IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL REVISION APPLICATION NO.106 OF 2022

Ashish Devidas Morkhade … APPLICANT
aged about 39 years,
Occ:- Service
R/o Near Ira International School
Butibori, Nagpur

// VERSUS //

State of Maharashtra … RESPONDENT
through Police Station Officer,
Police Station Butibori,
Nagpur

Shri A.M. Jaltare, Advocate for the applicant.
Shri Amit Chutke, APP for the State.

CORAM : G. A. SANAP, J.
DATE:- 21/04/2023

ORAL JUDGMENT

1. **Rule**. Rule made returnable forthwith. Heard finally by consent of learned Advocates for the parties.

2. In this criminal revision application, challenge is to the order passed by the learned Special Judge (N.D.P.S. Act) dated 08.04.2022 whereby, the learned Judge has directed Special I.G., Nagpur Zone and Superintendent of Police, Nagpur (Rural) to take action for registration of crime against PW-10 Aashish Devidas Morkhade, Investigating Officer for the offences found to have been *prima-facie* committed by him.

3. The relevant facts are as follows:-

The applicant -Aashish Devidas Morkhade is Police Sub Inspector. At the relevant time he was attached to Police Station, Butibori, Nagpur. Crime bearing No.318/2021 was registered at Butibori Police Station for commission of offences under Section 20(b) and Section 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 (herein after referred as N.D.P.S. Act) against three accused persons. The

contraband recovered in the case was Ganja weighing 78.360 Kg. The investigation for the said crime was entrusted to the applicant. He carried out the investigation from 27.08.2021. Prior to this date the investigation was carried out by A.P.I. Shri Manik Choudhary. After completion of the investigation, the charge sheet was not filed within time namely within 180 days from the date of the production of the accused before concerned Court for remand. The accused, therefore, on 25.01.2022 applied for bail under Section 167(2) of the Cr.P.C. in short default bail. The prosecutor filed the say in the said proceeding. The Special Court by order dated 28.01.2022 allowed the bail application and granted bail to the accused on the ground of failure of the applicant to file the charge sheet within time.

4. Learned Special Judge while passing the bail order made certain observations against the applicant. The learned Judge at the stage of deciding the bail application *prima-facie* found that this act of the applicant was an offence punishable under Section 59(1) of the N.D.P.S. Act. While deciding the

bail application the direction was issued to the Special I.G., Nagpur Zone and Superintendent of Police, Nagpur (Rural) for initiating necessary action against the applicant. It is to be noted that pursuant to this direction, departmental proceeding was initiated against him. He was suspended.

5. The prosecution adduced the evidence in the main trial. The Special Judge by his order dated 08.04.2022 convicted and sentenced the accused. The learned Judge on consideration of the facts, circumstances and available evidence on record *prima-facie* found that this act on the part of the applicant was intentional and as such it was an offence under Section 59 of the N.D.P.S. Act. The learned Judge accordingly issued the direction to the Special I.G., Nagpur Zone and Superintendent of Police, Nagpur (Rural) for registration of crime at appropriate Police Station against PW10- Aashish Devidas Morkhade.

6. Being aggrieved by this order, the applicant has approached this Court. It is the case of the applicant that there

was no negligence or any misconduct on his part. It is his case that delay occasioned for filing of the charge sheet was properly explained by him. It is further stated that he has been facing the department proceeding for this lapse. It is further stated that the learned Special Judge has no jurisdiction to issue such direction. According to the applicant, he took all possible steps to file the charge sheet within time. However, due to the circumstances which were beyond his control, he could not file the same within time. It is, therefore, submitted that the order which would ruin his entire service career needs to be set aside.

7. The Police Inspector, Police Station Butibori, filed his detailed affidavit and opposed this application. In short, in his reply, the in-charge of the Butibori Police Station has stated that the order passed by learned Special Judge is in accordance with law. In the reply, the chart of the dates and events has been provided to demonstrate that the applicant was responsible for this mess and, therefore, he has to face the consequences. It is further stated that except the applicant no

other officer was responsible for this mess.

