

Shaji Vs. State of Kerala

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Court : Kerala

Decided On : Mar-24-2003

Reported in : 2004CriLJ187; 2003(2)KLT929

Judge : J.B. Koshy and; P.R. Raman, JJ.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 173(2), 173(8) and 190

Appeal No. : Crl. R.P. No. 1275 of 2001

Appellant : Shaji

Respondent : State of Kerala

Advocate for Def. : P.V. Madhavan Nambiar, Director General of Prosecutions,;
M. Rajasekharan Nayar,;

Advocate for Pet/Ap. : Gracious Kuriakose, Amicus curiae; K. Gopalakrishna Kurup, Adv.

Disposition : Revision petition dismissed

Judgement :

ORDER

J.B. Koshy, J.

1. Whether a Magistrate is competent to order further investigation after taking cognizance of the offence on the basis of police report filed under Section 173(2) of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) and after appearance of the accused in pursuance of the summons issued? That is the only question to be decided in this Criminal Revision Petition.

2. A learned Single Judge of this Court (Mr. T.M. Hassan Pillai, J.) decided the above question in the negative in *Natarajan v. Sasidharan* (2002 (1) KLT 499). Reliance was placed by the learned Judge on the judgment of the Apex Court in *Randhir Singh Rana v. State (Delhi Administration)* (AIR 1997 SC 639). When this Revision Petition came up for hearing before the same Judge, a subsequent decision pronounced by another learned Single (Mr. G. Sasidharan, J.) in *Joisy v. Sub Inspector of Police* (2002 (3) KLT 172) was cited. In the above judgment relying the decision of the Apex Court in *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj v. State of Andhra Pradesh and Ors.* (AIR 1999 SC 2332) the learned Single Judge answered the question in the affirmative. Noticing the contrary view expressed in a subsequent decision and doubting the correctness of that judgment, this Revision Petition was referred to the Division Bench.

3. Before answering the questions, we may look into the facts of this as legal questions arising in a case can be answered only on the background of the facts in each case.

4. Petitioner is one of the accused in C.C. No. 610 of 2001 on the file of the Judicial Magistrate of the First Class-II, Attingal. Third respondent herein is the defacto complainant in the above case. He was a member of Ayiroorkara Farmers Cooperative Society Limited. He applied for a loan from the Society and for that purpose he produced his non-liability certificate as well as non-liability certificate of surety one Mr. Divakaran Nair. But, according to him, instead of granting the loan to him, the nonliability certificates were misused and forged to give loan to another person, third accused. Loan was not sanctioned to the petitioner. But, recovery proceedings were taken against his surety Mr. Divakaran Nair. Then, he filed a complaint. Thereafter, recovery proceedings taken against his surety Mr.

Divakaran Nair were dropped on the ground that the loan was repaid. According to him, because of the non-payment of money, he suffered loss and appropriate action should be taken against the culprits who dealt with the money of the Co-operative Society. FIR No. 175 of 1996 was registered before the Mangalapuram Police Station. According to him, the Managing Director and President of the society have role in the forgery and fraud. But, instead of taking action on the basis of the FIR, the Circle Inspector of Police was threatening him to withdraw the complaint. According to him, when FIR was registered, name of the President of the Co-operative Society was left out purposefully because of the political influence. He filed Writ Petition before this Court contending that he is being harassed for filing the complaint and proper names are not mentioned in the FIR and crime should be investigated by some other agency. That Writ Petition (O.P. No. 243 of 2001) was closed with an observation that the complainant should not be harassed. He filed Writ Appeal against that judgment. A statement was filed at that time before this Court that final report was filed naming three persons as accused and summons were already issued to them. He submitted that the real culprits were not included in the final report. According to him, this was manipulated because the then President of the Co-operative Society was the District Public Prosecutor also. The Writ Appeal was disposed of with the following observation:

'Now that the matter is pending trial before the Judicial First Class Magistrate-II, Attingal it is for the appellant to approach the said Court in case he is not satisfied with the investigation conducted by the police for appropriate relief.

