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CrI.R.C.No.1476 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.12.2023

DELIVERED ON : 16.04.2024

CORAM:

THE HON'BLE **MR.JUSTICE M. NIRMAL KUMAR**

CrI.R.C.No.1476 of 2023

Madhu Gulrajani

... Petitioner

Vs.

1.State represented by

Inspector of Police,

W-8 AWPS, Thirumangalam,

Chennai.

2.Mohan Kishanchand Dhalani

... Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Cr.P.C to set aside the impugned order for further investigation dated 21.04.2023 in CrI.M.P.No.1617 of 2022 in Spl.S.C.No.31 of 2021 in Cr.No.20 of 2020 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.

For Petitioner : Mr.Rahul Jagannathan

For Respondent-1 : Mr.A.Damodaran

Additional Public Prosecutor

For Respondent-2 : Mr.Abudu Kumar Rajarathinam,

Senior Counsel for

Mr.S.Ashok Kumar



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ORDER

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This Criminal Revision Petition has been filed challenging the impugned order dated 21.04.2023 in CrI.M.P.No.1617 of 2022 in Spl.S.C.No.31 of 2021 in Cr.No.20 of 2020 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO Act, Chennai.

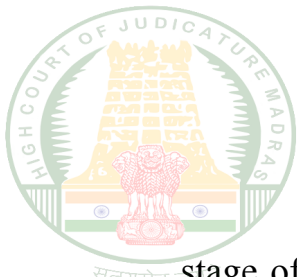
2.The petitioner/de-facto complainant, on whose complaint a case in Crime No.20 of 2020 registered by the first respondent against the second respondent and on completion of investigation, charge sheet filed in Spl.S.C.No.31 of 2021 for offence under Sections 342, 376 AB of I.P.C. and Section 5(m) r/w 6 of Protection of Children from Sexual Offences Act, 2012 (hereinafter referred as 'POCSO Act'). The second respondent/accused filed a petition under Section 173(8) of Cr.P.C. in CrI.M.P.No.1617 of 2022 seeking to order for further investigation. The trial Court by order dated 21.04.2023, allowed the same, against which, the present revision.



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3.The contention of the learned counsel for petitioner is that the trial Court ought not to have entertained the petition filed by the accused under Section 173(8) of Cr.P.C. seeking for further investigation, which is against law, which has been reiterated and confirmed by the Hon'ble Apex Court in several cases. He further submitted that the trial Court relying on the judgment of *Vinubhai Haribhai Malaviya vs. The State of Gujarat and another* reported in (2019) 17 SCC 1, had given a finding that the accused has *locus standi* to file an application for further investigation, which is based on a sheer misinterpretation and misunderstanding of the judgment. In the above referred case, the Hon'ble Apex Court confirmed the order of trial Court dismissing the petition for further investigation on the petition filed by the accused therein. Thus the order of the trial Court is contrary to the law laid down by the Hon'ble Apex Court in **Vinubhai Haribhai Malaviya** case. He further submitted that the question of law framed in the Apex Court judgment is that “whether, after filing a charge sheet by the police, a Magistrate has the power to order further investigation and if so, upto what



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stage of criminal proceeding”. It never considered or discussed the right of
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accused in filing a petition under Section 173(8) of Cr.P.C. On the other hand, the Apex Court had categorically held that the accused has no say in the manner of investigation, choosing the investigating agency and questioning the investigation and deprecated the practice of entertaining any petition from the accused questioning the investigation. In such circumstances, allowing the above petition by the trial Court is not proper.

4.Further, in the said judgment in para 40, 40.2 and 40.6, it had given its conclusion with regard to the powers of Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code. Those powers are the magisterial powers. Further, it is held that it is a 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

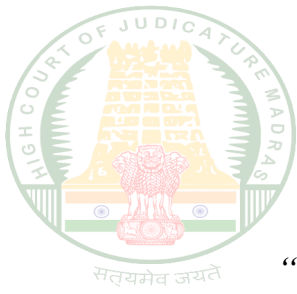


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further investigation to clear its doubt and to order the investigating agency to further substantiate its charge sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the Court of competent jurisdiction. Further it had also placed an embargo as to at what stage defacto complainant can file a petition under Section 173(8) of Cr.P.C., i.e, till taking cognizance and commencement of trial. After taking cognizance, it is the investigating agency alone who has got the right to file a petition for further investigation under Section 173(8) of Cr.P.C. In such circumstances, the impugned order, by wrong interpretation and wrong understanding, allowing the petition filed by the accused for further investigation, to be set aside.

