

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 4617 OF 2025

Sheetalkumar Sudhakar Manere
Age: 59 years, Occu.: Business,
R/o 'Narayani', 20/738/3, Yasholaxmi Road,
Ichalkaranji – 416 115, Dist. Kolhapur
(Maharashtra)

..PETITIONER

VERSUS

1. State of Maharashtra.
Through Hatkanagale Police Station

2. Sanjay Danchand Ghodawat
Age: 60 years, Occu.: Business,
R/o Yashwant Housing Society,
Jaysingpur, Tq. Shirol, Dist. Kolhapur
At Present – Majale, Tq. Hatkanangale,
Dist. Kolhapur

..RESPONDENTS

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Mr. Sanjeev Kadam, Senior Advocate (Through V.C.) a/w Ms. Varsha Thorat,
Ms. Vrunali Vilankar, Mr. Aarya Ambulkar, Mr. Nilabh Toshnival and Mr.
Piyush Toshnival, Advocates i/b Mr. Ashish Pawar, Advocate for Petitioner.
Mrs. P.S. Rane, A.P.P. for Respondent No. 1 – State
Mr. Nitin Gaware Patil a/w Ms. Tanvi Tapkire and Ms. Purva Patil, Advocates
for Respondent No. 2

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**CORAM : ABHAY J. MANTRI, J.
DATE : 10th SEPTEMBER, 2026**

ORAL JUDGMENT :

1. The Petitioner challenges the order dated 23rd July, 2025, passed
by the learned Judicial Magistrate First-Class Ichalkaranji (for short, “*learned*

Magistrate”) below Exhibit 106 in Regular Criminal Case No.367 of 2021, whereby the learned Magistrate allowed the application (Exh.106) filed by Respondent No.2 / Complainant seeking further investigation in Crime No. 334 of 2021 and directed Police Inspector of Hatkanangale Police Station to appoint Investigating Officer to investigate regarding participation of the proposed accused i.e. the Petitioner and one Mahesh Oza as per Section 173 (8) of the Code of Criminal Procedure, 1973 (for short, “*Cr.P.C.*”).

2. **Rule.** Rule made returnable forthwith. Heard learned counsel for both the parties at length and perused the impugned order, the documents pointed out by learned counsel for the respective parties and learned A.P.P. as well as the judgments relied upon by them in support of their submissions.

3. **Factual Matrix :-**

(a) Respondent No. 2 is the original complainant, who lodged the F.I.R. on 24th June, 2021 against one V.P. Singh and Ramesh Thakkar, alleging that they both, in collusion with others, hatched the conspiracy and prepared the forged documents and demanded an extortion amount of Rs. 5 crores from him. They also threatened to kill him, his family members, as well as his partner – Nilesh Bagi. Based on these allegations, police registered Crime No. 334 of 2021 against V.P. Singh and others for the offences punishable under Sections 384, 387 and 120-B of the Indian Penal Code, 1860 (for short “*I.P.C.*”). During the investigation, the Investigating Officer found that V.P.

Singh, along with six other accused, had been involved in the present crime. Accordingly, after completing the investigation, he filed a charge-sheet against all of them in the Trial Court for the offences punishable under Sections 381, 384, 386, 387, 120-B, 467, 468 r/w 34 of the I.P.C. and Section 67 of the Information Technology Act, which was numbered as R.C.C. No. 367 of 2021. Thereafter, on 24th September, 2022, the Investigating Officer filed a supplementary charge-sheet in the present crime.

(b) On 26th October, 2021, the Investigating Officer filed an application (Exh.88) in R.C.C. No. 367 of 2021, stating that from the statements of Mangesh Chavan, Milind Dongre and Sachin Gorle, some material has been found against the Petitioner and one Mahesh Oza. Therefore, permission was sought for further investigation under Section 173 (8) of the Cr.P.C. in connection with the same crime. After hearing the parties, on 13th November, 2021, the learned Magistrate granted permission to carry out further investigation under Section 173 (8) of the Cr.P.C., as prayed.

(c) On 17th August, 2022, the Investigating Officer submitted a preliminary report stating that they had carried out the investigation; however, till date nothing has emerged against the Petitioner herein, and the investigation concerning Oza is going on. Therefore, he submitted to the Court that the investigation against the Petitioner and one Mahesh Oza is ongoing

and, after ascertaining the material against them, he will take further steps in the matter; accordingly, arrangements were made to file a further report.