Without prejudice to the appellant's right to approach the Judicial First Class Magistrate-II, Attingal as mentioned above we dismiss the Writ Appeal.'

5. On filing of the final report, the Magistrate issued summons to the accused. At the time of issuing summons whether the Magistrate has applied his mind is not discernible from the records. When the final report was filed naming three persons as accused, the Magistrate simply issued notice to them. Accused also took bail from the Court. He filed the present petition C.M.P. No. 3085 of 2001 in C.C. No. 610 of 2000 before the Court as to find out the persons who actually committed

the forgery and also to conduct a fresh investigation. In the above C.M.P., the Magistrate ordered as follows:

'6. In the charge sheet it is mentioned as 'some one' was made to sign in the surety form. Who that 'someone' was not found out during investigation. No relevant documents are seized by the Investigating Officer. No document was sent for expert opinion. Who had committed forgery etc.? These questions the Investigating Officer has not answered. If trial proceeds with the case records in the present position prosecution will have no materials to prove the allegation and there will be several missing links in the chain of evidence. Hence I am of opinion that charge sheet is to be returned for further investigation to collect materials by which case can proceed with the trial.

7. In the result, petition is allowed. The Station House Officer, Mangalapuram Police Station is directed to conduct further investigation of the case according to law and submit fresh charge sheet. Accused will appear on fresh summons.'

This order passed by the learned Magistrate is under challenge in the Criminal Revision Petition by the first accused in C.C. No. 610 of 2000 on the file of the Judicial Magistrate of the First Class-II, Attingal.

6. Petitioner contended that the Magistrate has no power to order further investigation after taking cognizance of the offence and after summoning the accused. According to the third respondent, the complainant, final report was submitted mala fide and purposefully to save the real culprits as the President of the Bank was the then Public Prosecutor and even though it was mentioned in the final report that forgery was conducted, no investigation was conducted to find out who committed the forgery and the accused were not discharged under Section 239 of the Cr.P.C. and in the interest of justice, nothing prohibits the Magistrate to order further investigation. It was also contended that by ordering further investigation the first accused/petitioner is not at all affected and since order of further investigation was in furtherance of justice to find out the real culprits, in any event, the High Court need not interfere in a Revision Petition.

7. We may first consider some of the relevant statutory provisions and thereafter the various judgments of the Apex Court cited before us by both sides which are relevant for answering the question before us.

8. Section 156 of the Code gives statutory power to the police officer in charge of the police station to conduct investigation of any cognizable offence. Section 156(3) provides that any Magistrate empowered under Section 190 may order such an investigation. Section 173(1) provides that investigation should be completed without unnecessary delay and Section 173(2) provides that officer in charge of the police station shall forward to the Magistrate empowered to take cognizance of an offence a report in the prescribed manner. Section 173(8) provides as follows:

'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).'

Section 190 provides conditions for taking cognizance of the offence by the Magistrate. Section 190(1) reads as follows:

'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.'

Chap.XV (Sections 200 to 203) deals with private complaints and Section 202 provides that on receipt of a complaint, the Magistrate may inquire into the case himself or direct an investigation by the police officer and Section 203 provides for dismissal of the complaint, if no sufficient grounds are made out. Chap.XVI deals with commencement of proceedings before the Magistrate. It starts with issuance of the process (Section 204). If the Magistrate is of the opinion that there are sufficient grounds for proceeding he can take cognizance of the offence and issue process (summons or warrant). Therefore, on issuance of summons, it can be presumed that the Magistrate has taken cognizance of the offence. Here, in this case, the Magistrate has issued summons to the three accused named in the final report and, therefore, it can be stated that the Magistrate has taken cognizance of the offence. None of the accused has been discharged under Section 239 and that stage has not yet arisen. It is the contention of the petitioner that even though police has power under Section 173(8) to conduct investigation even after taking cognizance, the Magistrate has no power at all to direct the Police to conduct investigation after taking cognizance of the offence.