5.He further submitted that the Full Bench of this Court in CrI.A.No.663 of 2016, came to a conclusion and gave answers in seven points, more particularly, point No.7 reads as follows:



“44. ...

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(vii) The power to grant permission for further investigation under Section 173(8) of Cr.P.C. after cognizance has been taken on the police report can be exercised by the Magistrate only on a request made by the investigating agency and not, at the instance of anyone other than the investigating agency or even suo-motu. [vide judgment of the Hon'ble Supreme Court in Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel, 2017 (2) Scale 198].”

6.He further submitted that the purpose of further investigation is to investigate and find out when fresh facts come to knowledge which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding. Thus there must be some fresh facts. In this case, the accused filed this petition for further investigation only on the ground that a complaint was earlier lodged with Barnet Police Station, London and the same was closed due to



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jurisdiction. Based on the Barnet Police report, an F.I.R. was registered in
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India and after investigation, final report was filed against the second respondent/accused. Further, in the earlier complaint it is mentioned that the alleged occurrence took place in the year 2012, later it has been inserted as 2014. The non examination of any of those material witness to authenticate/verify the contents of the reports and records of Barnet Police Station is a serious flaw in investigation and the same has gravely prejudiced the rights of the accused. The entire medical records of the victim girl produced before the Court but the investigating officer not examined the counsellor of the victim girl and failed to produce the medical records. Further, the foreign records produced on the side of the prosecution are hit under Sections 78 and 82 of Indian Evidence Act. The trial Court referring to judgment of the Apex Court with regard to the magisterial powers in ordering further investigation and gives a finding that foreign documents relied by the prosecution are neither original nor certified copies, hence, it is lawful to order for further investigation for the purpose of receiving certified copy of



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the complaint given by the de-facto complainant to Barnet Police in March,
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2018, acknowledgement for the said complaint, record of interview of the victim child by CONDREN, dated 27.03.2018, statement of the victim child recorded by the Barnet Police on various dates and statement of the victim child in the interview and to collect the immigration particulars for the visit of both the victim child and the de-facto complainant to India from the Bureau of Immigration, Chennai, but on a petition for further investigation filed by the accused, is not proper.

7.As regards the travel details, it has already been collected. The copies of the foreign documents already submitted to the 1st respondent Police, who had enquired the petitioner, victim and others with regard to the same, recorded their statement and it forms part of the final report. The accused had earlier filed a discharge petition in Crl.M.P.No.40 of 2022 in Special C.C.No.31 of 2021 before the Special Court for Exclusive Trial of Cases under POCSO Act, Chennai. In the said petition, these points already



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raised and agitated. Further, the point with regard to the alleged occurrence as
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to whether it had taken place in the year 2012 or 2014 and if it is in the year 2012, the accused cannot be proceeded under POCOS Act, also raised. The trial Court, dismissed the discharge petition, against which, a revision preferred before this Court in Crl.R.C.No.916 of 2022. This Court, by order dated 14.07.2022, considering the points raised by the second respondent/accused are factual and can be decided during trial, dismissed the revision petition. Aggrieved against the same, the accused preferred a Special Leave Petition in SLP (Crl.) No.8781 of 2022. The Hon'ble Apex Court by order dated 10.10.2022 after hearing the counsel, dismissed the same. After dismissal of the discharge petition, now a petition with a different title has been filed.

8.Even in the discharge petition, the same points raised. The trial Court while dismissing the discharge petition, referred to the report of UK including the investigation report dated 10.03.2018 and one more report



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given by the Youth and Community Co-ordinator Impact Barnet Charity

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belong to London dated 14.08.2020, records of interview by the Barnet Police Station, London, with the victim child by mentioning the time to time events.

