Supreme Court of India
Vinay Tyagi vs Irshad Ali @ Deepak & Ors on 13 December, 2012
Bench: A.K. Patnaik, Swatanter Kumar

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2040-2041 OF 2012
(Arising out of SLP (Crl.) Nos.9185-9186 of 2009)

Vinay Tyagi Appellant

Versus

Irshad Ali @ Deepak & Ors. Respondents

WITH

CRIMINAL APPEAL NOS. 2042-2043 OF 2012
(Arising out of SLP(Crl.) Nos. 9040-9041 of 2009)

CRIMINAL APPEAL NO. 2044 OF 2012
(Arising out of SLP(Crl.) No. 6210 of 2010)

CRIMINAL APPEAL NO. 2045 OF 2012
(Arising out of SLP(Crl.) No. 6212 of 2010)

J U D G M E N T

Swatanter Kumar, J.

1. Leave Granted

2. The following two important questions of law which are likely to arise more often than not before the courts of competent jurisdiction fall for consideration of this Court in the present appeal :

Question No.1 : Whether in exercise of its powers under Section 173 of the Code of Criminal Procedure, 1973 (for short, the Code), the Trial Court has the jurisdiction to ignore any one of the reports, where there are two reports by the same or different investigating agencies in furtherance of the orders of a Court? If so, to what effect?

Question No.2 : Whether the Central Bureau of Investigation (for short the CBI) is empowered to conduct fresh/re-

investigation when the cognizance has already been taken by the Court of competent jurisdiction on the basis of a police report under Section 173 of the Code?

Facts :-

3. Irshad Ali @ Deepak, Respondent No.1, in the present appeal was working as an informer of the Special Cell of Delhi Police in the year 2000. He was also working in a similar capacity for Intelligence Bureau. Primarily, his profession and means of earning his livelihood was working as a rickshaw puller. On 11th December, 2005, it is stated that he had a heated conversation with the Intelligence Bureau officials for whom he was working. It was demanded of him that he should join a militant camp in Jammu & Kashmir in order to give information with respect their activities to the Intelligence Bureau. However, the said respondent refused to do the job and consequently claims that he has been falsely implicated in the present case. In fact, on 12th December, 2005, a report was lodged regarding disappearance of respondent no.2 by his family members at Police Station, Bhajanpura, Delhi. Not only this, the brother of the respondent no.2 also sent a telegram to the Prime Minister, Home Minister and Police Commissioner on 7th and 10th January, 2006, but to no avail. On 9th February, 2006, a report was published in the Hindustan Times newspaper, Delhi Edition, through SHO, Police Station, Bhajanpura, Delhi with the photograph of respondent no.2 seeking help of the general public in tracing him. On that very evening, it is stated that the Special Cell of the Delhi Police falsely implicated both the respondents in a case, FIR No. 10/2006, under Sections 4 and 5 of the Explosive Substances Act and under Section 120B, 121 and 122 of the Indian Penal Code, 1860 (for short IPC) read with Section 25 of the Arms Act. Both the respondents were described as terrorists. In the entire record, it was not stated that the respondents were working as informers of these agencies. At this stage, it will be pertinent to refer to the FIR that was registered against the accused persons, relevant part of which can usefully be extracted herein: -

> To, the Duty Officer, PS Special Cell, Lodhi Colony, New Delhi. During the 3rd week of January, 2006 information was received through Central Intelligence Agency that militant of Kashmir based Organisation has set up a base in Delhi. One Irshad Ali @ Deepak is frequently visiting Kashmir to get arms, ammuniation and explosives or the instructions from their Kashmir based Commanders. He is also visiting different parts of the country to spread the network of the militant organizations. As per the directions of senior officers, a team under the supervision of Sh. Sanjeev Kumar, ACP Special Cell led by Inspector Mohan Chand Sharma was formed to develop this information and identify Irshad and his whereabouts in Sultanpuri area, Secret sources were deployed. During the course of developments of information, it came to knowledge that above noted Irshad Ali @ Deepak is resident of Inder Enclave, Phase-II, Sultanpuri, Delhi. It also came to notice that one Mohd. Muarif Qamar @ Nawab r/o Bhajanpura, Delhi is also associated with the militant organization. During the development of this information, it was revealed that both Irshad Ali and nawab had gone to J&K on the directions of their handlers to receive a consignment of arms and explosives. Today on February 09, 2006 at about 4 PM, one of these sources telephonically informed SI Vinay Tyagi in the office of Special Cell, Lodhi Colony that Irshad A.li(sic) @ Deepak along with his associate Mohd. Muarif Qamar

