

M.Cr.C. No.9801/2021
State of M.P. Vs. Anil Sharma and others

HIGH COURT OF MADHYA PRADESH
BENCH GWALIOR

SINGLE BENCH:

HON'BLE SHRI JUSTICE G.S. AHLUWALIA

M.Cr.C. No.9801/2021

.....Applicant: State of M.P.

Versus

.....Respondents : Anil Sharma and others

 Shri Lokendra Shrivastava, Public Prosecutor for applicant/State.
 Respondent no.1 is unserved as he is in jail.
 None for respondent no.2 though served.
 Shri Anoop Kumar Gupta, Advocate for respondent no.3.
 Shri J.P. Mishra, Advocate for respondents no.4 and 5.

 Date of hearing : 29/06/2021

Date of order : 02/07/2021

Whether approved for reporting: Yes

ORDER
(02/07/2021)

This application under Section 482 of Cr.P.C. has been filed by State of Madhya Pradesh against order dated 7-12-2019 passed by 1st A.S.J., Dabra, Distt. Gwalior in S.T. No.26/2017, by which the application filed by the applicant under Section 173(8) of Cr.P.C. has been rejected.

2. The necessary facts for disposal of present application in short are that the complainant lodged a report alleging that co-accused Ramlakhan along with other respondents entered into a conspiracy and by impersonating respondent no.1 as his father Bhagwanlal (Respondent no.3) sold the land in question to her. Thereafter, the respondents also

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persuaded her that more land is available. Accordingly, an additional amount of Rs. 35,00,000 was given by the complainant. However, the sale deed was not executed. Only thereafter, when the complainant enquired into the matter, then came to know that even the first sale deed has not been executed by respondent no.3, but it has been executed by respondent no.1 by impersonating himself as respondent no.3. Accordingly, offence under Sections 419,420,467,468,471 of I.P.C. was registered.

3. During the pendency of investigation, “personal diary” of the complainant was also seized in which acknowledgment of receipt of money was given by respondent no.4.

4. The police filed charge sheet against respondents no. 1 to 3, but kept the investigation pending against the respondents no. 4 and 5. However, surprisingly, the “personal diary” of the complainant was not filed along with the charge sheet, although the seizure memo of “personal diary” of the complainant was filed.

5. It appears, that earlier the respondent no.4 filed several applications for grant of anticipatory bail, but all of them were rejected.

6. The respondent no. 4, had also filed M.Cr.C. No.1718/2015 for quashment of F.I.R., but during the pendency of the said application, an order under Section 319 of Cr.P.C. was passed by the Trial Court, thereby summoning the respondent no. 4 and 5 as additional accused. Therefore, M.Cr.C. No. 1718/2015 was dismissed by order dated 4-2-2019. It is also not out of place to mention here, that the respondent no. 4 had also

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challenged the order passed by the Trial Court under Section 319 of Cr.P.C. which was registered as Cr.R. No. 516/2019, which was also dismissed by this Court by order dated 4-2-2019.

7. The respondent no. 4 also filed an application for grant of bail under Section 439 of Cr.P.C. which was registered as M.Cr.C. No. 16076 of 2019. The said application was dismissed by order dated 23-4-2019 in the light of the acknowledgment of receipt of money given by the respondent no.4.

8. Thereafter, the respondent no.4 filed third application for grant of bail which was registered as M.Cr.C. No. 37198/2019. One of the ground raised in the said bail application was that the respondent no.4 had never given any acknowledgment of receipt and it appears that the first bail application was rejected on the basis of evidence which had never come on record. It was also submitted by the Counsel for the respondent no. 4 that the “personal diary” of the complainant was never seized and therefore, has not been filed along with the charge sheet.

9. However, when the police case diary was received, it was found that it was containing the photocopy of the “personal diary” of the complainant, therefore, sensing some foul play, this Court decided to conduct a deeper enquiry into the matter.

10. Accordingly, on 1-10-2019, the Court passed the following order :

“Shri Prashant Sharma, Counsel for the applicant.
Shri Purshottam Rai, Panel Lawyer for the
respondent/State.
Shri Naveen Bhargava, Counsel for the complainant.
Mr. Pankaj Tyagi, Town Inspector, Police Station
Bhitarwar, District Gwalior is present in person.

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From the case diary it appears that the "personal diary" maintained by the complainant was seized by the police, in which there was certain acknowledgments of receipts of money were given by the applicant Satish Sharma. Although the photocopy of the said "personal diary" is in the case diary, but it is submitted by the counsel for the applicant that the said "personal diary" has not been filed along with the charge sheet.

Yesterday an impression was given by the State Counsel that the said "Personal diary" has been sent to the Handwriting Expert and accordingly, the State Counsel was directed to seek instructions that how much time would be required for producing the report of the Handwriting Expert. Today Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior is present in person and he submitted that the said "personal diary" which was seized by the police during investigation has not been sent to the Handwriting Expert and the said "personal diary" of the complainant is also missing and an attempt was made to locate the same, however, the same could not be traced out. It is submitted by Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior that the charge sheet was filed on 16.3.2017 under the signatures of Mr. R.P. Indoria, Sub Inspector (Investigating Officer) and Ramesh Shakya (Town Inspector, Police Station Bhitwar, District Gwalior). Thereafter, a supplementary charge sheet was filed on 12.12.2018 by Mr. Maan Singh Bhadoriya, Sub Inspector, Police Station Bhitwar, District Gwalior. Shri Maan Singh Bhadoriya, Sub Inspector, Police Station Bhitwar is also present in the Court. On query, it is submitted by Mr. Bhadoriya that for the purposes of filing supplementary charge sheet he had inspected the police case diary, then he found that although the case diary contains draft dated 14.3.2017 were sent by the Superintendent of Police, Gwalior but there was no acknowledgement by the Handwriting Expert, therefore, he had talked to Mr. Bhadoriya, Investigating Officer who informed that the said articles mentioned in the draft dated 14.3.2017 were sent to the Handwriting Expert, Police Headquarter Jahagirabad. However, the same were returned back after pointing out some lapses and the said fact is also mentioned in the Rojnamcha Sanha dated 22.3.2017. The Rojnamcha Sanha dated 22.3.2017 is also in the case diary which has been brought by the police officers.