8. I have heard Shri A.M. Jaltare, learned Advocate for the applicant and Shri A.M. Chutke, learned APP for the State. Perused the record and proceedings.

9. Learned Advocate for the applicant submitted that learned Special Judge exceeded his jurisdiction by issuing direction to the Special I.G. Nagpur for registration of the First Information Report against the applicant and also to take necessary action for obtaining the sanction for his prosecution. Learned Advocate submitted that learned Special Judge was expected to make the relevant observations touching the issue in his order and issue the direction to the I.G. to explore the possibility of initiation of appropriate proceeding as per law against the applicant. Learned Advocate submitted that applicant was not given an opportunity to explain the circumstances before passing the order against him. Learned Advocate submitted that there is no material on record to sustain the findings and ultimate order passed by the learned

Special Judge. Learned Advocate submitted that at the most the case in question would be fit for issuing direction for conducting the departmental inquiry and not more than that. In order to substantiate his submission learned Advocate has placed reliance on three reported decisions. Learned Advocate further submitted that the intention of the applicant as has been attributed to him has not been supported by the record. Learned Advocate submitted that despite granting bail to the accused they were not able to furnish the security and as such they could not come out of jail till the judgment, which resulted into their conviction and sentence.

Learned Advocate further submitted that no doubt was raised about the fairness of investigation because the investigation and the evidence collected during the course of investigation has resulted into conviction of the accused. Learned Advocate submitted that these two facts are required to be taken into consideration.

10. Learned APP submitted that at the time of recording of the evidence of applicant as PW-10 he was given

an opportunity by the learned Special Judge to explain the relevant facts and circumstances. Learned APP took me through the deposition of PW-10 and pointed out that learned Special Judge by exercising his power put number of questions to the applicant. Learned APP submitted that while answering those questions, he has indirectly admitted serious lapses on his part. Learned APP further took me through the reply filed by the learned APP to the bail application made by the accused under Section 167(2) and submitted that learned APP was not properly appraised about this fact by the Investigating Officer. Learned APP further submitted that in the reply filed under the signature of the applicant to the said application, no categorical statement was made as to the delay occurred in filing the charge sheet in time. Learned APP submitted that considering the serious nature of the matter and the evidence on record the learned Special Judge was right in passing the order. Learned APP has relied upon a decision in the case of ***Sahabuddin and Another Vs. State of Assam*** reported in ***(2012) 13 SCC 213*** to substantiate his submission that learned Special Judge has power to issue such a direction.

11. Before I proceed to appreciate the rival submissions, it would be necessary to state that the N.D.P.S. Act was enacted in the year 1985 because the then existing enactments were not found sufficient or they had become out dated to take care of the menace of Narcotic Drugs. This Act was enacted with an object to consolidate and amend the law relating to Narcotic Drugs to make stringent provisions for the control and regulation of operations relating to Narcotic Drugs and Psychotropic Substances and to provide for forfeiture of property derived from and used in illicit traffic in Narcotic Drugs and Psychotropic Substances. The necessity was felt for the purpose of the implementing the provisions of the international conventions on Narcotic Drugs and Psychotropic Substances, Act. Consistent with this object and reasons behind enactment, stringent provisions have been made with regard to the punishment for the proved crime. Similarly, in order to avoid the misuse of this crime, ample checkes and balances have been provided by enacting the mandatory provisions. Those provisions can be traced from Section 41 to Section 57. Section 59 has also been enacted

consistent with this object and reason behind enactment of the N.D.P.S. Act. Section 59 provides the punishment for the offences relating to the failure of an officer in duty or his connivance in the contravention of the provisions of N.D.P.S. Act. It is to be noted that while deciding the cases under N.D.P.S. Act as well as any action proposed to be taken under Section 59 of the N.D.P.S. Act, a great care is required to be taken. Every action and step must be in a direction to fulfill the very object of the enactment of the N.D.P.S. Act. There was specific object behind the provisions in the form of Section 59. The law makers in their wisdom expected that all concerned in implementing the N.D.P.S. Act must be cautious and serious about their duty. In this case, the above stated facts would be required to born in mind.

