* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

CRL.M.C. 3125/2019 & CRL M.A. 12857/2019

Reserved on : 04.06.2021
Date of Decision: 14.09.2021

IN THE MATTER OF:

RAM UDAGAR MAHTO ..... Petitioner
Through: Mr. Arvind Kumar Gupta, Advocate with
Mr. Rishi Bhardwaj, Advocate
Mr. Vikas Pahwa, Sr. Advocate (Amicus Curiae) with
Ms. Raavi Sharma, Advocate
Versus

STATE ..... Respondent
Through: Ms. Radhika Kolluru, APP for State with
SI Jay Kishan, P.S. Saket

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present petition has been filed under Section 482 Cr.P.C. assailing the order dated 15.05.2019 passed by the learned Additional Sessions Judge-01 (South), Special Court (POCSO), Saket Courts, New Delhi in CIS/SC No. 7202/2016 arising out of FIR No. 220/2014 registered under Section 377 IPC and Sections 4/6 of the POCSO Act at P.S. Saket, Delhi.

2. The brief facts necessary for the disposal of the present petition are that on 28.03.2014, the complainant had sent her son, aged about 4 years, along with her driver *Ram Avtar* (the petitioner herein) to her parental house. On the next

day, the child victim complained to his mother of pain in his rectum. On being asked by the complainant/mother, the child victim narrated that the petitioner had inserted his penis in the child's anus. After the arrival of complainant's brother from abroad, a police complaint was made. During investigation, the medical examination of the child victim as well as the petitioner was conducted and the MLCs prepared. The relevant samples, including blood samples of the petitioner and the child victim and the underwear of the child victim were seized by the Investigating Officer for forensic examination. On 11.04.2014, these samples were taken to the FSL, Rohini. While the FSL report was awaited, the Investigating Officer filed the charge sheet under Section 377 IPC and Sections 4/6 of the POCSO Act on 05.05.2014 without annexing the FSL report.

3. Subsequently, charge was framed and vide order dated 16.07.2015, the Trial Court allowed an application filed by the complainant for alteration of the charge. On this date, the Director, FSL, Rohini was also asked to explain the delay in preparation of the FSL report. The case was put up on 14.08.2015 for examination of the child victim.

4. On receipt of the FSL report dated 07.08.2015, the Investigating agency filed it before the learned Addl. Sessions Judge. In the FSL report, it was stated that though a DNA profile was generated from the underwear of the child victim, no DNA profile could be generated from the blood samples of the petitioner and the child victim. As a result, the DNA profile generated from the underwear of the child victim could not be matched with the DNA of the petitioner. It was stated in the report that if required, fresh blood samples of both the child victim as well as the petitioner may be provided to determine whether or not the DNA generated therefrom matches with the DNA profile generated from the underwear of the child victim.

5. In the meantime, the trial had proceeded and twelve prosecution witnesses were examined. The FSL report was proved by *Indresh Kumar Mishra*, who was examined as PW-13, on 17.07.2018. After his examination, the Investigating Officer filed an application before the Trial Court on 26.10.2018 seeking permission for obtaining fresh blood samples of the petitioner and the child victim as the ones collected earlier had putrefied.

6. This application was contested on behalf of the petitioner. It was not only contended that the application filed by the Investigating Officer was an attempt to delay the proceedings and fill up the lacuna in the prosecution case, but also that asking for the petitioner's fresh blood sample at the stage of trial amounted to reinvestigation which could prejudice his defence. It was also contended that the same was violative of Articles 20(3) and 21 of the Constitution of India. After hearing arguments of both sides, the Trial Court vide the impugned order held that there was no bar in Section 53 Cr.P.C. for retaking of the blood sample of an accused at the stage of trial. It was also observed that the Investigating Officer had the right to further investigate under Section 173(8) Cr.P.C even at the stage of trial. The application was allowed and it was directed that the petitioner and child victim be medically examined by a registered medical practitioner to obtain their fresh blood samples.

