

IN HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

CRMC No.817/2018

Reserved on: 04.04.2024

Pronounced on

20 .04.2024.

Sukhdev Singh son of Charan Singh
resident of House No. 361 Nanak Nagar
Jammu

.....petitioner(s)

Through :- Mr. Parag Sharma Advocate

V/s

1.State of Jammu and Kashmir th.Director
General of Police J&K,Jammu

2.SHO Police Station Gandhi Nagar
Jammu

3. Pyara Singh son of S. Ujjagar Singh
resident of House No.220 Sector 6
NanakNagar Jammu

Through :- Mr. Surinder Singh Advocate.

Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE

JUDGMENT

Factual Matrix:

1. In an accident that took place on 20.05.2011, son of respondent No.3, namely Sarabjeet Singh, who was riding on his motorcycle, was hit by an allegedly rashly driven grey coloured Bajaj Chetak scooter. The son of respondent No.3 fell down from his motorcycle and sustained grievous injuries. The injured son of respondent No.3 remained lying on spot for half an hour and was not shifted by anybody to the hospital. Respondent No.3, on being informed about the accident by one Mandeep Singh, rushed to the spot and shifted his son to the hospital. However, he was declared brought dead.

2 With regard to the aforesaid incident, FIR No. 115/2011 came to be registered at the Police Station, Gandhi Nagar, Jammu. Apprehending that the matter shall not be investigated by the police in a fair manner due to the influence of the petitioner, respondent No.3 filed OWP No. 1483/2011 before this Court seeking, inter alia, a direction to the police to hand over the investigation to the Crime Branch. This Court did not accede to the request of respondent No.3 for transfer of investigation, but instead directed the SP South Jammu to entrust the investigation to an Investigating Officer other than SDPO Gandhi Nagar, Jammu. It is alleged that due to the influence of the petitioner, the new Investigating Officer also did not carry out the investigation in a fair and transparent manner which constrained respondent No.3 to again approach this Court by filing OWP No. 491/2012. The said writ petition was disposed of by this Court vide order dated 09.04.2012 directing the IGP Jammu to personally supervise and monitor the investigation. Be that as it is, the police completed the investigation and submitted a final report in terms of Section 173 of the Code of Criminal Procedure, Svt., 1989 [‘J&K Cr.PC’] before the Judicial Magistrate 1st Class (Sub-Judge), Jammu [‘the learned Magistrate’]. In the report, the police concluded that the accident had happened due to rash and negligent driving of motorcycle by the deceased son of respondent No.3 and therefore, he alone was guilty of commission of offence under Section 279/304-A RPC. The final report submitted by the police before the Court was accepted and the challan was disposed of as having been abated due to the death of the accused.

3 Feeling aggrieved by the order of learned Magistrate dated 2nd July, 2014, respondent No.3, the father of the deceased, filed a

criminal revision petition before the learned Principal Sessions Judge, Jammu [‘the Revisional Court’]. The Revisional Court disposed of the revision petition vide its order dated 29.10.2014. The order dated 2nd July, 2014 passed by the learned Magistrate was upheld on merits. However, the Revisional Court observed that the protest petition filed by respondent No.3 before the learned Magistrate ought to have been entertained and disposed of and, thus, directed the learned Magistrate to dispose of the said protest petition on merits. Pursuant to the order dated 29.10.2014 passed by the Revisional Court, the learned Magistrate considered the protest petition of respondent No.3 and accordingly, directed the SHO P/S Gandhi Nagar, Jammu to conduct reinvestigation in the light of observations made in his order passed on 11th July 2016. The learned Magistrate in his order dated 11th July, 2016 has pointed suspicion on the involvement of the petitioner and, thus, directed reinvestigation in the matter. Two orders, one dated 29.10.2014 passed by the Revisional Court and another dated 11th July 2016 passed by the learned Magistrate are subject matter of challenge in this petition filed by the petitioner invoking the inherent jurisdiction vested in this Court under Section 561-A of J&K Cr.P.C which was then in force in the erstwhile State of Jammu and Kashmir.