The original charge sheet was filed on 16.3.2017 and according to the said charge sheet the "personal diary" of the complainant Achal Gupta was also seized as it finds reference in column No.11 of the final report. However, in column No.

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11-A of final report which deals with the documents which were filed along with the charge-sheet, there is no reference of the "personal diary" of the complainant. Thus, it is clear that the "personal diary" of the complainant was not filed by the then Investigating Officer Mr. R.P. Indoria and Town Inspector, Police Station Bhitwar District Gwalior. It is submitted by Mr. Tyagi, T.I. Police Station Bhitwar District Gwalior that whenever any article or object is seized during the investigation, then the same is deposited in the Malkhana and he has checked the register of Malkhana and there is no reference of deposit of the "personal diary" of the complainant in the said Malkhana, therefore, it is clear that after seizing the "personal diary" of the complainant, the then Investigating Officer has not deposited the same in the Malkhana. It is further submitted by Mr. Tyagi that in spite of best efforts he could not locate the "personal diary" of the complainant in the Police Station and prays for some more time to find out that whether the said "personal diary" of the complainant is available in the Police Station or not.

Thus, it is clear that although the police had seized the "personal diary" of the complainant which was containing the acknowledgment of receipt of amount but the same has neither been filed along with the charge-sheet nor the same was sent to the Handwriting Expert. Further, the said "personal diary" is not available in the Malkhana of Police Station Bhitwar, District Gwalior also.

Accordingly, two working days time is granted to Shri Tyagi, Town Inspector, Police Station Bhitwar District Gwalior to file his detailed reply in the matter. He is also required to explain that by suppressing the "personal diary" whether the benefit would go to the complainant or to the accused.

It is submitted by Shri Maan Singh Bhadoriya that, before filing a supplementary charge-sheet, he had gone through the copy of the first chargesheet, which was filed on 16.03.2017 and he had noticed that the "personal diary" of the complainant was also seized, but it has not been filed along with the charge-sheet. He further clarified that he did not try to locate the "personal diary" of the complainant and at this stage, it is submitted by Shri Naveen Bhargava that although the "personal diary" of the complainant contains the acknowledgment of receipt given by the applicant Satish Sharma, but the police officers had deliberately suppressed the "personal diary" so that the applicant Satish Sharma can be saved and, therefore, instead of filing the charge-sheet against the applicant Satish Sharma, the then Investigating Officer Mr. R.P. Indoria and Mr. Ramesh Shakya, Town Inspector, Police Station Bhitwar District Gwalior kept the

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investigation pending against Satish Sharma although the incriminating material against Satish Sharma was available with the police department. It is further submitted by Shri Naveen Bhargava that only after the Court took cognizance against Satish Sharma under Section 319 of Cr.P.C., the applicant was made an accused, which clearly indicates that the police was out and out trying to save Satish Sharma by manipulating the documents, which were seized during investigation.

Mr. Maan Singh Bhadoriya is also directed to submit his reply as to why he did not try to locate the "personal diary" of the complainant even after coming to know that the said diary was seized during investigation, but was not sent to the Handwriting Expert and was also not filed along with the charge-sheet.

The question of issuing notice to Shri R.P. Indoria & Shri Ramesh Shakya shall be considered on the next date of hearing.

List this case on **04.10.2019.**"

11. Thereafter, on 4-10-2019, following order was passed :

“Shri Prashant Sharma, Counsel for the applicant.

Shri Vijay Sundaram, Panel Lawyer for the respondent/State.

Shri Naveen Bhargava, Counsel for the complainant.

Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior is present in person.

Mr. Maan Singh Bhadoriya, Sub Inspector, Police Station Bhitwar, District Gwalior is present in person.

Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior and Mr. Maan Singh Bhadoriya, Sub Inspector, Police Station Bhitwar, District Gwalior have filed their response.

2. The relevant portion of the response submitted by Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior reads as under:-

3. यह कि, उक्त आदेश के पालन निवेदन है कि मेरी पदस्थापना थाना प्रभारी थाना भितरवार जिला ग्वालियर के पद पर दिनांक 25.09.2018 को हुई थी।

4. यह कि, प्रार्थी की पदस्थापना होने पर उक्त अपराध की केस डायरी की विवेचना धारा 173 (8) के तहत लंबित होकर उप निरीक्षक श्री मानसिंह भदौरिया के द्वारा पूर्व से ही की जा रही थी।

5. यह कि, उक्त प्रकरण पंजीबद्ध होने के पश्चात प्रकरण की विवेचना उप निरीक्षक भगवान सिंह थाना

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भितरवार द्वारा की गई। दिनांक 23.08.2016 को उक्त अपराध की डायरी अग्रिम विवेचना हेतु उप निरीक्षक आर.पी. इंदौरिया को अग्रिम विवेचना हेतु प्राप्त हुई, श्री आर.पी. इंदौरिया उप निरीक्षक के द्वारा विवेचना के दौरान व्यक्तिगत डायरी जिसमें डॉ. अचल द्वारा दिये गये रूपये की प्राप्ति संबंधी लेख था, को उनके द्वारा दिनांक 10.10.2016 को जप्त किया गया।

6. यह कि, श्री आर.पी. इंदौरिया उप निरीक्षक थाना भितरवार जिला ग्वालियर की ओर से प्रकरण की विवेचना के दौरान दिनांक 16.03.2017 को आरोपी देवकिशन शर्मा, अनिल शर्मा की गिरफ्तारी हो जाने से उनके विरुद्ध विवेचना पूर्ण कर अभियोग पत्र क्रमांक 54/17 दिनांक 16.03.2017 को धारा 173 (8) दं.प्र.सं. के तहत विवेचना जारी रखते हुए सक्षम न्यायालय के समक्ष प्रस्तुत किया गया।

7. यह कि, उक्त जप्तशुदा डायरी में डी.के. शर्मा एवं सतीष शर्मा से उक्त डायरी में हस्ताक्षर थे, जिनके संबंध में तत्कालीन अनुसंधानकर्ता अधिकारी की ओर से डी.के. शर्मा की गिरफ्तारी होने के दौरान भी उससे नोटिस देकर किसी प्रकार से हस्ताक्षर नमूना नहीं लिया गया और जप्तशुदा डायरी के संबंध में अग्रिम विवेचना उक्त तत्कालीन अधिकारी की ओर से केस डायरी के अवलोकन से नहीं किया जाना स्पष्ट दर्शित हो रहा है।