7. Aggrieved by the aforesaid order, the petitioner has approached this Court by way of the present petition reiterating the contentions raised before the Trial Court. During the course of arguments, learned counsel for the petitioner has contended that the direction contained in the impugned order amounts to further investigation/reinvestigation which is impermissible once the Magistrate takes cognizance. At the time of making further submissions, he also contended that the impugned direction could not have been passed at the stage of trial and

placed reliance upon the decision of the Supreme Court in Vinubhai Haribhai Malaviya and Others *v.* State of Gujarat and Another[1] to support his argument. It was submitted that the application filed by the Investigating Officer was filed with an attempt to fill the lacuna in the prosecution case. Reliance was also placed on Section 311A Cr.P.C. to submit that the word 'proceeding' appearing therein does not find mention in Section 53 Cr.P.C., meaning thereby that the medical examination in relation to blood sample can only be done at the stage of investigation and not after the trial has commenced. In support of his submissions, learned counsel placed reliance on the decision of the Supreme Court in Vinay Tyagi *v.* Irshad Ali alias Deepak and Others[2] and the decision of a coordinate bench of this Court in Jude Chidibere & Ors. *v.* N.C.B.[3]

8. Per contra, learned APP for the State submitted that a request by the Investigating Officer to permit obtaining of blood sample of an accused is not barred at the stage of trial and that the direction given by the Trial Court vide the impugned order neither amounts to fresh investigation nor reinvestigation, but further investigation. It was also submitted that if the blood sample of the petitioner is not obtained, the same will result in losing of an important piece of corroborative evidence and cause grave miscarriage of justice. Learned APP further submitted that obtaining of blood sample from the petitioner would not tantamount to infringement of the right against self-incrimination provided under Article 20(3) of the Constitution of India or the right to life and personal liberty guaranteed under Article 21 thereof. In support of her submissions, learned APP placed reliance on the decisions in Anil Anantrao Lokhande *v.*

[1] (2019) 17 SCC 1

[2] (2013) 5 SCC 762

[3] 2010 SCC OnLine Del 770

State of Maharashtra[4], Sanjeev Nanda *v.* State of NCT of Delhi[5], Ram Lal Narang *v.* State (Delhi Administration)[6] and Amrutbhai Shambhubhai Patel *v.* Sumanbhai Kantibhai Patel and Others[7].

9. Mr. Vikas Pahwa, learned Senior Counsel and Amicus Curiae, addressed arguments and also placed on record his written submissions. He submitted that the decision in Vinubhai Haribhai Malaviya and Others (Supra), relied upon by learned counsel for the petitioner, is not applicable to the present case as the impugned directions for obtaining fresh blood sample did not amount to 'further investigation'. He also submitted that the application of Sections 53 and 53A of the Cr.P.C. is not limited to the stage of investigation. These provisions only enunciate the procedure of examination and do not vest any power or indicate any stage at which such power would be exercisable. It was submitted that a Magistrate is empowered under Section 311A Cr.P.C., which is nothing but an extension of Section 311 Cr.P.C., to direct any person to give even his blood sample in accordance with Sections 53 and 53A of the Cr.P.C. at any stage whether pre-cognizance or post-cognizance. Learned Amicus Curiae also submitted that taking of blood sample is not testimonial in nature, and hence, not hit by Article 20(3) of the Constitution of India. He also referred to various decisions where emphasis was laid on the use of scientific techniques such as DNA profiling in aid of criminal investigation. In support of his submissions, he placed reliance on the decisions in Jamshed alias Dalli *v.* State of U.P.[8], Anil

[4] 1980 SCC OnLine Bom 56

[5] 2007 SCC OnLine Del 859

[6] (1979) 2 SCC 322

[7] (2017) 4 SCC 177 [overruled in Vinubhai Haribhai Malaviya and Others (Supra)]

[8] (1976) SCC OnLine All 10

Anantrao Lokhande (Supra), Thogorani alias K. Damayanti *v.* State of Orissa and others[9] and Amrutbhai Shambhubhai Patel (Supra).