Grounds of challenge:

4 The impugned orders have been challenged by the petitioner, inter alia, on the following grounds:

- (i) That the learned Magistrate, or for that matter, the Revisional Court is not conferred any power under J&K Cr.P.C to direct the police to conduct reinvestigation. It is submitted that the order passed by the learned Magistrate on

the protest petition filed by respondent No.3 is, thus, without any authority of law and, therefore, cannot sustain;

(ii) That under J&K CrPC, in particular, under Section 173, only an informant, at whose instance an FIR has been registered, is entitled to a notice from the learned Magistrate before accepting the closure report and it is only the informant who is competent to file objections/protest petition before the learned Magistrate proposing to accept the closure report submitted by the police.

Submissions of learned counsel for the parties:

5 Mr. Parag Sharma, learned counsel appearing for the petitioner makes two-fold submissions. He submits that it is trite law that a criminal Court under the J&K Cr.P.C is devoid of any power to direct reinvestigation by the police. It is argued that the best, in the given facts and circumstances, a criminal Court can do, is to direct further investigation by the police. The learned Magistrate, as is apparent from the impugned order dated 11th July 2016, has washed out the earlier investigation in its entirety and has directed reinvestigation in the matter which is not permissible in law. The second submission is that the protest petition at the instance of victim of offence or his close relative is not maintainable unless he is informant.

6 Placing strong reliance upon a judgment of the Supreme Court in the case of **Bhagwant Singh vs Commissioner of Police, AIR 1985 SC 1285**, Mr. Parag Sharma learned counsel contends that the Code of Criminal Procedure as interpreted by the Supreme Court envisages a protest petition only by the informant and no other. He submits that neither the victim, nor his relatives, if they are not informant, have been conferred any right to file the protest petition. Learned counsel for the petitioner would also rely upon a judgment of

the Supreme Court in the case of **Hemant Dhasmana vs CBI and another, (2001) 7 SCC 536.**

7 Mr. Surinder Singh learned counsel for respondent No.3, on the other hand, justifies the impugned order passed by the Revisional Court as also the consequential order passed by the learned Magistrate. He submits that despite making frantic efforts to ensure fair investigation in the death of his son deliberately caused by the petitioner while driving his scooter in a most rash and negligent manner, the respondent No.3 could not persuade the Police of Police Station, Gandhi Nagar to unearth the truth and bring the guilty to book. He submits that despite this Court making intervention twice, the police of Police Station Gandhi Nagar failed to render justice to respondent No.3. Relying upon a Single Bench Judgment of Calcutta High Court in **Debasish Bose and another vs. State of West Bengal and another, 2015 CRI.L.J 2252,** Mr. Singh learned counsel for the respondent No.3 argues that a victim is an aggrieved person not only in a crime, but also in an investigation, enquiry, trial, appeal, revision, review and also the proceedings by which the inherent powers of this Court under [Section 482](#), Cr.P.C invoked by the accused. On that analogy, Mr. Singh argues that the legal heir of the deceased is, *de facto*, the complainant and, therefore, competent to file a protest petition.

Analysis and conclusion:

8 Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the impugned orders passed by the Revisional Court and the learned Magistrate respectively are not in consonance with law.

9 On completion of investigation in FIR No. 115/2011 under Sections 279/304-A RPC, the Investigating Officer of Police Station Gandhi Nagar, Jammu presented a final report before the learned Magistrate under Section 173 Cr.PC. As per the conclusions drawn by the Investigating Officer, the deceased himself was responsible for the accident and, therefore, prima facie, guilty of offences under Sections 279/304-A RPC. The learned Magistrate accepted the final report submitted by the I.O and dismissed the challan as having been abated due to death of lone accused in the case.

10 It may be pertinent to note that in the instant case, the FIR was registered at the Police Station Gandhi Nagar, Jammu on the basis of an information received by the police through reliable sources. There was, thus, no identifiable informant in the matter. It seems that the learned Magistrate before accepting the final report submitted by the I.O did not put anybody to notice. Respondent No.3, the father of the deceased, claims to have filed a protest petition before the learned Magistrate probably after dismissal of the challan. It is an unverifiable allegation of respondent No.3 that the protest petition filed by him before the learned Magistrate was not entertained.