8. यह कि, प्रकरण में तत्कालीन अनुसंधानकर्ता अधिकारी श्री आर.पी. इंदौरिया उप निरीक्षक द्वारा दिनांक 23.11.2017 तक विवेचना की गई है, उनके द्वारा उक्त केस डायरी में उल्लेखित पर्चों के अवलोकन से जप्तशुदा डायरी के संबंध में अग्रिम विवेचना किये जाने का किसी प्रकार का उल्लेख नहीं किया गया है।

9. यह कि, अग्रिम विवेचना उप निरीक्षक वीर सिंह जौनवार द्वारा की गई। उक्त जप्तशुदा डायरी के संबंध में उनके द्वारा भी वर्तमान में थाना भितरवार पर उपलब्ध केस डायरी का अवलोकन करने पर विवेचना नहीं की गई।

10. यह कि, वीरसिंह जौनवार के द्वारा प्रकरण की विवेचना के दौरान दिनांक 03.04.2018 को इस आशय का केस डायरी पर्चा में उल्लेख आरोपीगण की तलाश के संबंध में किया गया है।

11. यह कि, उक्त केस डायरी के अवलोकन से तत्कालीन थाना प्रभारी थाना भितरवार/निरीक्षक श्री तिमेश छारी द्वारा दिनांक 29.07.2018 को उपनिरीक्षक मानसिंह भदौरिया को फाईल कवर पर उक्त केस डायरी अग्रिम विवेचना हेतु दिया जाना अंकित है।

12. यह कि, उक्त दिनांक 29.07.2018 के पश्चात् वर्तमान तक केस डायरी विवेचना हेतु श्री मानसिंह भदौरिया उप निरीक्षक के पास रही है, जो मेरी पदस्थापना के पूर्व से ही उनको विवेचना हेतु दी गई थी। प्रकरण में मुझ प्रार्थी को पदस्थापना दिनांक से दिनांक 30.09.2019 तक प्रकरण में

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जप्तशुदा डायरी के संबंध में जानकारी नहीं थी और न ही अनुसंधानकर्ता अधिकारी की ओर से उक्त डायरी के संबंध में मेरे समक्ष तथ्य संज्ञान में लाये गये ।

13. यह कि, प्रकरण में दिनांक 01.10.2019 के आदेश के पालन में तत्कालीन विवेचक श्री आर.पी. इंदौरिया जिनके द्वारा उक्त व्यक्तिगत डायरी जप्त की गई थी, से जानकारी ली गई कि आपके द्वारा केस डायरी के साथ उक्त जप्तशुदा डायरी अनुसंधानकर्ता अधिकारी को नहीं दी गई है और केस डायरी के साथ जप्तशुदा डायरी संलग्न नहीं है। मुझ प्रार्थी द्वारा व्यक्तिगत रूप से श्री आर.पी. इंदौरिया को उक्त जप्तशुदा डायरी के संबंध में जानकारी ली गई। उक्त पर से उनके द्वारा बताया गया कि थाना पर रखी हुई अलमारियों की ड्रॉज में रखी है, उनमें देखा जाए तो उक्त डायरी मिल जाएगी। अलवारियों की ड्रॉज में तलाश कराई गई, तो संबंधित जप्तशुदा डायरी ड्रॉज में रखी हुई मिली। उक्त संबंध में रोजनामचा में रिपोर्ट अंकित की गई है, जिसकी प्रतियां प्रदर्श ए-1 है।

14. यह कि, उक्त डायरी के संबंध में अविलंब विवेचना की जाकर शीघ्र डायरी में जो हस्तलेख हैं, उनके संबंध में संबंधितों के नमूना सक्षम न्यायालय से अनुमति प्राप्त कर प्रकरण की विवेचना पूर्ण की जावेगी।

15. यह कि, प्रार्थी माननीय न्यायालय से क्षमा प्रार्थी है। प्रार्थी का यह भी निवेदन है कि उपरोक्तानुसार तथ्यों को दृष्टीगत रखते हुये उक्त जप्तशुदा डायरी के संबंध में जानकारी नहीं थी न ही प्रार्थी की किसी भी फरियादी पक्ष अथवा आरोपी पक्ष को लाभ पहुंचाने की मंशा नहीं थी और माननीय न्यायालय से यह भी प्रार्थना है कि उक्त डायरी की जांच रिपोर्ट प्राप्त हो जाने के पश्चात् ही यह स्पष्ट हो सकेगा की उक्त डायरी से किस पक्ष को लाभ प्राप्त हो सकता था या नहीं।

3. The similar explanation has been given by Mr. Maan Singh Bhadoriya, Town Inspector, Police Station Bhitwar, District Gwalior.

4. The reply submitted by Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior and Mr. Maan Singh Bhadoriya, Sub Inspector, Police Station Bhitwar, District Gwalior are considered.

5. Along with the replies, the officers have annexed the copy of the Rojnamcha Sanha No.2 dated 1.10.2019 recorded at 7:00 AM, according to which on 1.10.2019 the Almirahs and drawers initially which were being used by Mr. R.P. Indoriya was checked. However, the "personal diary" of the complainant was not found. It is also mentioned that the officer had a discussion with R.P. Indoriya. After a detailed order was passed by this Court on 1.10.2019, another Rojmancha Sanha has been recorded at Srl. No.18 on

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1.10.2019 itself at 17:53. In the Rojnamcha Sanha it is mentioned that earlier Investigating Officer Mr. R.P. Indoriya has informed ASI Mahesh Kumar Maurya about the “personal diary” of the complainant and, accordingly, the lock of the drawer was broke open and one “personal diary” having black colour cover which was having the details of money transactions acknowledged by Mr. D.K. Sharma and Satish Sharma was seized. It is also mentioned that the said diary was not in a sealed cover but it was found in an open condition.

6. When a specific question was put to Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior as to whether the drawer was broke open in his presence or not, then he submitted that before he could reach to the Police Station, the drawer was already broke open by ASI Mahesh Kumar Maurya and in fact Mr. Mahesh Kumar Maurya had handed over the said “personal dairy” to him. When Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior was asked to reconcile between the stand which he has taken in his reply and the Rojmancha Sanha No.2 dated 1.10.2019, then he kept silent and could not explain that when all the drawers of Mr.R.P. Indoriya were already checked at 7:00 in the morning on 1.10.2019, then how the “personal diary” of the complainant could be found in one of the said drawers.