10. I have heard Mr. Vikas Pahwa, learned Amicus Curiae, as well as learned counsel for the petitioner and learned APP for the State. I have also gone through the case records and the written submissions placed on record by them.

11. The primary issue involved in the present case is whether the impugned direction of obtaining fresh blood sample of the petitioner amount to further investigation, reinvestigation or fresh investigation.

12. Learned counsels while putting forward their respective submissions, have described the impugned directions as *"further investigation/reinvestigation/fresh investigation"*. The expressions *"further investigation", "reinvestigation",* and *"fresh investigation"* all connote different meanings and are entirely distinguishable in their scope and application.

13. The words *"further investigation"* find mention in Section 173(8) Cr.P.C. It is worthwhile to note that sub-section (8) in Section 173 did not exist in the Code of Criminal Procedure of 1898. It came to be inserted in pursuance of the recommendation contained in the Forty-First Law Commission Report, 1969. Although it was recommended as sub-section (7) to Section 173, it came to be added as sub-section (8). The relevant extract of the Report reads as follows:

> *"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*

[9] 2004 SCC OnLine Ori 297

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."

14. As per the Scheme of the Code, the stage perceived under Section 173(8) Cr.P.C. comes into action after a Report under Section 173(2) Cr.P.C. is forwarded by the police officer to the concerned Magistrate on completion of the investigation. This provision empowers the police officer to carry out further investigation if he obtains further evidence, oral or documentary, and to thereafter forward a further report regarding such evidence. Ordinarily, a police officer should inform the Court and seek formal permission to conduct further investigation when fresh facts come to light [Refer: Ram Lal Narang (Supra)].

15. Speaking literally, the word *"further"* would mean additional, more, or supplemental. *"Further investigation",* therefore, would mean continuation of the earlier investigation. The Supreme Court has shed light on the expression *"further investigation"* in Amrutbhai Shambhubhai Patel (Supra) where it was observed as under:

"*38. ...further investigation was a phenomenon where the investigating officer would obtain further oral or documentary evidence after the final report had already been submitted, so much so that the report on the basis of the subsequent disclosures/discoveries by way of such evidence would be in consolidation and continuation of the previous investigation and the report yielded thereby*…."

16. The law regarding occasion to undertake further investigation was propounded by the Supreme Court in Kishan Lal *v.* Dharmendra Bafna and Another[10] wherein it was held as follows:

> *"22. The investigating officer may exercise his statutory power of further investigation in several situations as, for example, when new facts come to its notice; when certain aspects of the matter had not been considered by him and he found that further investigation is necessary to be carried out from a different angle(s) keeping in view the fact that new or further materials came to its notice. Apart from the aforementioned grounds, the learned Magistrate or the superior courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends of justice. ..."*
>
> (emphasis added)

17. Section 173(8) Cr.P.C. makes it clear that further investigation is permissible, however, reinvestigation or fresh investigation is prohibited. The Supreme Court distinguished *'further investigation'* from *'reinvestigation'* and *'fresh investigation'* in its decision in K. Chandrasekhar *v.* State of Kerala and Others[11] where it was observed as follows:

> *"24. ...'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. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a 'further' report or reports - and not fresh report or reports - regarding the 'further' evidence obtained during such investigation. ...."*

[10] (2009) 7 SCC 685

[11] (1998) 5 SCC 223

18. The difference between the three concepts in the aforementioned terms was reiterated by the Supreme Court in Rama Chaudhary *v.* State of Bihar[12] where it held as follows:

> *"17. ...'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."*

19. Later, the Supreme Court in Vinay Tyagi (Supra), while reading into Section 173(8) Cr.P.C. the powers of a Magistrate to direct *"further investigation",* clarified that the Magistrate has no power to direct *"reinvestigation"* or *"fresh investigation" (de novo)* in a case initiated on the basis of a police report and such power is available only with Constitutional Courts. It was further observed:

> *"22. 'Further investigation' is where the investigating officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the executive. It is the continuation of previous investigation and, therefore, is understood and described as 'further investigation'. The scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental*

[12] (2009) 6 SCC 346

thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation.