11 Be that as it may, the fact remains that respondent No.3, feeling aggrieved and dissatisfied with the acceptance of police report by the learned Magistrate vide his order dated 02.07.2014 filed a revision petition before the Revisional Court. The Revisional Court did not find any fault in the order passed by the learned Magistrate, but took note of the fact that respondent No.3 was entitled to have his protest petition entertained and considered by the Magistrate in accordance with law. The Revisional Court vide its order dated 29.10.2014 while upholding

the order of learned Magistrate disposed of the revision petition directing the learned Magistrate to consider the protest petition filed by respondent No.3 in accordance with law. This is how the matter came up for consideration again before the learned Magistrate. The learned Magistrate considered the protest petition and the allegations made therein in respect of the investigation carried out by the police and came to the conclusion that the investigation by the police had not been satisfactory and, therefore, the matter required to be reinvestigated.

12 In the aforesaid backdrop and having bestowed my thoughtful consideration to the rival contentions, following issues are framed for determination in this petition.

(a) Whether the judicial Magistrate before whom a final report, recommending closure of the case, is laid by the police/Investigating Officer under Section 173 CrPC, is competent to direct fresh investigation;

(b) Whether the Judicial Magistrate is empowered under the Code of Criminal Procedure to entertain the protest petition after he has accepted the closure report and dismissed the challan;

(c) Whether the victim of crime or his close relation is entitled in law to lodge a protest petition or entitled in law to be put on notice by the judicial Magistrate proposing to accept the closure report. And, therefore, is required to be heard before accepting such closure report.

13 These are broadly the questions that have cropped up for determination in these proceedings.

Different stages of investigation:

Stage-I

14 This case has arisen at a time when J&K Cr.P.C was in operation. Chapter XIV of Part V of J&K Cr.P.C deals with the information to the police and their powers to investigate. Registration of

FIR, which is, sine qua non, for entering upon investigation by the police in a cognizable offence is referable to Section 154 CrPC. Section 154 CrPC, inter alia, provides that every information relating to commission of a cognizable offence if given orally to an officer-in-charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant. If such information is given in writing or reduced to writing as aforesaid, it shall be signed by the person giving it. Subsection (2) of Section 154 CrPC lays down that a copy of the information as recorded under subsection (1) shall be given forthwith, free of cost, to the informant against a proper receipt. This information given to the police relating to commission of a cognizable offence when reduced to writing is termed as 'First Information Report'['FIR']. It is, thus, evident that in an FIR registered on the basis of information supplied by an identifiable person, the informant is recognized as a person having stake in the outcome of the investigation that may be set in motion by the police upon registration of such FIR. However, many a times, the police receives information through undisclosed and unidentifiable sources. In such a case, the informant, at whose instance an FIR is registered, is not identifiable and, therefore, there is no obligation on the officer-in-charge of a Police Station to supply a copy of the FIR to anybody. Section 154 of J&K CrPC, as it is, does not recognize any right of the victim of the crime if he is a person other than the informant, to receive a copy of the information or be informed of the progress of investigation.

Stage-II

15 After registration of FIR, Officer-in-charge of a police station may enter into investigation of a cognizable offence disclosed in

the FIR. The investigation by the police in any cognizable offence can be undertaken without the order of a Magistrate. Apart from the power of the police to investigate a cognizable offence without order of a Magistrate in terms of Section 156 (1) CrPC, a Magistrate empowered under Section 190 of CrPC may order such an investigation. This is so provided in Section 156(3) CrPC.

Stage-III

16 The police entering upon investigation in a cognizable offence pursuant to registration of FIR is empowered to require attendance of witnesses who may be acquainted with the circumstances of the case and record their statements under Section 161 CrPC. In terms of Section 164 CrPC, a Judicial Magistrate 1st Class or any Judicial Magistrate of second class specially empowered in this behalf by the High Court, provided he is not a police officer, is empowered to record any statement or confession made to him in the course of an investigation under Chapter XIV. Under Section 164-A CrPC, a police officer not below the rank of Sub-Inspector making an investigation of any offence punishable with death or imprisonment for seven years or more, is put under an obligation to take the witnesses, who are material and essential for proper investigation of the case, to the nearest Judicial Magistrate, for recording their statements.

