2022 INSC 1071

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1768 OF 2022
(ARISING OUT OF SLP (CRL.) NO. 9609 OF 2022
@ DIARY NO. 22814 OF 2019)

DEVENDRA NATH SINGH ..…… **APPELLANT(S)**

VERSUS

STATE OF BIHAR & ORS. ……. **RESPONDENT(S)**

JUDGMENT

DINESH MAHESHWARI, J.

Delay condoned. Leave granted.

2. The challenge in this appeal is to the order dated 10.09.2018, as passed by the High Court of Judicature at Patna in Criminal Miscellaneous No. 649 of 2016.

2.1. The said petition under Section 482 of the Code of Criminal Procedure, 1973[1] was filed by respondent No. 3 of the present appeal, against the order dated 21.06.2014, as passed by the ACJM, Barh, District Patna[2] in Barh Police Station Case No. 115 of 2012 whereby, the learned Magistrate had taken cognizance of the offences under Sections 409, 467, 468 and 420 of the Indian Penal Code, 1860[3] on the allegations

1 'CrPC', for short.
2 Hereinafter referred to as 'the Magistrate'.
3 'IPC', for short.

against the respondent No. 3 of misappropriation of stocks worth Rs. 16,99,648/- from the godown of the Bihar State Food and Civil Supplies Corporation[4] during the years 2010-11 and 2011-12.

3. The main plank of the submissions before the High Court in the aforesaid petition by the respondent No. 3 had been that he was only a Class IV employee of the Corporation and that the '*entire game was played*' by the present appellant, who was holding the position of the District Manager. In that regard, the contents of audit report forming part of the First Information Report[5] were extensively relied upon.

4. The High Court, after taking note of the submissions made on behalf of the present respondent No. 3, expressed surprise that the then District Manager of the Corporation (i.e., the present appellant), who was ultimately responsible for the illegalities, was given a clean chit by the informant, i.e., the Senior Dy. Collector-cum-District Manager (in-charge of the godown). It was also observed that the present respondent No. 3, a Class IV employee, could not have been posted at the godown; and that he was made an accused in the case '*as scapegoat to save the skin'* of the present appellant.

4.1. Having said so, the High Court proceeded to direct the Magistrate to give directions to the police to further investigate the case in terms of Section 173(8) CrPC regarding the allegations against the appellant and to seek the report within a period of three months. The Court, however,

4 Hereinafter referred to as 'the Corporation'.
5 'FIR', for short.

expressed its disinclination to interfere with the impugned order taking cognizance against the present respondent No. 3 and disposed of the petition while giving liberty to the respondent No. 3 to raise all the points at the time of framing the charge which, as per the directions of the High Court, were to be decided by the learned Magistrate after taking into consideration the material emerging in further investigation against the appellant.

5. The impugned order dated 10.09.2018 could be usefully reproduced, *in extenso*, as under: -

> "This petition under Section 482 Cr. P. C. has been filed for quashing the order dated 21.6.2014 passed by the A.C.J.M. Barh, Patna in Barh P.S. case no. 115 of 2012 by which learned Magistrate has taken cognizance for the offence under Sections 409,467, 468 and 420 of the I.P.C. against the petitioner.
>
> Heard learned counsel for the petitioner and State.
>
> Learned counsel for the petitioner has submitted that petitioner was only a class IV employee in the Bihar State Food and Civil Supply Corporation Ltd. for short 'the Corporation". The entire game was played by D.N Singh who was District Manager which has also come in the Audit Report which is part of the FIR and annexed as Annexure-2. The informant who was Senior Dy. Collector-cum-District Manager (Incharge) of the Godown has not lodged any case against said D.N.Singh the then District Manager who had played entire game in committing misappropriation. The F.I.R. has been lodged only against the petitioner who was class IV employee and was made In-charge of the Godown by D.N. Singh against the Circular and Government policy, which had also come in detail in Audit Report submitted by the Auditor. The police submitted charge sheet against this petitioner on the basis of aforesaid FIR and cognizance has been taken against the petitioner on the basis of the charge sheet.
>
> This Court is really surprised to find that the then District Manager of the Corporation, who was ultimately responsible for all such illegalities, had been given clean chit by the informant. He was not made accused in the case. The petitioner being the IV grade employee, was posted by the then District Manager, namely, D.N. Singh, as Incharge Assistant Godown Manager although he was not entitled to be posted as such. He has been made accused

in the case as scapegoat to save the skin of D.N.Singh, the then District Manager of Godown.

Learned ACJM, Barh, Patna is directed to give direction to the police to further reinvestigate the case in terms of provision of Section 173(8) of the Cr. P.C. with regard to allegation against D.N.Singh the then District Manager with regard to allegation of misappropriation of money and appointing the petitioner who was class IV employee as In-charge Assistant Godown Manager against the circulars and directions of the Government. The Magistrate will direct the police to complete the re-investigation with regard to role of then District Manager Sri D. N.Singh in the entire game of the misappropriation of the money as mentioned in detail in the audit report in accordance with law and submit report before him within a period of three months from the date of passing of the order by the learned Magistrate.

This Court, at present, is not inclined to interfere with the impugned order with regard to the petitioner by which cognizance has been taken against him on the basis of charge sheet submitted by the police.

This Cr. Misc. petition is, accordingly, disposed off. The petitioner is given liberty to raise all the points, as raised in the present application, at the time of framing of charge, which shall be considered and disposed off by the learned Court below in accordance with law after taking into consideration the materials which will come during further investigation with regard to allegation against D. N. Singh the then District Manager."

6. The order aforesaid is questioned by the appellant in whose relation the directions have been issued for further investigation, *inter alia,* on the ground that investigation is the prerogative of the investigating agency/officer and no mandate could be issued to the Magistrate so as to usurp such powers to investigate. It is also submitted that the impugned order has been directly in violation of the principles of natural justice inasmuch as no opportunity of hearing was extended by the High Court to the appellant.