12. The relevant facts which gave rise for this order have been stated in the order by the learned Special Judge. It is seen that on 27.08.2021 the investigation was handed over to the applicant. The applicant has not stated that he was not aware of the mandate of the law. Before handing over the

investigation to him on 27.08.2021, the investigation was conducted by API Mr. Manik Choudhary. On 24.09.2021 the C.A. report after analysis of the samples was received at Police Station. On 01.10.2021 the inventory was prepared and certified by the Judicial Magistrate, First Class Nagpur. The applicant recorded last statement of the witness on 01.10.2021.

13. The undisputed facts which could be seen from the record indicate that the approach of the applicant was careless, casual and not in consonance with the provisions of law. Despite receipt of the CA report on 24.09.2021, again on 12.10.2021 he forwarded requisition to FSL, Nagpur for C.A. report of the samples. FSL, Nagpur, on the very next date i.e. 13.10.2021 communicated in writing to the applicant that samples were already analyzed and the CA report and relevant samples were returned back to the Police Station. This fact would show that applicant despite receipt of CA report, from 24.09.2021 to 12.10.2021 was sitting idle. The requisition sent by him to FSL on 12.10.2021 would reflect upon his serious misconduct.

14. It is, therefore, seen that on 13.10.2021 he was made aware that CA report was already forwarded after analyzing the samples to the Police Station. So from 13.10.2021, no further investigation was carried out by him. From 13.10.2021 to 26.11.2021 he did not take steps for filing the charge sheet. On 26.11.2021 he submitted the case diary for scrutiny to S.D.P.O, Nagpur (Rural). The S.D.P.O. Nagpur (Rural) returned the case diary to the applicant on 08.12.2021. The applicant submitted the case diary with papers for verification to Additional Superintendent of Police, Nagpur on 10.12.2021. The Additional S.P. returned the case diary with papers to the applicant on 28.12.2021. According to the applicant, till 14.01.2022 the investigation of the crime was with him. It is seen that from 29.12.2021 to 14.01.2022 he did not file the charge sheet in the Court. He has come before this Court with an explanation that he was busy in the investigation of other crimes entrusted to him by his superior. It needs to be stated that the police officer attached to the Police Station is bound to be entrusted with the investigation in more than one crime. This cannot be the ground and

justification for not filing the charge sheet in a case where investigation is complete in all respect. It is further pertinent to note that for the purpose of filing the charge sheet, the investigation officer is not personally required to carry the papers to the court. Such work is required to be done by the court Moharir or constable attached to said police station. In this case, the applicant failed to take the requisite care.

15. At this stage, it is pertinent to note that the crime in question by any standard was serious crime. In this crime 78.360 Kg Ganja was recovered. The officer has not stated that he was not aware of the provisions of the N.D.P.S. Act. Similarly, such defence cannot be accepted. It is to be noted that in serious crimes like crime relating to human body punishable under Section 302 I.P.C. the custody period cannot be extended beyond 90 days. In such serious crime charge sheet has to be filed within 90 days. There is no provision for extension of period. As per the provisions of N.D.P.S. Act initial judicial custody period is of 180 days. It is further seen that there is provision for extension of this period

to further 180 days. In this context, the action of this applicant is required to be examined. During this period, as stated above, if he had any difficulty in filing the charge sheet, it was open for him to approach the prosecutor and make an application for extension of time. No steps were taken by him. It is stated that on his application, leave was sanctioned to him from 15.01.2022 to 29.01.2022. However, he resumed his duties on 25.01.2022. The period of 180 days expired on 28.01.2022. The right to apply for default bail accrued in favour of the accused on 21.01.2022. They applied for default bail on 25.01.2022. The bail was granted on 28.01.2022. All these facts in totality are required to be taken into consideration.