During her examination on 27.03.2018, she gave details about how she was sexually assaulted. The Lower Court on perusal of statements and materials filed in the charge sheet finding *prima facie* case is there, dismissed the discharge petition. Now for the foreign documents already filed seeks certified copy of the documents orders further investigation. Whether the documents are admissible in evidence or not has to be decided during trial and not at this stage. The accused having failed in his earlier endeavour, now filed this petition. But strangely, the Lower Court when dismissed the discharge petition, placing reliance on these documents finding *prima facie* materials available to proceed against the accused, had now allowed the above petition for further investigation. Hence, prays for setting aside the impugned order.



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9.The learned counsel for petitioner filed additional typed set of papers and judgments in support of his contentions, which are as follows:

- (i) *Secundrabad Club etc. vs. Prashanth Kumar Mishra* reported in 2023 *Livelaw (SC) 660*;
- (ii) *Satishkumar Nyalchand Shah vs. State of Gujarat and others* reported in (2020) 4 SCC 22;
- (iii) *Vinubhai Haribhai Malaviya vs. State of Gujarat* reported in (2019) 17 SCC 1;
- (iv) *Atul Rao vs. State of Karnataka and another* reported in (2018) 14 SCC 298;
- (v) *Amrutbhai Shambhubhai Patel vs. Sumanbhai Kantibhai Patel and others* reported in (2017) 4 SCC 177;
- (vi) *Narender G. Goel vs. State of Maharashtra and another* reported in (2009) 6 SCC 65;
- (vii) *Chinnathambi vs. State in Criminal Appeal No.663/2016* (Full Bench Judgment of Madras High Court).

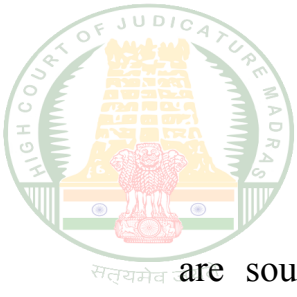
10.The learned Additional Public Prosecutor appearing for the 1st respondent Police filed status report narrating the receipt of complaint,



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investigating conducted and final report filed. He further submitted that based
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on the complaint, an FIR in Crime No.20 of 2020 registered for offence under Section 6 of The Protection of Children from Sexual Offence Act, 2012, 164 Cr.P.C., statements of the petitioner and his daughter/victim girl recorded wherein they clearly narrated the commission of offence by the 2nd respondent and his conduct. It is further submitted that the immigration particulars and travel details of the victim girl and the petitioner reveals that during the year 2012, the victim girl arrived India along with her mother on 19.07.2012 and left India on 30.08.2012. During the year 2014, the victim girl along with her mother arrived India on 14.07.2014 and left on 14.08.2014. In between 14.08.2014 and 19.08.2014, the victim girl and her mother left to another foreign country and returned back to India. From 19.08.2014 to 07.09.2014, they were in India. During 2019, the petitioner has arrived India on 10.12.2019 and left on 10.01.2020. The other documents which are relied upon by the prosecution are very much relevant for the purpose of the case. Since these documents are foreign documents, the same



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are sought for through proper channel and the 1st respondent Police is
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awaiting the same from the concerned authorities of New Delhi to whom already request made. He further submitted that the impugned order passed on the petition filed by the 2nd respondent is not permissible. Earlier, the 2nd respondent/accused filed a discharge petition in Crl.M.P.No.40 of 2022 in Special C.C.No.31 of 2021 before the trial Court and the trial Court on considering the charge sheet filed along with the statement and document along with foreign documents had found *prima facie* case made out and dismissed the discharge petition observing that the probative value of the documents, its genuinity, acceptability in evidence are all to be decided only during the course of trial at the time of recording evidence on both sides by giving opportunity to both sides to disputes the same in the name of cross examination. In any event, filing of petition for further investigation by the accused is impressible. If permitted, it would only open up a Pandora box and no trial could commence and complete.