6.1. While elaborating, learned counsel for the appellant has contended that the High Court, while exercising its powers under Section

482 CrPC, could not have issued a specific direction to the Magistrate to direct the police to investigate the role of the appellant, who was neither named in the FIR nor was charge-sheeted and was not even a party before the High Court. With reference to the Constitution Bench decision in the case of ***Dharam Pal and Ors. v. State of Haryana and Anr.:*** **(2014) 3 SCC 306** and the other decisions in ***Abhinandan Jha & Ors. v. Dinesh Mishra*****: (1967) 3 SCR 668** and ***Vinubhai Haribhai Malaviya and Ors. v. State of Gujarat and Anr.*****: (2019) 17 SCC 1**, the learned counsel has submitted that the principles remain settled by this Court that as per the scheme of CrPC, formation of an opinion as to whether a person is to be put on trial has been left to the officers in charge of a police station; and this Court has further held that in a case where the Magistrate is of the opinion that the final report submitted by the police is unsatisfactory, he could exercise his powers under Section 156(3) CrPC and direct the police to make a further investigation or straightaway take cognizance under section 190(1)(c) CrPC, notwithstanding the contrary opinion of the police. However, according to the learned counsel, directions for exercising such power in a particular manner could not have been issued by the High Court while dealing with the petition filed by the respondent No. 3. The learned counsel has also referred to the decision in ***Madan Mohan v. State of Rajasthan and Ors.*****: (2018) 12 SCC 30**, wherein this Court has observed that a superior Court could not issue

directions to any subordinate Court commanding them to pass a particular order on any application filed by a party.

6.2. Learned counsel for the appellant has also relied upon the decision in ***Popular Muthiah v. State*****: (2006) 7 SCC 296** to submit that while dealing with a similar issue where the High Court, in an appeal against conviction under Section 302 IPC, had issued directions to the investigating agency to investigate the appellant who had not been sent up for trial, this Court held that the High Court could not have issued such a direction in exercise of its inherent powers, as the investigation of an offence was a statutory power of the police and it was for the State to decide whether it wanted to proceed against an accused or not. It was observed that the High Court could not issue directions to investigate the case from a particular angle or by a particular agency and hence, it went beyond its jurisdiction in directing the prosecution of the appellant. Therein, the impugned judgment was set aside, and the matter was remanded to the High Court for fresh consideration after hearing the appellant.

6.3. In the second limb of submissions, learned counsel for the appellant has contended that the High Court ought to have given an opportunity of hearing to the appellant before issuing the impugned directions. The learned counsel would argue that the test as to whether a person is entitled to an opportunity of being heard in challenge to an order passed by a Magistrate is not dependant on whether such person had a

right to be heard by the Magistrate in the first instance; the entitlement to hearing has to be assessed independently by considering the consequences of the proceedings in which a hearing is sought; and a hearing could be claimed where a substantial right of a person would be affected. The learned counsel has referred to the decision in ***Divine Retreat Centre v. State of Kerala and Ors.*****: (2008) 3 SCC 542** wherein, while dealing with the issue whether the High Court could have passed a judicial order directing an investigation against the appellant therein without hearing it, this Court held that no judicial order could be passed by any Court without providing a reasonable opportunity of being heard to the person who was likely to be affected by such order while distinguishing the decision in the case of ***Union of India and Anr. v. W.N. Chadha*****: 1993 Supp (4) SCC 260** by observing that the *dictum* in the said judgment would not apply where a challenge was to a judicial order directing an inquiry or investigation against a person or institution. The learned counsel has also relied upon a 3-Judge Bench decision of this Court in ***Manharibhai Muljibhai Kakadia and Anr. v. Shaileshbhai Mohanbhai Patel and Ors.*****: (2012) 10 SCC 517,** wherein it was observed that an accused or a person suspected to have committed a crime has a right to be heard in a criminal revision preferred before the High Court or Sessions Judge against an order of dismissal of a complaint under Section 203 CrPC, as an order passed by the superior Court in revision, overturning the order of dismissal of the complaint

would, in effect, restore the complaint and hence, cause prejudice to the accused.

6.3.1. It has been contended that in the absence of the appellant, the High Court had no occasion to take note of the fact that he had already been exonerated of all charges after detailed departmental proceedings and hence, the directions for further investigation were wholly unwarranted in this case.

6.4. Learned counsel for the appellant has also argued that the High Court could not have directed for further investigation or reinvestigation in this the matter in view of the *dictum* of this Court in ***Vinay Tyagi v. Irshad Ali and Ors*.: (2013) 5 SCC 762**, wherein it was held that fresh/*de novo* investigation ought to be directed sparingly and in exceptional circumstances, like where the investigation already conducted is tainted by malafides.

6.5. Learned counsel for the appellant would submit that the Magistrate himself, while taking cognizance, could have proceeded against the present appellant, if he had been satisfied that the materials on record implicated the appellant to any extent but, when the Magistrate opted not to proceed against the appellant, the High Court could not have issued directions to further reinvestigate the matter qua the appellant, though it is always open for a Court to proceed against a person not sent up for trial at the stage of Section 319 CrPC, if the evidence is forthcoming in that regard.

7. Learned counsel for the respondent No. 3 has supported the impugned order with the submissions that the appellant was a high-ranking officer and he appears to have influenced the other officers in the internal inquiry so as to give him a clean chit. A copy of the audit report dated 31.05.2012 forming the basis of the FIR in question has been placed on record and has been exhaustively referred to during the course of submissions.

7.1. The learned counsel has underscored the observations of this Court in the case of ***Vinubhai Haribhai Malaviya*** (supra) that the ultimate aim of investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed the crime are booked and those who have not, are not arraigned to face trial. With reference to these and other observations that such requirements pertain to the spirit of Article 21 of the Constitution of India, learned counsel has argued that the offences in question, relating to defalcation of foodgrains which caused hardship to the economically weaker sections of the society, need to be properly investigated not only to book the actual culprits but also to check the recurrence of such a crime.