(d) Prior to submitting the report by the Investigating Officer, on 21st /22nd June, 2022, Respondent No.2 filed an application before the learned Magistrate seeking direction against the Investigating Officer to carry out further investigation in the matter. On 05th November, 2022, the Investigating Officer filed a reply to the said application and contended that a thorough investigation is necessary in the present crime. The Petitioner filed an intervention application in the said proceeding on 19th August, 2023, and requested permission to intervene and argue the matter. The learned Magistrate, after considering the submission and material on record, allowed the application (Exh.106) and directed the Police Inspector, Hatkanangale Police Station, to appoint an Investigating Officer to investigate the participation of the proposed accused, i.e., the present Petitioner and one Mahesh Oza, as per Section 173(8) of the Cr.P.C. In paragraph no. 6 of the impugned order, the learned Magistrate stated that, in view of Section 156(3) of the Cr.P.C., the proposed accused/Petitioner has no locus standi to argue the application. Therefore, he was not permitted to argue the said application. Being aggrieved by the said order, the Petitioner has preferred this petition.

4. Having heard the rival contentions of the learned counsel for the respective parties and learned A.P.P. and having gone through the record as pointed out by respective learned counsel and the judgments relied upon by them, the following points fall for consideration :-

- (i) *Whether the Petitioner, being a proposed accused, has locus to participate in the application (Exh.106) or challenge the impugned order, i.e., the order passed by the learned Magistrate on the said application?*
- (ii) *Whether Respondent No. 2, being a complainant/informant, has locus to file an application before the learned Magistrate for seeking further investigation in the crime, under Section 173(8) of the Cr.P.C.?*
- (iii) *Whether the learned Magistrate was empowered to direct further investigation under Section 173(8) of the Cr.P.C. after taking cognizance of the matter?*
- (iv) *Whether the petition is maintainable in view of an alternate remedy available before the learned Sessions Court?*
- (v) *Whether any interference is required in the impugned order in the writ jurisdiction?*
- (vi) *What order?*

5. Before dealing with the aforesaid points, I would like to reproduce the undisputed facts of the matter, as under :-

- (a) Respondent No. 2 is the original Complainant. The Petitioner was working with him in the real estate business. Based on the complaint filed by the Complainant, a crime was registered against V.P. Singh and Ramesh Thakkar. Pursuant to the said complaint, the Investigating Officer has carried

out the investigation and filed a charge-sheet against V.P. Singh and six others and thereafter again filed a supplementary charge-sheet against two more accused persons.

(b) *It is not in dispute that no charge has yet been framed in the Trial. Likewise, the Petitioner and one Mahesh Oza are not implicated as accused in the present crime.* The charge-sheet indicates that the Investigating Officer recorded statements of Mangesh Chavan, Milind Dongare, and Sachin Gorle. Similarly, the learned Magistrate recorded statements of these witnesses under Section 164 of Cr.P.C. After recording their statements, the Investigating Officer moved an application on 26th October, 2021, seeking permission to conduct further investigation against the proposed accused, i.e., the present Petitioner, and one Mahesh Oza. On 13th November, 2021, the learned Magistrate granted permission to investigate the crime against the proposed accused. After conducting the preliminary investigation, the Police Inspector filed a report before the learned Magistrate.

6. Respondent No. 2/Complainant, being dissatisfied with the investigation conducted by the concerned Investigating Officer, filed an application (Exh.106) on 21st/22nd June, 2022 with the learned Magistrate contending that the Investigating Officer is evading the Petitioner from being implicated as an accused. Therefore, the Petitioner requested the learned Magistrate to appoint a competent officer to carry out further investigation.

The Investigating Officer, by filing his reply, corroborated and supported the said application, and pursuant thereto, the learned Magistrate passed the impugned order.

7. It would be appropriate to reproduce Section 173 (8) of the Cr.P.C., which reads as under :-

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

(8). Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2).”

8. Bare perusal of the above provision reveals that there is nothing in Section 173(8) of the Cr.P.C. to suggest that the Court is obliged to hear the accused or proposed accused before any such direction is made or passes any order on application for further investigation. Likewise, there is no bar to the complainant in filing an application seeking further investigation in the crime. The Section does not indicate that the accused must be given an opportunity of hearing before passing any order on application for further investigation. On the contrary, it is trite law that it is not necessary to give an opportunity of hearing to the proposed accused as a matter of course while passing an order on an application for further investigation under Section 173(8) of the Cr.P.C.