7. Mr. Maan Singh Bhadoriya, Sub Inspector, Police Station Bhitwar, District Gwalior who is also present in the Court has stated that it was Mr. Pankaj Tyagi who had a talk with Mr. R.P. Indoriya and Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior had informed Mr. R.P. Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior that this Court has taken cognizance of the fact that “personal diary” is missing, therefore, now the case has assumed importance, thus, the diary should be handed over/traced. However, it is submitted by Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior that he never called Mr. R.P. Indoriya. On the contrary, in the afternoon Mr. R.P. Indoriya himself called him and informed that the diary has been located. Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior was directed to inform the time when he was given information about the missing “personal diary”, then he kept silent. Thereafter, he was asked as to whether, he has deleted the call details from his mobile or not, then he conceded that he has not deleted any call details from his mobile and, accordingly, he was directed to check the mobile and inform the Court about the timings of the phone call made by Mr. R.P. Indoriya. Even after taking about 15 minutes, Mr. Pankaj

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Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior was not in a position to point out the time on which Mr. R.P. Indoriya had informed him about the recovery of missing “personal diary” of the complainant.

8. Under these circumstances, this Court is of the view that the police officers are not telling the truth before this Court and they are trying to hide something.

9. The crux of the matter is that although the “personal diary” of the complainant has been recovered but still the same has not been filed before the Trial Court. Even no application has been filed for taking the specimen signatures of the accused persons. Thus it is clear that the police officers are still trying to protect the accused persons.

10. On 1.10.2019 Mr. Maan Singh Bhadoriya, Sub Inspector, Police Station Bhitwar, District Gwalior was directed to explain as to why he did not try to locate the “personal diary” because in the charge sheet which was initially filed against the co-accused persons, the details of the “personal diary” of the complainant were mentioned in the list of the documents/articles which were seized but in the list of documents which were filed before the Trial Court, the “personal diary” did not find place. On 1.10.2019, it was admitted by Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior that whenever the documents are seized during the investigation, then they are kept in the Malkhana and he had already checked the register of Malkhana and there was no reference of the deposit of the “personal diary” of the complainant in the said Malkhana. Thus it is clear that Mr. R.P.Indoriya played an important role in protecting the accused persons.

11. It is also not out of place to mention here that initially no charge sheet was filed against the applicant and the investigation was kept pending under Section 173(8) of Cr.P.C.. However, the importance of the matter is that although the case diary containing the acknowledgement of receipt of money was with the police and the police had sufficient incriminating material against the applicant but still not only the investigation was kept pending against the applicant but the “personal diary” of the complainant was kept in dark in order to protect the accused persons. Further Mr. R.P. Indoriya has been transferred to different police station, however, still Mr. R.P. Indoriya was in a position to inform the police personnel about the place where the “personal diary” was kept. This was done only after a detailed order dated 1.10.2019 was passed and prior to that, every attempt was being made by Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior, Mr. Maan Singh Bhadoriya, Sub Inspector, Police Station

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Bhitarwar, District Gwalior and Mr. R.P. Indoriya to keep the “personal diary” of the complainant out of the reach of the Courts. At the same time, Mr. Ramesh Shakya who was posted as Town Inspector at the relevant time also did not keep a watch over the activities of Mr. R.P. Indoriya specifically when he had also signed the final charge sheet which was filed against the co-accused persons. Thus Mr. Ramesh Shakya, Town Inspector was also aware of the fact that some “personal diary” of the complainant has been seized but it has not been made a part of the charge sheet and still he did not try to enquire from the Investigating Officer i.e. Mr. R.P. Indoriya as to why the said “personal diary” has been kept out of investigation. Further some documents were also sent to the handwriting expert but still the “personal diary” of the complainant was not sent to the handwriting expert. Thus it is clear that Mr. R.P. Indoriya, Mr. Ramesh Shakya, the then Town Inspector and Mr. Maan Singh Bhadoriya the subsequent Investigating Officer have done their best to screen the offender by keeping an incriminating material away from the Courts which contains the acknowledgment of receipt of money by the applicant. At the same time, Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitarwar, District Gwalior has tried to mislead the Court by making self-contradictory statement and thus every attempt has been made by Mr. Pankaj Tyagi to protect the guilty police officers.

12. Manipulating the evidence is a serious misconduct on the part of the police personnel and this is required to be brought to the knowledge of Director General of Police, State of M.P., Bhopal.

13. Accordingly, the Superintendent of Police, Gwalior as well as the Panel Lawyer are directed to supply a copy of this order to the Director General of Police, State of M.P., Bhopal.

14. The Director General of Police, State of M.P., Bhopal is directed to file the affidavit on the following issues:

(i) Whether, the manipulation done by the police officers is a serious misconduct or is a routine, normal negligence?

(ii) Whether, the attempt to keep the “personal diary” of the complainant away from the notice of the Court by not filing the same along with the charge sheet was an attempt to screen the offender or not?

(iii) Whether, the above-mentioned, conduct of the police officers required departmental enquiry as well as their prosecution for criminal case or not?

15. The affidavit be filed within two weeks.

16. Heard the learned counsel for the parties on the question of grant of bail.

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17. This is third application filed under Section 439 of Cr.P.C. for grant of bail.

18. The applicant has been arrested on 18.3.2019 in connection with Crime No.292/2014 registered by Police Station Bhitwar, District Gwalior for offence under Sections 406, 419, 420, 467, 468, 471, 120-B of IPC.

19. It is submitted by the counsel for the applicant that although during investigation, the police might have seized the "personal diary" of the complainant but since the same was not filed along with the charge sheet, therefore, it is clear that the police has not relied upon the said "personal diary" of the complainant. Further, it is submitted that at the time when the previous bail application was argued, the conduct of the police authorities in keeping the photocopy of the said "personal diary" in the case diary was unwarranted. It is further submitted that from the "personal diary" it appears that more than 70,00,000/- were paid by the complainant but she has made complaint with regard to making payment of Rs.35,00,000/- only. Thus it is clear that the complainant has suppressed certain aspects or an amount of Rs.35,00,000/- was returned back by the applicant. However, these facts have not been explained by the complainant. It is further submitted that if the police has chosen not to file the "personal diary" of the complainant, then the complainant cannot be made to suffer because of the misconduct of the police personnel.