Stage-IV

17 Under Section 169 CrPC, if, upon an investigation undertaken by the Officer-in-charge of the police station or the I.O, it is found that there is no sufficient evidence or reasonable ground of suspicion justifying forwarding of the accused to a Magistrate, such officer shall, if the accused is in custody, release him on his executing a

bond, with or without sureties, and direct such accused to appear as and when required before a Magistrate empowered to take cognizance of the offence on a police report and to try and commit him for trial. However, where the evidence collected by the Investigating Officer is sufficient and there is reasonable ground of suspicion against the accused, the Investigation Officer shall forward the accused under custody to a competent Magistrate or if the offence is bailable and the accused is able to give security, shall take security from him for his appearance from day to day before the Magistrate on a day fixed. Section 172 CrPC deals with maintenance of diary of proceedings in investigation.

Report by the police and duties of Magistrate:

18 Section 173 which is significant and lies in the core of discussion, deserves to be set out below:

“173. Report of police officer on completion of investigation.

(1) Every investigation under this Chapter shall be completed without unnecessary delay :

Provided that investigation into offences under sections 152, 153-A, 295, 295-A, 296, 297, 298, 435, 436 and 505 of the State Ranbir Penal Code shall be completed within two weeks, and if the investigation is not so completed the investigating officer shall report the causes of the delay to the District Superintendent of Police who shall issue necessary instructions for completion of the investigation.

(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 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, whether with or without sureties ;

(g) whether he has been forwarded in custody under section 170.

(ii) The officer shall also communicate, in such manner as may be prescribed by the 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 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) Wherever 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 witness.

(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 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)".

19 From a sequential reading of Section 173 CrPC in its entirety, it is evident that every investigation under the Chapter in question is required to be completed without any unnecessary delay, though there is no fixed time limit prescribed under the Section or anywhere else in the CrPC within which the investigation must be completed. The Section mandates that on completion of investigation undertaken in the manner explained hereinabove, the Officer-in-charge of a Police Station shall forward a police report in the prescribed form to the competent Magistrate having been empowered to take cognizance of the offence on the said report. Clause (ii) of subsection (2) of Section 173 Cr. PC further casts an obligation on the officer-in-charge of a police station to simultaneously communicate the action taken by him to

the person, if any, by whom the information relating to commission of offence was first given. The provisions of Section 173 CrPC recognise only the right of an informant to have the information about the action taken by the police upon the FIR registered at his instance. The Section does not speak of or refers to any such right vested in the victim of crime or his relative.

20 It is here when a report under Section 173 CrPC is submitted to the Magistrate recommending closure of the case, following four options open up before the Magistrate depending upon the facts and circumstances of each case.

(i) The Magistrate may agree with the conclusions drawn by the police and accept the final report and drop the proceedings;

(ii) Independently of the conclusions drawn by the police and on the basis of material on record, the Magistrate may take cognizance under Section 190 (1)(b) of CrPC and issue process straightway to secure the attendance of the accused;

(iii) Where the Magistrate is satisfied and is of the opinion that the investigation has not been carried out in a proper manner, he may, by order, direct further investigation; and,

(iv) The Magistrate may, without taking cognizance and issuing process on the police report and dropping the proceedings, take cognizance upon the protest petition if filed treating the same as a complaint and proceed under Chapter XVI.

21 It is seen that the CrPC nowhere uses the expression ‘charge-sheet’ or ‘final report’. However, it is understood in the Police Manual that a report submitted by the police under Section 170 CrPC is referred to a ‘charge-sheet by the police’ whereas report sent to the

Magistrate in terms of Section 169 CrPC is termed as ‘closure report’ or Ikhtitami’.

22 From a reading of Section 173 in the context of other provisions of Chapter XVI, it is beyond any shadow of doubt that when a Magistrate proposes to accept the closure report submitted by the police and drop the proceedings, it is under an obligation to serve upon the informant a notice and provide him an opportunity of hearing before taking any final decision on the closure report submitted by the police. Such right of the informant is not specifically conferred by any provision of CrPC including Section 173 but has been derived from the provisions of subsection (2) of Section 173 which obligates the police, submitting a report, to communicate to the informant the action taken by him on the FIR registered at his instance. This right of the informant, to be heard by the Magistrate before he passes an order accepting the closure report, is culled out from the scheme of Chapter XVI and, in particular, the provisions of section 173 CrPC. The Supreme Court in **Bhagwant Singh’s** case (supra) in paragraphs 4 and 5 held thus:

“4Now, when the report forwarded by the officer-in charge of a police station to the Magistrate under sub-section (2)(i) of [Section 173](#) comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of [Section 156](#) and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the

report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of [Section 156](#). Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the First Information Report, the informant would certainly be prejudiced because the First Information Report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the First Information Report lodged by him is clearly recognised by the provisions contained in sub-section (2) of [Section 154](#), sub-section (2) of [Section 157](#) and sub-section (2)(ii) of [Section 173](#), it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the First Information Report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer in charge of a police station under sub-section (2)(i) of [Section 173](#), the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the magistrate to whom a report is forwarded under sub-section (2)(i) of [Section 173](#) decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report. It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the

informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the First Information Report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2) (i) of [Section 173](#) if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant. Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

5. The position may however, be a little different when we consider the question whether the injured person or a relative of the deceased, who is not the informant, is entitled to notice when the report comes up for consideration by the Magistrate. We cannot spell out either from the provisions of the Code of Criminal procedure, 1973 or from the principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to a relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report, unless such person is the informant who has lodged the First Information Report. But even if such person is not entitled to notice from the Magistrate, he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. The injured person or any relative of the deceased, though not entitled to notice from the Magistrate, has locus to appear before the Magistrate at that time of consideration of the report, if he otherwise comes to know that the report is going to be considered by the Magistrate and if he wants to make his submissions in regard to the report, the Magistrate is bound to hear him. We may also observe that even though the Magistrate is not bound to give notice of the hearing fixed for consideration of the report to the injured person or to any relative of the deceased, he may, in the exercise of his discretion, if he so thinks fit, give such notice to the injured person or to any particular relative of or relatives the deceased, but not giving of such notice will not have any invalidating effect on the order which may be made by the Magistrate on a consideration of the report”.

23 The judgment rendered in **Bhagwant Singh’s** case (supra) still holds field and is an authority on the points under discussion. It is

thus trite law that when the police report forwarded by the officer-in-charge of a Police Station under subsection (2) of 173 CrPC comes up for consideration before the Magistrate, one of the two different situations may arise:

(i) The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate shall have three different options;

(a) he may accept the report and take cognizance of the offence and issue process; or

(b) he may disagree with the report and drop the proceedings; or

(c) He may direct further investigation under subsection (3) of Section 156 CrPC and require the police to make a further report.

(ii) The other situation may emerge where in the opinion of the police, no offence appears to have been committed and such a report has been made, in such a situation also, the Magistrate shall have an option to adopt one of the three courses: (i) he may accept the report and drop the proceedings; or (ii) he may disagree with the report and take cognizance of the offence and issue process; or (iii) he may direct further investigation under subsection (3) of section 156 CrPC.

24 In either of these situations, if the Magistrate decides to take cognizance of the offence and issue process, the informant is not prejudicially affected. Nor is the injured or any relative of the deceased aggrieved. However, when the Magistrate decides that there is no sufficient ground for proceeding further and proposed to drop the proceedings, or takes the view that, though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the FIR, the informant would certainly be prejudiced.

25 As already discussed, the right of the informant who lodges FIR is clearly recognized by Section 154(2), 157(2) and 173(2)(ii) of

CrPC. In **Bhagwant Singh's** case (supra), the Supreme Court specifically adverted to the question whether the injured or a relative of the deceased, who is not the informant, is entitled to notice when the report comes up for consideration before the Magistrate and held that, in the absence of any provision in the CrPC or from the stand point of principles of natural justice, any obligation on the Magistrate to issue notice to the injured person or to the relative of the deceased for providing such person an opportunity to be heard at the time of consideration of the report is not spelled out. The Supreme Court, however, underscored that the injured person or the relative of the deceased is not entitled to notice from the Magistrate, but he can appear before the Magistrate and make his submissions when the report is considered by the Magistrate for the purpose of deciding what action he should take on the report. This is so very clearly spelled out in para No. 5 of the judgment reproduced hereinabove.