As to Point No. (i).

9. Learned counsel for Respondent No. 2 and the learned A.P.P. strongly raised the preliminary objection that the proposed accused, i.e., the Petitioner, has no locus to challenge the impugned order, as he has no concern with the investigation in the crime in question. Therefore, the Court is not obliged to hear the petitioner before passing any order on the application for further investigation, as doing so would frustrate the objective of an effective investigation. Even the proposed accused, i.e., the Petitioner, has no say at this stage in respect of the application under Section 173(8) of the Cr.P.C. There is no question of a violation of the accused's personal liberty; therefore, there is no necessity to hear him. The Petitioner has no concern with the investigation; therefore, passing the impugned order would not prejudice his rights. On that ground alone, they urged that the Petitioner has no locus to challenge the impugned order and that the petition is liable to be dismissed. To buttress his submission, he relied on the following judgments :-

(i) **Satishkumar Nyalchand Shah Vs. State of Gujarat¹**
(Paras : 5.2, 9, 10, 11) (for short “Satishkumar”)

(ii) **Dinubhai Boghabai Solanki Vs. State of Gujarat & Ors.²**
(Paras: 50 to 53). (for short, ‘Dinubhai’)

1 (2020) 4 SCC 22

2 (2014) 4 SCC 626

(iii) **Union of India & Anr. Vs. W.N. Chadha**³
(Paras : 89, 90, 92, 94, 98) (for short, '*W.N. Chadha*')

(iv) **Manishaben Vrajlal Thakkar Vs. State of Gujarat & Ors.**⁴
(Paras : 3.8, 5, 8VII, 10, 14, 15, 16). (for short, '*Manishaben*')

10. As against this, though learned Senior Counsel for the Petitioner advanced the argument at length, he has not responded specifically to the submission on the said point. Still, he has only emphasised that the impugned order specifically directs further investigation naming the present Petitioner, and therefore the Petitioner has locus to challenge the said order. However, he did not advance any argument on that point. The thrust of his argument was that Respondent No. 2 has no locus to file an application seeking further investigation under Section 173(8) of the Cr.P.C.; therefore, the learned Magistrate's passing of the impugned order is contrary to settled position of law. He further canvassed that, by order dated 13th November, 2021, the learned Magistrate directed the Investigating Officer to carry out further investigation, and pursuant to that order, the Investigating Officer has also filed a report before the learned Magistrate. Therefore, there is no need to direct further investigation again on the application of Respondent No.2 – Complainant, who has no locus.

3 1993 Supp (4) SCC 260

4 Order dt. 18.08.2024 in Cri.Rev.Appln. No. 10 of 2024 by Gujarat High Court

11. While dealing with the aforesaid controversy, it would be appropriate to take into consideration the law laid down by the Hon'ble Supreme Court in the judgments relied upon by learned counsel for Respondent No. 2 one by one.

(a) In **Satishkumar** (supra), the Hon'ble Supreme Court has specifically held that *“the appellant against whom no relief is sought in the application concerned for further investigation has no locus and/or no say regarding the application for further investigation under Section 173(8) Cr.P.C. He cannot be said to be either a necessary or proper party to the application or the proposed accused against whom further investigation is sought. He is not required to be heard at this stage. There is no question of hearing the accused/one of the accused against whom the charge-sheet is already filed, and trial against whom is in progress, and no relief of further investigation is sought against him”*.

(b) In **Dinubhai** (supra), the Hon'ble Supreme Court has held that *“it is a settled law that the accused has no right to be heard at the stage of the investigation or does not have to say in the matter of appointment of an investigation agency or have any say in regard to the manner and method of investigation. Similarly, it is held that “the High Court has no obligation either to hear or to make a potential accused a party to the proceeding before directing that the investigation be conducted by the CBI”. It is not necessary*

to give the proposed accused an opportunity of hearing as a matter of course. If prior notice and an opportunity of hearing have to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective investigation.”