7.2. The learned counsel would argue that in the peculiar circumstances of this case, when it was found that no proper investigation was carried out against the appellant, who was the District Manager and overall in-charge of the godowns, the High Court has rightly exercised its inherent powers to issue the directions so as to ensure further and proper

investigation in the matter. While relying on the decision of this Court in the case of ***State of Punjab v. Central Bureau of Investigation and Ors.*: (2011) 9 SCC 182**, the learned counsel has contended that under Section 482 CrPC, the High Court has the power to order further investigation as also reinvestigation; and that no illegality or jurisdictional error could be imputed on the order impugned. The learned counsel has further submitted that when the High Court has the power to direct further investigation or reinvestigation directly, it also could do so by issuing directions to the learned Magistrate, who is *in seisin* of the matter.

7.3. The learned counsel has further contended that the Magistrate, before whom a final report is submitted, has the power and authority to differ with the report and to order further investigation. However, the existence of this power with the Magistrate does not *ipso facto* imply that the High Court, even in exercise of its inherent jurisdiction, cannot direct further investigation in an appropriate case, when it comes to its notice that the investigation in a case has not been conducted properly.

7.4. It has further been argued that although the inherent powers cannot be used by the High Court in a routine manner and can be exercised only in extreme cases but in the present case, when offence in question has the consequences for the society at large, the High Court cannot be faulted in exercising its inherent powers, which are, nevertheless, exercised *ex debito justitiae.* The learned counsel has particularly referred to paragraph 30 of the aforesaid decision in ***Popular***

***Muthiah**;* and has further relied upon the case of ***Neetu Kumar Nagaich v. State of Rajasthan and Ors.**:* **(2020) 16 SCC 777** wherein this Court has held that when a constitutional Court is satisfied that the investigation has not been conducted in an objective manner or conducted in a manner as to help someone escaping the law, it could direct *de novo* investigation so as to prevent miscarriage of criminal justice.

7.5. As regards the contention that no notice was issued to the appellant before passing of the impugned order, the learned counsel has argued, with reference to the decision of this Court in ***W.N. Chadha*** (supra) that, at the stage of investigation, no such notice is required to be issued to the accused. Learned counsel has also referred to various other decisions and has submitted that the said decision in ***W.N. Chadha*** has been consistently followed by this Court. The learned counsel would also submit that though the referred judgments were rendered in the applications filed by the victim and not by the co-accused but the underlying principle remains the same that an accused is not required to be heard at the stage of investigation. Learned counsel would also submit that if upon receiving the final report, the learned Magistrate could have ordered further investigation without prior notice to the accused, so could the High Court have, in exercise of its inherent jurisdiction, which is, if anything, much wider.

7.6. In the last leg of contentions, learned counsel for respondent No. 1 has also submitted that before granting of interim stay by this Court, the

requisite investigation had commenced and was transferred to the Economic Offences Unit, where the allegations against the appellant have been found to be *prima facie* correct but further action was deferred in view of the stay order of this Court. However, the investigation hitherto carried out makes it clear that the doubts expressed by the High Court have been found to be completely justified. Hence, the learned counsel would submit in the alternative that, in any case, the investigation already carried out deserves to be protected so that the real culprits like the appellant do not escape the process of law.

8. Apart from the submissions aforesaid, it is noteworthy that though, on behalf of the respondent No. 2 - Corporation, the reply submissions are essentially to the effect that in the departmental proceedings, charges were not proved against the present appellant but then, in the counter affidavit on behalf of the respondent No. 1 - State, detailed submissions have been made, essentially refuting the case of the appellant.

8.1. It has, *inter alia*, been submitted on behalf of the respondent-State that apart from the present matter, being Barh P.S. Case No. 115 of 2012, there had also been another matter, being Bikram P.S. Case No. 129 of 2012 against the respondent No. 3 as also the present appellant; and after the order passed by the High Court, the investigation in the present case was also carried out by the Economic Offences Unit, Bihar along with the aforesaid Bikram P.S. Case No. 129 of 2012. While indicating *prima facie* complicity of the appellant, it has also been pointed out that in

the said Bikram P.S. Case No. 129 of 2012, instituted for offences under Sections 409, 420, 468, 471 and 474 IPC, after finding *prima facie* case against the present appellant, prosecution sanction has also been obtained. That case relates to misappropriation of the goods worth Rs. 7.69 crores. It is submitted that in the present case, prosecution sanction has not been obtained for the appellant having been given interim protection by this Court. A few passages of the counter affidavit filed on behalf of the State could be usefully reproduced as under: -

> "13. In fact, the successor in office District Manager had also observed for holding a departmental proceeding against this petitioner and the petitioner was found to have given change of the go downs to Pramod Ranjan Kumar Sinha even without of the permission of the Headquarter of the Corporation.
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> 14. Even the petitioner was found to be silent with respect to the affairs of the go down change whereof was handed over by this petitioner a Class Iv employee namely Pramod Ranjan Sinha inasmuch as on 11.02.2010 on truck bearing Registration No. BR 1G 1051 carrying 104.61.650 Quintals of Wheat from Mokama Depot left Barh Go-down, however, on 12.02.2010 this truck was apprehended and it was found to be black marketing, but, this petitioner despite Knowledge did not take any steps against the employee in charge of the go down by removing him from the post and only value of the wheat was recovered from the salary of the employee. In fact, the district office has repeateadly informed about the irregularities at the procurement centers, however, the petitioner did not take any steps, nor did he remove the in change from the procurement center / go down.
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> 15. In fact it has also been reported that despite various irregularities and Knowledge of such irregularities the petitioner did not take any pain to atop the some and take corrective measures.
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> 16. It is stated that being a District Manager it was the responsibility and prime duty of this petitioner to get the lifting of food grains, store the same and ensure proper distribution from the go downs, However, the petitioner failed to do so leading to such huge misappropriation. In fact, as per the report of the SFC, it was found that there is no proof that this petitioner carried out inspections / visits to the Go downs.