26 In view of the aforesaid authoritative pronouncement of the Supreme Court, it is beyond the pale of discussion that there is no obligation on the magistrate to issue notice to the injured or to a relative of the deceased for providing such person an opportunity of being heard at the time of consideration of the report unless such person is the informant who has lodged the FIR. It is equally trite that though such person is not entitled to a notice form the Magistrate, he can still appear before the Magistrate and make his submissions when the report comes up for consideration before the Magistrate for the purpose of deciding what action he will take on the report.

27 Whether it is the informant or the injured person or any relative of the deceased, he may be heard by the Magistrate only when

the Magistrate proposes not to take cognizance of the police report and drop the proceedings.

28 As is evident from a plain reading of subsection (8) of Section 173 read with Section 156(3), the Magistrate before whom the report in terms of Section 169 or 170 is submitted under Section 173, the Magistrate is empowered only to direct further investigation if he was of the opinion that the investigation conducted by the police is perfunctory or that the police has failed to record relevant evidence or recorded the evidence which was irrelevant etc. The Code of Criminal Procedure does not confer power upon a Magistrate or any competent Court of criminal jurisdiction to direct reinvestigation. The investigation made by the police cannot be wiped out by the Magistrate, though it may point out the defects or irregularities in the investigation and direct further investigation in the matter. The reinvestigation as is held by the Supreme Court can only be ordered by the Constitutional Courts under Article 32 or Article 226 of the Constitution of India or by the High Court under its inherent jurisdiction vested by Section 561-A CrPC (now 482 CrPC). [See: [Vinay Tyagi v. Irshad Ali @ Deepak and others, \(2013\) 5 SCC 762](#)]

29 The power of the Magistrate to direct further investigation also finds discussion in **Hemant Dhasmana's case** (supra). Recently, the Supreme Court in **Vishnu Kumar Tiwari vs State of UP, (2019) 8 SCC 27** surveyed the legal position on the subject and held thus:

“27 It is undoubtedly true that before a Magistrate proceeds to accept a final report under Section 173 and exonerate the accused, it is incumbent upon the Magistrate to apply his mind to the contents of the protest petition and arrive at a conclusion thereafter. While the Investigating Officer may rest content by producing the final report, which, according to him, is the culmination of his efforts,

the duty of the Magistrate is not one limited to readily accepting the final report. It is incumbent upon him to go through the materials, and after hearing the complainant and considering the contents of the protest petition, finally decide the future course of action to be, whether to continue with the matter or to bring the curtains down.

43. It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the informant may address the court ventilating his objections to the final report. This he usually does in the form of the protest petition. In *Mahabir Prasad Agarwala v. State*, a learned Judge of the High Court of Orissa, took the view that a protest petition is in the nature of a complaint and should be examined in accordance with provisions of Chapter XVI of the *Criminal Procedure Code*. We, however, also noticed that in *Qasim and others v. The State and others* a learned Single Judge of the High Court of Judicature at Allahabad, *inter alia*, held as follows:

“6. ... In the case of *Abhinandan Jha* also what was observed was 'it is not very clear as to whether the Magistrate has chosen to treat the protest petition as complaint.' This observation would not mean that every protest petition must necessarily be treated as & complaint whether it satisfies the conditions of the complaint or not. A private complaint is to contain a complete list of witnesses to be examined. A further examination of complainant is made under *Section 200 Cr.P.C.* If the Magistrate did not treat the protest petition as a complaint, the protest petition not satisfying all the conditions of the complaint to his mind, it would not mean that the case has become a complaint case. In fact, in majority of cases when a final report is submitted, the Magistrate has to simply consider whether on the materials in the case diary no case is made out as to accept the final report or whether case diary discloses a *prima facie* case as to take cognizance. The protest petition in such situation simply serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that simply because there is a protest petition the case is to become a complaint case.”

44. We may also notice that in *Veerappa and others v. Bhimareddappa*, the High Court of Karnataka observed as follows:

“9. From the above, the position that emerges is this: Where initially the complainant has not filed any

complaint before the Magistrate under Section 200 of the Cr. P.C., but, has approached the police only and where the police after investigation have filed the 'B' report, if the complainant wants to protest, he is thereby inviting the Magistrate to take cognizance under Section 190(1)(a) of the Cr. P.C. on a complaint. If it were to be so, the protest petition that he files shall have to satisfy the requirements of a complaint as defined in Section 2(d) of the Cr. P.C., and that should contain facts that constitute offence, for which, the learned Magistrate is taking cognizance under Section 190(1)(a) of the Cr. P.C. Instead, if it is to be simply styled as a protest petition without containing all those necessary particulars that a normal complaint has to contain, then, it cannot be construed as a complaint for the purpose of proceeding under Section 200 of the Cr. P.C.”