(c) In **W.N. Chadha** (supra), it is observed that ‘*the audi alteram partem*’ rule is attracted where decision/action results in violation of life and personal liberty, but where investigation is conducted in strict compliance with statute, the rule cannot be invoked as natural justice is being followed. The accused has never been prejudiced and deprived of his right to property due to the alleged non-compliance of the principle of *audi alteram partem*.”

(d) In **Manishaben Thakkar** (supra), the Gujarat High Court, after considering the various judgments, has held in Paragraph no. 14, as under :-

“Indeed, the complainant has a right to draw the attention of the Court seeking further investigation to prevent miscarriage of justice; and to unearth the truth; but that right cannot be misused by filing repeated applications where the Court already noted the subjective satisfaction to its conscience that no further investigation is required.”

12. A bare perusal of the mandate in the above judgments would abundantly clear that it would not be necessary to give an opportunity of hearing to the proposed accused. As a matter of course, if an opportunity of hearing has to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective investigation.

13. Undisputedly, in the case at hand, the Petitioner was not impleaded as an accused at the time when the learned Magistrate passed the impugned order, but he was shown as a proposed accused. The complainant sought further investigation against him and one Mahesh Oza, as the statements of Milind Dongare, Mangesh Chavan and Sachin Gorle prima facie point the finger of suspicion at the Petitioner. It is trite law that it is not necessary to give the proposed accused an opportunity of hearing as a matter of course while passing an order on an application for further investigation under Section 173 (8) of the Cr.P.C. Based on the statements of witnesses, the learned Magistrate passed the impugned order.

14. The Petitioner was/is not an accused in the present crime. Therefore, he need not worry about the order permitting the Investigating Officer to carry out further investigation. Why is he shying away from facing the investigation? If he has not done anything, he has no reason to object to the direction for further investigation, but he may assist the investigation as the complainant's associate.

15. It is worth noting that the offence committed in the case at hand is of a serious nature, and the accused persons, in a predetermined and preplanned manner, hatched a conspiracy and committed the offence in question. The ultimate object of justice is to find out the truth, punish the guilty and protect the innocent. Finding the truth is a herculean task in such

offences, as accused persons, in a predetermined and preplanned manner, have committed the crime. Therefore, the duty is cast upon the Court to be extremely careful and cautious in dealing with the complaint and must consider the realities. The allegations in the complaint need to be scrutinised with great care and circumspection. Had the Petitioner had no concern with the alleged crime, he need not worry if the Court has permitted further investigation. *Indeed, the complainant has the right to draw the attention of the Court and seek further investigation to prevent miscarriage of justice and unearth the truth.*

16. Moreover, the Court owes a duty to look beyond the mere face value of F.I.R. or complaint, as it is not enough to simply examine if the written averments mechanically disclose ingredients of the alleged offence. Instead, the Court must meticulously scrutinise all attending circumstances emerging from the record, exercise due care and circumspection, and read between the lines to ascertain the truth. On the contrary, the Petitioner's own conduct in filing the Intervention Application/this Petition and thereby trying to obstruct the investigation/legal process leads to draw an adverse inference, because if he genuinely has no concern with the alleged crime, there should be no anxiety or fear regarding conducting a thorough investigation.

17. In the light of the above discussion and the dictum laid down in the above-cited judgments and the mandate in Section 173(8) of the Cr.P.C., in my

view, the Petitioner has no locus to intervene in the application (Exh.106) and to argue the same or no locus to challenge the same in this writ petition. On that ground alone, the petition needs to be dismissed. Accordingly, ***I answer Point (i) in the negative.***

As to Point Nos. (ii) and (iii).

18. While dealing with Points (ii) and (iii), I would like to rely on Paragraph No.14 in the judgment of ***Manishaben Thakkar*** (supra), which is reproduced hereinabove, bare perusal of which reveals that the complainant, being an aggrieved person, has every right to draw the attention of the Court for seeking further investigation to prevent miscarriage of justice and to unearth the truth. Apart from that, Section 173(8) of the Cr.P.C. does not bar the complainant from moving an application seeking further investigation.