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11.The learned Senior Counsel appearing for the 2nd

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respondent/accused filed typed set and submitted that the petitioner/defacto complainant is the brother's daughter of the 2nd respondent and the victim girl is the granddaughter of the 2nd respondent. Both the petitioner and his daughter/victim girl settled in United Kingdom and they used to visit India on occasions. The complaint made against the 2nd respondent is that during the month of August, 2012, when the victim girl had come to India, the 2nd respondent alleged to have committed sexual assault, for which, in the year 2018, the petitioner lodged a complaint with the Barnet Police Station, London. During enquiry, the victim girl was referred to psychiatric consultation and thereafter, on the point of jurisdiction the complaint was closed. Two years thereafter, in the year 2020, a complaint was lodged to the 1st respondent Police and a case in Crime No.20 of 2020 registered against the 2nd respondent. The learned Senior Counsel further submitted that the alleged occurrence said to have taken place during the month of August 2012 i.e., when the victim girl had come to India. It is to be noted that The Protection



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of Children from Sexual Offence Act, 2012 came into force only on
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14.11.2012. In such circumstances, the 2nd respondent cannot be prosecuted by the Special Court under POCSO Act. He further submitted that the entire case rest on the complaint given by the petitioner to the Barnet Police in the month of March, 2018, record of interview of the victim girl by CONDREN, dated 27.03.2018, Statement of the victim girl recorded by the Barnet Police on various dates, the victim girl interview conducted therein. In this case, the Investigating Officer not examined the counsellor for the victim girl and failed to produce the medical records. The victim girl, here not willing to subject herself for medical examination. The 1st respondent Police relying on the foreign documents which are neither original nor certified copies, not admissible in evidence as per Section 78(6) of the Indian Evidence Act. Hence, the foundational facts of the case gets demolished. In view of the same, the 2nd respondent/accused filed a petition under Section 173(8) of Cr.P.C., to get these documents authenticated and certified. The trial Court on considering significance and importance of such documents directed the



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1st respondent Police to conduct further investigation for the purpose of
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receiving certified copies of foreign documents.

12.He further argued that the complaint itself is a motivated complaint for the reason that there was some dispute with regard to family business and also in dividing the family property. By using the victim girl, a false complaint lodged against the 2nd respondent, to cause ignominy to the family members of the 2nd respondent, giving wide publicity about his arrest, ensured stoppage of 2nd respondent son's marriage getting cancelled. He further submitted that the 2nd respondent is an aged person having severe health ailments and is under constant medical care. He further submitted that the travel documents would prove, there was no such travel during the relevant point of time. Added to it, the complaint lodged in the Barnet Police Station, London in the year 2018. Even as per the petitioner, the occurrence took place in the year 2012, when the victim girl was ten years old and it was a day before she left India. From the immigration particulars, it is seen that

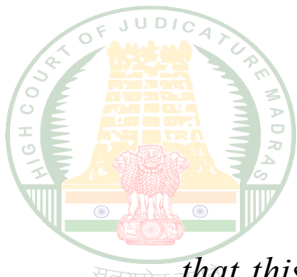


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the victim girl left India on 30.08.2012 and thereafter, they came again in the year 2014 and in the year 2019 and lastly left India on 10.01.2020 before lodging the complaint. During these visits, no complaints made here in India. Thereafter, with an ulterior motive due to dispute in family business and in family property, a false complaint lodged to the 1st respondent Police primarily placing reliance on the complaint given to Barnet Police Station, London. The trial Court on the contention of the 2nd respondent and on perusal of the materials rightly ordered further investigation for collection of foreign documents finding that the foreign documents not authenticated and certified is admissible in evidence. The 2nd respondent in the interest of justice has a right to file a petition for further investigation.

13.In support of his submissions, the learned Senior Counsel relied on para 42 of the decision of the Hon'ble Apex Court in the case of “*Vinubhai Haribhai Malaviya and others v. State of Gujarat and another*” reported in (2019) 17 SCC 1” and submitted that '*in the interest of justice*



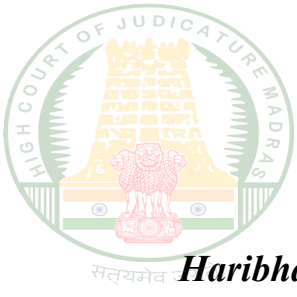
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that this power be exercised suo motu by the Magistrate himself, depending

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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'. In the instant case, the trial Court had rightly exercised his discretion invoking the power under Section 173(8) Cr.P.C.