@ Nawab R/o Bajanpura, Delhi is coming from Jammu in JK SRTC Bus No. JK-02 Y-0299 with a consignment of explosives, arms & ammunition and will alight at Mukarba Chowk, near Karnal Bypass in the evening. This information was recorded in Daily Dairy (sic) and discussed with senior officers. A team consisting of Insp. Sanjay Dutt, myself, SI Subhash Vats, SI Rahul, SI Ravinder Kumar Tyagi, S.I Dalip Kumar, SI Pawan Kumar, ASI Anil Tyagi, ASI Shahjahan, HC Krishna Ram, HC Nagender, HC Rustam, Ct. Rajiv and Ct. Rajender was constituted to act upon this information. Thereafter the team members in 3 private vehicles and 2 two wheelers armed with official weapons as per Malkhana register, departed from the office of Special Cell, Lodhi Colony at about 4.30 PM and reached G.T. Karnal Depot at 5.30 PM where Insp. Sanjay Dutt met the informer. Insp. Sanjay Dutt asked 6/7 persons to join the police party after disclosing them about the information. All of them went away citing genuine excuses. The police party was briefed by Insp. Sanjay Dutt and was deployed around Mukarba Chowk, Interstate Bus Stand. At about 7.35 PM, above mentioned Irshad and Nawab were identified by the informer when they had alighted from the bus No.JK-02 Y-0299 coming from Jammu. Both were scene (sic) carrying blue and green-red check coloured airbags each on their right shoulders. In the meantime, team posted near by was alerted and when they were about to cross the outer Ring Road to go towards Rohini side, were overpowered. Cursory search of the above-mentioned persons was conducted and from the right dhub of the pant worn by Mohd Muarif Qamar @ Nawab mentioned above, apprehended by me with the help of Dalip Kumar, one Chinese pistol star Mark.30 calibre along with 8 live cartridges in its magazine was recovered. On measuring the length of the barrel and body 19.4 cms, magazine 10.8 cms, butt 8.9 cms and diagonal length of pistol is 21.5 cms Number 19396 is engraved on the butt of the pistol. On checking the blue coloured bag recovered from the possession of Nawab, one white envelope containing non- electronic detonators, one ABCD green coloured Timer, one AB cream coloured Timer was also recovered which was concealed beneath the layers of clothes including one light blue coloured shirt and dark gray coloured pant in the bag, and from the red green coloured bag recovered from the possession of Irshad Ali mentioned above, apprehended by SI Ravinder Tyagi with the help of Ct. Rajender Kumar, one Chinese pistol star Mark .30 calibre along with 8 live cartridges in its magazine was recovered. On measuring the length of the barrel and body 19.4 cms, magazine 10.8 cms, butt 8.9 cms and diagonal length of pistol is 21.5 cms, Number 33030545 is engraved on the barrel and body of the pistol. One white polythene containing a mixture of black and white oil based explosive material kept in a black polythene and was also concealed beneath the layers of clothes. On weighing the explosive was found to be 2 kg. Out of this two samples of 10 gms each were taken out in white plastic small jars. The remaining recovered explosive kept back in black polythene, pulinda prepared and sealed with the seal of VKT. Sample explosive were marked as S1 and S2 and sealed with the seal of VKT. The ABCD timer and AB Timer were kept in a plastic jar and sealed with the seal of VKT marked as T and 3 non electric detonators along with envelope were kept in a transparent plastic jar with the help of cotton and sealed with the seal of VKT marked as D. The recovered Star Mark

pistol from the possession of accused Mohd. Muarif @ Nawab and Irshad ali were kept in separate pulindas and marked as M&I respectively and sealed with the seal of VKT. The blue coloured airbag and clothes recovered from the possession of accused Mohd. Muarif @ Nawab and kept in a cloth pulinda and sealed with the seal of T and the green-red colour check bag recovered from the possession of accused Irshad Ali containing clothes was kept in a pulinda sealed with the seal of VKT and CFSL forms were filled-up and sealed with the seal of VKT. Seal after use was handed over to SI Ravinder Kumar Tyagi. During their interrogation, both the accused Irshad Ali @ Deepak S/o Mohd. Yunus Ali R/o F-247-A, Inder Enclave, Phase-II, Sultnpuri, Delhi aged 30 years and Mohd. Muarif Qamar @ Nawab R/o Vill. Deora Bandhoh, P.O.-Jogiara, PS-Jale, Distt.- Darbhanga, Bihar, stated that they brought the recovered consignment of arms, ammunitions and explosives from J&K from their Commanders in J&K and was to be kept in safe custody and was to be used for terrorist activity in Delhi on the directions of their handlers in J&K. Militant Irshad Ali and Nawab above mentioned have kept in their possession explosives, ABCD Timer, AB Timer, Non Electronic detonators and arms and ammunition which were to be used for the purpose of terrorist activities in order to overawe the sovereignty, integrity and unity of India in order to commit terrorist and disruptive activities and there by committing offences punishable u/s 121/121A/122/123/120B IPC r/w 4/5 Explosive Substance Act and 25 Arms Act. Rukka is being sent to you for registration of the case through SI Ravinder Kumar Tyagi. Case be registered and further investigation be handed over to SI Rajpal Dabas, D-882, PIS No. 28860555 who has already reached at the spot as per the direction of senior Officers who had already been informed about the apprehension and recovery of explosives, arms and ammunition from their possession. Date and time of offence. February 09, 2006 at 7.35 PM, place of occurrence; Outer ring road, Mukarba Chowk, near Inter State bus stand, Delhi. Date and time of sending the rukka: 09.02.2006 at 10.15 PM. Sd English SI Vinay Tyagi No. D- 1334, PIS No. 28862091, Special Cell/NDR/OC, Lodhi Colony, New Delhi dated 09.02.2006.

4. Aggrieved by the action of the Delhi police, brother of the accused filed a petition in the High Court of Delhi stating the harrowing facts, the factum that both the accused were working as informers, and that they have been falsely implicated in the case and, inter alia, praying that the investigation in relation to FIR No.10 of 2006 be transferred to the CBI. This writ petition was filed on 25th February, 2006 upon which the Delhi High Court had issued notice to the respondents therein. Upon receiving the notice, Delhi Police filed its status report before the High Court reiterating the contents stated in the above FIR but conceding to the fact that the accused persons were working as informers of the police. While issuing the notice, the High Court did not grant any stay of the investigation and/or the proceedings before the court of competent jurisdiction, despite the fact that a prayer to that effect had been made. The Special Cell of the Delhi Police, filed a chargesheet before the trial court on 6th May, 2006 when the matter was pending before the High Court. In the writ petition, it was stated to be a mala fide exercise of power. The High Court on 9th May, 2006 passed the following order :

The Petitioner has filed this petition under Article 226 of the Constitution of India read with the Section 482 Cr.P.C. for issuance of Writ, Order or Direction in the nature of Mandamus to the Respondents to transfer the investigation of case FIR No.10/2006 dated 09.02.2006 of the Police Station Special Cell, under Section 121/121-A/122/123/120-B IPC read with the Section 4/5 of Explosive Substance Act and Section 25 of Arms Act to an independent agency like CBI on the allegation that his brother Moarif Qamar @ Nawab was falsely implicated in a serious case like the present one on the basis of a totally cooked up story. The above named brother of the Petitioner was reported to be missing ever since 22.12.2005 and a complaint to that effect was lodged at PS Bhajanpura, Delhi. It appears that usual notices, as provided, were issued on order to search the brother of the Petitioner. Lastly, a notice was got published by SHO, Bhajanpura, Delhi in Delhi Hindustan Times in its edition dated 09.05.2006 which is precisely the date on which it is alleged that the brother of the Petitioner and another person were apprehended by the police when they were returning from Jammu & Kashmir by Jammu & Kashmir State Transport Roadways bus near Kingsway Camp, Mukraba Chowk and a Chinese made pistol, certain detonators and 2 Kg of RDX were recovered from the Petitioners brother and 2 Kg of RDX were recovered from co-accused Mohd. Irshad Ali. The investigation leads the police to pinpoint the Petitioner being a member of terrorist organization, namely Al-Badar and consequently, after usual investigation, a charge sheet has been filed against both the accused persons.