45. Complaint is defined in Section 2(d) of the Code as follows:

“2(d) " complaint" means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report. Explanation.- A report made by a police officer in a case which discloses, after investigation, the commission of a non- cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;”

46. *If a protest petition fulfills the requirements of a complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the protest petition. The prayer in the protest petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or liable to be treated as a complaint, we would think that essentially, the protest petition in this case, is summing up of the objections the second respondent against the final report.”*

30 From the above discussion, it is now crystal clear that where the police has submitted a closure report and the Magistrate

proceeds to take action by way of cognizance by disagreeing with the conclusion arrived at in the police report, he would be taking cognizance on the basis of evidence in the police report under Section 190(1)(b) CrPC and not on the complaint under section 190(1)(a) CrPC and, therefore, in such a case, the question of examining the complainant who has filed a protest petition, or his witnesses under section 200 CrPC would not arise. It is only when the Magistrate proceeds to accept the closure report and exonerate the accused, he is under obligation to apply his mind to the contents of the protest petition, go through the material placed on record by the complainant and decide the future course of action after hearing the complainant. The future course of action could either be to continue with the matter or to close the case. If the material made available by the protestor is such that it persuades the Court to disagree with the conclusions arrived at by the I.O, the Magistrate can straightway take cognizance under section 190 (1)(b) for which there is no necessity to treat the protest petition as a complaint and proceed under section 200/201 CrPC. In such a situation, the protest petition only serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of mind by the Magistrate. There is another eventuality where the Magistrate agrees with the conclusions drawn by the police in the final report and decides not to take cognizance. However, if a protest petition fulfills the requirements of a complaint, the Magistrate may treat the protest petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. While examining the protest petition for the purpose of treating it a complaint, the Magistrate must ensure that the protest petition complies with the requirement of a

complaint and is required to be entertained, notwithstanding the fact that the Magistrate has accepted the closure report submitted by the police and dropped the proceedings. The parameters which fall for consideration at the time of entertaining the second complaint with respect to the commission of same offence, would be kept in mind.

31 Before I record my conclusion, I find it appropriate to deal with the judgment of the Calcutta High Court rendered in **Debasish Bose's case** (supra). The Single Bench of the Calcutta High Court having regard to the large scale amendments made to the Code of Criminal Procedure, 1973 by Act 5 of 2009 whereby the victim was for the first time given right to participate in the prosecution of the accused at different stages of investigation, enquiry and trial. The right of the victim to file appeal against the acquittal of the accused too was recognized. It is in the aforesaid backdrop, the Single Bench of Calcutta High Court was of the opinion that after the amendments carried to the Code of Criminal Procedure, 1973 by Act 5 of 2009, the victim is an aggrieved person not only in the crime, but also in investigation, enquiry, trial, appeal, revision etc. and, therefore, has *locus standi* to file the protest petition. There is no denying the fact that the victim of crime or a close relative of the deceased has a right to appear before the Magistrate and file a protest petition when the closure report submitted by the police comes up for consideration before the Magistrate. However, the Magistrate, proposing to accept the closure report or otherwise deciding not to take cognizance of the police report submitted under Section 173 CrPC, is under no obligation to issue notice to any person, other than the informant, including the victim or the close relative of the deceased, unless such person is an informant who has lodged the FIR.