> 17. During investigation, when statement of the witnesses were recorded, namely, Radhakant Paswan, Ramashankar Prasad and Brajkishore Srivastave, the then Assistants, they deposed that the petitioner was responsible and that he did not discharge his duties properly.
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> 18. In fact, besides the present criminal case the petitioner has also been arraigned as a non-FIR accused in connection with Bikram Police Station Case No. 129 of 2012 dated 12.06.2012 instituted under Sections 409/420/468/471/474 of IPC which is also a case of identical nature. In fact, in this case the prosecution sanction has also been received from the Corporation against this petitioner on 13.01.2012.
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> 19. It is stated that in the present case also there is material against him as stated above, however, prosecution sanction has not been obtained as the petitioner has been granted interim protection.
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> 20. That in the above background, the statement made in Para 1 is opposed and contested and it is prayed that the order impugned may be upheld."

9. We have given anxious consideration to the rival submissions and have scanned through the material placed on record.

10. As could be readily noticed, the present case carries the peculiarities of its own inasmuch as only the respondent No. 3 was named in the FIR and was charge-sheeted on the allegations of defalcation of foodgrains in the godown of Corporation. No investigation whatsoever was carried out in relation to the role of the appellant in the matter. When the respondent No. 3 attempted to question the order passed by the learned Magistrate taking cognizance of the offences under Sections 409, 467, 468 and 420 IPC, the High Court, though, remained disinclined to interfere with the order so passed by the learned Magistrate but, on the other hand, expressed surprise that the appellant, the then District Manager, was given a clean chit by the informant,

another officer of the Corporation; and only the respondent No. 3, a Class IV employee, was named as an accused. The High Court even proceeded to observe that the respondent No. 3 had been made accused in the case '*as scapegoat to save the skin'* of the appellant. Therefore, the High Court directed the learned Magistrate to give directions for further investigation in terms of Section 173(8) CrPC with regard to the allegations against the appellant, of misappropriation of money and of appointing the respondent No. 3 as in-charge Assistant Godown Manager against the circulars and directions of the Government. The High Court further observed that the directions shall be to complete the investigation with regard to the role of the appellant in '*the entire game of the misappropriation of the money as mentioned in detail in the audit report*'. Indisputably, the order impugned came to be passed by the High Court without the appellant being a party before it and in the exercise of its inherent powers under Section 482 CrPC.

10.1. Thus, and in view of the submissions made before us, two principal questions arise for determination in this appeal: one, as to whether the High Court, in the exercise of its inherent powers under Section 482 CrPC, was justified in issuing directions to the Magistrate to order further investigation though, the Magistrate before whom the charge-sheet had been filed and who had taken cognizance, did not adopt any such process; and second, as to whether the High Court was

justified in passing the order impugned without affording an opportunity of hearing to the appellant?

11. While dealing with the first question as to the High Court's exercise of its inherent powers under Section 482 CrPC in the manner the same have been exercised in this matter, we may usefully refer to the relevant provisions of law, which would be of bearing in the forthcoming discussion.

11.1. Section 482 CrPC, saving the inherent powers of the High Court, whereunder and whereby the order impugned has been passed in this matter, reads as under: -

> **"482. Saving of inherent power of High Court.-** Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

11.2. It is indisputable that as per the scheme of CrPC, formation of an opinion as to whether the person is to be put on trial has been left to the officer in-charge of a police station; and where the Magistrate is of the opinion that the result of investigation in the form of report filed before him is not satisfactory, he may also order investigation in terms of Sections 156(3) and/or 173(8) CrPC or he may straightway take cognizance under Section 190(1)(c).

11.2.1. Section 156, the relevant parts of Section 173 and Section 190 CrPC read as under: -

"**156. Police officer's power to investigate cognizable case.**- (1) Any officer in charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate.

(3) Any Magistrate empowered under section 190 may order such an investigation as above-mentioned."

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

*** *** ***

(2) (i) As soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating –

(a) the names of the parties;
(b) the nature of the information;
(c) the names of the persons who appear to be acquainted with the circumstances of the case;

(d) whether any offence appears to have been committed and, if so, by whom;
(e) whether the accused has been arrested;
(f) whether he has been released on his bond and, if so, whether with or without sureties;
(g) whether he has been forwarded in custody under section 170;
(h) whether the report of medical examination of the woman has been attached where investigation relates to an offence under Sections 376, 376A, 376AB, 376B, 376C, 376D, 376DA, 376DB or section 376E of the Indian Penal Code (45 of 1860).

(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.

*** *** ***

(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)."

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"**190. Cognizance of offences by Magistrates.**- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub-section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub-section (1) of such offences as are within his competence to inquire into or try."

11.3. It is hardly a matter of dispute that the Code of Criminal Procedure contemplates various stages and vests various powers in the Magistrate to proceed against the persons not named in the charge-sheet like the provision contained in Section 190(1)(c). These aspects, essentially of ordinary operation of the general scheme of the Code of Criminal Procedure, as also underscored in the Constitution Bench decision of this Court in ***Dharam Pal*** (supra) and in another decision in ***Abhinandan Jha*** (supra) do not require much elaboration for the purpose of the present case.

12. As noticed, the present case carries its unique features that the learned Magistrate had not exercised any such powers in terms of Section 156(3) or Section 173(8) or Section 190(1)(c) CrPC but, the High Court has, while dealing with a petition under Section 482 CrPC, directed

him to direct the police to investigate further, particularly as regards the role of the appellant; and such exercise of power by the High Court is in question. In this regard, we may usefully refer to the relevant of the decisions cited by the learned counsel for the parties.

12.1. In the case of ***Vinay Tyagi*** (supra), this Court dealt with the wide range of issues relating to the powers of the High Court under Section 482 CrPC as also the powers of the Magistrate under Section 173 CrPC; and different vistas of the processes of conducting 'fresh investigation' and/or 'further investigation'. This Court observed and held as under: -

> **"43.** At this stage, we may also state another well-settled canon of the 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.
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> **44.** 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 the 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 *Disha* v. *State of Gujarat*[6], *Vineet Narain* v. *Union of*

6 (2011) 13 SCC 337: (2012) 2 SCC (Cri) 628.

India[7], *Union of India* v. *Sushil Kumar Modi*[8] and *Rubabbuddin Sheikh* v. *State of Gujarat*[9] .

45. 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.

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48. 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.

49. 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

7 (1998) 1 SCC 226: 1998 SCC (Cri) 307.
8 (1996) 6 SCC 500.
9 (2010) 2 SCC 200: (2010) 2 SCC (Cri) 1006.