16. In the backdrop of serious objection having been raised to the order passed by the Learned Special Judge, it would be necessary to examine the relevant part of the order. It would also be necessary to see the evidence of applicant. Perusal of his evidence which is on record at page 138 would show that after completion of the cross examination of the

applicant on behalf of the defence, the learned Judge asked near about 10 questions to the applicant. The object behind these questions was to seek his explanation about this fact. It is to be noted that learned Judge was aware of real state of affairs because he had decided the bail application and at that time he was confronted with the serious lapse on the part of the Investigating Officer. Applicant has admitted that investigation was complete in all respect on 13.10.2021. He has admitted that he was aware that charge sheet has to be filed in such crime within 180 days from the date of the arrest of the accused. He has stated that CA report was already available with him. He has stated that due to inadvertence, charge sheet remained to be filed. It is seen that on all the relevant aspects he was questioned. The answers given by him have been taken into consideration by the learned Judge.

17. At this stage, it is necessary to examine the powers of the learned Judge to put such questions to the witness. Section 165 of the Indian Evidence Act 1872 empowers the Judge to put questions to the witness or order production of

document. The learned Judge put all the questions to PW-10 in exercise of his power under Section 165 of the Evidence Act. The learned judge was not only cautious of rights of the applicant but also the rights of the accused persons and the prosecution. The learned Judge after completion of the questions by him to the applicant granted the accused and prosecution an option to cross examine or to ask any question to the applicant in the context of the answers given to the Court questions by the applicant. The record reveals that they declined this offer. It is therefore, apparent that the objection raised on behalf of the applicant that before passing the order he was not granted an opportunity to defend himself appropriately is without substance. It is to be noted that this objection cannot be accepted for more than one reason. The learned Judge on the basis of the material on record has recorded his *prima facie* opinion about the commission of an offence under Section 59 of N.D.P.S. Act by this applicant. The learned Judge has not awarded any sentence to him. So the right of the accused to meet the case which he would be made to face has not in any way tinkered with or taken away.

18. It is to be noted that the approach of the learned Judge being Special Judge under the N.D.P.S. Act is consistent with the object and spirit of the enactment. It is to be noted that while implementing the provisions of the enactment such as N.D.P.S. Act all concerned at their respective place are required to demonstrate equal seriousness. If such seriousness is not demonstrated then it can frustrate the object and intention of such enactment. It needs to be stated that in order to ensure such seriousness by all concerned the stringent provisions have been made. Section 59 of the N.D.P.S. Act is one such stringent provision. It provides for penal consequences in case of an act by anyone, which is not consistent with the object and intention. It is submitted that the opportunity was not given to him to explain the reasons for delay in filing the charge sheet. In my view, this objection can be taken care of by perusing the questions put to the applicant and answers given by him. He has categorically stated that investigation was complete on 13.10.2021. It is not his case that after these questions by the Court and answers given by him, he was in any manner prevented by the Court

from placing on record his explanation. The questions put to him and answers given by him to those questions clearly indicate that he was granted an opportunity to explain each and every aspect. In fact the applicant has admitted that in all respect the investigation was completed on 13.10.2021. Applicant had an opportunity to place his detailed explanation on record when he was called upon to file the say to the bail application. The perusal of the say or reply to the bail application would show that it was conspicuously silent about the reasons for delay in filing the charge sheet. In fact the say filed by the prosecutor on 27.01.2022 would reveal that on phone, he had questioned the applicant about the delay in filing the charge sheet. However, he did not answer him. He finally went to meet him on 28.01.2022. It is, therefore, seen that throughout the proceeding, he has not placed the reasons for delay in filing the charge sheet on record. It is, therefore, seen that the failure on his part is serious wrong. Learned judge has found that this wrong is fully covered within the dragnet of Section 59 (1) of the N.D.P.S. Act.

19. I have minutely perused the reasons recorded by the learned Judge. The learned Judge has placed on record his anguish. The learned Judge on the basis of the material collected during the course of investigation convicted the accused persons. However, despite conviction of the accused persons, learned Judge deemed it appropriate to issue the direction which has been questioned in this revision.