9. In *H.N. Rishbud and Anr. v. State of Delhi* (AIR 1955 SC 196), the Supreme Court contemplated the possibility of further investigation even after the Court had taken cognizance of the offence. There, the Court held that if invalidity of the investigation comes to the knowledge of the Court in the earlier stages of trial, the Court can take necessary steps to get the illegality cured and rectified by ordering reinvestigation. The Court observed as follows:

'10. It does not follow, however, that the invalidity of the investigation is to be completely ignored by the Court during trial. When the breach of such a mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such reinvestigation as the circumstances of an individual case may call for..... In our opinion, therefore, when such a breach is brought to the notice of the Court at an early stage of the trial the Court will have to consider the nature and extent of the violation and pass appropriate orders for such reinvestigation as may be called for, wholly or partly,

and by such officer as it considers appropriate.....'

10. The next decision cited is *Abhinandan Jha and Ors. v. Dinesh Mishra* (AIR 1968 SC 117). There, the police submitted a report under Section 169 stating that no case was made out. The Magistrate directed the police to submit a charge sheet. The Supreme Court held that the Court cannot direct the police to submit an opinion in a particular form. The Court can either accept the report or disagree with it. Despite the report of the police, if the Magistrate is satisfied, he can take cognizance of the offence or he can order a reinvestigation. However, the Magistrate cannot compel the police to form a particular opinion on the investigation or to submit a report as directed by him. It is for the police to come to their opinion. In *Devarapalli Lakshminarayana Reddy and Ors. v. Narayana Reddy and Ors.* (AIR 1976 SC 1672) the Supreme Court held that in the case of a complaint regarding commission of cognizable offence power under Section 156(3) can be invoked by the Magistrate before he takes cognizance of the offence. But, if he once takes such cognizance and embarks upon the procedure embodied in Chap.XV, he is not competent to switch back to the pre-cognizance stage and avail of Section 156(3). Section 202 comes in at a stage when some evidence was collected by the Magistrate under Chap.XV and Section 202 power of the Magistrate has circumscribed in the investigation only for the purpose of deciding whether or not there is sufficient ground for proceeding. It is also further held that when summons or notice is issued under Section 202, Magistrate said to have taken notice. In *Tula Ram and Ors. v. Kishore Singh* (AIR 1977 SC 2401) the Court was considering the order of investigation on a private complaint. There, the Court observed that the Magistrate can order investigation under Section 156(3) only at the pre-cognizance stage, that is to say, before taking cognizance under Sections 190, 200 and 204 and enquiry contemplated under Section 202 is different from the investigation under Section 156(3).

11. Another important case cited in *Ram Lal Narang v. State (Delhi Administration)* (1979 SCC (Cri.) 479 = AIR 1979 SC 1791) where in the Supreme Court held that there is a statutory right on the police to investigate under Section 173(8) even if the Magistrate had taken cognizance. The police cannot abuse the power and, therefore, when the case is pending, police should ordinarily seek permission from

the Court for fresh investigation. The Court also held that power of the police to conduct investigation even after the Magistrate had taken cognizance of the offence was existing even before Section 173(8) was enacted. The Court also referred to the Law Commission report wherein Law Commission observed as follows in para. 14.23 of its 41st report:

'14.23. A report under Section 173 is normally the end of the investigation. Sometimes, however, the police officer after submitting the report under Section 173 comes upon evidence bearing on the guilt or innocence of the accused. We should have thought that the police officer can collect that evidence and send it to the Magistrate concerned. It appears, however, that Courts have sometimes taken the narrow view that once a final report under Section 173 has been sent, the police cannot touch the case again and cannot re-open the investigation. This view places a hindrance in the way of the investigating agency, which can be very unfair to the prosecution and, for that, matter, even to the accused. It should be made clear in Section 173 that the competent police officer can examine such evidence and send a report to the Magistrate. Copies concerning the fresh material must of course be furnished to the accused.'