23. However, in the case of a 'fresh investigation', 'reinvestigation' or 'de novo investigation' there has to be a definite order of the court. The order of the court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the investigating agency nor the Magistrate has any power to order or conduct 'fresh investigation'. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between…

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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."

20. Again, in Dharam Pal *v.* State of Haryana and Others[13] the Supreme Court, while considering the issue of transfer of investigation and the powers of Constitutional Courts, observed as under:

"25. …The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute

[13] (2016) 4 SCC 160

> *impediment for exercising the said constitutional power which is meant to ensure a fair and just investigation. ... It is the bounden duty of a court of law to uphold the truth and truth means absence of deceit, absence of fraud and in a criminal investigation a real and fair investigation, not an investigation that reveals itself as a sham one. It is not acceptable. It has to be kept uppermost in mind that impartial and truthful investigation is imperative. …"*
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> (emphasis added)

21. To a similar extent are the observations of the Supreme Court in Pooja Pal *v.* Union of India and Others[14], Neetu Kumar Nagaich *v.* State of Rajasthan and Others[15] and Vinubhai Haribhai Malaviya and Others (Supra).

22. Now I proceed to analyze the facts of the present case in light of the exposition of law outlined hereinabove. Can it be said that the impugned direction tantamount to a direction for further investigation, reinvestigation, or fresh investigation?

23. From a conjoint reading of the facts of the case and the law on the issue, it is apparent that the impugned direction can neither be termed as 'reinvestigation' nor as 'fresh investigation', since there is no direction by the Trial Court to start the investigation *ab initio* wiping out the earlier investigation altogether. The earlier investigation still stands and the Trial Court did not find any fault with it. Even otherwise, the Trial Court had no power to direct either reinvestigation or fresh investigation.

24. Insofar as the question of the impugned direction amounting to further investigation is concerned, it has been noted earlier that the word *"further"* means additional, more, or supplemental; and *"further investigation",* therefore,

[14] (2016) 3 SCC 135

[15] (2020) 16 SCC 777

would mean continuation of the earlier investigation. The facts of the present case are peculiar. It is noted that the blood sample of the petitioner was duly taken during initial stages of the investigation and at that time, the petitioner had not raised grievance of any sort. The blood samples were seized and sent to the FSL for examination, where they were duly received. However, the samples were not timely analyzed at the FSL and could only be examined after a delay of more than one year and four months from the date of their receipt at the FSL. As per the FSL Report filed before the learned Addl. Sessions Judge, even though DNA profile was generated from the underwear of the child victim, none could be generated from the blood samples of the child victim and the petitioner resulting in failure to test the samples against each other for a match. In view of this Report, the Investigating Officer filed an application for retaking of the blood samples of both the child victim as well as the petitioner. Neither the investigation was defective nor lacking on this aspect. The fault, if any, laid with the FSL for examining the samples after a considerable amount of time. Pithily put, the Investigating Officer had not come across any additional, more or supplemental material. There was no subsequent disclosure/discovery of any new or additional material whatsoever. By filing the application, the Investigating Officer was only repeating the step which he had already taken in the earlier investigation. In the peculiar facts and circumstances of this case, this Court is of the opinion that the impugned direction does not amount to directing further investigation.

25. Examining the issue from another point of view that whether by passing of the impugned order, any prejudice is caused to the petitioner. The answer is in negative for the reason that it is not the case that by virtue of impugned directions, the petitioner has been asked to give his blood sample for the first time. The petitioner had already given his blood sample during the investigation

without any protest and to do so a second time shall in no manner prejudice his case. It is rather preposterous to forestall forensic examination in anticipation of an unfavorable outcome. If favorable, the outcome will help the petitioner himself in substantiating his defence.