20. It is to be noted that first priority is required to be given to the investigation by Investigating Officer. It is observed that first priority is not given for conducting the investigation. The failure to display the promptness in conducting the investigation in serious crime can result in either tampering with the prosecution evidence or vanishing of the said evidence. The fate of the case of the prosecution depends upon the quality of the investigation. Prompt, swift and careful investigation is necessary to ensure the fairness. Such investigation can bring about a quality to the investigation. It is observed that by and large a casual approach is adopted in conducting the investigation even in

the serious crimes. This case is classic example of it. The misconduct on the part of the investigating officer, despite completion of investigation well in time, has extended the benefit of default bail to the accused. It is true that the accused could not furnish the surety and therefore, they could not come out of the jail. However, it does not mean that on this ground the investigation officer would get himself exonerated from the dragnet of Section 59 of the N.D.P.S. Act.

21. In my view, therefore, learned Special Judge was well within his power. Learned Special Judge has not exceeded his jurisdiction. Learned Judge has simply directed IG to take action for registration of crime against the applicant. It is submitted that order of the learned Judge directing them to obtain sanction is not according to law. On going through the order, I am of the opinion that learned Judge has not given any direction for obtaining the sanction. Learned Judge has stated about an appropriate action for registration of crime and sanction for prosecution. It is not out of place to mention that after registration of the First Information Report, the

investigation may be carried out. Investigation may result in filing of the charge sheet or filing of report under Section 169 or A, B, C summary. If there is material to file charge sheet then question of obtaining sanction would arise. In that event depending upon the result of the investigation, the officer would be required to move either the Central Government or the State Government for the sanction. It, therefore, cannot be said that learned Judge has directed them to obtain the sanction and prosecute him by side tracking the provisions of law.

22. At this stage, it would be necessary to mention that unless and until the Courts at every stage takes serious view of such a matter, the police officer would not improve. It is to be noted that investigation is the most important part of the criminal justice system. The fate of entire case of prosecution depends upon the quality of the investigation. It is, therefore, high time to send an appropriate message to all concerned, as and when the Court is confronted with such a case. It is to be noted that quality of investigation is one of the factors for

dismal rate of conviction. It is observed that in number of cases a very casual and careless approach is adopted by the Investigating Officer. There could be number of reasons. Whatever be the reasons, the Courts as and when confronted with such case, must deal with the same with iron fist. In my view, the approach of the learned Special Judge is highly courageous and commendable. It is noticed that by and large there is tendency to avoid such steps or action at the behest of the officer by taking lenient view. In my view, therefore, learned Judge was well within his jurisdiction. He has not exceeded his jurisdiction.

23. Learned Advocate relying upon the decision in the case of ***Jayrajsinh Madhubha Gadhvi Vs. State of Gujarat*** reported in *2022(4) Cri.CC 206* submitted that Court cannot issue direction to the officer to grant sanction. In my view, this proposition is not applicable to this case, because learned Judge has not issued any direction to the competent authority to grant sanction. Learned Judge has made observation that as and when any action is taken, the action of

sanction would also be part of the same. The question of obtaining sanction in this case would arise if the report or the charge sheet is proposed to be filed on the basis of the investigation. The second judgment learned Advocate relied upon is the case of ***Ashok Kumar Nigam Vs. State of Uttar Pradesh and another*** reported in ***(2016) 12 SCC 797.*** In this case, in the departmental proceeding, the punishment awarded by the disciplinary authority was increased by the High Court. The Hon'ble Apex Court in this case has held that it was an error on the part of the High Court because the High Court could not have placed the appellant in a worse-off position for having challenged punishment awarded by the disciplinary authority. In my view, therefore, the decisions relied upon by the learned Advocate are not applicable to the case of the applicant.

