
DIFFERENT ASPECTS OF SECTION 173(8) OF THE CRIMINAL PROCEDURE CODE

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Further Investigation

Section 173(8) of the Criminal Procedure Code deals with further investigation. In the 1898 code, there was no such identical provision to that of the provision mentioned in the criminal procedure code, 1973. It was added on the recommendation of the law commission in its 41st report making further investigation a statutory right of the police.

Section 173(8) of the code of criminal procedure, 1973 provides-

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).

‘Rama Chaudhary vs. State of Bihar [1]

The hon’ble apex court held “further investigation” is the continuation of the previous investigation or subsequent investigation and is not fresh or de-novo investigation which initially wipes out the investigation done earlier. Further investigation within the meaning of the provision of section 173(8) is additional or supplemental.

Difference Between Further Investigation and Re-Investigation

Further investigation is the complete investigation in final form and comes under section 173(2) of CrPC. It is the continuation of the previous investigation and not the new investigation. Re-investigation is the investigation denovo started ab initio wiping out the earlier investigation. The CrPC is silent regarding the process of re-investigation.

Mithabhai Pashabhai Patel v. State of Gujarat [2] wherein it has been held that in view of the provisions of Sub-section (2) and Sub-section (8) of Section 173, even after submission of the police report under Sub-section (2) on completion of the investigation, the police have a right to 'further' investigation under Sub-section (8) of Section 173, but not 'fresh investigation' or 're-investigation'. That the meaning of 'further' is additional, more or supplemental. 'Further' investigation, therefore, is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether.

Can Senior Superintendent of Police (SSP) Give Orders For Further Investigation?

According to section 173(8) of the criminal procedure code, 1973 police have the power to carry out further investigation, even after filing a charge sheet. The law does not make it mandatory to take prior permission from the magistrate for carrying out further investigation. It is the statutory right of the police.

In Popular muthiah v state, represented by inspector of police [3]

It was held by the apex court, when a power under section 173(8) is exercised, the court ordinarily should not interfere with the statutory powers the investigating agency. The court cannot issue directions to investigate the case from a particular angle or by a particular agency.

In Ramachandran v R. udhayakumar and others [4] the Supreme Court held that “from a plain reading of section 173 of CrPC, it is evident that even after completion of investigation under section 173(2) of CrPC. The police have right to further investigate under section 173(8) and not fresh investigation or de-novo or re investigation.

In M. Subramaniam and anr. Vs. S. Janaki and anr. [5] The apex court held that “it is well-settled when a person is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, there is impliedly included in the grant even without special mention every power and every control, the denial of which would render the grant itself. Thus, when an act confers jurisdiction, it impliedly also grants the power of doing all such acts or employee such means as are essentially necessary for its execution”.

This statement of the hon'ble court further cements the fact that the police have statutory authority regarding further investigation.

Randhir Singh Rana v. State (Delhi Administration) [6] wherein this Court, while considering the provisions of Section 156(3), 173(8), 190, 200 and 204 CrPC. had held that after taking cognizance of an incident on the basis of a police report and after appearance of the accused, a Judicial Magistrate cannot on his own order further investigation in the case, and if an order of discharge is passed, nothing would prevent the police from making further investigation on its own.

Can the order of further investigation passed by the police officer be challenged in a petition under section 482 CrPC?

The inherent powers under section 482 of CrPC include powers to quash FIR, or any criminal proceedings pending before the high court. Such powers can only be exercised to secure ends of justice and, prevent abuse of the process of any court. Hence, the order can be challenged only under certain circumstances.

It provides: -

"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".

In State of Andhra Pradesh v. Gourishetty Mahesh, [7] While exercising jurisdiction under section 482 of the code, the high court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable apprehension of its accusation would not be sustained. That is the function of trial judge/court.

In Hamida v. Rashid, [8] Ends of justice would be better served if valuable time of the court is spent in hearing those appeals rather than entertaining petitions under section 482 at an interlocutory stage which after filed with some oblique motive in order to circumvent the prescribed procedure, or to delay the trial which enable to win over the witness or may disinterested in giving evidence, ultimately resulting in miscarriage of justice.

In State of Punjab Vs. CBI [9] the hon'ble Supreme Court held that, when the charge sheet has been filed and the high court held the same cannot affect or limit the powers of the high

court to pass an order under section 482 of CrPC for further investigation or re-investigation in order to serve the ends of justice. It was the case where senior functionaries senior police officers and political leaders were involved and justice would not be served if local police had investigated the matter. Therefore, the high court gave order under section 482 CrPC for fresh investigation by the CBI.

Limitations

In R.P. Kapur v. State of Punjab [10] In this case Supreme Court went on to limit the powers of the Hon'ble high court within the ambit of CrPC stating "Inherent power of the High Court cannot be invoked in regard to matters which are directly covered by specific provisions in the CrPC."

DOES THE ACCUSED HAVE A RIGHT TO CHALLENGE ORDER FOR FURTHER INVESTIGATION?

In Dinubhai Baghabhai Solanki v. State of Gujarat [11]; Narender G. Goel v. State of Maharashtra; and Union of India v. W.N. Chadha. The apex court held that when the proposed Accused has no locus and/or say at this stage, the Appellant, who as such is already charge-sheeted, and the trial against him is proceeded further, and against him no relief is sought while submitting the application Under Section 173(8) Code of Criminal Procedure shall not have any locus or say. It is submitted that therefore the High Court has rightly refused to implead the Appellant as a party Respondent in the petition filed by the private Respondent herein.