Based upon the opinion, Section 173(8) was statutorily incorporated in the Code. The Supreme Court held that even before Section 173(8) was incorporated, police had the same powers. After considering the judgment in H.N. Rishbud's case (supra), the Supreme Court in Ram Lal Narang's case (supra) observed as follows:

'17. This decision is a clear authority for the view that further investigation is not altogether ruled out merely because cognizance of the case has been taken by the Court; defective investigation coming to light during the course of a trial may be cured by a further investigation. if circumstances permit it.' (underlining for emphasis)

12. In State of Bihar and Anr. v. J.A.C. Saldanha and Ors. ((1980) 1 SCC 554) the Supreme Court held that even after the submission of the report under Section 173(2), State Government has got power to direct further investigation under Section 173(8) as State Government has got superintendence over the police in

view of Section 3 of Police Act, 1861. It also held that on a cognizance of the offence being taken by the Court, the police function of investigation comes to an end subject to the provision contained in Section 173(8). After taking cognizance of the offence, if the Magistrate finds that the investigation was faulty, whether the Magistrate can direct the police to conduct reinvestigation under Section 173(8) was not directly considered in that case. It only stated that the State Government has got power to direct the police to conduct further investigation under Section 173(8) even after submission of final report by the police.

13. In *Union Public Service Commission v. S. Papaiah and Ors.* (1997 SCC (Cri.) 1112) it was held that before accepting a final report closing the case, notice should be issued by the Magistrate to the informant and it was held that the Magistrate was not justified in getting final report without notice to the complainant. In that case, final report was submitted by the investigating agency. Shortcomings necessitating reinvestigation pointed to the investigating agency by the informant was brought to the notice of the Court while submitting the final report. In the above circumstances, it was held that, acceptance of the final report and closure of the case by the Magistrate was bad. It was held that when shortcomings have been brought to the notice of the Magistrate, the Magistrate can order the police for reinvestigating the matter. The Supreme Court held as follows:

'13. The appellant brought the contents of its communication dated 23.1.1995 to the notice of the learned Metropolitan Magistrate through its Miscellaneous Petition No. 2040 of 1995 seeking 'reinvestigation' but the learned Magistrate, rejected the petition vide order dated 4.11.1995 observing that 'rightly or wrongly that Court had passed an order and it had no power to review the earlier order'. Here again the learned Magistrate fell into an error. He was not required to 'review' his order. He could have ordered 'further investigation' into the case. It appears that the learned Metropolitan Magistrate overlooked the provisions of Section 173(8) which have been enacted to take care of such like situations also.' (underlining for emphasis)

In view of the defect noticed in the investigation and final report, the Supreme Court held that in the larger interest, Court should have ordered reinvestigation

under Section 173(8) even after acceptance of the final report.

14. In *Randhir Singh Rana v. The State being the Delhi Administration* (AIR 1997 SC 639) the question posed before us came up directly. The Supreme Court observed that the matter was not directly considered in earlier cases and it is a grey area. It was also held that after taking cognizance of the case whether the Magistrate has got power to order further investigation was not considered in *Tula Ram's case* (supra). It was also held in view of the decision in *Ram Lal Narang's case* that it is now settled that despite the Magistrate takes cognizance upon a police report, the police has got a right of further investigation if they receive fresh information. Following the decision in *Devarapalli Lakshminarayana Reddy's case* (supra) it was also held that power under Sections 202 and 156(3) are different and exclusive and operative in two distinct spheres. Thereafter, the Court held as follows:

'11. The aforesaid being the legal position as discernible from the various decisions of this Court and some of the High Courts, we would agree, as presently advised, with Shri. Vasdev that within the grey area to which we have referred the Magistrate of his own cannot order for further investigation. As in the present case the learned Magistrate had done so, we set aside his order and direct him to dispose of the case either by framing the charge or discharge the accused on the basis of materials already on record. This will be subject to the caveat that even if the order be of discharge, further investigation by the police on its own would be permissible, which could even end in submission of either fresh charge sheet.'

After the above decision, in *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj v. State of Andhra Pradesh and Ors.* (AIR 1999 SC 2332) the Supreme Court held that reinvestigation under Section 173(8) can be ordered by the Magistrate without affording an opportunity of hearing to the accused. In that case, even though final report was filed, that was not accepted. But, before taking cognizance ordered investigation. While disposing of the case, the Supreme Court held that even after taking cognizance of the offence, police can further investigate the matter under Section 173(8) and in such a situation, the Court also can direct the police to conduct further investigation. The Court held as follows:

'10. Power of the police to conduct further investigation, after laying final report is recognised under 5.173(8) of the Code of Criminal Procedure. Even after the Court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in *Ram Lal Narang v. State (Delhi Administration)* (AIR 1979 SC 1791: (1979(Crl.) LJ 1346). The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the Court and seek formal permission to make further investigation.