26. The next contention raised on behalf of the petitioner is that the direction contained in the impugned order for him to give his blood sample infringes his fundamental right against self-incrimination under Article 20(3) of the Constitution of India, which provides that:

> *"No person accused of any offence shall be compelled to be a witness against himself".*

In this regard, it bears mention that the expression *"to be a witness"* may amount to *"furnishing evidence"* in the sense of making oral or written statements, but not in the larger sense of the expression so as to include giving a of thumb impression or impression of palm or foot or fingers or specimen writing or exposing a part of the body by an accused for person of identification. While observing so, the Supreme Court in State of Bombay *v.* Kathi Kalu Oghad[16] arrived at the following conclusions:

> *"16. In view of these considerations, we have come to the following conclusions:*
>
> *(1) An accused person cannot be said to have been compelled to be a witness against himself simply because he made a statement while in police custody, without anything more. In other words, the mere fact of being in police custody at the time when the statement in question was made would not, by itself, as a proposition of law, lend itself to the inference that the accused was compelled to make the statement, though that fact, in conjunction with other circumstances disclosed in evidence in a particular case, would be a relevant*

[16] AIR 1961 SC 1808

consideration in an enquiry whether or not the accused person had been compelled to make the impugned statement.

(2) The mere questioning of an accused person by a police officer, resulting in a voluntary statement, which may ultimately turn out to be incriminatory, is not 'compulsion'.

(3) 'To be a witness' is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making of oral or written statements but also production of documents or giving materials which may be relevant at a trial to determine the guilt innocence of the accused.

(4) Giving thumb impressions or impressions of foot or palm or fingers or specimen writings or showing parts of the body by way of identification are not included in the expression 'to be a witness'.

(5) 'To be a witness' means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in court or otherwise.

(6) 'To be a witness' in its ordinary grammatical sense means giving oral testimony in court. Case law has gone beyond this strict literal interpretation of the expression which may now bear a wider meaning, namely, bearing testimony in court or out of court by a person accused of an offence, orally or in writing.

(7) To bring the statement in question within the prohibition of Article 20(3), the person accused must have stood in the character of an accused person at the time he made the statement. It is not enough that he should become an accused, any time after the statement has been made."

27. The aforesaid observations and conclusions are equally applicable to a case of blood sample as well. In Jamshed alias Dalli (Supra), a Division Bench of the Allahabad High Court, while placing reliance on Kathi Kalu Oghad (Supra), has held that taking of blood sample of the appellant/accused did not amount to his becoming a witness against himself. The Bombay High Court also, through a Division Bench in Anil Anantrao Lokhande (Supra**)**, has negated similar contention raised on behalf of the accused in a case where direction was

given for the accused to give his blood sample. A further contention that the expression *"examination of his person"* would not include extraction of blood from the body of the arrested person, was also negated in this case. Subsequently, the afore-referred decisions were followed in Thogorani (Supra**)** and H.M. Prakash @ Dali *v.* The State of Karnataka[17]. It is worthwhile to note that contentions similar to those raised hereinabove, albeit in respect of samples relating to polygraph/narco analysis/brain mapping and voice samples, have also been negatived by the Supreme Court in Selvi and Others *v.* State of Karnataka[18] and Ritesh Sinha *v.* State of Uttar Pradesh and Another[19].

28. It was also contended on behalf of the petitioner that the impugned direction is an attempt to fill up lacuna in the prosecution case. However, the same also fails to satisfy this Court. The blood sample of the petitioner is a vital piece of evidence. If the DNA profile generated from it matches with the DNA profile generated from the underwear of the child victim, the result would corroborate the version of the child victim. If not, the same would come to the aid of the petitioner. In State (Delhi Administration) *v.* Pali Ram[20], the Supreme Court while giving paramount importance to *"doing justice"* observed that the *"likelihood of filling up of loopholes in prosecution case"* was a subsidiary factor if the Trial Court, that was in seisin of the case, formed an opinion that the assistance of an expert was essential to enable the Court to arrive at a just determination of the issue, which was identification of the disputed writing in that case. It was also observed that:

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[17] 2004 SCC OnLine Kar 162

[18] (2010) 7 SCC 263

[19] (2019) 8 SCC 1

[20] (1979) 2 SCC 158

> "*28. …Moreover, it could not be predicted at this stage whether the opinion of the Government Expert of Questioned Documents would go in favour of the prosecution or the defence. The argument raised before the High Court was thus purely speculative."*

29. Coming to the next contention raised on behalf of the petitioner that the impugned directions would result in delaying the trial, this Court deems it apposite to refer to the following observations of the Supreme Court in Hasanbhai Valibhai Qureshi *v.* State of Gujarat and Others[21] made in reference to further investigation:

> "*13. ... if there is necessity for further investigation, the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice…."*
>
> *(emphasis added)*

30. Thus, the assurance of a fair trial is to be the first imperative in the dispensation of justice. [Refer: Commissioner of Police, Delhi and Another *v.* Registrar, Delhi High Court, New Delhi[22]]. The need for fair investigation has also been emphasized in Vinay Tyagi (Supra) where it was observed as under:

> *"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…."*

31. Reference may also be placed on the decision in Pooja Pal (Supra), where the fundamental rights enshrined under Article 21 of the Constitution of India

[21] (2004) 5 SCC 347

[22] (1996) 6 SCC 323

were discussed in the context of *"speedy trial"* juxtaposed to *"fair trial"* in the following manner:

> *"83. A 'speedy trial', albeit the essence of the fundamental right to life entrenched in Article 21 of the Constitution of India has a companion in concept in 'fair trial', both being inalienable constituents of an adjudicative process, to culminate in a judicial decision by a court of law as the final arbiter. There is indeed a qualitative difference between right to speedy trial and fair trial so much so that denial of the former by itself would not be prejudicial to the accused, when pitted against the imperative of fair trial. As fundamentally, justice not only has to be done but also must appear to have been done, the residuary jurisdiction of a court to direct further investigation or reinvestigation by any impartial agency, probe by the State Police notwithstanding, has to be essentially invoked if the statutory agency already in charge of the investigation appears to have been ineffective or is presumed or inferred to be not being able to discharge its functions fairly, meaningfully and fructuously. As the cause of justice has to reign supreme, a court of law cannot reduce itself to be a resigned and a helpless spectator and with the foreseen consequences apparently unjust, in the face of a faulty investigation, meekly complete the formalities to record a foregone conclusion. Justice then would become a casualty. Though a court's satisfaction of want of proper, fair, impartial and effective investigation eroding its credence and reliability is the precondition for a direction for further investigation or reinvestigation, submission of the charge-sheet ipso facto or the pendency of the trial can by no means be a prohibitive impediment. The contextual facts and the attendant circumstances have to be singularly evaluated and analysed to decide the needfulness of further investigation or reinvestigation to unravel the truth and mete out justice to the parties. The prime concern and the endeavour of the court of law is to secure justice on the basis of true facts which ought to be unearthed through a committed, resolved and a competent investigating agency".*

32. In view of the conclusion arrived at, that in the peculiar facts and circumstances of this case the impugned direction does not amount to further investigation but rather constitute repetition of a step already undertaken in the

earlier investigation, the contentions raised as to the applicability of Sections 53/53A Cr.P.C., in light of Sections 91/311A Cr.P.C. and Section 165 of the Indian Evidence Act, at the stage of trial become academic and need not be gone into.

33. Consequently, the impugned order is upheld and the petition is dismissed. The matter is directed to be listed before the Trial Court on 20.09.2021 to proceed further with the case. The Trial Court shall ensure that on receipt of the relevant blood samples, the FSL examines them at the earliest and furnishes a Report expeditiously.

34. Before concluding, this Court appreciates the effort put in by the learned Amicus Curiae in addressing extensive arguments and placing detailed submissions on record.

35. A copy of this order be communicated electronically to the concerned Trial Court.

(MANOJ KUMAR OHRI)
JUDGE

September 14, 2021
P'ma/na