On notice being issued to the Respondent/State. A status report stands filed by the Assistant Commissioner of Police, NDR/OC, Special Cell, Lodhi Colony, Delhi which has reiterated the allegations about the arrest of the Petitioners brother and Mohd. Irshad Ali in the above circumstances, the report has, however sustained the allegation about a report in regard to the missing of the brother of the Petitioners having being lodged with the police as far as on 28.12.2005. The allegations about the false implication of the Petitioners brother are, however, controverted and denied.

I have heard learned counsel for the parties. Learned counsel for the Petitioner has invited the attention of the Court to various attendant circumstances around the time of the alleged arrest of the accused persons on 09.02.2006. The circumstances disclosed do cast a suspicion on the case of the prosecution in regard to the manner in which Mohd. Moarif Qamar @ Nawab and the other accused Mohd. Irshad Ali were apprehended by the officials of Special Cell and about the recovery of the contraband articles like explosive and detonators. The offences under Sections 121/121-A/122/123/120-B IPC read with the Section 4/5 of Explosive Substance Act and Section of 25 Arms Act are very grave offences and may lead to a very severe punishment, if the charges are established. Therefore, without commenting any further on the merits of the matter, this Court is of the considered opinion that it is a fit case where an inquiry by some independent agency is called for the allegations made in the present petition. Accordingly, the CBI, in the first instance, is called upon to undertake an inquiry into the matter and submit a report to this Court within four

> weeks.
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> List on 17th July, 2006.
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> Copy of the Order be forwarded to the Director, CBI for taking necessary action in the matter.

5. The CBI also filed its report before the High Court indicating therein that the alleged recoveries effected from the accused persons did not inspire confidence and further investigation was needed. After perusing the records, the High Court again on 4th August, 2008 passed the following order: -

> However, this relief cannot be claimed at this stage as if there was any error or misconduct or false implication of the accused on the part of any police official or the investigating officer while registering the case and while the investigation of the case is yet to be ascertained by the trial court during the trial of the case. Therefore, this relief being premature cannot be granted.

6. After detailed investigation, the CBI filed the closure report on 11th November, 2008 stating that the accused persons were working as informers of Special Cell of Delhi Police and Intelligence Bureau Officials and that it was a false case. After filing of the report by the CBI, the accused-respondent no.2, namely, Mohd. Muarif Qamar Ali, filed an application before the Trial Court in terms of Section 227 of the Code with a prayer that in view of the closure report submitted by the CBI, he should be discharged. This application was opposed by the Special Cell, Delhi Police, who filed a detailed reply. The CBI, of course, stood by its report and submitted that it had no objection if the said accused was discharged. The learned Trial Court, in its order dated 13th February, 2009, opined that the CBI had concluded in its report that the manner of recovery and arrest of the accused persons from Mukarba Chowk did not inspire any confidence but the CBI had not discovered any fact pertaining to the recovery of the arms and ammunition, explosive substances and bus tickets etc. from the two accused persons.

7. Observing that the CBI had not investigated all the aspects of the allegations, the Court also noticed that in the order dated 4th August, 2008, the High Court noted that transfer of investigation from Special Cell to CBI had been directed, and further, filing of charge-sheet after completion of investigation, which was pending before the Court of competent jurisdiction had been directed. Upon noticing all these facts and pleas, the Court concluded, therefore, the prayer for acceptance of the closure report and discharge of the accused is premature. The same cannot be granted at this stage. With these observations, the contentions of the CBI, Special Cell and the accused persons stand disposed of.

8. Vide the same order, the Court also observed, no definite conclusion can be drawn at this stage to ascertain the truthfulness of the version of two different agencies and fixed the case for arguments on charge for 28th February, 2009.

9. The respondent no.2 herein, Maurif Qamar, filed a petition under Section 482 of the Code praying that the proceedings pending before the Court of Additional Sessions Judge, Delhi, pertaining to FIR No.10 of 2006, be quashed. This was registered as Criminal Miscellaneous Petition No.781 of 2009 and the application for stay was registered as Crl. Misc. Application No.286/2009. As already noticed, the Court had not granted any stay but had finally disposed of the petition vide its order dated 28th August, 2009. The High Court observed that once the report was filed by the CBI, that agency has to be treated as the investigating agency in the case and the closure report ought to have been considered by the trial court. It remanded the case to the trial court while passing the following order:

> 12. In these circumstances, the impugned order dated 13.02.2009 dismissing the applications moved by the petitioners for discharging them is set aside. The case is remanded back to the Additional Sessions Judge to proceed further in the matter after hearing the parties on the basis of the closure report filed by the CBI dated 11.11.2008 and in accordance with the provisions contained under Section 173 and Section 190 of the Code of Criminal Procedure. In case he accepts the report, then the matter may come to an end, subject to his orders, if any, against the erring officers. However, if he feels that despite the closure report filed by the CBI, it is a case fit for proceeding further against the petitioners, he may pass appropriate orders uninfluenced dby (sic) what this Court has stated while disposing of this case. The only rider would be that while passing the orders the Additional Sessions Judge would not be influenced by the report of the Sepcial (sic) Cell in this matter. Parties to appear before the Trial Judge on 14th September, 2009.