14.He also placed reliance on the decision of the High Court of Gujarat in the case of “*Nitinbhai Mangubhai Patel v. State of Gujarat* reported in **2013 SCC OnLine Guj 8980**” wherein question framed '*whether after the Investigating Officer submits the charge sheet against the accused persons and the learned Magistrate has taken the cognizance and issued summons against the accused, an application for further investigation that too at the instance of the accused is permissible or not*'. The High Court of Gujarat answered the question by rejecting such contention. This decision has been taken on appeal before the Hon'ble Apex Court in *Vinubhai*

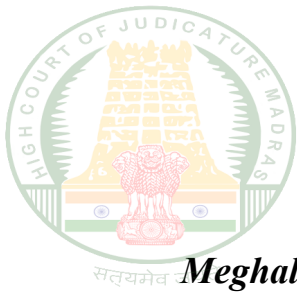


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Haribhai Malaviya case and the Hon'ble Apex Court set asides the Judgment
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of High Court of Gujarat insofar as it states that post-cognizance the Magistrate is denuded of power to order further investigation.

15.The learned Senior Counsel placed reliance on the decision of the Hon'ble Apex Court in the case of "**Babubhai v. State of Gujarat** reported in (2010) 12 SCC 254" wherein it had held that '*the investigation into a criminal offence must be free from objectionable features or infirmities which may legitimately lead to a grievance on the part of the accused that investigation was unfair and carried out with an ulterior motive*'. In **Babubhai** case, the Hon'ble Apex Court relied on the decision in the case of "**State of Bihar v. P.P.Sharma** reported in 1992 SCC (Cri) 192" wherein it had held that '*Malice in law could be inferred from doing of wrongful act intentionally without any just cause or excuse or without there being reasonable relation to the purpose of the exercise of statutory power*'. Further referred to the case of "**Navinchandra N.Majithia v. State of**



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Meghalaya reported in **(2000) 8 SCC 323**" wherein the Apex Court
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emphasised on independence of the investigating agency and deprecated any kind of interference. Further referred to "***Nirmal Singh Kahlon v. State of Punjab and Ors.***, reported in **(2009) 1 SCC (Cri) 523**" wherein it had held that a concept of fair investigation and fair trial are concomitant to preservation of the fundamental right of the accused under Article 21 of the Constitution of India. Further referring to "***Manu Sharma v. State (NCT of Delhi)*** reported in **(2010) 6 SCC 1**" for the point that the investigation should be judicious, fair, transparent and expeditious to ensure compliance with the basic rule of law. Further referred to the decision of "***All India Judges' Assn. v. Union of India*** reported in **(1992) 1 SCC 119**" wherein it had held that the trial judge is the Kingpin in the hierarchical system of administration of justice. He further referred to the decision of Hon'ble Apex Court in the case of "***Pulen Phukan v. State of Assam*** reported in **2023 SCC OnLine SC 350**" wherein it had held that '*the duty of the Trial Court is to carefully scrutinise the evidence, try to find out the truth on the basis of evidence led.*



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Wherever necessary the Trial Court may itself make further inquiry on its own with regard to facts and circumstances which may create doubt in the minds of the Court during trial. If the investigation is unfair and tainted then it is the duty of the Trial Court to get the clarifications on all the aspects which may surface or may be reflected by the evidence so that it may arrive at a just and fair conclusion.' Thus, following these principles, the trial Court had rightly allowed the petition for further investigation.

16.He further submitted that the contention of the petitioner that this Court in Crl.R.C.No.916 of 2022 while dismissing the revision observed that there is no question of this Court to order further investigation at this stage and this Court observation is only a passing remark and it not a subject matter decided by the Court. The Hon'ble Apex Court in the case of "***Arun Kumar Aggarwal v. State of M.P.***, reported in (2014) 13 SCC 707" had held that it is well settled that the mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form



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the part of the judgment of the Court and have no authoritative value.

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Assailing the above submissions, he prays for dismissal of the criminal revision case confirming the impugned order.

17.This Court considered the rival submissions and perused the materials available on record.