19. The crux of the arguments of learned Senior Counsel for the Petitioner is that Respondent No. 2 - Complainant does not have locus to seek further investigation and therefore, cannot seek further investigation in the crime. Secondly, he propounded that the learned Magistrate has taken cognisance of the matter and therefore has no power to direct further investigation. To substantiate his submissions, he relied on the following judgments :-

- (i) **Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel and Ors.**⁵ (Paras : 48, 49, 50, 51). (for short, '***Amrutbhai***')

⁵ (2017) 4 SCC 177

- (ii) **Janata Nagari Sahakari Pat Sanstha Maryadit Vs. State of Maharashtra** ⁶ (for short, '*Janata Nagari Sahakari Pat Sanstha*')
- (iii) **Ravindra Rajnarayan Pandey @ Dabba Pandey Vs. State of Maharashtra and Anr.** ⁷ (Paras : 17, 19, 20, 21, 22). (for short, '*Ravindra Pandey*')
- (iv) **Umesh Pandurang Gore Vs. State of Maharashtra and Ors.** ⁸ (for short, '*Umesh Gore*')

20. *Per contra*, learned counsel for Respondent No.2 – Complainant strenuously opposes the same, contending that the dictum laid down in **Amrutbhai** (supra), **Athul Rao Vs. State of Karnataka**⁹ and **Bikash Ranjan Rout Vs. State (NCT of Delhi)** ¹⁰ have been held to be contrary, and the Hon'ble Supreme Court overruled them in **Vinubhai Haribhai Malaviya and Ors. Vs. State of Gujarat and Anr.**¹¹, and therefore, the dictum laid down in the said judgment is hardly of any assistance to the Petitioner in support of his submissions. He drew my attention to Paragraph Nos. 10, 14, 17, 38 to 40, and 42 to 44 of the said judgment. As such, he submitted that in view of the law laid down in the said judgment, the learned Magistrate is empowered to direct further investigation in the offence until the trial commences, i.e. charges are framed. In the case at hand, no charge has been framed; therefore, passing an order by the learned Magistrate is just and proper. He further placed reliance

⁶ 2021 SCC OnLine Bom 4652

⁷ Cr. W.P. No.4128 of 2019 dt. 08.01.2024 (Bombay High Court)

⁸ W.P. No.4539 of 2018 dt. 22.04.2022 (Bombay High Court)

⁹ (2018) 14 SCC 298

¹⁰ (2019) 5 SCC 542

¹¹ (2019) 17 SCC 1

on the judgments of *Anant Thakur Karmuse Vs. State of Maharashtra & Others*¹², *Dineshkumar Gokuldas Kalantry Vs. State of Maharashtra and Anr.*¹³, *Siby Paul Paulose, Manavalan Vs. State represented by S.I. of Police and Anr.*¹⁴ and *Manishaben* (supra), and submitted that, to prevent miscarriage of justice and unearth the truth, it is necessary to direct the Police Inspector of the concerned police station to appoint an Investigating Officer to conduct further investigation. Therefore, he submitted that the law laid down in *Janata Nagari Sahakari Pat Sanstha* (supra), *Ravindra Pandey* (supra) and *Umesh Gore* (supra) is hardly of any assistance to the Petitioner in support of his contention. Therefore, he submitted that the impugned order passed by the learned Magistrate is just and proper and there is no need to interfere with it.

21. While considering the above issues, it appears that the Investigating Officer recorded statements of witnesses, i.e. Mangesh Chavan, an Advocate, who states that, on instructions of the Petitioner and one Mahesh Oza, he prepared the draft of a document. However, in the said draft, some alteration/modification had been made, and he categorically stated that the draft document given by him and the document prepared are different. Second witness, Milind Dongare, a Notary Advocate, stated that he did not notarise the said document, but that his forged signature and stamp were affixed to it.

¹² (2023) 5 SCC 802

¹³ 2025 SCC OnLine Bom 5532

¹⁴ 2011 SCC OnLine Ker 4273

The said document was not registered with him; therefore, the Investigating Officer, by application dated 26th October, 2021 (Exh.88), sought permission to conduct further investigation in the matter, and the learned Magistrate granted permission. The report submitted by the Investigating Officer indicates that the investigation against the Petitioner and one Mahesh Oza is still ongoing, and after ascertaining the material against them, he will take further steps in the matter; accordingly, arrangements were made to file a further report.

22. Respondent No. 2, being dissatisfied with the investigation, made an application contending that the Investigating Officer is evading the investigation against the Petitioner and one Mahesh Oza, and therefore, he has moved an application to appoint an Investigating Officer to conduct further investigation.