11. In such a situation the power of the Court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the Court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the Court would only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the Magistrate with such an obligation.' (underlining for emphasis)

15. In *Kishori Singh and Ors. v. State of Bihar and Anr.* (2001 Cri. LJ 123) the Supreme Court held that when offence is only triable by a Court of Sessions, Magistrate cannot issue summons to any person other than those persons whose names are mentioned in the chargesheet under Section 173. It is true that power under Section 319 to add parties can be exercised during trial and when the matter is exclusively triable by the Sessions Court, the Magistrate cannot pass orders under S.319 after final report is submitted. That case has no bearing in the question referred to us,

16. Another decision cited by the prosecution is *Hemant Dhasmana v. Central Bureau of Investigation and Anr.* (2001 SCC (Crl.) 1280). There, the Supreme Court held that the Magistrate has got power to order further investigation in a case and when exercised, it would not be appropriate for the High Court to interfere in exercise of revisional powers. However, the Magistrate cannot direct to conduct investigation by a particular police officer; but, can direct the police to conduct investigation under Section 173(2). There, the Supreme Court observed

as follows:

'16. Although the said sub-section does not, in specific terms, mention about the powers of the Court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the Court. When any such order is passed by a Court which has the jurisdiction to do so, it would not be a proper exercise of revisional powers to interfere therewith because the further investigation would only be for the ends of justice. After the further investigation, the authority conducting such investigation can either reach the same conclusion and reiterate it or it can reach a different conclusion. During such extended investigation, the officers can either act on the same materials or on other materials which may come to their notice. It is for the investigating agency to exercise its power when it is put back on that track. If they come to the same conclusion, it is of added advantage to the persons against whom the allegations were made.....

(underlining for emphasis)

In Mahesh Chand v. B. Janardhan Reddy and Anr. ((2003) 1 SCC 734) a three-member Bench of the Supreme Court held that second complaint on the same facts is maintainable and also held that merely because the Magistrate has accepted the final report excluding the accused, the same by itself will not stand in his way to take cognizance of the offence on a protest complaint. In the above case, the Supreme Court held as follows;

'There cannot be any doubt or dispute that only because the Magistrate has accepted a final report, the same by itself would not stand in his way to take cognizance of the offence on a protest/complaint petition; but the question which is required to be posed and answered would be as to under what circumstances the said power can be exercised.'

It was further held that when there is manifest error or manifest miscarriage of justice, Court will be justified in taking cognizance of the case on a protest complaint even though a Magistrate Court accepted the final report of the case earlier. It was also held that:

'Further, second complaint on the same facts could be entertained only in exceptional circumstances, namely, where the previous order was passed on an incomplete record or on a misunderstanding of the nature of complaint or it was manifestly absurd, unjust or.....'

17. There is a decision on the point rendered by another learned Single Judge (S.Padmanabhan, J.), in Aravindakshan and Anr. v. State of Kerala and Anr. (1985 Cri. LJ 1389). The learned Judge was of the opinion that in view of the decision in Ram Lal Narang's case (supra) even after taking cognizance, the Magistrate has got power to order further investigation under Section 173. The Court held as follows:

'In view of the above said decision the contention of the petitioners loose much of its force. The main contention of the petitioners was that the provisions of Section 173(8) could be invoked only by the investigating agency and not by the Court. In support of this contention, the counsel relied on certain portions of the above said judgment itself..... But, I do not think that the above said observations will in any way help the petitioners. The Supreme Court was only dealing with the investigational powers of the police even when there was no express provision for further investigation as embodied in the amended Code. Another portion of the same judgment itself will negative the contention put forward by the counsel for the petitioners. It was further held in that decision:

We should not, however, be understood to say that the police should ignore the pendency of a proceeding before a Court and investigate every fresh fact that comes to light as if no cognizance had been taken by the Court of any offence. We think that in the interests of the independence of the magistracy and the judiciary, in the interests of the purity of the administration of criminal justice and in the interests of the comity of the various agencies and institutions entrusted with different stages of; such administration, it would ordinarily be desirable that the police should inform the Court and seek formal permission to make further investigation when fresh facts come to light.' (underlining supplied)

It therefore follows that the powers of Court in the matter of granting permission for further investigation or ordering further investigation are there. There is no merit in

the contention to the contrary.'