10. It is this order of the High Court which is the subject matter of the present appeals by special leave.

11. It would be appropriate for the Court to examine the relevant provisions and scheme of the Code in relation to filing of a report before the court of competent jurisdiction and the extent of its power to examine that report and pass appropriate orders. The criminal investigative machinery is set into motion by lodging of a First Information Report in relation to commission of a cognizable offence. Such report may be made orally, in writing or through any means by an officer in charge of a police station. Such officer is required to reduce the same into writing, read the same to the informant and wherever the person reporting is present, the same shall be signed by such person or the person receiving such information in accordance with the provisions of Section 154 of the Code. A police officer can conduct investigation in any congnizable case without the orders of the Magistrate. He shall conduct such investigation in accordance with the provisions of Chapter XIII, i.e., in accordance with Sections 177 to 189 of the Code. Where information as contemplated in law is received by an investigating officer and he has reasons to believe that an offence has been committed, which he is empowered to investigate, then he shall forthwith send a report of the same to the Magistrate and proceed to the spot to investigate the facts and circumstances of the case and take appropriate measures for discovery and arrest of the offender. Every report under Section 157 shall be submitted to the Magistrate in terms of Section 158 of the Code upon which the Magistrate may direct an investigation or may straight away proceed himself or depute some other magistrate

subordinate to him to hold an inquiry and to dispose of the case in accordance with the provisions of the Code. It needs to be recorded here that the proceedings recorded by a police officer cannot be called into question at any stage on the ground that he was not empowered to conduct such investigation. The provisions of Section 156(3) empower the Magistrate, who is competent to take cognizance in terms of Section 190, to order investigation as prescribed under Section 156(1) of the Code. Section 190 provides that subject to the provisions of Chapter XIV of the Code, any Magistrate of the first class and any magistrate of the second class specifically empowered in this behalf may take cognizance of any offence upon receipt of a complaint, facts of which constitute such offence, upon a police report of such facts or upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed. The Chief Judicial Magistrate is competent to empower any Magistrate of the second class to take cognizance in terms of Section 190. The competence to take cognizance, in a way, discloses the sources upon which the empowered Magistrate can take cognizance. After the investigation has been completed by the Investigating Officer and he has prepared a report without unnecessary delay in terms of Section 173 of the Code, he shall forward his report to a Magistrate who is empowered to take cognizance on a police report. The report so completed should satisfy the requirements stated under clauses

(a) to (h) of sub-section (2) of Section 173 of the Code. Upon receipt of the report, the empowered Magistrate shall proceed further in accordance with law. The Investigating Officer has been vested with some definite powers in relation to the manner in which the report should be completed and it is required that all the documents on which the prosecution proposes to rely and the statements of witnesses recorded under Section 161 of the code accompany the report submitted before the Magistrate, unless some part thereof is excluded by the Investigating Officer in exercise of the powers vested in him under Section 173(6) of the Code. A very wide power is vested in the investigating agency to conduct further investigation after it has filed the report in terms of Section 173(2). The legislature has specifically used the expression nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under Section 173(2) has been forwarded to the Magistrate, which unambiguously indicates the legislative intent that even after filing of a report before the court of competent jurisdiction, the Investigating Officer can still conduct further investigation and where, upon such investigation, the officer in charge of a police station gets further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the prescribed form. In other words, the investigating agency is competent to file a supplementary report to its primary report in terms of Section 173(8). The supplementary report has to be treated by the Court in continuation of the primary report and the same provisions of law, i.e., sub-section (2) to sub-section (6) of Section 173 shall apply when the Court deals with such report. Once the Court examines the records, applies its mind, duly complies with the requisite formalities of summoning the accused and, if present in court, upon ensuring that the copies of the requisite documents, as contemplated under Section 173(7), have been furnished to the accused, it would proceed to hear the case. After taking cognizance, the next step of definite significance is the duty of the Court to frame charge in terms of Section 228 of the Code unless the Court finds, upon consideration of the record of the case and the documents submitted therewith, that there exists no sufficient ground to proceed against the accused, in which case it shall discharge him for reasons to be recorded in terms of Section 227 of the Code. It may be noticed that the language of Section 228 opens with the words, if after such consideration and hearing as aforesaid,

the Judge is of the opinion that there is ground for presuming that the accused has committed an offence, he may frame a charge and try him in terms of Section 228(1)(a) and if exclusively triable by the Court of Sessions, commit the same to the Court of Sessions in terms of Section 228(1)(b). Why the legislature has used the word presuming is a matter which requires serious deliberation. It is a settled rule of interpretation that the legislature does not use any expression purposelessly and without any object. Furthermore, in terms of doctrine of plain interpretation, every word should be given its ordinary meaning unless context to the contrary is specifically stipulated in the relevant provision. Framing of charge is certainly a matter of earnestness. It is not merely a formal step in the process of criminal inquiry and trial. On the contrary, it is a serious step as it is determinative to some extent, in the sense that either the accused is acquitted giving right to challenge to the complainant party, or the State itself, and if the charge is framed, the accused is called upon to face the complete trial which may prove prejudicial to him, if finally acquitted. These are the courses open to the Court at that stage. Thus, the word presuming must be read ejusdem generis to the opinion that there is a ground. The ground must exist for forming the opinion that the accused had committed an offence. Such opinion has to be formed on the basis of the record of the case and the documents submitted therewith. To a limited extent, the plea of defence also has to be considered by the Court at this stage. For instance, if a plea of proceedings being barred under any other law is raised, upon such consideration, the Court has to form its opinion which in a way is tentative. The expression presuming cannot be said to be superfluous in the language and ambit of Section 228 of the Code. This is to emphasize that the Court may believe that the accused had committed an offence, if its ingredients are satisfied with reference to the record before the Court. At this stage, we may refer to the judgment of this Court in the case of Amit Kapur v. Ramesh Chander & Anr. [JT 2012 (9) SC 329] wherein, the Court held as under :

> The above-stated principles clearly show that inherent as well as revisional jurisdiction should be exercised cautiously. If the jurisdiction under Section 482 of the Code in relation to quashing of an FIR is circumscribed by the factum and caution afore-noticed, in that event, the revisional jurisdiction, particularly while dealing with framing of a charge, has to be even more limited. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the record of the case and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the Court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of

committing an offence, is an approach which is impermissible in terms of Section 228 of the Code. It may also be noticed that the revisional jurisdiction exercised by the High Court is in a way final and no inter court remedy is available in such cases. Of course, it may be subject to jurisdiction of this court under Article 136 of the Constitution of India. Normally, a revisional jurisdiction should be exercised on a question of law. However, when factual appreciation is involved, then it must find place in the class of cases resulting in a perverse finding. Basically, the power is required to be exercised so that justice is done and there is no abuse of power by the court. Merely an apprehension or suspicion of the same would not be a sufficient ground for interference in such cases.