> 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."
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> (emphasis supplied)

12.2. In the case of ***State of Punjab v. CBI*** (supra), this Court had the occasion to deal with a petition challenging the High Court's directions for entrusting investigation relating to multiple FIRs to CBI, where the FIRs had their genesis in the allegations of rape by the respondent No. 3 against her husband and several other persons. While dismissing the petition and declining leave to appeal under Article 136 of the Constitution of India, this Court exposited on the magnitude of power of the High Court under Section 482 CrPC for securing the ends of justice in the following passages: -

> **"22.** Section 482 CrPC, however, states that nothing in CrPC shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under CrPC or to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Thus, the provisions of CrPC do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order of the court or to prevent the abuse of any process of the court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 CrPC, therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 CrPC for fresh investigation or reinvestigation if the High Court is satisfied that such fresh investigation or reinvestigation is necessary to secure the ends of justice.
>
> **23.** We find support for this conclusion in the following observations of this Court in *Mithabhai Pashabhai Patel* v. *State of Gujarat*[10] cited by Mr Dhavan:
>
> > "*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

10 (2009) 6 SCC 332: (2009) 2 SCC (Cri) 1047.

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*[11] opined as under:

> '*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-section (8), but not fresh investigation or reinvestigation.'

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."

24. It is clear from the aforesaid observations of this Court that the investigating agency or the court subordinate to the High Court exercising powers under CrPC have to exercise the powers within the four corners of CrPC and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge-sheet has been filed under sub-section (2) of Section 173 CrPC and such further investigation will not mean fresh investigation or reinvestigation. <u>But these limitations in sub-section (8) of Section 173 CrPC in a case where charge-sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 CrPC for securing the ends of justice</u>."

(emphasis supplied)

12.3. The decision of this Court in the case of ***Popular Muthiah*** (supra) has been referred to by the learned counsel for the contesting parties in support of their respective contentions. Therein, the High Court, while

11 (2008) 5 SCC 413: (2008) 2 SCC (Cri) 631.

exercising its appellate jurisdiction against the judgment and order convicting and sentencing an accused of the offence under Section 302 IPC, opined that no case was made out to interfere with judgment of the Trial Court in regard to the conviction of the charged accused but then, there was evidence at every stage implicating the other persons too in the crime; and the action on the part of the investigating officers leaving them from the array of accused was not simply a *bona fide* error. The High Court felt that the Sessions Judge ought to have exercised his jurisdiction under Section 319 CrPC and while making adverse comments as regards conduct of the case, the High Court directed that the prosecution of such other accused persons be launched. The High Court further directed that the State shall take the advice of the Public Prosecutor as to under what Section they were to be charged and tried; and CB, CID shall take over the matter, reinvestigate, and prosecute such other accused persons. The question before this Court was about legality and propriety of the directions so issued by the High Court while exercising appellate jurisdiction and without extending an opportunity of hearing to the persons proposed to be prosecuted. In this backdrop, this Court exposited on the amplitude as also on the limitation of such powers of the High Court and remitted the matter to the High Court, for consideration afresh and after notice to the parties concerned, while observing and holding as under: -

> "**29.** The High Court while, thus, exercising its revisional or appellate power, may exercise its inherent powers. Inherent power of the High Court can be exercised, it is trite, both in relation to substantive as also procedural matters.

30. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent jurisdiction irrespective of the nature of the proceedings. It is not trammelled by procedural restrictions in that:

(*i*) Power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(*ii*) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(*iii*) It is, however, beyond any doubt that the power under Section 482 of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where the Code is silent, where the power of the court is not treated as exhaustive, or there is a specific provision in the Code; or the statute does not fall within the purview of the Code because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.

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46. The High Court, however, was not correct in issuing a direction to the State to take advice of the State Public Prosecutor as to under what section the appellant has to be charged and tried or directing CB, CID to take up the matter and reinvestigate and prosecute the appellant herein. Such a power does not come within the purview of Section 482 of the Code of Criminal Procedure. Investigation of an offence is a statutory power of the police. The State in its discretion may get the investigation done by any agency unless there exists an extraordinary situation.

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48. The High Court while passing the impugned judgment did not bear the said principles in mind. It went beyond its jurisdiction in directing the prosecution of the appellant before us. In a case of this nature, where a superior court exercises its inherent jurisdiction, it indisputably should remind itself about the inherent danger in taking away the right of an accused. The High Court should have been circumspect in exercising the said jurisdiction. When a power under sub-section (8) of Section 173 of the Code of Criminal Procedure is exercised, the court ordinarily should not interfere with the statutory power of the investigating agency. It cannot issue directions to investigate the case from a particular angle or by a particular agency. In the instant case, not only the High Court had asked reinvestigation into the matter, but also directed examination of the witnesses who had not been cited as prosecution witnesses. It furthermore directed prosecution of the appellant which was unwarranted in law.

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56. So far as inherent power of the High Court is concerned, indisputably the same is required to be exercised sparingly. The

> High Court may or may not in a given situation, particularly having regard to lapse of time, exercise its discretionary jurisdiction. For the said purpose, it was not only required to apply its mind to the materials on record but was also required to consider as to whether any purpose would be served thereby.
>
> **57.** Having regard to the peculiar facts and circumstances of this case, we are of the opinion that before issuing the impugned directions, the High Court should have given an opportunity of hearing to the appellants herein.
>
> **58.** For the reasons aforementioned, the impugned judgment is set aside and the matter is remitted to the High Court for consideration of the matter afresh. The High Court shall issue notice to the appellants herein as also the State and pass appropriate orders as it may deem fit and proper and in accordance with law. The appeals are allowed with the aforementioned observations and directions."
>
> (emphasis supplied)

