

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 9399 of 2024

**Petitioner :-** Navneet

**Respondent :-** State Of Up And 5 Others

**Counsel for Petitioner :-** Alok Kumar Yadav, Vikas Chandra  
Srivastava, Vipul Singh

**Counsel for Respondent :-** G.A.

**Hon'ble J.J. Munir, J.**

**Hon'ble Arun Kumar Singh Deshwal, J.**

**(Order on writ petition)**

Let the Deputy Commissioner of Police, Central NOIDA, Gautambudh Nagar be impleaded as party respondent during the course of the day.

Supplementary affidavit filed today in the Court is taken on record.

In Case Crime No.408 of 2018, under Sections 420, 406, 467, 468, 120B IPC, Police Station- Phase-III, District- Gautambudh Nagar, the Police filed a charge sheet after investigation before the Court on 10th July, 2018. The Magistrate took cognizance on 18.07.2018. The charge sheet was challenged by the accused Rishi Aggarwal and another before this Court by means of Application U/S 482 No. 2667 of 2019. This Court heard the aforesaid application and by a judgement and order dated 7th March, 2024 dismissed the application under Section 482 Cr.P.C. upholding the charge sheet and the order of cognizance. After the aforesaid order was passed, the Deputy Commissioner of Police, Central NOIDA, Gautambudh Nagar passed an order dated 04.04.2024 which reads;

आदेश

"कृपया स्टॉफ ऑफिसर पुलिस आयुक्त, गौतमबुद्धनगर द्वारा अपने पत्र संख्या शि०प्र० -

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176/2024 दिनांक 03.04.2024 के माध्यम से थाना फेस -3 पर पंजीकृत मु०अ०सं० 408/2018 धारा 420, 406, 467, 468 120 बी भादवि के सम्बन्ध में अवगत कराया गया है कि श्री ऋषि अग्रवाल निवासी सी 64 सेक्टर 47 नोएडा द्वारा पुलिस आयुक्त गौतमबुद्धनगर को प्रस्तुत किये गये प्रार्थना की अपर पुलिस उपायुक्त से०नो० से जांच कराने के उपरान्त नये तथ्य प्रकाश में आने पर पुलिस आयुक्त, गौतमबुद्धनगर महोदया द्वारा मुकदमा उपरोक्त में अग्रिम विवेचना अपराध शाखा से कराये जाने हेतु निर्देशित किया गया है।

उपरोक्त विवेचना में नये तथ्यों के प्रकाश में आने के फलस्वरूप थाना फेस -3 पर पंजीकृत मु०अ०सं० 408/2018 धारा 420, 406, 467, 468, 120 बी भादवि में धारा 173(8) द०प्र०सं० के अन्तर्गत अग्रेत्तर विवेचना किये जाना समीचीन होगा।

अतः उक्त सम्बन्ध में थाना फेस -3 पर पंजीकृत मु०अ०सं० 408/2018 धारा 420, 406, 467,468, 120 बी भादवि में धारा 173(8) द०प्र०सं० के अन्तर्गत अग्रिम विवेचना किये जाने के आदेश पारित किये जाते हैं। उक्त अभियोग में प्रभारी निरीक्षक थाना फेस -3 को निर्देशित किया जाता है कि उक्त के सम्बन्ध में मा० न्यायालय को सूचित करते हुये अभियोग से सम्बन्धित समस्त अभिलेख/प्रपत्र अविलम्ब अपराध शाखा, गौतमबुद्धनगर को उपलब्ध कराना सुनिश्चित करें। "

Section 173 of Code of Criminal Procedure (in short the Code) reads;

*"173. Report of police officer on completion of investigation.—(1) Every investigation under this Chapter shall be completed without unnecessary delay.*

*(1-A) The investigation in relation to [an offence under Sections 376, 376-A, 376-AB, 376-B, 376-C, 376-D, 376-DA, 376-DB or 376-E 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;*

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(e) whether the accused has been arrested;

(f) whether he has been released on his bond and, if so, whether 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 to an offence under 105 [Sections 376, Section 376-A, Section 376-AB, Section 376-B, Section 376-C, Section 376-D, Section 376-DA, Section 376-DB] 106[or Section 376-E 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 along with 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).

**(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**

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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)."

Once, therefore, the Police have filed the charge sheet, they are not precluded from further investigating the offence but are limited in their right to submit further report or reports regarding such evidence in the form as may be prescribed. Therefore, after the Court takes cognizance of an offence, the Police may further investigate the matter but that too with leave of the Magistrate, in view of Sub- Section (8) of Section 173 of the Code. They cannot further investigate the offence without the leave of the Magistrate. In no event, the Police have a right to a re-investigation of the crime or investigate *de novo* and put in a final report. The power to re-investigation is not available with the Police, including officer of all ranks, right from the investigating officer to the Director General of Police, as also the State Government. The power to direct a re-investigation vests only in this Court or the Supreme Court in exercise of powers under Section 482 of the Code or 226 of the Constitution.

