IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY, 2024

BEFORE

THE HON'BLE MR JUSTICE K.NATARAJAN

CRIMINAL PETITION NO.9009 OF 2021

BETWEEN:

ANNEGOWDA
S/O LATE JAVAREGOWDA,
AGED ABOUT 59 YEARS,
R/AT BEGAMANGALA VILLAGE,
CHITTANAHALLI POST,
KASABA HOBLI,
NAGAMANGALA TALUK,
MANDYA DISTRICT - 571 432.

...PETITIONER

(BY SRI. NATARAJ G., ADVOCATE)

AND:

1. THE STATE BY YESHVANTHAPURA POLICE STATION
BENGALURU,
REPRESENTED BY SPP,
HIGH COURT OF KARNATAKA,
AT BENGALURU - 560 001.

2. B.J NAGARATHNAMMA
W/O B H LAKSHMAN GOWDA,
AGED ABOUT 69 YEARS,
R/AT BYALADAKERE VILLAGE,
NAGAMANGALA TALUK,
MANDYA DISTRICT - 571 418.

3. B. L. HARIPRASAD
S/O B.H.LAKSHMAN GOWDA
AGED ABOUT 44 YEARS,
R/AT NO.3, 1ST MAIN ROAD,
SUBEDAR PALYA,
YESHWANTHPURA,
BANGALORE.

PRESENTLY R/AT BYALADAKERE VILLAGE,
BELLUR HOBLI,
NAGAMANGALA TALUK,
MANDYA DISTRICT - 571 418.

…RESPONDENTS

(BY SMT. ANITHA GIRISH., HCGP FOR R1;
SRI. SURENDRA KUMAR N., ADVOCATE FOR R2
& R3)

THIS CRIMINAL PETITION IS FILED UNDER SECTION 482 OF CR.P.C. PRAYING TO SET ASIDE THE ORDER DATED 26.03.2021 BEING PASSED BY THE XXIV ADDL.C.M.M., BENGALURU IN C.C.NO.28739/2017 FOR THE OFFENCE P/U/S 201 AND 420 OF IPC VIDE ANNEXURE-A.

THIS CRIMINAL PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 28.05.2024 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

RESERVED FOR ORDERS ON: 28.05.2024 PRONOUNCED ON : 31.05.2024

ORDER

This petition is filed by the petitioner/accused under Section 482 of Cr.P.C., for challenging the order of the Magistrate dated 26.3.2021 against the application filed by the Investigating Officer under Section 173 (8) of Cr.P.C., permitting for further investigation in C.C.No.28739/2017 passed by XXIV ACMM, Bengaluru, for the offences punishable under Sections 201 and 420 of IPC.

2. Heard the arguments of learned counsel for the petitioner, learned HCGP for the respondent No.1 and learned counsel for respondent Nos.2 and 3.

3. The case of the petitioner is that the respondent Nos.2 and 3 have filed private complaint under Section 200 of Cr.P.C. read with 156(3) of Cr.P.C. Learned Magistrate referred the complaint to the police for registering the FIR and filing the final

report. The police after receipt of the complaint registering the FIR in Crime No.461/2016 for the offences punishable under Sections 193, 34, 120B, 471, 420, 463, 468, 506(B) of IPC and after the investigation, the police have filed charge sheet against the petitioner for the offences punishable under sections 420 and 201 of IPC. After filing the charge sheet, the Magistrate took the cognizance and also secured the presence of the petitioner and framed the charges and subsequently issued summons to the complainant CW1.

4. It is further alleged that the CW1 appeared before the court. At this stage Assistant Public Prosecutor (APP) filed an application under Section 173(8) of IPC for directing the Investigating Officer to conduct further investigation. Subsequently, the said interlocutory application has been withdrawn by the APP after objection raised by the petitioner/accused counsel.

5. It is further alleged that the complainant said to have approached the Investigating Officer and filed representation seeking further investigation. Then once again the Investigating Officer appeared before the court filed an application under Section 173(8) of Cr.P.C. seeking for further investigation, which was allowed by the Magistrate vide impugned order dated 26.3.2021, which is under challenge.