12.4. The 3-Judge Bench decision of this Court in the case of ***Vinubhai Haribhai Malaviya*** (supra) has also been referred to by the learned counsel for the parties in support of their respective contentions. Therein, this Court did not approve the impugned judgment of the High Court insofar it was stated that post-cognizance, the Magistrate was denuded of power to order further investigation. However, this Court took note of the basic facts of the case that the FIR dated 22.12.2009 was concerned with two criminal acts, namely, preparing of fake and bogus *Satakhat* and power of attorney in respect of the agricultural land in question, and demanding of an amount of Rs. 2.5 crores as an attempt to extort money by the accused persons. It was also noticed that the facts alleged in the application for further investigation were pertaining to the revenue entries made in favour of *R* and *S*, and alleging as to how their claim over the same land was false and bogus. This Court found that the facts alleged in

the application for further investigation were in the nature of a cross-FIR, which had never been registered. A communication of the Commissioner of Revenue, Gujarat dated 15.03.2011 to the Collector, Surat was also referred to in this regard. In an overall comprehension of the matter, and in view of the said communication of the Commissioner of Revenue, Gujarat dated 15.03.2011, this Court held that no case for further investigation into the facts alleged in the FIR dated 22.12.2009 was made out. However, having regard to what was stated by the Commissioner, this Court directed the police to register an FIR *qua* those facts, to be inquired into by a senior police officer; and this Court issued further directions for appropriate steps on the basis of the police report. In the course of this decision, this Court exposited on the theory and philosophy related with the aim of investigation and inquiry as also on the wide range of powers of the police and the Magistrate as regards investigation and further investigation, *inter alia*, in the following passages: -

> **"18.** It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the 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. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over CrPC that must needs inform the interpretation of all the provisions of CrPC, so as to ensure that Article 21 is followed both in letter and in spirit.
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> ******* ******* *******
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> **25.** It is thus clear that the Magistrate's power under Section 156(3) CrPC is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police—which such Magistrate

is to supervise—Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the "investigation" referred to in Section 156(1) CrPC would, as per the definition of "investigation" under Section 2(*h*), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) CrPC.

*** *** ***

42. ……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 midway 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) 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 inculpating 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……."

12.5. The case of ***Divine Retreat Centre*** (supra) has had the peculiarity of its own. Therein, the Criminal Case bearing No. 381 of 2005 had been registered at Koratty Police Station on the allegations made by a female remand prisoner that while taking shelter in the appellant-Centre, she was subjected to molestation and exploitation and she became pregnant; and thereafter, when she came out of the Centre to attend her sister's

marriage, she was implicated in a false theft case and lodged in jail. Parallel to these proceedings, an anonymous petition as also other petitions were received in the High Court, which were registered as a *suo motu* criminal case. In that case, the High Court, while exercising powers under Section 482 CrPC, directed that the said Criminal Case No. 381 of 2005 be taken away from the investigating officer and be entrusted to the Special Investigating Team ('SIT'). The High Court also directed the said SIT to investigate/inquire into other allegations levelled in the anonymous petition filed against the appellant-Centre. However, this Court did not approve the order so passed by the High Court and in that context, while observing that no unlimited and arbitrary jurisdiction was conferred on the High Court under Section 482 CrPC, explained the circumstances under which the inherent jurisdiction may be exercised as also the responsibilities of the investigating officers, *inter alia*, in the following words: -

"**27.** In our view, there is nothing like unlimited arbitrary jurisdiction conferred on the High Court under Section 482 of the Code. The power has to be exercised sparingly, carefully and with caution only where such exercise is justified by the tests laid down in the section itself. It is well settled that Section 482 does not confer any new power on the High Court but only saves the inherent power which the Court possessed before the enactment of the Code. There are three circumstances under which the inherent jurisdiction may be exercised, namely, (*i*) to give effect to an order

under the Code, (*ii*) to prevent abuse of the process of court, and (*iii*) to otherwise secure the ends of justice.

*** *** ***

39. The sum and substance of the above deliberation and analysis of the law cited leads us to an irresistible conclusion that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions under Chapter XII of the Code. However, we may hasten to add that unfettered discretion does not mean any unaccountable or unlimited discretion and act according to one's own choice. The power to investigate must be exercised strictly on the condition of which that power is granted by the Code itself.

40. In our view, the High Court in exercise of its inherent jurisdiction cannot change the investigating officer in the midstream and appoint any agency of its own choice to investigate into a crime on whatsoever basis and more particularly on the basis of complaints or anonymous petitions addressed to a named Judge. Such communications cannot be converted into suo motu proceedings for setting the law in motion. Neither are the accused nor the complainant or informant entitled to choose their own investigating agency to investigate a crime in which they may be interested.

41. It is altogether a different matter that the High Court in exercise of its power under Article 226 of the Constitution of India can always issue appropriate directions at the instance of an aggrieved person if the High Court is convinced that the power of investigation has been exercised by an investigating officer mala fide. That power is to be exercised in the rarest of the rare case where a clear case of abuse of power and non-compliance with the provisions falling under Chapter XII of the Code is clearly made out requiring the interference of the High Court. But even in such cases, the High Court cannot direct the police as to how the investigation is to be conducted but can always insist for the observance of process as provided for in the Code."

(emphasis supplied)

12.6. In the case of ***Madan Mohan*** (supra), this Court, of course, reiterated the settled principles that no superior Court could issue a direction/mandamus to any subordinate Court commanding them to pass a particular order but, the questioned directions had been as regards dealing with a bail application, which were not approved by this Court while observing, *inter alia*, as under: -

"**15.** In our considered opinion, the High Court had no jurisdiction to direct the Sessions Judge to "allow" the application for grant of bail. Indeed, once such direction had been issued by the High Court then what was left for the Sessions Judge to decide except to follow the directions of the High Court and grant bail to Respondents 2 and 3. In other words, in compliance to the mandatory directions issued by the High Court, the

Sessions Judge had no jurisdiction to reject the bail application but to allow it.

16. No superior court in hierarchical jurisdiction can issue such direction/mandamus to any subordinate court commanding them to pass a particular order on any application filed by any party. The judicial independence of every court in passing the orders in cases is well settled. It cannot be interfered with by any court including superior court."

12.7. In the case of ***Neetu Kumar Nagaich*** (supra), this Court issued directions for *de novo* investigation in regard to the unnatural death of a law student. We need not elaborate on the said decision for the fact that such directions were issued under the writ jurisdiction of this Court.

13. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:

(a) The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.

(b) The powers of the Magistrate to ensure proper investigation in terms of Section 156 CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8) CrPC after receiving the report of investigation. Whether further investigation

should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

(c) Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8) CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8) CrPC do not limit or affect such powers of the High Court to pass an order under Section 482 CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

(d) Even when the wide powers of the High Court in terms of Section 482 CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

(e) The powers under Section 482 CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the

State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.

14. Applying the principles aforesaid to the facts of the present case, what we find is that, in relation to the allegations of defalcation of goods and misappropriation of stocks from the godown of the Corporation, the person lodging the FIR with reference to the audit report, i.e., the Senior Dy. Collector-cum-District Manager, made imputations only against the respondent No. 3, who was a class IV employee of the Corporation but was purportedly posted as an in-charge Assistant Godown Manager by the appellant, who was, at the relevant time, holding the position of the District Manager. Though several features of the actions and omissions at the relevant time have been mentioned in the audit report, we do not propose to dilate on the same. Suffice it to observe for the present purpose that when all the relevant aspects were duly projected before the High Court in the petition filed by the respondent No. 3, the High Court could not have simply ignored the same only for the reasons that the informant omitted to state them while lodging the FIR, and/or the investigating officer overlooked them while submitting the result of

investigation, and/or the learned Magistrate did not pay requisite attention to them while taking cognizance.

14.1. In the given set of facts and circumstances, we are satisfied that the present one had been such a case of exceptional and special features where the High Court was justified in ordering further investigation, particularly *qua* the role of the appellant. Thus, the principal part of the order impugned, directing further investigation, in our view, calls for no interference[12].

15. However, there are certain other aspects and features of the order impugned which are difficult to be appreciated and approved. The High Court has chosen to use such harsh and severe expressions in the impugned order which carry all the potential of causing prejudice to the appellant and even to distract a fair and dispassionate investigation. As noticed, the High Court has made its comments that the '*entire game was played*' by the appellant who was holding the position of District Manager. The High Court has even stated that the appellant was '*ultimately responsible for all such irregularities*'. The High Court has gone to the extent of observing that the respondent No. 3 was made an accused in the case '*as scapegoat to save the skin*' of the appellant. These and other akin observations in the order impugned lead to the position as if the High Court has already concluded on the result of investigation against the

12 It could be noticed that in the impugned order dated 10.09.2018, the High Court has employed three different expressions as to the expected course of action where the Magistrate has been directed to '*give direction to the police to further reinvestigate*' and to '*direct the police to complete the re-investigation*' as also to consider '*the materials which will come during further investigation*'. However, it is apparent that on the substance of the matter, the directions are to ensure 'further investigation' in the matter, particularly with regard to the role of the appellant.

appellant. It is entirely a different matter to order further investigation on being *prima facie* satisfied about the requirement to do so in view of exceptional circumstances pertaining to a given case but, while doing so in exercise of inherent powers, the High Court has not been justified in making such observations and remarks which are likely to operate over and above the investigation and may cause prejudice to the appellant. As noticed, the principle remains settled that the High Court cannot issue directions to investigate the case from a particular angle.

16. Thus, we are of the view that in the given set of facts and circumstances, though the High Court has rightly exercised its powers under Section 482 CrPC for directing further investigation but, has not been justified in making such observations, comments, and remarks, which leave little scope for an independent investigation and which carry all the potential to cause prejudice to the appellant. The first question in this appeal is answered accordingly.

17. Adverting to the other question, i.e., as to whether the High Court was justified in passing the order impugned without affording an opportunity of hearing to the appellant, we may refer to some of the relevant decisions cited in this regard.

17.1. The case of ***Manharibhai Muljibhai Kakadia*** (supra) had been concerning the exercise of the powers of revision by the High Court after dismissal of a complaint under Section 203 CrPC. This Court pointed out that in such a revision petition, the accused/suspect arraigned in the

complaint gets the right of hearing before the Revisional Court, as is expressly provided in Section 401(2) CrPC. This Court, however, made it clear that if the complaint is restored for fresh consideration of the Magistrate, the persons who are alleged to have committed the crime shall have no right to participate in the proceedings nor would they be entitled to any hearing until consideration of the matter by the Magistrate for issuance of process. This Court said, *inter alia*, as under: -

> **"53.** ….We hold, as it must be, that in a revision petition preferred by the complainant before the High Court or the Sessions Judge challenging an order of the Magistrate dismissing the complaint under Section 203 of the Code at the stage under Section 200 or after following the process contemplated under Section 202 of the Code, the accused or a person who is suspected to have committed the crime is entitled to hearing by the Revisional Court. In other words, where the complaint has been dismissed by the Magistrate under Section 203 of the Code, upon challenge to the legality of the said order being laid by the complainant in a revision petition before the High Court or the Sessions Judge, the persons who are arraigned as accused in the complaint have a right to be heard in such revision petition. This is a plain requirement of Section 401(2) of the Code. If the Revisional Court overturns the order of the Magistrate dismissing the complaint and the complaint is restored to the file of the Magistrate and it is sent back for fresh consideration, the persons who are alleged in the complaint to have committed the crime have, however, no right to participate in the proceedings nor are they entitled to any hearing of any sort whatsoever by the Magistrate until the consideration of the matter by the Magistrate for issuance of process. We answer the question accordingly. The judgments of the High Courts to the contrary are overruled."
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> (emphasis supplied)

17.2. The layout and backdrop of, as also the questions involved in, the case of ***W.N. Chadha*** (supra) were of their own peculiarities. For the present purpose, suffice it to notice that as regards the process and manner of investigation, which included the issues relating to a letter of

rogatory, this Court, *inter alia*, pointed out the exclusion of the principle of *audi alteram partem* in relation to an accused at the stage of investigation in the following terms: -

"80. The rule of *audi alteram partem* is a rule of justice and its application is excluded where the rule will itself lead to injustice. In S.A. de Smith's *Judicial Review of Administrative Action*, (4th Edn.) at page 184, it is stated that in administrative law, a *prima facie* right to prior notice and opportunity to be heard may be held to be excluded by implication in the presence of some factors, singly or in combination with another. Those special factors are mentioned under items (1) to (10) under the heading "Exclusion of the audi alteram partem rule".