20. *Per contra*, it is submitted by the counsel for the complainant that in fact the police personnel have tried to save the applicant and that is why initially they did not file the charge sheet against the applicant, in spite of the fact that they were having documentary material against the applicant but they deliberately did not make the "personal diary" of the complainant as a part of the investigation and they did not sent the said "personal diary" of the complainant to the handwriting expert. Initially the complainant was under an impression that since the "personal diary" has been seized, therefore, it might have been sent to the handwriting expert but only after the reply is submitted by the police personnel it has come to their knowledge that even the "personal diary" of the complainant was not deliberately made a part of the charge sheet.

21. It is submitted that the entire attempt of the police authorities was to save the accused/applicant, therefore, it is clear that the applicant is an influential person who had succeeded in manipulating the investigation by removing the incriminating documentary evidence from the investigation. It is further submitted that this misdeeds of the police personnel have come to light only because the Trial Court

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had exercised its jurisdiction under Section 319 of Cr.P.C.

22. Heard the learned counsel for the parties.

23. This Court by order dated 23.4.2019 has already dismissed the bail application on merits. At the time when M.Cr.C. No.16076/2019 was being argued, the photocopy of the “personal diary” of the complainant was available in the case diary. Even today, the photocopy of the “personal diary” of the complainant is available in the case diary. Thus it is clear that the police officers were aware of the fact that the “personal diary” of the complainant contains the acknowledgment of the applicant but still they did not include the “personal diary” of the complainant in the investigation and did not file it along with charge sheet and even it was not kept in the Malkhana and according to Mr. Pankaj Tyagi, Town Inspector, Police Station Bhitwar, District Gwalior the same was found in one of the drawer of almirah whereas in the Rojnamcha Sanha No.2 dated 1.10.2019 which was recorded at 7:00 AM, it was specifically mentioned that all the Almirahs and Drawers were checked but the “personal diary” was not found. Thus it is clear that “personal diary” of the complainant was not even kept in the police station but only after a serious view was taken by this Court on 1.10.2019, the “personal diary” of the complainant has seen the light of the day. Thus the police officers were unauthorisedly keeping the “personal diary” of the complainant with them.

24. Now the only question for consideration is that who would be the beneficiary of such an act of the police personnel. The complainant herself has provided her “personal diary” to the police which contains the acknowledgment given by the applicant. Thus, by not making the “personal diary” as a part of the charge sheet, the complainant was certainly not going to get any advantage.

25. The only conclusion which can be drawn is that the entire manipulation was done by the police officers in order to protect and give undue advantage to the applicant. Thus it is clear that the applicant had earlier manipulated the investigation and under these circumstances this Court is of the considered opinion that it is not a fit case for grant of bail.

26. The application fails and is hereby **dismissed**.

27. **The Office is directed to list this case on 21.10.2019 for consideration of the affidavit of the Director General of Police, State of M.P., Bhopal.**

28. Let two typed copies of this order be given to Panel Lawyer for sending the same to the Director General of Police, State of M.P., Bhopal and to Superintendent of Police, Gwalior, who shall communicate the order to Director

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General of Police, State of M.P., Bhopal.”

12. Thereafter on 21-10-2019, following order was passed :
 “Shri Sidharth Sharma, Counsel for the applicant.
 Shri R.K.Upadhyay, Public Prosecutor for the respondent/State.
 Shri Naveen Bhargava, Counsel for the complainant.
 Heard on I.A. No. 8484/2019 filed by the State for extension of time.
 It is mentioned in the application that the Director General of Police is in abroad on official tour, therefore, some time may be granted to comply the order dated 04/10/2019. For the reasons mentioned in the application, the same is allowed.
 Time is extended.
 Let the affidavit be filed by 02/11/2019.
 List this case in the **week commencing 04/11/2019.**”
13. Thereafter, on 20-11-2019, following order was passed :
 “None for the applicant.
 Shri P.S.Raghuwanshi, Public Prosecutor for the respondent/State.
 Shri Naveen Bhargava, Counsel for the complainant.
 The compliance report dated 31/10/2019 is perused.
 From compliance report, it appears that in a preliminary inquiry, the Additional Superintendent of Police had found that certain police officers are in guilty of dereliction of their duties. In compliance report, it is mentioned that the departmental inquiry is under contemplation against the erring officers. It is also mentioned in the compliance report that the inquiry has not revealed any kind of criminal conspiracy by the erring officers. However, the counsel for the State could not point out any finding by the inquiry officer to the effect that no criminal conspiracy was found by the erring officers. Thus, the observation made in the compliance report appears to be de hors the inquiry report. Accordingly, the Director General of Police is directed to file a fresh compliance report on the following issues:-
 “1. Further progress with regard to the departmental inquiry proposed against the erring officers.
 2. What are the findings with regard to the question of conspiracy.
 3. It may also be clarified that when it has been found that the police officers had

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deliberately not filed copy of the "personal diary" of the complainant in spite of fact that it was seized, then how it can be said that there was no criminal conspiracy on the part of the erring police officers.”

Let a fresh compliance report be filed within a period of one week.

List this case **on 28/11/2019**.

Let a typed copy be supplied to the counsel for the State for communication of the same to the Director General of Police for necessary information and compliance.”

14. Thereafter, on 28-11-2019, following order was passed :

“None for the applicant.

Shri Sanjay Bahirani, Public Prosecutor for the respondent/State.

Shri Naveen Bhargava, Counsel for the complainant.

Shri Bahirani seeks permission to file the supplementary affidavit of the Director General of Police, the permission granted.

It is submitted by Shri Bahirani that although, in the affidavit dated 31/10/2019 filed by the Director General of Police, it was mentioned that the inquiry has not revealed any kind of conspiracy by the erring officers but it appears that the said above fact mentioned in the said affidavit was incorrect and accordingly, now a SIT has been constituted for verifying that whether there was any criminal conspiracy by the police officers in with holding incriminating material or not.