6. Learned counsel for the petitioner has strenuously contended that the order of the Magistrate is not sustainable for the reasons, that when the case was adjourned to some date and without notifying the accused the trial court passed the impugned order by advancing the case before the court and passed order for further investigation. Therefore, without giving an opportunity for the petitioner ordering for further investigation, is not correct. Hence, on this ground, the impugned order

is not sustainable. Learned counsel further contended that though the Magistrate has power to direct the police to further investigate, but once the trial began after framing of the charges, the Magistrate has no power to direct the police to further investigate the matter. Therefore, on this ground the order is liable to be set aside. In support of his case, learned counsel for the petitioner relied upon the judgment of Hon'ble Supreme Court reported in ***Vinubhai Haribhai Malaviya and Ors Vs State of Gujarat and Anr (2019)*** reported in ***AIR 2019 SC 5233*** (AIR Online 2019 SC 1199).

7. Per contra learned HCGP seriously objected the petition, contending that the Investigating Officer who had filed the charge sheet has not properly investigated the matter. There were various offences made out in the complaint regarding forging the signature, creating the documents and selling the property. Such being the case, the Investigating

Officer filed charge sheet for the offence only under Section 420 of IPC. He has not properly investigated the matter, therefore it is necessary for the Investigating Officer for going for further investigation and to file additional charge sheet under Section 173(8) of Cr.P.C., which is permissible. Therefore he argued that there is no flaw in the order to interfere by this court. Hence, prayed for dismissal of the petition.

8. Learned counsel for the respondent Nos.2 and 3, also taken similar contention and contended that for referring the matter for further investigation, the court need not hear the accused and court has power to direct the police to further investigate and the consent of the accused is not necessary. It is further argued by the learned counsel that in a recent case Hon'ble Supreme Court has held in the case of ***Devendra Nath Singh Vs State of Bihar*** reported in ***AIR 2022 SC 5344,*** wherein it was

allowed the court to further investigate the matter for fair investigation. He also contended the Hon'ble Supreme Court also allowed similar application for further investigation in the case reported in ***AIR 2004 SC 2078*** by Hon'ble Supreme Court in the case of ***Hasanbhai Valibhai Quresh Vs State of Gujarat and Others***. Learned counsel also contended that after considering the judgment of the Hon'ble Supreme Court stated in the case of "***Vinubhai Haribhai'*** stated supra, permitted the police to further investigate the matter. Further contended that as per the judgment of Hon'ble Supreme Court in case of ***Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha maharaj Vs State of Andra Pradesh and others*** reported in ***(1999) 5 SCC 740*** and it is contended that the court is not obliged to hear the accused for making further investigation and therefore prayed for dismissing the petition.

9. Having heard the arguments and perused the records, on perusal of the same, it is not in dispute that the respondent Nos.2 and 3 filed private complaint and the same was referred to the police under Section 156(3) of Cr.P.C. There were various allegations in the complaint, therefore the complainant alleged that the accused committed the offences on various provisions under Sections 468, 471, 506, 420 of IPC. Admittedly, the police registered the FIR for various offences but filed charge sheet only for the offences punishable under Sections 420 and 201 of IPC.

10. It is also an admitted fact, the accused appeared before the court after receiving summons to him. The charges were also framed by the court and subsequently the Assistant public prosecutor moved similar application under Section 173(8) of Cr.P.C., which came to be dismissed as withdrawn. Thereafter the case was adjourned and in the

meanwhile, the Investigating Officer moves an application for further investigation under Section 173(8) of Cr.P.C., which came to be allowed vide impugned order dated 26.3.2021.

11. The main contention of the petitioner is that when the case was adjourned to May-2021 but the prosecution advanced the case before the court in March-2021 and without giving an opportunity to the petitioner, the impugned order has been passed. Therefore it is contended that the order is not sustainable. In this regard, the respondent counsel relied upon the judgment of the Hon'ble Supreme Court and contended that while ordering for further investigation the court is not required to hear the accused. Hon'ble Supreme Court in the case of ***Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj Vs State of Andra Pradesh and others*** stated supra in paragraph Nos.10 and 11 of the judgement are as below;

> *"10. Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in Ram Lal Narang v. State (Delhi Admn.)¹. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.*
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> *11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation."*

In view of the judgment of Hon'ble Supreme Court stated supra the court need not hear the accused for

redirecting the police to further investigate. Therefore the contention of the learned counsel for the petitioner not sustainable under the law

12. As regards to another contention by learned counsel for the petitioner is that once the trial began the Magistrate has no power to direct the police for further investigation. The Hon'ble Supreme Court has held in the case of ***Devendra Nath Singh's*** case stated supra in paragraph No.12.2 it has held as below