12. On analysis of the above discussion, it can safely be concluded that presuming is an expression of relevancy and places some weightage on the consideration of the record before the Court. The prosecutions record, at this stage, has to be examined on the plea of demur. Presumption is of a very weak and mild nature. It would cover the cases where some lacuna has been left out and is capable of being supplied and proved during the course of the trial. For instance, it is not necessary that at that stage each ingredient of an offence should be linguistically reproduced in the report and backed with meticulous facts. Suffice would be substantial compliance to the requirements of the provisions.

13. Having noticed the provisions and relevant part of the scheme of the Code, now we must examine the powers of the Court to direct investigation. Investigation can be ordered in varied forms and at different stages. Right at the initial stage of receiving the FIR or a complaint, the Court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Code. Investigation can be of the following kinds :

(i) Initial Investigation.

(ii) Further Investigation.

(iii) Fresh or de novo or re-investigation.

14. The initial investigation is the one which the empowered police officer shall conduct in furtherance to registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.

15. Further investigation is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a further investigation. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly

described as supplementary report. Supplementary report would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a reinvestigation, fresh or de novo investigation.

16. However, in the case of a fresh investigation, reinvestigation or de novo investigation there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct fresh investigation. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of fresh/de novo investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a fresh investigation. In the case of Sidhartha Vashisht v. State (NCT of Delhi) [(2010) 6 SCC 1], the Court stated that it is not only the responsibility of the investigating agency, but also that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not prima facie be indicative of a biased mind and every effort should be made to bring the guilty to law as nobody stands above law de hors his position and influence in the society. The maxim contra veritatem lex nunquam aliquid permittit applies to exercise of powers by the courts while granting approval or declining to accept the report. In the case of Gudalure M.J. Cherian & Ors. v. Union of India & Ors. [(1992) 1 SCC 397], this Court stated the principle that in cases where charge-sheets have been filed after completion of investigation and request is made belatedly to reopen the investigation, such investigation being entrusted to a specialized agency would normally be declined by the court of competent jurisdiction but nevertheless in a given situation to do justice between the parties and to instil confidence in public mind, it may become necessary to pass such orders. Further, in the case of R.S. Sodhi, Advocate v. State of U.P. [1994 SCC Supp. (1) 142], where allegations were made against a police officer, the Court ordered the investigation to be transferred to CBI with an intent to maintain credibility of investigation, public confidence and in the interest of justice. Ordinarily, the courts would not

exercise such jurisdiction but the expression ordinarily means normally and it is used where there can be an exception. It means in the large majority of cases but not invariably. Ordinarily excludes extra- ordinary or special circumstances. In other words, if special circumstances exist, the court may exercise its jurisdiction to direct fresh investigation and even transfer cases to courts of higher jurisdiction which may pass such directions.

17. Here, we will also have to examine the kind of reports that can be filed by an investigating agency under the scheme of the Code. Firstly, the FIR which the investigating agency is required to file before the Magistrate right at the threshold and within the time specified. Secondly, it may file a report in furtherance to a direction issued under Section 156(3) of the Code. Thirdly, it can also file a further report, as contemplated under Section 173(8). Finally, the investigating agency is required to file a final report on the basis of which the Court shall proceed further to frame the charge and put the accused to trial or discharge him as envisaged by Section 227 of the Code.

18. Next question that comes up for consideration of this Court is whether the empowered Magistrate has the jurisdiction to direct further investigation or fresh investigation. As far as the latter is concerned, the law declared by this Court consistently is that the learned Magistrate has no jurisdiction to direct fresh or de novo investigation. However, once the report is filed, the Magistrate has jurisdiction to accept the report or reject the same right at the threshold. Even after accepting the report, it has the jurisdiction to discharge the accused or frame the charge and put him to trial. But there are no provisions in the Code which empower the Magistrate to disturb the status of an accused pending investigation or when report is, filed to wipe out the report and its effects in law. Reference in this regard can be made to K. Chandrasekhar v. State of Kerala [(1998) 5 SCC 223]; Ramachandran v. R. Udhayakumar [(2008) 5 SCC 413], Nirmal Singh Kahlon v State of Punjab & Ors. [(2009) 1 SCC 441]; Mithabhai Pashabhai Patel & Ors. v. State of Gujarat [(2009) 6 SCC 332]; and Babubhai v. State of Gujarat [(2010) 12 SCC 254].

19. Now, we come to the former question, i.e., whether the Magistrate has jurisdiction under Section 173(8) to direct further investigation.

20. The power of the Court to pass an order for further investigation has been a matter of judicial concern for some time now. The courts have taken somewhat divergent but not diametrically opposite views in this regard. Such views can be reconciled and harmoniously applied without violation of the rule of precedence. In the case of State of Punjab v. Central Bureau of Investigation [(2011) 9 SCC 182], the Court noticed the distinction that exists between reinvestigation and further investigation. The Court also noticed the settled principle that the courts subordinate to the High Court do not have the statutory inherent powers as the High Court does under Section 482 of the Code and therefore, must exercise their jurisdiction within the four corners of the Code.