18.Though very many grounds raised by the learned counsel for the petitioner as well as learned Senior counsel for the 2nd respondent and the learned Additional Public Prosecutor, it is seen on the complaint of the petitioner, FIR in Crime No.20 of 2020 registered on 07.11.2020 against the 2nd respondent for offence under Section 6 of The Protection of Children from Sexual Offence Act, 2012. The complaint of the petitioner is a detailed one giving all details of the victim girl subjected to sexual assault at the hands of the 2nd respondent on 06.09.2014 in the 2nd respondent's house. During investigation, 164 Cr.P.C., statements of the petitioner and her daughter/victim girl recorded, both narrated sequence of events. The 2nd



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respondent was arrested on 20.11.2020 and later he was granted bail by this
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Court in Crl.O.P.No.19207 of 2020 *vide* order, dated 15.12.2020. Though the learned Senior Counsel for the 2nd respondent contended that the complaint lodged with ulterior motive, the marriage of the 2nd respondent's son stalled. The complaint filed to take revenge for some family disputes, these point are to be decided only during trial. The 1st respondent on completion of investigation, filed charge sheet before the trial Court for offence under Sections 342 & 376AB of IPC and Section 5(m) r/w 6 of The Protection of Children from Sexual Offence Act, 2012 listing LW1 to LW11 and documents. LW1 and LW3 are parents of LW2/victim girl. In the complaint dated 26.10.2020 to Commissioner of Police, Chennai, the Counsellor/Therapist report, Police interview as recorded by Metropolitan Police, London, Police report as recorded by Metropolitan Police, London, proof of visit to India in 2014 and Age and Address Proof of petitioner, all annexed as enclosures (five documents enclosed). During the course of investigation, some more documents submitted by the petitioner.



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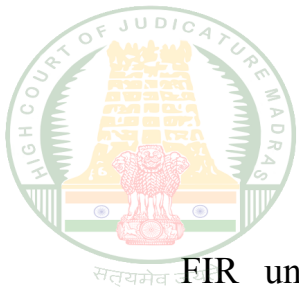
19. Earlier the 2nd respondent filed a discharge petition before the trial Court in Crl.M.P.No.40 of 2022 in Special C.C.No.31 of 2021 and the same was dismissed *vide* order, dated 16.06.2022 observing that the probative value of the documents, its genuinity, acceptability in evidence, all to be decided during the course of trial at the time of recording evidence on both sides by giving opportunity to both sides to disputes the same in the name of cross examination. Aggrieved over the same, the 2nd respondent filed criminal revision case before this Court in Crl.R.C.No.916 of 2022 and this Court *vide* order, dated 14.07.2022 dismissed the revision confirming the order of the trial Court, dated 16.06.2022. Challenging the same, the 2nd respondent approached the Hon'ble Apex Court in Special Leave to Appeal (Crl.)No.8781 of 2022 and the same was dismissed by order, dated 10.10.2022. Now the only point is to be considered in this revision is that whether after filing of charge sheet by the Investigating Agency the accused can file a petition for further investigation.



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20.The learned Senior Counsel for the 2nd respondent relied on the decision of High Court of Gujarat in “*Nitinbhai Mangubhai Patel v. State of Gujarat* reported in *2013 SCC OnLine Guj 8980*” and the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in *Vinubhai Haribhai Malaviya vs. The State of Gujarat and another* reported in *(2019) 17 SCC 1*. Both decisions arise out of the same case in C.R.No.I-257 of 2009. The defacto complainant in C.R.No.I-257 of 2009 is Nitinbhai Mangubhai Patel who lodged the complaint against Vinubhai Haribhai Malaviya and others. On conclusion of investigation in that case, charge sheet filed against the accused and the same was taken on file as Criminal Case No.9781 of 2010. During trial, Vinubhai Haribhai Malaviya/A1 and other accused filed separate applications for further investigation under Section 173(8) Cr.P.C. before the trial Court. The trial Court therein dismissed the applications seeking further investigation by the accused. Added to it, the accused therein had filed a petition seeking registration of