23. On 05th November, 2022, the Investigating Officer filed a reply to the said application and consented to the same and asserted that a thorough investigation is necessary in the present crime. The learned Magistrate, after considering the submission and material on record, allowed the application (Exh.106) and directed the Police Inspector with Hatkanangale Police Station to appoint an Investigating Officer to investigate the participation of the proposed accused, i.e., the present Petitioner and one Mahesh Oza, as per Section 173(8) of the Cr.P.C.

24. While determining the controversy, it is necessary to consider the dictum laid down in *Vinubhai Malviya* (supra). The Hon'ble Supreme Court, in Paragraph No. 10, framed the question of law as to “*whether, after a charge-sheet is filed by the police, the learned Magistrate has the power to order further investigation and, if so, up to what stage of a criminal proceeding?*” While replying to the same, the Hon'ble Supreme Court in Paragraph Nos. 42, 43 and 44 dealt with the same and categorically held that the learned Magistrate is empowered to order further investigation until charges are framed under Section 156(3) read with Section 173(8) of Cr.P.C. I would like to reproduce Paragraph Nos. 42, 43 and 44 as under :-

“42. *There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra) having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8), to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases mid-way through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of*

the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate, who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi (supra). Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra) have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Administration) (1997) 1 SCC 361 and Reeta Nag v. State of West Bengal and Ors. (2009) 9 SCC 129 also stand overruled.

43. *We now come to certain other judgments that were cited before us. King Emperor v. Khwaja Nazir Ahmad AIR 1945 PC 18 was strongly relied upon by Shri Basant for the proposition that, unlike superior Courts, Magistrates did not possess any inherent power under the CrPC. Since we have grounded the power of the Magistrate to order further investigation until charges are framed under Section 156(3) read with Section 173(8) of the CrPC, no question as to a Magistrate exercising any inherent power under the CrPC would arise in this case.*

44. *Union of India and Anr. v. W.N. Chadha (1993) Supp. 4 SCC 260 is a judgment which states that the accused has no right to participate in the investigation till process is issued to him, provided there is strict compliance with the requirements of fair investigation. Likewise, the judgments in Smt. Nagawwa v. Veeranna Shivalongappa Konjalgi & Ors. (1976) 3 SCC 736, Prabha Mathur and Anr. v. Pramod Aggarwal & Ors. (2008) 9 SCC 469, Narender G. Goel v. State of Maharashtra (2009) 6 SCC 65 and Dinubhai Bhogabhai Solanki v. State of Gujarat & Ors. (2014) 4 SCC 626, which state that the accused has no right to be heard at the stage of investigation, have very little to do with the precise question before us. All these judgments are, therefore,*

distinguishable. Further, Babubhai v. State of Gujarat & Ors. (2010) 12 SCC 254, is a judgment which distinguishes between further investigation and re-investigation, and holds that a superior court may, in order to prevent miscarriage of criminal justice if it considers necessary, direct investigation de novo, whereas a Magistrate's power is limited to ordering further investigation. Since the present case is not concerned with re-investigation, this judgment also cannot take us much further. Likewise, Romila Thapar v. Union of India, (2018) 10 SCC 753, held that an accused cannot ask to change an investigating agency, or to require that an investigation be done in a particular manner, including asking for a court-monitored investigation. This judgment also is far removed from the question that has been decided by us in the facts of this case."

25. In Paragraph No. 42, the Hon'ble Supreme Court has categorically held that, to the extent that judgments in *Amrutbhai Patel* (supra), *Athul Rao* (supra) and *Bikash Rout* (supra) have been held to be contrary, they stand overruled, and therefore, in Paragraph No. 43, held that the learned Magistrate is empowered to direct investigation until charges are framed.

26. The judgments in *Janata Nagari Sahakari Pat Sanstha Maryadit* (supra) and *Umesh Gore* (supra), on which the Petitioner is relying, have passed the order based on the dictum laid down in *Amrutbhai Patel* (supra). The Hon'ble Supreme Court in *Vinubhai Malviya* (supra) has overruled the finding recorded in *Amrutbhai Patel* (supra) to that extent. Therefore, the dictum laid down in *Janata Nagari Sahakari Pat Sanstha* (supra) and *Umesh Gore* (supra) is hardly of any assistance to the Petitioner in support of his submissions that the learned Magistrate is not empowered to order further investigation after he takes cognizance of the matter or the complainant cannot

file an application seeking further investigation. On the contrary, the complainant, being an aggrieved person and the one who brought the matter to the Court's notice, has the right to draw the Court's attention and seek further investigation to prevent miscarriage of justice and unearth the truth. Section 173 (8) of the Cr.P.C. does not bar the complainant from seeking further investigation, as observed above. The ultimate object of justice is to find out the truth, punish the guilty and protect the innocent. If the Petitioner is innocent, then he need not worry about the impugned order if the investigation goes on further. It is also necessary to consider that the said offence was committed in a preplanned and predetermined manner; therefore, finding out the truth is a herculean task. Therefore, further investigation is required in the crime.