21. Referring to the provisions of Section 173 of the Code, the Court observed that the police has the power to conduct further investigation in terms of Section 173(8) of the Code but also opined that even the Trial Court can direct further investigation in contradistinction to fresh investigation, even where the report has been filed. It will be useful to refer to the following paragraphs of the judgment wherein the Court while referring to the case of Mithabhai Pashabhai Patel v. State of Gujarat

(supra) held as under:

> 13. It is, however, beyond any cavil that further investigation and reinvestigation stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a State to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in Ramachandran v. R. Udhayakumar (2008) 5 SCC 513 opined as under: (SCC p. 415, para 7) 7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-
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> section (8), but not fresh investigation or reinvestigation.
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> A distinction, therefore, exists between a reinvestigation and further investigation.
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> 15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The precognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code.

22. In the case of Minu Kumari & Anr. v. State of Bihar & Ors. [(2006) 4 SCC 359], this Court explained the powers that are vested in a Magistrate upon filing of a report in terms of Section 173(2)(i) and the kind of order that the Court can pass. The Court held that when a report is filed before a Magistrate, he may either (i) accept the report and take cognizance of the offences and issue process; or (ii) may disagree with the report and drop the proceedings; or (iii) may direct further investigation under Section 156(3) and require the police to make a further report.

23. This judgment, thus, clearly shows that the Court of Magistrate has a clear power to direct further investigation when a report is filed under Section 173(2) and may also exercise such powers with the aid of Section 156(3) of the Code. The lurking doubt, if any, that remained in giving wider interpretation to Section 173(8) was removed and controversy put to an end by the judgment of this Court in the case of Hemant Dhasmana v. CBI, [(2001) 7 SCC 536] where the Court held that although the said order does not, in specific terms, mention the power of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by the court, which has the jurisdiction to do so, then such order should not even be interfered with in exercise of a

higher courts revisional jurisdiction. Such orders would normally be of an advantage to achieve the ends of justice. It was clarified, without ambiguity, that the magistrate, in exercise of powers under Section 173(8) of the Code can direct the CBI to further investigate the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the new report to be submitted by the Investigating Officer, would be governed by sub-Section (2) to sub-Section (6) of Section 173 of the Code. There is no occasion for the court to interpret Section 173(8) of the Code restrictively. After filing of the final report, the learned Magistrate can also take cognizance on the basis of the material placed on record by the investigating agency and it is permissible for him to direct further investigation. Conduct of proper and fair investigation is the hallmark of any criminal investigation.

24. In support of these principles reference can be made to the judgments of this Court in the cases of Union Public Service Commission v. S. Papaiah & Ors [(1997) 7 SCC 614], State of Orissa v. Mahima [(2003) 5 SCALE 566], Kishan Lal v. Dharmendra Bhanna & Anr. [(2009) 7 SCC 685], State of Maharashtra v. Sharat Chandra Vinayak Dongre [(1995) 1 SCC 42].

25. We may also notice here that in the case of S. Papaiah (supra), the Magistrate had rejected an application for reinvestigation filed by the applicant primarily on the ground that it had no power to review the order passed earlier. This Court held that it was not a case of review of an order, but was a case of further investigation as contemplated under Section 173 of the Code. It permitted further investigation and directed the report to be filed.

26. Interestingly and more particularly for answering the question of legal academia that we are dealing with, it may be noticed that this Court, while pronouncing its judgment in the case of Hemant Dhasmana v. CBI, (supra) has specifically referred to the judgment of S. Papaiah (supra) and Bhagwant Singh v. Commissioner of Police & Anr. [(1985) 2 SCC 537]. While relying upon the three Judge Bench judgment of Bhagwant Singh (supra), which appears to be a foundational view for development of law in relation to Section 173 of the Code, the Court held that the Magistrate could pass an order for further investigation. The principal question in that case was whether the Magistrate could drop the proceedings after filing of a report under Section 173(2), without notice to the complainant, but in paragraph 4 of the judgment, the three Judge Bench dealt with the powers of the Magistrate as enshrined in Section 173 of the Code. Usefully, para 4 can be reproduced for ready reference:-

> 4. Now, 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 and 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.

27. In some judgments of this Court, a view has been advanced, (amongst others in the case of Reeta Nag v State of West Bengal & Ors. [(2009) 9 SCC 129] Ram Naresh Prasad v. State of Jharkhand and Others [(2009) 11 SCC 299] and Randhir Singh Rana v. State (Delhi Administration) [(1997) 1 SCC 361]), that a Magistrate cannot suo moto direct further investigation under Section 173(8) of the Code or direct re-investigation into a case on account of the bar contained in Section 167(2) of the Code, and that a Magistrate could direct filing of a charge sheet where the police submits a report that no case had been made out for sending up an accused for trial. The gist of the view taken in these cases is that a Magistrate cannot direct reinvestigation and cannot suo moto direct further investigation.

28. However, having given our considered thought to the principles stated in these judgments, we are of the view that the Magistrate before whom a report under Section 173(2) of the Code is filed, is empowered in law to direct further investigation and require the police to submit a further or a supplementary report. A three Judge Bench of this Court in the case of Bhagwant Singh (supra) has, in no uncertain terms, stated that principle, as afore-noticed.

29. The contrary view taken by the Court in the cases of Reeta Nag (supra) and Randhir Singh (supra) do not consider the view of this Court expressed in Bhagwant Singh (supra). The decision of the Court in Bhagwant Singh (supra) in regard to the issue in hand cannot be termed as an obiter. The ambit and scope of the power of a magistrate in terms of Section 173 of the Code was squarely debated before that Court and the three Judge Bench concluded as afore-noticed. Similar views having been taken by different Benches of this Court while following Bhagwant Singh (supra), are thus squarely in line with the doctrine of precedence. To some extent, the view expressed in Reeta Nag (supra), Ram Naresh (supra) and Randhir Singh (supra), besides being different on facts, would have to be examined in light of the principle of stare decisis.