Finally, the Court concluded that:

'16. Therefore, the power of the Court to order further investigation even after taking cognizance of the offence is always there and Section 173(8) need not be understood as empowering the police alone and prohibiting the Magistrate.'

18. A Full Bench of the Delhi High Court in *Rajneesh Kumar Singhal v. State (National Capital Territory of Delhi)* (2001 (2) Crime 346) answered the same question posed before us in this case in the affirmative and held that even after taking cognizance, the Magistrate has got power to order further investigation and restriction of such powers of the Magistrate will adversely affect the administration of justice. The Apex Court in *Randhir Singh Rana's case* (supra) only held that the Magistrate acting suo motu has no power to order further investigation after taking cognizance of the offence. If, on application, the Magistrate came to the opinion that there is miscarriage of justice, he can order further investigation. After explaining the case of *Randhir Singh Rana v. State (Delhi Administration)* (supra) Delhi High Court observed as follows:

'This case, however, does not deal with a situation where an application is made to the Magistrate for directing further investigation of the matter by the complainant or the police. Besides, as seen above, in at least three decisions of the Supreme Court, out of which two are decisions which were rendered after the decision in *Randhir Singh Rana's case* (supra) the power of the Trial Court, before whom police reports were filed, to direct the police to carry out further investigation have been recognised. There is no provision in the Code which bars the Magistrate before whom the report under Section 173(2) of the Code is filed to direct further investigation of the offence even in a case where cognizance has already been taken. All procedural laws are meant to do justice and not to stifle the same. In a given situation where a Magistrate finds that the matter requires further investigation in view of the partisan attitude of the police there can be no bar to his directing the investigating agency to conduct further investigation in the case. The Magistrate by giving such a direction does not trench upon the jurisdiction of the police who are empowered to further investigate the matter. The Magistrate simply

by asking the police to further investigate the matter in a sense is directing it to exercise the jurisdiction which has been conferred on the police under Section 173(8) of the Code. Restricting the powers of the Magistrate will adversely affect the administration of justice. Magistracy cannot be made so powerless that it becomes incapable of correcting a wrong and advancing the cause of justice.'

On going through the plethora of decisions cited before us and after considering the facts of this case, we are in full agreement with the Full Bench decision of the Delhi High Court in the above case.

19. In this case, the allegation of the petitioner was that the then President of the society was the District Public Prosecutor and due to political influence, real culprits were not included in the final report as accused and investigation already conducted was faulty and incomplete. When police submitted final report as the file shows, the Magistrate immediately without notice to the complainant issued summons to the three accused mentioned as accused in the final report. In the Writ Appeal wherein a Division Bench of this Court also allowed the complainant to raise the complaint before the Magistrate where the case is pending, petition was filed for reinvestigation. On the basis of the complaint, Magistrate was satisfied that in the interest of justice, a further investigation should be conducted. Of course, police was directed to charge sheet. The word 'charge sheet' is only meant to file final report. The Court cannot direct to charge sheet a person. What is meant by the Magistrate is only to file a final report after further investigation. On further investigation, police is free to submit a report on the basis of its findings. But, it is bound to conduct reinvestigation and submit a report. We clarify the same accordingly. Direction of the Magistrate is only to conduct a reinvestigation and submit a fresh report on the basis of reinvestigation. The petitioner is not at all affected by such an investigation. In the second report, if the petitioner is excluded, that will be to his advantage. The complaint of the petitioner is that real culprits in the forgery were excluded in the report submitted. No enquiry was conducted with regard to the forgery even though there was clear finding in the final report that somebody has committed forgery. If the person committed forgery was made an accused, the petitioner herein will not be affected at all. He is already charge-sheeted as first accused. He is not an aggrieved person affected