It is submitted by Shri Bahirani that the SIT has been constituted on 26/11/2019 and the SIT would conclude its inquiry and would submit its finding within a period of fifteen days from today.

Accordingly, list this case **on 26/12/2019** for further orders.”

15. Thereafter, on 30-12-2019, following order was passed :

“None for the applicant.

Shri H.D.Mishra, Public Prosecutor for the respondent/State.

In the first half of the day, Shri Mishra had made a statement that status report dated 13.12.2019 has been filed

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and prima facie, it has been found that there was no intentional or deliberate act on the part of the Investigating Officer.

Accordingly, the Superintendent of Police, Gwalior was directed to remain present to explain the facts. Shri Navneet Bhasin, Superintendent of Police, Gwalior along with Shri Pankaj Pandey, Additional Superintendent of Police, Gwalior are present before the Court.

It is submitted by Shri Bhasin that in fact no final conclusion has been drawn so far with regard to the criminal intention on the part of erring officer, but he may be granted some time to conclude the investigation.

In presence of Shri Pandey, Additional S.P. who is conducting the enquiry, case diary was seen and several lapses were pointed out which were never seen by Additional S.P. so far. It was found that although the Investigating Officer had filed an application before the Court for initiating proceeding under Section 82/83 of Cr.P.C. and even the details of the property of the accused Satish Sharma were collected from the concerning Tahsildar, but it appears that no further action was taken by the said Investigating Officer in that regard and in spite of initiation of proceeding under Section 82/83 of Cr.P.C., the charge-sheet was filed against Satish Sharma by keeping it pending under Section 173 (8) of Cr.P.C. on the ground of collection of evidence, whereas the "personal diary" of the complainant, which purportedly contains the acknowledgment of receipt of money given by Satish Sharma, was never produced before the Court and it was never deposited in the Malkhana and as per the Rojnamcha Sanha No. 2 dated 01.10.2019 which was recorded at 07:00 AM, almirah and drawers of the police station were checked, but the personal diary was not found, however, later on, personal diary of the complainant was produced by saying that it was kept in the one of the drawers and same has been collected on the telephonic instructions given by the then Investigating Officer.

It is submitted by Shri Pandey, Additional S.P. that during enquiry it has come on record that although the Police Officers had already recovered the personal diary of the complainant by breaking open the drawer, but they could not identify the said diary, therefore, a wrong entry was made in the Rojnamcha Sanha No. 2 on 01.10.2019 to the effect that diary was not found.

The explanation given by Shri Pandey appears to be non-acceptable specifically when the **police authorities were looking for the said "personal diary" only.**

At this stage, it is submitted by Shri Bhasin, S.P., Gwalior that four days' time may be granted to conclude the

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enquiry so as to find out that whether there was any criminal conspiracy on the part of the Investigating Officer or not and whether they are liable to be prosecuted or not ?

Time granted.

List this case on **06.01.2020.**”

16. Thereafter, on 6-1-2020, following order was passed :

“None for the petitioner even in the second round.

Shri Purushottam Pandey, learned Public Prosecutor for the State.

It is submitted by Shri Pandey that compliance report has been filed and considering the conduct of S.I. R.P.Indoriya, Satish Sharma and Devkrishan Sharma Crime No.07/2020 has been registered against them in Police Station Bhitwar, District Gwalior.

Shri Munish Rajoriya, D.S.P. Head Quarter Gwalior is also present in person.

It is submitted by Shri Rajoriya that the personal diary of the complainant has not been filed before the Trial Court so far. However, as the trial is fixed for tomorrow, therefore, the same shall be filed before the Trial Court positively.

In view of the submissions made by Shri Rajoriya as well as in view of the compliance report submitted by State, this Court is of the considered opinion that at present nothing survives in the bail application. The bail application of the applicant has already been rejected by this Court by order dated 04/10/2019. However, the case was kept pending for considering the conduct of the investigation officer. Accordingly, the proceedings are hereby dropped.

However, Shri Rajoriya is directed to file the certified copy of the order of the Trial Court before the Principal Registrar of this Court by **08/01/2020** pointing out that the personal diary of the complainant, has been filed before the Trial Court.”

17. From the above mentioned orders, it is clear that the police officers were out and out trying to protect the respondent no.4, by not filing the “personal diary” of the complainant along with the charge sheet.

18. It appears that since, this Court had taken a very serious view of the matter, as the investigating officer, by withholding a very important piece of evidence, had tried to protect the accused persons, therefore, the

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prosecution filed an application under Section 173(8) of CrPC, seeking permission for further investigation. The copy of the application has not been placed on record.

19. However, from the impugned order, it appears that in the light of the order dated 28-11-2019, the prosecution prayed that since, direction has been given to the police as well as the affidavit of the Director General of Police has also been obtained and the role of the investigating officer in withholding the personal diary is also required to be investigated as well as further investigation in the light of “personal diary” of the complainant is also necessary, therefore, permission was sought for further investigation.

20. However, unfortunately, the Trial Court, without considering the seriousness of the matter and without considering that the matter was still pending before the High Court relating to illegal withholding of “personal diary” of the complainant, and by conveniently ignoring the above mentioned orders passed by this Court, rejected the application filed under Section 173(8) of Cr.P.C. and refused to grant permission for further investigation.

21. Challenging the order passed by the Court below, it is submitted by the Counsel for the State that in fact, the investigating officer, deliberately withheld the “personal diary” of the complainant, with a solitary intention to give undue advantage to the respondent no.4, and in spite of the fact that documentary evidence was already collected against the respondent no.4, he did not file the charge sheet on the ground

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that further investigation is pending against respondent no.4. Only during the course of arguments on application for bail, it was found that the investigating officer has deliberately not filed the “personal diary” of the complainant along with the charge sheet. It is submitted that in the light of the order dated 28-11-2019 passed by this Court in M.Cr.C. No. 37198 of 2019, it was necessary to investigate into the conduct of the investigating officer in deliberately withholding the “personal diary” of the complainant and in view of the fact that “personal diary” of the complainant was recovered from the police station itself, therefore, the Trial Court should not have rejected the application for further investigation. It is further submitted that once, it came to light that the investigating officer has played fraud on the Court by deliberately withholding an important piece of evidence, then such fraudulent act should not be protected by the Court by denying permission for further investigation.