27. This Court, in ***Dineshkumar Kalantry*** (supra), after considering various judgments of the Hon'ble Supreme Court including ***Amrutbhai, Vinubhai***, has categorically held that “***the complainant's application under Section 173 (8) of the Cr.P.C. is maintainable even after framing of charge***”.

28. The Kerala High Court in ***Siby Paul*** (supra), in Paragraph No.14, has held that “***the learned Trial Court can order further investigation under Section 173(8) of Cr.P.C. on the basis of application preferred in this regard by the de facto complainant at any stage irrespective of the stage of pre-cognizance or post-cognizance stage***”.

29. Besides, it is a settled law that the learned Magistrate is empowered to pass the order for further investigation. The Hon'ble Supreme Court in *Vinubhai Malviya* (supra) has laid down, "there is no good reason given by the Court in *Amrutbhai Patel* (supra), *Athul Rao* (supra) and *Bikash Rout* (supra) as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate; while concomitantly, the power of the police to further investigate the offence continues till the stage the trial commences. Such a view would not accord with the earlier judgments of the Hon'ble Supreme Court, in *Sakiri*, *Samaj Parivartan Smudaya*, *Vinay Tyagi*, and *Hardeep Singh*; having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed."

30. In *Hasanbhai Valibhai Qureshi Vs. State of Gujarat*¹⁵, the Hon'ble Supreme Court held that "*if there is a necessity for further investigation when fresh facts come to light, then the interest of justice is paramount and trumps the need to avoid any delay being caused to the proceeding*". The Court therefore held that "*whether a further investigation is warranted, the hands of the investigating agency or the Court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.*"

¹⁵ (2004) 5 SCC 347

31. In *Anant Thakur* (supra), the facts were that initially the chargesheet was filed against accused No.1 to 10 on 07-12-2020. Thereafter, the prosecution filed a supplementary chargesheet against accused No.11 and 12 on 28-08-2021. Accused No.13 was not even charge-sheeted in the supplementary chargesheet. The Court then framed charges against accused Nos. 1 to 12 on 28-08-2021. Only thereafter, the second supplementary charge-sheet was filed against accused No. 13 on 05-03-2022. According to the state investigating agency, further investigation was still required on certain aspects. As such, this court held that ***“the victim has a fundamental right of fair investigation and fair trial. Therefore, mere filing of the chargesheet and framing of the charges cannot be an impediment in ordering further investigation, if the facts so warrant.”***

32. Apart from the above discussion, on plain reading of Sections 156(3) and 173(8) of the Cr.P.C., it is clear that the power of the Magistrate is very wide. For this, the judicial authority must be satisfied that the police have conducted a proper investigation; and to ensure that a proper investigation takes place in the sense of a just investigation by the police, the Magistrate is empowered to pass an order of further investigation.

33. Even assuming the case at hand, on the application of Respondent No.2 – Complainant, the learned Magistrate, after satisfying himself, has passed the order and it is not the case that merely based on the application

filed by Respondent No.2 – Complainant, the learned Magistrate has passed the order without giving any reason. The ultimate aim of investigation and enquiry, whether by police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. This is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India, and cannot be doubted.