by the impugned order. On the facts of this case, we are of the opinion that a further enquiry is fully justified. Therefore, even if there is technical violation or deviation from the normal procedure, no case is made out for interference in a Revision Petition as there is no failure of justice. Procedural laws are handmaids of justice. Impugned order of the Magistrate is in the interest of justice. But, we make it clear that we are not holding that the allegations in the complaint are correct or any of the persons are guilty. It is for the police to conduct a reinvestigation and file a report. If police finds that nobody is guilty or even the accused already arrayed are not guilty, it is for the police to file the report and Court cannot compel the police to file a report in a particular manner.

20. In the above circumstances, we arrive at the following conclusions:

(1) When a final report is filed before the Magistrate under Section 173(2), the Court may accept the report and either drop the proceedings or take cognizance of the proceeding on the basis of the report;

(2) The Court may disagree with the report. Even if the final report states that no offence has been committed, if the Magistrate feels that there are sufficient grounds for proceeding further, he can issue process and take cognizance of the offence;

(3) The Court may without accepting the report order further investigation. Magistrate has no power to direct the police to file a final report in a particular form or report making some persons guilty. On the basis of the further investigation, police is free to make the final report;

(4) By taking cognizance of the offence, adjudicatory process of the Court starts and normally investigation stage ends except under Section 173(8). Therefore, ordinarily, after taking cognizance of the offence, Court shall not suo motu order further investigation unless circumstances warrant;

(5) If the complainant files a petition saying that real culprits were not included in the final report or there is lacuna in the investigation which will cause failure of justice and if the Magistrate after considering the matter comes to the prima facie

conclusion that proper investigation was not conducted, he is not helpless, the Magistrate will be free to order further investigation to avoid failure of justice;

(6) Section 173(8) gives power to the police to conduct further investigation with permission from the Magistrate even in a case where cognizance of the offence has already been taken by the Magistrate. The above provision gives express power to the police for further investigation even after taking cognizance of the offence.

(7) Section 173(8) puts no bar on the Magistrate to order further investigation. If the Magistrate comes to the conclusion that in the interest of justice a further investigation is necessary, he can trigger the police to exercise the power under Section 173(8) as police has power to conduct further investigation under Section 173(8) even after taking cognizance of the offence. The Magistrate has got power to point out to the police to exercise their duties under Section 173(8) if on the facts of the case, it is revealed that further investigation is necessary. But, such powers can be exercised sparingly only if the circumstances warrant in the interest of justice;

(8) There is no provision in the Code prohibiting or fettering the power of the Magistrate from ordering further investigation if the circumstances warrant to prevent miscarriage of justice. It is the duty of the Court to see that ultimate truth is revealed and no innocent shall be punished and at the same time real culprits shall not escape;

(9) When a Magistrate order further investigation, High Court in its revisional power shall not interfere in the same unless there is miscarriage of justice.

21. In view of the above conclusions, we overrule the decision in *Natarajan v. Sasidharan* (2002 (1) KLT 499) in so far as it holds that after taking cognizance of the offence under no circumstances, Court can direct further investigation and agree with the view expressed in *Joisy v. Sub Inspector of Police* (2002 (3) KLT 172).

22. In this case, before accepting the police report, no notice was given to the complainant. The complainant approached this Court stating that real culprits escaped due to faulty investigation and this Court directed him to point out such defects to the Magistrate. The Magistrate on going through the protest complaint came to the conclusion that more investigation is necessary. Magistrate has not added accused under Section 319 and did not make anybody accused, but, only directed further investigation noticing the defect in the report. It is for the police to conduct further investigation and make further report after appropriate investigation. Petitioner/first accused is not at all aggrieved or prejudiced by the above order and no interference is needed especially in a Revision Petition filed by him. Order of further investigation in this case will not result in miscarriage of justice and in fact it is done in furtherance of justice. The Criminal Revision Petition is dismissed.