22. Shri Praveen Bhargava, Counsel for the complainant/intervener, also criticized the order of the Trial Court, being contrary to law.

23. As already observed by this Court in its order dated 29-6-2021, Shri Anoop Gupta, Counsel for the respondent no.3 had stated that so far as the respondent no.1, who is the son of respondent no.3 and the respondent no.3 are concerned, they have nothing to do with the controversy involved in the present application.

24. Shri J.P. Mishra, Counsel for respondent no. 4 and 5 has supported the order passed by the Trial Court.

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25. Heard the learned Counsel for the parties.

26. It is an unfortunate case, where the Trial Court has taken the facts of the case in a most casual manner and could not understand the gravity of the misconduct of the investigating officer.

27. The Trial Court was already aware of the order dated 28-11-2019 passed by this Court in M.Cr.C. No. 37198 of 2019. The Trial Court was also aware of the fact that the said case was still pending before the High Court. Under these circumstances, the Trial Court must have waited for the final outcome of M.Cr.C. No. 37198 of 2019, but by rejecting the application filed under Section 173(8) of CrPC, the Trial Court, not only became part of fraud played by the investigating officer, but also tried to nullify the various orders passed by this Court in M.Cr.C. No. 37198 of 2019. This act of the Trial Court is a clear example of violation of judicial discipline.

28. It is also very unfortunate that when M.Cr.C. No. 37198 of 2019 was taken up for further hearing on 30-12-2019, none of the parties brought the impugned order to the notice of this Court. On the contrary, on 6-1-2020, a statement was made by the police officers, that the “personal diary” shall be filed before the Trial Court on the next date of hearing.

29. From the order dated 7-1-2020, it is clear that the “personal diary” of the complainant was filed before the Trial Court which has been taken on record.

30. The different orders passed in M.Cr.C. No. 37198/2019 have

already been reproduced. With great difficulties, the “personal diary” of the complainant, saw the light of the day, although every effort was made by the police authorities to suppress the same. An undertaking was also given by the police authorities, that they shall file the “personal diary” of the complainant before the Trial Court, and the said undertaking was accepted by this Court. Now the question for consideration is that when the charge sheet has been filed, then whether there is any limitation on the power of the High Court to direct for further investigation or not?

31. The Supreme Court in the case of **State of Punjab v. CBI**, reported in **(2011) 9 SCC 182** has held as under :

22. Section 482 CrPC, however, states that nothing in CrPC shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under CrPC or to prevent the abuse of the process of any court or otherwise to secure the ends of justice. Thus, the provisions of CrPC do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order of the court or to prevent the abuse of any process of the court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 CrPC, therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 CrPC for fresh investigation or reinvestigation if the High Court is satisfied that such fresh investigation or reinvestigation is necessary to secure the ends of justice.

23. We find support for this conclusion in the following observations of this Court in *Mithabhai Pashabhai Patel v. State of Gujarat* cited by Mr Dhavan: (SCC p. 337, paras 13 & 15)

“13. It is, however, beyond any cavil that ‘further investigation’ and ‘reinvestigation’ stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a ‘State’ to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no

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superior court would ordinarily issue such a direction. Pasayat, J. in *Ramachandran v. R. Udhayakumar* opined as under: (SCC p. 415, para 7)

‘7. At this juncture it would be necessary to take note of Section 173 of the Code. From a plain reading of the above section it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation.’

A distinction, therefore, exists between a reinvestigation and further investigation.

* * *

15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The precognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code.”

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

32. Thus, it is clear that even after the charge sheet is filed, the High Court in exercise of its power under Section 482 of Cr.P.C. can always direct for further investigation.

33. Further, the police is always having a power to conduct further investigation. The Supreme Court in the case of **State of A.P. v. A.S. Peter**, reported in (2008) 2 SCC 383 has held as under :

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9. Indisputably, the law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out of a further investigation even after filing of the charge-sheet is a statutory right of the police. A distinction also exists between further investigation and reinvestigation. Whereas reinvestigation without prior permission is necessarily forbidden, further investigation is not.

10. In *R.P. Kapur v. Sardar Pratap Singh Kairon* this Court laid down the law in the following terms: (AIR p. 1121, para 10)

“10. ... The Additional Inspector General of Police to whom Sethi’s complaint was sent was, without doubt, a police officer superior in rank to an officer in charge of a police station. Sardar Hardayal Singh, Deputy Superintendent of Police, CID, Amritsar, was also an officer superior in rank to an officer in charge of a police station. Both these officers could, therefore, exercise the powers, throughout the local area to which they were appointed, as might be exercised by an officer in charge of a police station within the limits of his police station.”

It was further held: (AIR p. 1122, para 10)

“10. ... If the police officer concerned thought that the case should be investigated by CID—even though for a reason which does not appeal to us—it cannot be said that the procedure adopted was illegal.”

11. It is not correct to contend that the investigation was taken up by a different agency. CID is a part of the investigating authorities of the State. A further investigation was directed by the Additional Director General of Police. Section 36 of the Code of Criminal Procedure, 1973 empowers a police officer, superior in rank to an officer in charge of a police station, to exercise the same powers throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

12. It was, therefore, permissible for the higher authority to carry out or direct further investigation in the matter.

13. This aspect of the matter is covered by a decision of this Court in *State of Bihar v. J.A.C. Saldanha* wherein it was held: (SCC p. 568, para 19)

“19. ... This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). Therefore, the High Court was in error in holding that the State Government in exercise of the power of superintendence under Section 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section 156(2) that an

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investigation by an officer in charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on the ground that such investigating officer had no jurisdiction to carry on the investigation; otherwise that provision would have been a short answer to the contention raised on behalf of Respondent 1.”

(See also *Upkar Singh v. Ved Prakash*.)

14. In *Ram Lal Narang* this Court was concerned with a case where two conspiracies were alleged; one being part of a larger conspiracy. Two investigations were carried out. This Court, while opining that further investigation is permissible in law, held that the Magistrate has a discretion in the matter to direct further investigation, even if he had taken cognizance of the offence, stating: (SCC pp. 337-38, para 20)

“20. ... The criticism that a further investigation by the police would trench upon the proceeding before the court is really not of very great substance, since whatever the police may do, the final discretion in regard to further action is with the Magistrate. That the final word is with the Magistrate is sufficient safeguard against any excessive use or abuse of the power of the police to make further investigation. 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.”