Satishkumar Nyalchand Shah vs. State of Gujarat and Ors. [12] Feeling aggrieved and dissatisfied with the impugned judgment and order dated 24.12.2018 passed by the High Court of Gujarat at Ahmedabad in Criminal Miscellaneous Application No. 1 of 2018 in Special Criminal Application No. 8704 of 2018, by which the High Court has dismissed the said application preferred by the Appellant herein permitting him to be joined as Respondent No. 4 in the said Special Criminal Application No. 8704 of 2018, which was filed by the private Respondent herein seeking further investigation against other persons (other than the Appellant who is one of the Accused and is already charge-sheeted), the Appellant has preferred the present appeal. The Supreme Court further reiterated that the court is not obliged to hear the accused before any direction for further investigation is made under section 173(8) of CrPC. Therefore, the high court was right in dismissing the appeal. The bench referred this

observation from **Bhagwan Samardha v. State of A.P. [13]** it is observed and held that there is nothing in Section 173(8) Code of Criminal Procedure that advises that the accused must be heard before making any directions for further investigation. In Sri Bhagwan Samardha (supra), this Court in paragraph 11 held as under:

11. In the given 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 the law does not require it, we would not burden the Magistrate with such an obligation.

Does The Accused Have The Right To Challenge Such Order Before The Court Takes Cognizance Of The Case?

No, the accused here does not have a right to challenge the order of further investigation in any case I.e., before the court takes cognizance or after the court takes cognizance. But further investigation 'post-cognizance stage' can be ordered by a magistrate before the commencement of a trial via section 156(3) and 174(8) of CrPC.

Devarapalli Lakshminarayana Reddy and others vs. V. Narayana Reddy and others [14]

The Supreme Court had held that power under Section 156(3) could be invoked by Magistrate before he takes cognizance of offence under Section 190 (1)(a) - But if he once takes such cognizance and embarks upon the procedure embodied in Chapter XV, he is not competent to switch back to pre-cognizance stage and avail of Section 156(3) of CrPC - The stand taken in petition by Petitioner that Magistrate should have referred the case under Section 156(3) of CrPC. to police for investigation after taking cognizance was in conflict with the law laid down by Supreme Court, Magistrate after taking cognizance of case proceeded to follow the procedure prescribed in Chapter XV of CrPC and in doing so, he had not committed any illegality - Magistrate has still option to take the assistance of police at appropriate stage under Section 202 of CrPC - Magistrate had committed no error of jurisdiction while passing impugned order. There was no merit in petition and same was dismissed. The same was overruled in the case of **Vinubhai Haribhai Malaviya and others Vs. State of Gujarat and another, [15]**

Supreme Court Case (Cri) 228 wherein the Supreme Court considered the entire scheme of the CrPC and noticed the Law Commission's Report whereafter Section 173 CrPC was amended to include Section 173(8) under the CrPC. The Supreme Court emphasized the requirement of a fair and speedy trial, right to just and fair trial is a facet of Article 21 of the Constitution of India although in the said case Supreme Court was considering the question of further investigation by the Magistrate after the police report has been forwarded to him under Section 173 CrPC and taking into consideration the questions before the Court, it held as under:

“With the introduction of Section 173(8) in the CrPC, the police department has been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate. Quite obviously, this power continues until the trial can be said to commence in a criminal case. The debatable question that arises here is whether the magistrate can order further investigation after the police report has been submitted to him under section 173 CrPC. “What is recognized by this decision is that in the circumstance that the Magistrate does not agree with the police report, he may order further investigation -which is done in his capacity as a supervisory authority in relation to investigation carried out by the police.”

“It is therefore clear that the power of magistrate under Section 156(3) of the 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 ensure 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) of the 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) of the CrPC.”

Paragraph 39 of the judgment then referred to the "inquiry" stage of a criminal case states that:

"39. Section 2(g) CrPC and the case laws referred to above, therefore, clearly means every inquiry, other than a trial, conducted under this code by a magistrate or court. The word

"inquiry" is, therefore, does not mean any inquiry relating to the investigation of the case by the investigating agency but actually is an inquiry after the case is brought to the notice of the court on the filing of the charge-sheet. The court can thereafter proceed to make inquiries and it is for this reason that an inquiry has been given to mean something other than the actual trial."

CONCLUSION

In the light of above conflict between the vinubhai case and devrapalli case judgement suggested that vinubhai is limited to police report cases and devrapalli is limited to complaint cases. Further investigation is now a well settled principal of law which the magistrate can order under section 173(2) of Cr.PC.

REFERENCES

1. (2009) 6 SCC 346
2. MANU/SC/0858/2009: (2009) 6 SCC 332: 2009 AIR SCW 3780
3. (2006) 7 SCC 296
4. CRIMINAL APPEAL NO. 871 OF 2008
5. CRIMINAL APPEAL NO. 102 OF 2011.
6. MANU/SC/0161/1997: (1997) 1 SCC 361
7. JT 2010 (6) SC 588(2010) 6 SCALE 767:2010 Cr LJ 3844
8. (2008) 1 SCC 474
9. (2011) 9 SCC 182
10. AIR 1960 SC 866.
11. MANU/SC/0134/2014: (2014) 4 SCC 626, MANU/SC/0885/2009: (2009) 6 SCC 65, MANU/SC/0149/1993: 1993 Supp (4) SCC 260.
12. (02.03.2020 - SC): MANU/SC/0241/2020
13. MANU/SC/0402/1999: (1999) 5 SCC 740
14. MANU/SC/0108/1976: AIR 1976 SC 1672
15. MANU/SC/1427/2019: (2020)