> *"12.2. It is, however, beyond any cavil that 'further investigation' and 'reinvestigation' stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a 'State' to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in Ramachandran v. R. Udhayakumar opined as under:*

> *11. (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631.*
>
> *'7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code,*
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> *the police has right to further investigate under sub- section (8), but not fresh investigation or reinvestigation.'*
>
> *A distinction, therefore, exists between a reinvestigation and further investigation."*

13. However, by referring the judgment the Hon'ble Supreme Court in case of ***Devendra Nath Singh's*** case stated supra it is held that the court can order for further investigation and to file additional charge sheet under Section 173 (8) of Cr.P.C., Hon'ble Supreme Court has held at paragraph Nos.13(a),(b) & (c), 16 and 19 as under;-

> *13. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:*

(a) The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.

(b) The powers of the Magistrate to ensure proper investigation in terms of Section 156 CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8) CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

(c) Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8) CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 CrPC could

be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8) CrPC do not limit or affect such powers of the High Court to pass an order under Section 482 CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

(d) Even when the wide powers of the High Court in terms of Section 482 CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

(e) The powers under Section 482 CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of

further investigation or reinvestigation, a particular person has to be prosecuted.

16. Thus, we are of the view that in the given set of facts and circumstances, though the High Court has rightly exercised its powers under Section 482 CrPC for directing further investigation but, has not been justified in making such observations, comments, and remarks, which leave little scope for an independent investigation and which carry all the potential to cause prejudice to the appellant. The first question in this appeal is answered accordingly.

19. On the facts and in the circumstances of the present case, we are clearly of the view that no purpose would be served by adopting the course of Popular Muthiah (supra) where this Court restored the matter for reconsideration of the High Court with an opportunity of hearing to the appellant therein. Some of the prominent and peculiar circumstances of the present case are that the allegations and imputations have their genesis in the documentary evidence in the form of departmental instructions and the audit report; the fact that the appellant was holding the office of the District Manager at the relevant point of time is not in dispute; and hereinbefore, we have upheld the exercise of inherent powers by the High Court in directing

further investigation qua the role of the appellant.

19.1. We have also taken note of the submissions that, according to the appellant, he had already been exonerated of all charges after detailed departmental proceedings; and such a fact did not appear before the High Court for want of notice to him. For the present purpose, suffice it to observe that even if the appellant had been exonerated in the departmental proceedings, such a fact, by itself, may not be conclusive of criminal investigation; and for this fact alone, the High Court could not have ignored all other features of the case and the material factors that had surfaced before it.

14. In view of the above said judgment the Magistrate has power to direct the police for further investigation for fair investigation the Hon'ble Supreme Court also in ***Hasanbhai Valibhai Quresh's*** case stated supra taken similar view at paragraph Nos.12 and 13 of the judgment as under,

12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the Court as such,it is open to the police to conduct proper investigation, even after the Court took cognizance of any

offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.

13. In Om Prakash Narang and another v. State (Delhi Admn.), (AIR 1979 SC 1791) it was observed by this Court that further investigation is not altogether ruled out merely because cognizance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the Courts. In view of the aforesaid position in law if there is necessity for further investigation the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand on the way of further investigation if that would help the Court in arriving at the truth and do real and substantial as well as effective

justice. We make it clear that we have not expressed any final opinion on the merits of the case.

15. In view of the judgment of Hon'ble Supreme Court in various cases, this court also followed the same in writ petition No.17118/2022 dated 28.5.2024 has permitted the police to further investigate the matter by dismissing the writ petition. Therefore, I am of the view, merely the police filed the charge sheet and cognizance taken, the Court cannot confine to the charge sheet. If the Investigating Officer makes an application for further investigation of the matter to the Magistrate, the Magistrate has power to permit the police to further investigate the matter. It cannot be construed as re-investigation and merely the Magistrate not given any notice to the accused while directing the police to further investigate the matter, that itself is not ground to quash the impugned order for the purpose of investigation. The magistrate has always power to

further investigate the matter. Therefore, I am of the view the petitioner not made out a case for setting aside the impugned order.

Accordingly, I proceed to pass the following;

The petition field by the petitioner/accused is hereby ***dismissed***.

Sd/-
JUDGE

AKV
CT:SK