24. Learned APP in support of his submissions, has relied upon the decision in the case of ***Sahabuddin and Another Vs. State of Assam*** (supra). Para 32 of this decision would be relevant. It is extracted below:-

"Para 32. In our considered view, action should be taken against both these witnesses. Before we pass any direction in this regard, we may refer to the judgment of this Court in ***Gajoo Vs. State of Uttarakhand, (2012) 9 SCC 532,*** *where the Court had directed an action against such kind of evidence and witnesses.*

> *" 20. In regard to the defective investigation, this Court in* ***Dayal Singh v. State of Uttaranchal*** *[Criminal Appeal 529 of 2010, decided on 3rd August, 2012] while dealing with the cases of omissions and commissions by the investigating officer, and duty of the Court in such cases, held as under:-*
>
> *"27. Now, we may advert to the duty of the Court in such cases. In* ***Sathi Prasad v. State of U.P. (1972) 3 SCC 613****, this Court stated that it is well settled that if the police records become suspect and investigation perfunctory, it becomes the duty of the Court to see if the evidence given in Court should be relied upon and such lapses ignored. Noticing the possibility of investigation being designedly defective, this Court in Dhanraj Singh v. State of Punjab (2004) 3 SCC 654, held:-*

"5. In the case of a defective investigation the Court has to be circumspect in evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigating officer if the investigation is designedly defective."

28. Dealing with the cases of omission and commission, the Court in ***Paras Yadav Vs. State of Bihar (1999) 2 SCC 126****, enunciated the principle, in conformity with the previous judgments, that if the lapse or omission is committed by the investigating agency, negligently or otherwise, the prosecution evidence is required to be examined dehors such omissions to find out whether the said evidence is reliable or not. The contaminated conduct of officials should not stand in the way of evaluating the evidence by the courts, otherwise the designed mischief would be perpetuated and justice would be denied to the complainant party.*

29. In ***Zahira Habibullah Sheikh(5) and another v. State of Gujarat & Ors. (2006) 3 SCC 374****, the Court noticed the importance of the role of witnesses in a criminal trial. The importance and primacy of the quality of trial*

process can be observed from the words of Bentham, who states that witnesses are the eyes and ears of justice. The Court issued a caution that in such situations, there is a greater responsibility of the court on the one hand and on the other the courts must seriously deal with persons who are involved in creating designed investigation. The Court held that-

"42. Legislative measures to emphasize prohibition against tampering with witness, victim or informant have become the imminent and inevitable need of the day. Conducts which illegitimately affect the presentation of evidence in proceedings before the Courts have to be seriously and sternly dealt with. There should not be any undue anxiety to only protect the interest of the accused. That would be unfair, as noted above, to the needs of the society. On the contrary, efforts should be to ensure fair trial where the accused and the prosecution both get a fair deal. Public interest in proper administration of justice must be given as much importance if not more, as the interest of the individual accused. In this Courts have a vital role to play." (Emphasis in original)

30. With the passage of time, the law also developed and the dictum of the Court

emphasized that in a criminal case, the fate of proceedings cannot always be left entirely in the hands of the parties. Crime is a public wrong, in breach and violation of public rights and duties, which affects the community as a whole and is harmful to the society in general.

33. In ***Ram Bali v. State of U.P. (2004) 10 SCC 598****, the judgment in* ***Karnel Singh v. State of M.P (1995) 5 SCC 518*** *was reiterated and this Court had observed that: (Ram Bali case, SCC p. 604- para 12)*

" 12... In case of defective investigation the court has to be circumspect [while] evaluating the evidence. But it would not be right in acquitting an accused person solely on account of the defect; to do so would tantamount to playing into the hands of the investigation officer if the investigation is designedly defective'.

34. Where our criminal justice system provides safeguards of fair trial and innocent till proven guilty to an accused, there it also contemplates that a criminal trial is meant for doing justice to all, the accused, the society and a fair chance to prove to the prosecution. Then alone can law and order be maintained. The Courts do not

merely discharge the function to ensure that no innocent man is punished, but also that a guilty man does not escape. Both are public duties of the judge. During the course of the trial, the learned Presiding Judge is expected to work objectively and in a correct perspective. Where the prosecution attempts to misdirect the trial on the basis of a perfunctory or designedly defective investigation, there the Court is to be deeply cautious and ensure that despite such an attempt, the determinative process is not subvered. For truly attaining this object of a "fair trial", the Court should leave no stone unturned to do justice and protect the interest of the society as well.