30. Having analysed the provisions of the Code and the various judgments as afore-indicated, we would state the following conclusions in regard to the powers of a magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code :

> 1. The Magistrate has no power to direct reinvestigation or fresh investigation (de novo) in the case initiated on the basis of a police report.
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> 2. A Magistrate has the power to direct further investigation after filing of a police report in terms of Section 173(6) of the Code.
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> 3. The view expressed in (2) above is in conformity with the principle of law stated in Bhagwant Singhs case (supra) by a three Judge Bench and thus in conformity with the doctrine of precedence.
>
> 4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In

fact, such power would have to be read into the language of Section 173(8).

5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the Court to the extent that even where the facts of the case and the ends of justice demand, the Court can still not direct the investigating agency to conduct further investigation which it could do on its own.

6. It has been a procedure of proprietary that the police has to seek permission of the Court to continue further investigation and file supplementary chargesheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case.

31. Having discussed the scope of power of the Magistrate under Section 173 of the Code, now we have to examine the kind of reports that are contemplated under the provisions of the Code and/or as per the judgments of this Court. The first and the foremost document that reaches the jurisdiction of the Magistrate is the First Information Report. Then, upon completion of the investigation, the police are required to file a report in terms of Section 173(2) of the Code. It will be appropriate to term this report as a primary report, as it is the very foundation of the case of the prosecution before the Court. It is the record of the case and the documents annexed thereto, which are considered by the Court and then the Court of the Magistrate is expected to exercise any of the three options afore-noticed. Out of the stated options with the Court, the jurisdiction it would exercise has to be in strict consonance with the settled principles of law. The power of the magistrate to direct further investigation is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the Court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the Court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.

32. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the Court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these reports, the Court shall discharge an accused in compliance with the provisions of Section 227 of the Code.

33. At this stage, we may also state another well-settled canon of criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct further investigation, fresh or de novo and even reinvestigation. Fresh, de novo, and reinvestigation are synonymous expressions and their result in law would be the

same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

34. We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of Magistrate under Section 228 of the Code. Wherever a charge sheet has been submitted to the Court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialised agency. It can safely be stated and concluded that in an appropriate case, when the court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialised agency. These principles have been reiterated with approval in the judgments of this Court in the case of Disha v. State of Gujarat & Ors. [(2011) 13 SCC 337]. Vineet Narain & Ors. v. Union of India & Anr.[(1998) 1 SCC 226], Union of India & Ors. v. Sushil Kumar Modi & Ors. [1996 (6) SCC 500] and Rubabbuddin Sheikh v. State of Gujarat & Ors. [(2010) 2 SCC 200].

35. The power to order/direct reinvestigation or de novo investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the Court may, by declining to accept such a report, direct further investigation, or even on the basis of the record of the case and the documents annexed thereto, summon the accused.

36. The Code does not contain any provision which deals with the court competent to direct fresh investigation, the situation in which such investigation can be conducted, if at all, and finally the manner in which the report so obtained shall be dealt with. The superior courts can direct conduct of a fresh/de novo investigation, but unless it specifically directs that the report already prepared or the investigation so far conducted will not form part of the record of the case, such report would be deemed to be part of the record. Once it is part of the record, the learned Magistrate has no jurisdiction to exclude the same from the record of the case. In other words, but for a specific order by the superior court, the reports, whether a primary report or a report upon further investigation or a report upon fresh investigation, shall have to be construed and read conjointly. Where there is a specific order made by the court for reasons like the investigation being entirely unfair, tainted, undesirable or being based upon no truth, the court would have to specifically direct that the investigation or proceedings so conducted shall stand cancelled and will not form part of the record for consideration by the Court of competent jurisdiction.

37. The scheme of Section 173 of the Code even deals with the scheme of exclusion of documents or statements submitted to the Court. In this regard, one can make a reference to the provisions of Section 173(6) of the Code, which empowers the investigating agency to make a request to the Court

to exclude that part of the statement or record and from providing the copies thereof to the accused, which are not essential in the interest of justice, and where it will be inexpedient in the public interest to furnish such statement. The framers of the law, in their wisdom, have specifically provided a limited mode of exclusion, the criteria being no injustice to be caused to the accused and greater public interest being served. This itself is indicative of the need for a fair and proper investigation by the concerned agency. What ultimately is the aim or significance of the expression fair and proper investigation in criminal jurisprudence? It has a twin purpose. Firstly, the investigation must be unbiased, honest, just and in accordance with law. Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.

38. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct further investigation or file supplementary report with the leave of the Court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct further investigation and file supplementary report with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the Court to conduct further investigation and/or to file a supplementary report will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the interpretative process.

39. Such a view can be supported from two different points of view. Firstly, through the doctrine of precedence, as afore-noticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of contemporanea expositio. Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused.

40. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to direct further investigation on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to

take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct further investigation to clear its doubt and to order the investigating agency to further substantiate its charge sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct further investigation or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct further investigation or reinvestigation as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, re-investigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this court in the case of Sivanmoorthy and Others v. State represented by Inspector of Police [(2010) 12 SCC 29]. In light of the above discussion, we answer the questions formulated at the opening of this judgment as follows:

The court of competent jurisdiction is duty bound to consider all reports, entire records and documents submitted therewith by the Investigating Agency as its report in terms of Section 173(2) of the Code. This Rule is subject to only the following exceptions;

a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;

b) Where an order is passed by the higher courts in exercise of its extra- ordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on fresh investigation or re-investigation or any part of it be excluded, struck off the court record and be treated as non est. No investigating agency is empowered to conduct a fresh, de novo or re-investigation in relation to the offence for which it has already filed a report in terms of Section 173(2) of the Code. It is only upon the orders of the higher courts empowered to pass such orders that aforesaid investigation can be conducted, in which event the higher courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the court of the learned magistrate.