Conclusions:

32 In view of the aforesaid discussion and the legal position adumbrated hereinabove, I have arrived at the following conclusion:

(i) That under the scheme of J&K CrPC or for that matter, under the Code of Criminal Procedure, 1973, there is no obligation on the Magistrate, taking up for consideration the closure report (Ikhtitami) submitted by the police under Section 173 CrPC, to put the victim or close relative of the deceased to notice, unless such person is an informant who has lodged FIR. Section 173 (2)(ii) recognizes the right of the informant, by whom the information relating to the commission of offence was first given, to have the action taken by the police on his report, communicated to him simultaneously with the forwarding of report in the prescribed form to the Magistrate empowered to take cognizance of the offence on a police report;

(ii) That though the Code does not envisage notice to the Victim or close relation of the deceased (the complainant) by the Magistrate before he takes up the closure report submitted by the police for consideration and its acceptance, yet the complainant may of its own appear before the Magistrate and lodge a protest petition. In such situation, if the protest petition is lodged by the complainant before passing of the final order by the Magistrate on the police report, the Magistrate shall be bound to take the same into consideration before deciding to proceed on the closure report submitted by the police in one way or the other;

(iii) That the protest petition filed by the informant upon notice or by the complainant without notice shall be considered by the Magistrate when he takes up for consideration the closure report submitted by the police under Section 173 CrPC. If the Magistrate is persuaded by the contents of the protest petition and the material placed

therewith not to accept the closure report and take cognizance instead, in such situation, the Magistrate would be taking cognizance on the police report and would not be required to proceed under Section 200/201 CrPC.

Provided further, when the Magistrate accepts the closure report submitted by the police and drops the proceedings, he can still treat the protest petition as a complaint, provided it fulfils the requirements of the complaint and meets the parameters permitting a second complaint on the same facts and in relation to same offence. In such situation, the Magistrate will record the statement of the complainant and the witnesses, if any, present and proceed under Chapter XVI of the Code.

Decision:

33 When the facts of the instant case are viewed in the backdrop of legal position explained above, it is seen that, in the instant case, the FIR was registered on the basis of information received by the police through reliable sources and, therefore, there was no obligation on the Magistrate, considering the closure report, to give a notice to the informant or the complainant. Claimably, the father of the deceased filed a protest petition before the Magistrate, but the same was filed at the time when the Magistrate had already accepted the closure report and dropped the proceedings. In such situation, the Magistrate could not have reviewed its own order of accepting the closure report, but he could have still proceeded to treat the protest petition as a complaint, provided it fulfilled the requirements of a complaint. This aspect was not considered by the Magistrate. The Revisional Court, which was approached by the respondent No.3, did not find any fault or infirmity in the order passed by the Magistrate accepting the closure report, but

relegated respondent No.3 to the remedy of pressing his protest petition before the Magistrate.

34 The Revisional Court, however, failed to spell out the manner in which the protest petition should have been proceeded before the Magistrate. As a matter of fact, after having accepted the order of the Magistrate accepting the closure report submitted by the police, the Revisional Court ought to have permitted respondent No.3 to file a fresh complaint before the Magistrate. This is so, because the protest petition appended with the revision petition and stated to have been filed, but not entertained by the Magistrate, was, prima facie, not fulfilling the requirements of a complaint. Undoubtedly, the respondent No.3 was entitled in law to file a complaint before the Magistrate and the Magistrate could have proceeded on the complaint under Chapter XVI of the Code, provided he was satisfied that the fresh complaint was maintainable, notwithstanding the acceptance of closure report submitted by the police on the same facts and in respect of the same offence. The order of the Magistrate impugned in this petition passed pursuant to the directions of the Revisional Court is palpably wrong and erroneous, in that, the Magistrate has not treated the protest petition as a fresh complaint and proceeded under Chapter XVI of the Code, but has directed reinvestigation in the matter thereby virtually reviewing its earlier order accepting the closure report. Such course was not permissible in law. It is well settled that the criminal Courts are not empowered under the Code of Criminal Procedure to review their own orders.

35 Having held thus, the petition on hand is allowed. The impugned order passed by the Revisional Court as well as the learned

Magistrate is set aside. Further investigation, if any, carried out by the police in terms of the impugned order passed by the Magistrate is illegal and *non est* in the eye of law and is, therefore, also quashed. Respondent No.3 is however left free to file a fresh complaint before the Magistrate concerned. Needless to say that should respondent No.3 file any such complaint, the same shall be considered by the Magistrate on its merits and in accordance with law.

Pending applications, if any, also stand disposed of.

A copy of this judgment is directed to be circulated to all the Magistrates/Sessions Judges in the Union Territory.

(SANJEEV KUMAR)
JUDGE

Jammu
20 .04.2024
Sanjeev

Whether order is reportable:Yes