35. This brings us to an ancillary issue as to how the Court would appreciate the evidence in such cases. The possibility of some variations in the exhibits, medical and ocular evidence cannot be ruled out. But it is not that every minor variation or inconsistency would tilt the balance of justice in favour the accused. Of course, where contradictions and variations are of a serious nature, which apparently or impliedly are destructive of the substantive case sought to be proved by the prosecution, they may provide an advantage to the accused. The Courts, normally, look at expert evidence with a greater

sense of acceptability, but it is equally true that the courts are not absolutely guided by the report of the experts, especially if such reports are perfunctory, unsustainable and are the result of a deliberate attempt to misdirect the prosecution. In ***Kamaljit Singh v. State of Punjab (2003) 12 SCC 155,*** *the Court, while dealing with discrepancies between ocular and medical evidence, held:- (SCC p. 159, para 8)*

" 8. It is trite law that minor variations between medical evidence and ocular evidence do not take away the primacy of the latter. Unless medical evidence in its term goes so far as to completely rule out all possibilities whatsoever of injuries taking place in the manner stated by the eyewitnesses, the testimony of the eyewitnesses cannot be thrown out."

36. Where the eye witness account is found credible and trustworthy, medical opinion pointing to alternative possibilities may not be accepted as conclusive.

"34…...The expert witness is expected to put before the Court all materials inclusive of the data which induced him to come to the conclusion and enlighten the court on the technical aspect of the case by [examining] the

terms of science, so that the court, although not an expert, may form its own judgment on those materials after giving due regard to the expert's opinion, because once the expert opinion is accepted, it is not the opinion of the medical officer but [that] of the Court. (See Madan Gopal Kakkad v. Naval Dubey (1992) 3 SCC 204)." (emphasis supplied)

21. The present case, when examined in light of the above principles, makes it clear that the defect in the investigation or omission on the part of the investigation officer, cannot prove to be of any advantage to the accused. No doubt the investigating officer ought to have obtained serologist's report both in respect of Ext. 2 and Ext. 5 and matched it with the blood group of the deceased. This is a definite lapse on the part of the investigating officer which cannot be overlooked by the Court, despite the fact that it finds no merit in the contention of the accused.

22. For the reasons afore-recorded, we dismiss this appeal being without any merit. However, we direct the Director General of Police, Uttarakhand to take disciplinary action against Sub-Inspector, Brahma Singh, PW6, whether he is in service or has since retired, for such serious lapse in conducting investigation. The Director

General of Police shall take [a] disciplinary action against the said officer and if he has since retired, the action shall be taken with regard to deduction/stoppage of his pension in accordance with the service rules. The ground of limitation, if stated in the relevant rules, will not operate as the inquiry is being conducted under the direction of this Court."

25. In my view, therefore, this decision recognizes the powers of the court to pass such an order. It is true that in this case, the order of initiation of disciplinary action was passed. The question whether the case warrants a disciplinary action or penal action depends upon the facts and circumstances of each and every case. In this case, the learned Judge found it appropriate to order initiation of a penal action as provided under Section 59 of N.D.P.S. Act. It needs to be stated that as and when it is found by any Court at any stage of proceeding that the actionable wrong within the meaning of Section 59 of the N.D.P.S. Act has been committed then in that event it has to be approached and dealt with firmly by initiating an appropriate action. In this view of the matter, I do not see any

substance in the revision. The same is accordingly dismissed.

26. Before parting with the matter, it is necessary to appreciate the assistance rendered by Shri Amit Chutke, learned APP to this Court the resolving the issue involved in the matter.

27. Learned Advocate submits that the applicant would like to take recourse to the available remedy against this order. He, therefore prays that interim order may be extended for three months.

28. Learned APP submits that Court may pass an appropriate order.

29. In view of this, it is ordered that interim order to continue for three months from today.

JUDGE

manisha