81. Thus, there is exclusion of the application of audi alteram partem rule to cases where nothing unfair can be inferred by not affording an opportunity to present and meet a case. This rule cannot be applied to defeat the ends of justice or to make the law "lifeless, absurd, stultifying and self-defeating or plainly contrary to the common sense of the situation" and this rule may be jettisoned in very exceptional circumstances where compulsive necessity so demands.

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89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes

an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether *audi alteram partem* is implicit, but whether the occasion for its attraction exists at all.

90. Under the scheme of Chapter XII of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer.

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92. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering

the Magistrate to give an opportunity of being heard under certain specified circumstances."

(emphasis supplied)

17.3. It could also be usefully recapitulated that in the case of ***Popular Muthiah*** (supra), even when not disapproving the exercise of inherent powers by the High Court irrespective of the nature of proceedings (of course, while laying down the limitations on such exercise of powers), this Court also observed that in the peculiar circumstances of the case, where investigation was being ordered against the persons who were not investigated earlier, the High Court should have given them an opportunity of hearing before issuing the impugned directions. Thus, the impugned judgment was set aside and the matter was remitted to the High Court for consideration afresh, after notice to the appellants as also to the State.

18. In an appropriate application of the principles aforesaid, we are clearly of the view that even though the decision in ***W.N. Chadha*** (supra) shall have no direct application to the present case but then, the observation concerning opportunity of hearing, as occurring in ***Manharibhai Muljibhai Kakadia*** (supra), also does not enure to the benefit of the appellant because therein, the matter before the High Court had been a revision petition governed by Section 401 CrPC and by virtue of sub-section (2) thereof, opportunity of hearing to the affected party

remains a statutory mandate[13]. In ***Popular Muthiah*** (supra), of course, this Court held that the said appellant against whom the High Court was issuing directions for investigation should have been given an opportunity of hearing but, that had been the observation in the unique and peculiar circumstances of the case where the crime in question had already gone through one round of trial, with one person having been tried and convicted. Moreover, while disapproving unwarranted directions of the High Court as regards prosecution of the appellant, this Court also indicated that the High Court ought to have considered if any purpose would be served by its directions. It cannot be said that in ***Popular Muthiah****,* this Court has laid down a rule of universal application that in every such case of exercise of powers under Section 482 CrPC for ordering further investigation (which are even otherwise to be invoked sparingly and in exceptional cases), the Court is obliged to extend an opportunity of hearing to the person whose actions/omissions are to be investigated. In our view, the question of opportunity of hearing in such matters would always depend upon the given set of facts and circumstances of the case.

19. On the facts and in the circumstances of the present case, we are clearly of the view that no purpose would be served by adopting the

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13 Section 401 CrPC provides for the wide revisional powers of the High Court and its sub-section (2) reads as under: -

"(2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence."

course of ***Popular Muthiah*** (supra) where this Court restored the matter for reconsideration of the High Court with an opportunity of hearing to the appellant therein. Some of the prominent and peculiar circumstances of the present case are that the allegations and imputations have their genesis in the documentary evidence in the form of departmental instructions and the audit report; the fact that the appellant was holding the office of the District Manager at the relevant point of time is not in dispute; and hereinbefore, we have upheld the exercise of inherent powers by the High Court in directing further investigation *qua* the role of the appellant.

19.1. We have also taken note of the submissions that, according to the appellant, he had already been exonerated of all charges after detailed departmental proceedings; and such a fact did not appear before the High Court for want of notice to him. For the present purpose, suffice it to observe that even if the appellant had been exonerated in the departmental proceedings, such a fact, by itself, may not be conclusive of criminal investigation; and for this fact alone, the High Court could not have ignored all other features of the case and the material factors that had surfaced before it.

20. At this juncture, and in the last segment of this discussion, it may also be observed that we have taken note of another peculiar feature connected to this case that apart from the subject-matter of the present appeal, being Barh P.S. Case No. 115 of 2012, there had also been

another matter, being Bikram P.S. Case No. 129 of 2012 against the respondent No. 3 as also the present appellant, pertaining to similar allegations of misappropriation of goods. As per the submissions made on behalf of the State, in the said Bikram P.S. Case No. 129 of 2012, instituted for offences under Sections 409, 420, 468, 471 and 474 IPC, after finding *prima facie* case against the present appellant, prosecution sanction has also been obtained; and after the order passed by the High Court, the investigation in the present case was also carried out along with the aforesaid Bikram P.S. Case No. 129 of 2012. According to the affidavit filed on behalf of the State, *prima facie* complicity of the appellant has been found but, in this case, prosecution sanction has not been obtained for the appellant having been given interim protection by this Court.

20.1. We would hasten to observe that the aforesaid submissions on behalf of the State have only been taken note of without pronouncing on the merits thereof and while leaving every aspect open for examination and consideration of the respective investigating agency, sanctioning authority, and the Court at the appropriate stage and in an appropriate manner. These submissions have been referred to herein only in order to indicate that viewed from any angle, there does not appear any just and strong reason to restore the matter for reconsideration of the High Court.

21. In the totality of circumstances and in the larger interest of justice, we are clearly of the view that in this case, the investigation contemplated

by the order impugned should be allowed to be taken to its logical end but, while effacing the unwarranted and unnecessary observations of the High Court[14], lest there be any prejudice to any party only because of such observations. In other words, the entire matter is left open for examination by the investigating agency, by the sanctioning authority, and by the Court concerned at the relevant stage and in accordance with law.

22. Accordingly and in view of the above, this appeal fails and is, therefore, dismissed but, with the observations foregoing and while effacing the unwarranted and unnecessary observations of the High Court in the order impugned.

……..……J.
(DINESH MAHESHWARI)

……..……J.
(ANIRUDDHA BOSE)

NEW DELHI;
OCTOBER 12, 2022.

14 As discussed in paragraph ‘15’ hereinbefore.