officer in charge of a police station could as well exercise the power of further investigation under Section 173(8) in view of the provision embodied in Section 36 of the Code. If that be so, such superior officer could as well undertake further investigation on his own and it is immaterial and irrelevant that he does it at the instance or on the direction of the State Government. Such a direction in no way corrodes his power to further investigate on his own.

19. The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). Therefore, the High Court was in error in holding that the State Government in exercise of the power of superintendence under Section 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section 156(2) that an investigation by an officer in charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on the ground that such investigating officer had no jurisdiction to carry on the

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> *investigation; otherwise that provision would have been a short answer to the contention raised on behalf of Respondent 1.*"

22. Yet in another case of K. Chandrashekhar vs. State of Kerela,(1998) 5 SCC 223, the Hon'ble Apex Court has recognized the right of further investigation by the Police under Section 173(8) of the Code. Relevant paragraph 24 is as under:

> "*24. From a plain reading of the above section it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right of "further" investigation under sub-section (8) but not "fresh investigation" or "reinvestigation". That the Government of Kerala was also conscious of this position is evident from the fact that though initially it stated in the Explanatory Note of their notification dated 27-6-1996 (quoted earlier) that the consent was being withdrawn in public interest to order a "reinvestigation" of the case by a special team of State police officers, in the amendatory notification (quoted earlier) it made it clear that they wanted a "further investigation of the case" instead of "reinvestigation of the case". The dictionary meaning of "further" (when used as an adjective) is "additional; more; supplemental". "Further" investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a "further" report or reports -- and not fresh report or reports -- regarding the "further" evidence obtained during such investigation. Once it is accepted -- and it has got to be accepted in view of the judgment in Kazi Lhendup Dorji [1994 Supp (2)*

SCC 116 : 1994 SCC (Cri) 873] -- that an investigation undertaken by CBI pursuant to a consent granted under Section 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that "further investigation" is a continuation of such investigation which culminates in a further police report under sub-section (8) of Section 173, it necessarily means that withdrawal of consent in the instant case would not entitle the State Police, to further investigate into the case. To put it differently, if any further investigation is to be made it is the CBI alone which can do so, for it was entrusted to investigate into the case by the State Government. Resultantly, the notification issued withdrawing the consent to enable the State Police to further investigate into the case is patently invalid and unsustainable in law. In view of this finding of ours we need not go into the questions, whether Section 21 of the General Clauses Act applies to the consent given under Section 6 of the Act and whether consent given for investigating into Crime No. 246 of 1994 was redundant in view of the general consent earlier given by the State of Kerala."

23. In the case of Rama Chaudhary v. State of Bihar, (2009) 6 SCC 346, the Apex Court has further confirmed the statutory right of the police to further investigate the matter even after filing of the charge-sheet in following words in para 22:

"22. The law does not mandate taking prior permission from the Magistrate for further investigation. It is settled law that carrying out further investigation even after filing of the charge-sheet is a statutory right of the police (vide K. Chandrasekhar v. State of Kerala [(1998) 5 SCC 223 : 1998 SCC (Cri) 1291]). The material collected in further investigation cannot be rejected only because it has been filed at the stage of the trial. The facts and circumstances show that the trial court is fully

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> *justified to summon witnesses examined in the course of further investigation. It is also clear from Section 231 CrPC that the prosecution is entitled to produce any person as witness even though such person is not named in the earlier charge-sheet.*"

24. Assistance can also be taken from the judgment in case of Vinay Tyagi vs. Irshad Ali @ Deepak & Others, (2013) 5 SCC 762, wherein the Hon'ble Apex Court categorically noted that 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 Apex Court, while recognizing the aforesaid position of law applying the doctrine of "*contemporanea expositio*" has observed that though there is no requirement of seeking prior leave of the learned Magistrate to conduct further investigation and to file supplementary report, however, as a matter of practice, which was understood and implemented for long time that normally the permission of the learned Magistrate was formally sought for further investigation, it should be ideally observed. The Hon'ble Apex Court further held that so far as the further investigation is concerned, no permission is required. However, for the purposes of fresh, *de novo* or re-investigation, the permission of the learned Magistrate is mandatory. It will be relevant to note paragraphs 40, 49, 50, 51, 52, 53 & 54 of the aforesaid judgment, which are as under:-

> "*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*

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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.

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

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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.

51. 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

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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, reinvestigation 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 Sivanmoorthy v. State [(2010) 12 SCC 29 : (2011) 1 SCC (Cri) 295] .

52. In light of the above discussion, we answer the questions formulated at the opening of this judgment as follows.

53. 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;

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(b) Where an order is passed by the higher courts in exercise of its extraordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on "fresh investigation" or "reinvestigation" or any part of it be excluded, struck off the court record and be treated as non est.

54. No investigating agency is empowered to conduct a "fresh", "de novo" or "reinvestigation" 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. "

25. In case of Hemendra Reddy (supra), the issue before the Hon'ble Apex Court was that after filing of closure report, can investigation be carried out and upon which, cognizance can be taken. The Hon'ble Apex Court while summarizing final conclusion, in para 83, held as under:-

"83. We may summarise our final conclusion as under:
(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against conducting further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.

(ii) Prior to carrying out further investigation under Section 173(8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.

(iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the

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> *accused are being subjected to investigation twice over. Moreover, investigation cannot be put at par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.*
>
> *(v) There is nothing in the CrPC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the CrPC.*"

26. It is well settled that the police has a right to further investigate even after submission of charge sheet before the learned Magistrate in exercise of powers u/s 173(8) of the Code. It has been statutorily recognized that there is no requirement that before initiating further investigation, the investigating agency must take permission of the Magistrate concerned, as further investigation is distinct from re-investigation / *de novo* investigation or fresh investigation. Further investigation is just continuance of the investigation, which has already been done and to find out the facts in continuation of the facts, which are forming part of the final report and which were left out during the investigation. However, fresh, *de novo* or reinvestigation has effect of wiping out the investigation already done and to start it from the beginning or from its inception.

27. Coming back to the case on hand, it is noticeable that in final report filed u/s 173(2) of the Code against the petitioner dated 14.6.2017 showcase that the investigating officer has reserved his right to file prosecution sanction u/s 19 of the Act, as at the relevant time, it was not obtained during

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investigation. Prosecution sanction u/s 19 of the Act is incumbent to take cognizance of the charges under the Act levelled in the FIR. The principal allegation against the petitioner is misuse of his power as DPS and facilitated exchange of demonetized notes in the post office. The supplementary charge sheet filed on 27.2.2018 u/s 173 of the Code at Annexure A reveals two aspects. Firstly, source of old currency exchanged by the petitioner – the then DPS, Ahmedabad and secondly, filing of prosecution sanction u/s 19 of the Act in respect of all charge sheeted accused. Either of the act of the investigating officer cannot be held as *de novo*, fresh or re-investigation. It is in continuation of the earlier part of the investigation. The case of Peethambaran (supra) is distinguishable on the fact that in case on hand, investigating officer has not carried any re-investigation and secondly, he has reserved his right to investigate further at the time of filing final report u/s 173(2) of the Code. Thus, no substance found in submission that supplementary charge sheet (Annexure A) cannot be filed.

28. In view of above, second petition i.e. Special Criminal Application No.1776 of 2019 is found to be speculative, futile and fatuous.

29. In the premises of aforesaid reasons, both the petitions fail and stand dismissed. Notice discharged. Interim relief granted earlier stands vacated.

(J. C. DOSHI,J)

SHEKHAR P. BARVE