34. In *Ravindra Pandey* (supra), the facts were that the Investigating Officer had completed the investigation and filed an ‘A’ Summary report before the Magistrate. The learned Magistrate accepted the same. *Respondent No.2 therein, i.e. the original complainant, did not file any objection, nor did he challenge the order of the Magistrate granting ‘A’ Summary. Thereafter, on 15th October, 2015, i.e. after a period of eight years, he filed an application in the MECR by way of protest petition under Section 173(8) of the Cr.P.C. seeking directions from the Magistrate to direct the CBI/CID or any other authority to initiate the inquiry into the fraud committed in MECR No. 5 of 2005.* It is pertinent to note that in the said matter, the complainant has not challenged the order granting ‘A’ Summary; instead, the complainant has moved an application to carry out further investigation, i.e., after eight years, accepting the final report. Moreover, this Court has observed that the supplementary statement of one witness, Kavita, does not in any way indicate that the Petitioner was a part of the sex trade. However, the facts in the case at hand

are quite different from those in the said case. In the present case, the police have conducted the investigation, and the charge-sheet has been filed. During the investigation, some statements were recorded, and during the recording of the said statements, they pointed the finger of suspicion towards the Petitioner and one Mahes Oza; therefore, the Investigating Officer also sought further investigation, and thereafter the Complainant sought the same, which is pending. In the case at hand, the question is not whether the order was challenged after eight years; rather, the supplementary statements of the witnesses indicate suspicion against the petitioner. Therefore, in my view, the observations made in the said judgment are hardly of any assistance to the Petitioner in support of his submission.

35. In the said judgment, this Court has categorically held that “*it is permissible for the investigating agency to carry out further investigation and there is no bar to conducting such investigation, and it is not necessary for the Magistrate to review or recall the order accepting the final report*”.

36. In the wake of the above discussion, at the outset, it appears that in the case at hand, the charge has yet to be framed. Similarly, the Petitioner is not shown or implicated as an accused. Respondent No.2, being a Complainant, is an aggrieved party and has locus to seek further investigation to prevent miscarriage of justice and unearth the truth. Apart from that, the Magistrate is empowered to direct further investigation if he is satisfied that it

is necessary. Having considered the law laid down in *Vinubhai Malviya* (supra), *Amrutbhai Patel* (supra), *Manishaben Thakkar* (supra), and *Anant Thakur* (supra), in my view, Respondent No.2, being a complainant, has the right to draw the attention of the Court seeking further investigation to prevent miscarriage of justice and to unearth the truth. Also, the learned Magistrate is empowered to direct further investigation in the crime until the trial is commenced. Therefore, I do not find substance in the submission of learned Senior Counsel for the Petitioner that Respondent No. 2 – Complainant has no locus to file an application seeking further investigation, or that the learned Magistrate is not empowered to direct further investigation after taking cognisance. Therefore, his prayer to that extent is turned down. As such, I have no hesitation in holding that Respondent No. 2, being a complainant/informant, has locus to file an application before the learned Magistrate seeking further investigation in the crime under Section 173(8) of the Cr.P.C. The learned Magistrate is also empowered to direct further investigation under Section 173(8) of the Cr.P.C. even after taking cognisance of the matter. Hence, accordingly, I answer *Point Nos. (ii) and (iii) in the affirmative.*

As to Point No. (iv).

37. In view of the judgments in *Dhariwal Tobacco Products Ltd. and Ors. Vs. State of Maharashtra and Ors.*¹⁶, *Prabhu Chawla Vs. State of Rajasthan*

¹⁶ (2009) 2 SCC 370

*and Ors.*¹⁷ and **Madhu Limaye Vs. State of Maharashtra**¹⁸, in my view, despite the availability of the alternate remedy of filing a Revision U/s 397 of the Cr. P. C., the petition U/s 482 is maintainable. ***Hence, I answer Point (iv) in the affirmative.***

As to Point No. (v).

38. Perusal of the impugned order reveals that the learned Magistrate, after considering the material placed before him, has rightly passed the order, and in Paragraph No.6 has rightly held that the proposed accused have no locus standi to intervene in the application and argue on the application. Similarly, Paragraph No. 8 dealt with the statement of Mangesh Chavan and observed that a prima facie accusation appears against the Petitioner and one Mahesh Oza, and that further investigation is needed in that regard. Accordingly, the impugned order was passed. Hence, I do not find any illegality or perversity in the impugned order to warrant interference in it in the writ jurisdiction. Hence, ***I answer Point (v) in the negative.*** Accordingly, the following order is passed.

39. As a result, **Criminal Writ Petition, being bereft of merits, stands dismissed.**

40. The Rule is discharged. No order as to costs.

41. The Petition is disposed of.

(ABHAY J. MANTRI, J.)

SSD

¹⁷ (2016) 16 SCC 30

¹⁸ (1977) 4 SCC 551