41. Having answered the questions of law as afore-stated, we revert to the facts of the case in hand. As already noticed, the petitioner had filed the writ petition before the High Court that the investigation of FIR No. 10/2006 dated 9th February, 2006 be transferred to CBI or any other independent investigating agency providing protection to the petitioners, directing initiation of appropriate action against the erring police officers who have registered the case against the petitioner and such other orders that the court may deem fit and proper in the facts and circumstances of the case. This petition was filed under Article 226 of the Constitution read with

Section 482 of the Code on 25th February, 2006. The High Court granted no order either staying the further investigation by the agency, or the proceedings before the court of competent jurisdiction. The Delhi Police itself filed a status report before the High Court on 4th April, 2006 and the Special Cell of Delhi Police filed the charge sheet before the trial court on 6th May, 2006. After perusing the status report submitted to the High Court, the High Court vide its Order dated 9th May, 2006 had noticed that the circumstances of the case had cast a suspicion on the case of the prosecution, in regard to the manner in which the accused were apprehended and recoveries alleged to have been made from them of articles like explosives and detonators. After noticing this, the Court directed that without commenting on the merits of the matter, it was of the opinion that this was a case where inquiry by some independent agency is called for, and directed the CBI to undertake an inquiry into the matter and submit its report within four weeks. Obviously, it would have been brought to the notice of the High Court that the Delhi Police had filed a report before the trial court. The status report had also been placed before the High Court itself. Still, the High Court, in its wisdom, did not consider it appropriate to pass any directions staying proceedings before the court of competent jurisdiction. Despite pendency before the High Court for a substantial period of time, the CBI took considerable time to conduct its preliminary inquiry and it is only on 4th July, 2007 that the CBI submitted its preliminary inquiry report before the court. After perusing the report, the Court directed, as per the request of the CBI, to conduct in depth investigation of the case.

42. In the order dated 24th October, 2007, the High Court noticed that despite the fact that the CBI had taken considerable time for completing its investigation, it had still not done so. Noticing that the investigation was handed over to the CBI on 9th May, 2006 and despite extensions it had not submitted its report the Court granted to the CBI four weeks time from the date of the order to submit its findings in respect of the allegations made by the accused in the complaint and directed the matter to come up on 28th November, 2007. The significant aspect which needs to be noticed is that the Court specifically noticed in this order that the trial of the case is not proceeding, further hoping that CBI shall file supplementary report or supplementary material before the trial court and the accused gets an opportunity of case being formally investigated. However, the pace at which the investigation is done by the CBI shows that CBI may take years together for getting the records.

43. This order clearly shows that the High Court contemplated submission of a supplementary report, which means report in continuation to the report already submitted under Section 173(2) of the Code by the Delhi Police.

44. On 28th November, 2007, the case came up for hearing before the High Court. Then CBI filed its closure report making a request that both the accused be discharged. The case came up for hearing before the High Court on 4th August, 2008, when the Court noticed that CBI had filed a report in the sealed cover and the Court had perused it. Herein, the Court noticed the entire facts in great detail. The High Court disposed of the writ petition and while noticing the earlier order dated 4th July, 2007 wherein the accused persons had assured the court that they would not move bail application before the trial court, till CBI investigation was completed, permitted the applicants to move bail applications as well.

45. The application for discharge filed by the accused persons on the strength of the closure report filed by the CBI was rejected by the trial court vide its order dated 13th February, 2009 on the ground that it had to examine the entire record including the report filed by the Delhi Police under Section 173(2) of the Code. The High Court, however, took the contrary view and stated that it was only the closure report filed by the CBI which could be taken into consideration, and then the matter shall proceed in accordance with law. In this manner, the writ petition was finally disposed of, directing the parties to appear before the trial court on 14th September, 2009. The High Court had relied upon the judgment of this Court in the case of K. Chandrasekhar v. State of Kerala and Others (supra) to say that once investigation stands transferred to CBI, it is that agency only which has to proceed with the investigation and not the Special Cell of the Delhi Police.

46. We are unable to accord approval to the view taken by the High Court. The judgment in the case of K. Chandrasekhar (supra), firstly does not state any proposition of law. It is a judgment on peculiar facts of that case. Secondly, it has no application to the present case. In that case, the investigation by the police was pending when the investigation was ordered to be transferred to the CBI. There the Court had directed that further investigation had to be continued by the CBI and not the Special Cell of the Delhi Police.

47. In the present case, report in terms of Section 173(2) had already been filed by the Special Cell of the Delhi Police even before the investigation was handed over to CBI to conduct preliminary inquiry. Furthermore, the final investigation on the basis of the preliminary report submitted by the CBI had also not been handed over to CBI at that stage.

48. Once a Report under Section 173(2) of the Code has been filed, it can only be cancelled, proceeded further or case closed by the court of competent jurisdiction and that too in accordance with law. Neither the Police nor a specialised investigating agency has any right to cancel the said Report. Furthermore, in the present case, the High Court had passed no order or direction staying further investigation by the Delhi Police or proceedings before the court of competent jurisdiction.

49. On the contrary, the court had noticed explicitly in its order that it was a case of supplementary or further investigation and filing of a supplementary report.

50. Once the Court has taken this view, there is no question of treating the first report as being withdrawn, cancelled or capable of being excluded from the records by the implication. In fact, except by a specific order of a higher court competent to make said orders, the previous as well as supplementary report shall form part of the record which the trial court is expected to consider for arriving at any appropriate conclusion, in accordance with law. It is also interesting to note that the CBI itself understood the order of the court and conducted only further investigation as is evident from the status report filed by the CBI before the High Court on 28th November, 2007.

51. In our considered view, the trial court has to consider the entire record, including both the Delhi Police Report filed under Section 173(2) of the Code as well as the Closure Report filed by the CBI and the documents filed along with these reports.

52. It appears, the trial court may have three options, firstly, it may accept the application of accused for discharge. Secondly, it may direct that the trial may proceed further in accordance with law and thirdly, if it is dissatisfied on any important aspect of investigation already conducted and in its considered opinion, it is just, proper and necessary in the interest of justice to direct further investigation, it may do so.

53. Ergo, for the reasons recorded above, we modify the order of the High Court impugned in the present appeal to the above extent and direct the trial court to proceed with the case further in accordance with law.

.....J.

(A.K. Patnaik) .....J.

(Swatanter Kumar) New Delhi;

December 13, 2012.