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FIR under Section 156(3) Cr.P.C against the original complainant in
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C.R.No.I-257 of 2009 which was also rejected. Challenging the dismissal of further investigation, the accused therein viz., Vinubhai Haribhai Malaviya preferred revision before the learned 2nd Additional Sessions Judge, Surat (Revisional Court) and the Revisional Court in Criminal Revisional Application No.376 of 2011 had set aside the dismissal order of the trial Court and ordered further investigation in C.R.No.I-257 of 2009 at the instance of the accused. Further, the Revisional Court in Criminal Revisional Application No.346 of 2011 dismissed the petition seeking for registration of FIR under Section 156(3) Cr.P.C. Both the orders challenged before the High Court of Gujarat in Criminal Revision Application No.44 of 2012 by the defacto complainant therein and the High Court of Gujarat had quashed the order passed by the Revisional Court ordering further investigation. Against which, an appeal had been preferred before the Hon'ble Apex Court by the accused therein Vinubhai Haribhai Malaviya in Criminal Appeal Nos.478-79 of 2017 (*Vinubhai Haribhai Malaviya vs. The State of Gujarat*



and another reported in (2019) 17 SCC 1) wherein the Hon'ble Apex Court
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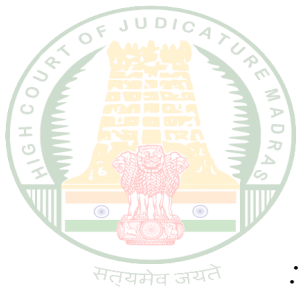
had framed the question that whether after a charge-sheet is filed by the Police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding. Further the Hon'ble Apex Court referring to various judgments had finally in para 36, it had held as follows:

“40. Having analysed the provisions of the Code and the various judgments as aforeindicated, 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:

40.1. The Magistrate has no power to direct “reinvestigation” or “fresh investigation” (de novo) in the case initiated on the basis of a police report.

40.2. A Magistrate has the power to direct “further investigation” after filing of a police report in terms of Section 173(6) of the Code.

40.3. The view expressed in sub-para 40.2 above is in conformity with the principle of law stated in Bhagwant Singh case [Bhagwant Singh v. Commr. of Police, (1985) 2 SCC 537



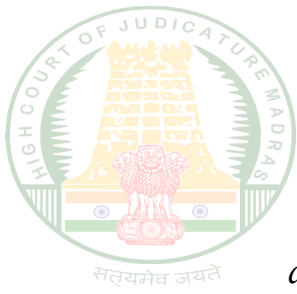
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: 1985 SCC (Cri) 267] by a three-Judge Bench and thus in conformity with the doctrine of precedent.

40.4. 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).

40.5. 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.

40.6. It has been a procedure of propriety that the police has to seek permission of the court to continue “further investigation” and file supplementary charge-sheet. This



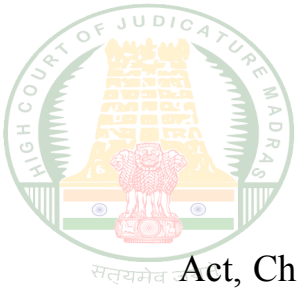
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approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."

21.Finally, the Hon'ble Apex Court set aside the judgment of the High Court of Gujarat (*Nitinbhai Mangubhai Patel v. State of Gujarat* reported in *2013 SCC OnLine Guj 8980*) insofar as it states that post-cognizance the Magistrate is denuded of power to order further investigation and set asides the judgment of the Second Additional Sessions Judge which had ordered further investigation. No where it had considered or decided the right of the accused to file a petition for further investigation after he was summoned by the trial Court.

22.In the light of the above discussions, this Court comes to the conclusion that the impugned order, dated 21.04.2023 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases under POCSO



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Act, Chennai is liable to be set aside and the same is set aside. Accordingly,
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this criminal revision case stands allowed. Consequently, connected
miscellaneous petition is closed.

16.04.2024

Index : Yes/No
Internet : Yes/No
Speaking order/Non-speaking order
Neutral Citation : Yes/No
rsi/vv2



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- To
- 1.The Inspector of Police,
W-8, AWPS, Thirumangalam,
Chennai.
 - 2.The Sessions Judge,
Special Court for Exclusive Trial of Cases under POCSO Act,
Chennai.
 - 3.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

rsi/vv2

**Pre-delivery order in
Crl.R.C.No.1476 of 2023**

16.04.2024