15. While acknowledging the power of the police authorities to carry out further investigation in terms of Section 173 of the Code of Criminal Procedure, an observation was made therein to the following effect: (*Narang case*, SCC p. 338, para 21)

“21. ... In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.”

16. Even in regard to an independent investigation undertaken by the police authorities, it was observed: (*Narang*

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*case*¹, SCC p. 338, para 21)

“21. ... In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation.”

The Supreme Court in the case of **Hasanbhai Valibhai Qureshi v.**

State of Gujarat, reported in (2004) 5 SCC 347 has held as under :

7. By order dated 19-3-2004 direction was given to the Director General of Police, Gujarat to submit a report as to whether the action taken by the investigating officer was proper and whether there was need for further investigation. In the report submitted by the Director General of Police, it has been fairly accepted that the deletion of Section 120-B IPC does not appear to be proper. In any event the Court of Additional Sessions Judge of the 10th Fast Track Court at Veraval has framed charge in Sessions Case No. 64 of 2003 on 22-3-2004 against three of the accused persons under Section 120-B IPC. It has been stated that though retention of Section 120-B IPC was desirable, but nothing more is required to be done in view of the fact that the Sessions Judge has already framed charge under the section. It has been stated that there were a few lapses in investigation and inquiry is being caused against the investigation officer with a view to initiate suitable departmental action. So far as the desirability of further investigation is concerned, it is stated that the case has been fixed for day-to-day hearing from 5-4-2004 to 15-4-2004 and if further investigation is done, it would prove infructuous and would only delay the process of trial unnecessarily.

* * * *

11. Coming to the question whether a further investigation is warranted, the hands of the investigating agency or the court should not be tied down on the ground that further investigation may delay the trial, as the ultimate object is to arrive at the truth.

12. Sub-section (8) of Section 173 of the Code permits further investigation, and even dehors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognizance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not

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satisfied of the propriety or the manner and nature of investigation already conducted.

13. In *Ram Lal Narang v. State (Delhi Admn.)* it was observed by this Court that further investigation is not altogether ruled out merely because cognizance has been taken by the court. When defective investigation comes to light during course of trial, it may be cured by further investigation, if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that the police should inform the court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation is as much relevant, desirable and necessary as an expeditious disposal of the matter by the courts. In view of the aforesaid position in law, 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. We make it clear that we have not expressed any final opinion on the merits of the case.

34. Thus, it is clear that where the investigating officer has deliberately conducted a faulty investigation and certain lapses were left deliberately, then a direction for further investigation can be given.

35. Further fair trial and fair investigation is also a fundamental right of a victim. The Supreme Court in the case of **Nirmal Singh Kahlon v.**

State of Punjab, reported in **(2009) 1 SCC 441** has held as under :

28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India. But the State has a larger obligation i.e. to maintain law and order, public order and preservation of peace and harmony in the society. A victim of a crime, thus, is equally entitled to a fair investigation. When serious allegations were made against a former Minister of the State, save and except the cases of political revenge amounting to malice, it is for the State to entrust one or the other agency for the purpose of investigating into the matter. The State for achieving the said

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object at any point of time may consider handing over of investigation to any other agency including a Central agency which has acquired specialisation in such cases.

36. Fair investigation is the basic requirement of criminal law. The Supreme Court in the case of **Vinubhai Haribhai Malaviya v. State of Gujarat**, reported in **(2019) 17 SCC 1** has held as under :

18. It is clear that a fair trial must kick off only after an investigation is itself fair and just. The ultimate aim of all investigation and inquiry, whether by the police or by the Magistrate, is to ensure that those who have actually committed a crime are correctly booked, and those who have not are not arraigned to stand trial. That this is the minimal procedural requirement that is the fundamental requirement of Article 21 of the Constitution of India cannot be doubted. It is the hovering omnipresence of Article 21 over CrPC that must needs inform the interpretation of all the provisions of CrPC, so as to ensure that Article 21 is followed both in letter and in spirit.

37. When a Court comes to a conclusion that the investigating officer has deliberately suppressed a material evidence which was already collected during the pendency of the investigation, then such conclusion can be said to be discovery of new fact. Further, the Court should try to conduct a fair trial and at the same time, fair investigation is also the paramount duty of the investigating officer. Whenever, it is found that the investigating officer has investigated the matter in a most malafide manner with oblique motive and has gone to the extent of withholding important piece of evidence, then the Courts cannot close their eyes and cannot promote and encourage the investigating officers to indulge in such corrupt practice. The Courts cannot become a part of the illegality committed by the investigating officer, by refusing to grant permission for further investigation. It is once again clarified that even if the charge

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sheet has already been filed, but still the prosecution can conduct further investigation. Further, if it is found that the investigating officer had deliberately withheld the “personal diary” of the complainant, then he can also be prosecuted in the present case with the aid of Section 120-B as well as for offence under Section 201 of I.P.C.

38. With heavy heart, it is once again observed, that the Trial Court took the matter in a most casual manner and did not honor the different orders passed by the High Court in M.Cr.C. No. 37198/2019 as well as ignored the powers of the police to conduct further investigation, therefore, refusal to grant permission to the police to conduct further investigation cannot be given the stamp of approval.

39. Under these circumstances, the 7-12-2019 passed by 1st A.S.J., Dabra, Distt. Gwalior in S.T. No.26/2017 is hereby **set aside**. The application filed by the prosecution under Section 173(8) of Cr.P.C. is allowed. The police is granted permission to conduct further investigation in the light of different orders passed by this Court in M.Cr.C. No. 37198 of 2019. It is made clear that since, the “personal diary” of the complainant has already been filed before the Trial Court, therefore, the same shall be treated as part of the Charge sheet/supplementary charge-sheet filed against the accused persons.

40. The police must complete the further investigation within a period of 3 months from today, and shall file its report before the Trial Court positively.

41. Needless to mention here, that if any further examination of the

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prosecution witness, in the light of the “personal diary” of the complainant is required, then the Trial Court shall *suo motu* recall them, by exercising its power under Section 311 of Cr.P.C.

42. With aforesaid observations, the application is **Allowed**.

(G.S. AHLUWALIA)
Judge

Arun*