In this connection reference may be made to **Peethambaran vs State of Kerala and other; 2023 (124) ACC 325** where it has been held in paragraph Nos. 16, 17, 19 and 28 as under;

*16. In Hemant Dhasmana v. CBI MANU/SC/0459/2001: (2001) 7 SCC 536 it was observed that although the Section is not specific in respect of the Court's power to order further investigation, the power of the police can be set into motion upon the order of such a court. It was further observed that this order should not be interfered with even in the exercise of the revisional jurisdiction of a higher court.*

*17. The above two cases make it amply clear that a magistrate has the power to order further investigation and the cases referred to earlier make clear that fresh investigation/reinvestigation/de novo investigation fall into the purview of the jurisdiction of a higher court.*

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19. *The Chief Police Officer of a district is the Superintendent of Police who is an officer of the Indian Police Service. Needless to state, an order from the District Police Chief is not the same as an order issued by the concerned Magistrate. Referring to Vinay Tyagi (supra), this Court in Devendra Nath Singh v. State of Bihar and Ors. MANU/SC/1306/2022: (2023) 1 SCC 48 noted that there is no specific requirement to seek leave of the court for further investigation or to file a supplementary report but investigation agencies, have not only understood it to be so but have also adopted the same as a legal requirement. The doctrine of contemporanea exposito aids such an interpretation of matters which have been long understood and implemented in a particular manner to be accepted into the interpretive process. In other words, the requirement of permission for further investigation or to file a supplementary report is accepted within law and is therefore required to be complied with.*

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

*Prima facie*, therefore it appears that the Deputy Commissioner of Police, Central NOIDA, Gautambudh Nagar had jurisdiction to pass an order directing further investigation but that power could be exercised only with the leave of the Magistrate; not unilaterally by the Police.

The Court is informed that in furtherance of the order dated 04.04.2024 investigation was assigned to a nominated Inspector of Police, Radha Raman Singh, Incharge Crime Branch, Gautambudh Nagar, who investigated the matter virtually *de novo* and put in a final report on 06.05.2024, exculpating all the accused.

It is argued by Mr. Alok Yadav, learned counsel for the petitioner that there was absolutely no jurisdiction with the Police to investigate the matter *de novo* under the garb of carrying out further investigation and put in a final report exculpating the accused, in supersession of the earlier report, charge sheeting them. It is also submitted that the petitioner is now being harassed by Radha Raman Singh, who is asking him to come forward to the Police Station and produce evidence. The course of action adopted by the Deputy Commissioner of Police, Central NOIDA,

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Gautambudh Nagar and Radha Raman Singh, Inspector, Crime Branch, Commissionerate, Gautam Budh Nagar is *prima facie* manifestly illegal and without jurisdiction. It is all the more serious because after this Court had approved the charge sheet put in earlier by the Police, the Police could not in the garb of doing a further investigation do a re-investigation or investigation *de novo* and put in a final report. Also, *prima facie*, a final report submitted after the Court has taken cognizance of the offence is of no consequence and is not a report which could be accepted by the Magistrate on the basis of which proceeding of the criminal case can be dropped to put an end to the case before the Magistrate. The trial *prima facie* has to proceed on the basis of the earlier charge sheet that has already been put in by the Police. The subsequent final report submitted by Radha Raman Singh appears *prima facie* to be non est and without jurisdiction.

Admit.

Issue notice.

Notice on behalf of respondent nos.1, 2, 3, 4 and 5 is accepted by learned AGA. He is granted three weeks time to file counter affidavit.

Apart from the counter affidavit to be filed by the other respondents, the Deputy Commissioner of Police, Central NOIDA, District Gautambudh Nagar who passed the order dated 04.04.2024 and Radha Raman Singh, Inspector, Crime Cell, Commissionerate, Gautambudh Nagar will file their personal affidavits explaining their respective stands in the mater. The Deputy Commissioner of Police will explain why he thought he could direct further investigation without obtaining leave of the learned Magistrate under Section 173(8) of the Code and Radha Raman Singh would explain how under the garb of further

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investigation he could do a re-investigation or investigation *de novo* and put in a final report in the matter, where the Police earlier had filed a charge sheet, which this Court had approved by our order passed in Application U/S 482 Cr.P.C No.2667 of 2019.

Step to serve the respondent no.6 by R.P.A.D within a week.

List for **orders** on **9th July, 2024** together with a report regarding service and the postal track attached as well as the status of pleadings.

### **(Order on Stay Application)**

Issue notice.

Until further orders of this Court, operation of the notice dated 03.06.2024 issued under Section 91/160 of Cr.P.C. by Radha Raman Singh, Inspector, Crime Cell, Gautambudh Nagar to the petitioner shall remain **stayed** and the said Inspector or any other member of the Police force stand **restrained** from summoning the petitioner in connection with the said crime. The Magistrate in the meantime shall proceed on the basis of earlier Police report.

Let this order be communicated to the Deputy Commissioner of Police, Central NOIDA, Gautambudh Nagar and Radha Raman Singh, Inspector, Crime Cell, Commissionerate, Gautambudh Nagar through the Chief Judicial Magistrate, Gautambudh Nagar by the Registrar (Compliance) **by Monday**.

**Order Date :- 7.6.2024**

A.Kr.

(Arun Kumar Singh Deshwal, J.)

(J.J. Munir, J.)