MHPU010179612021

Common order below Exh. 128 and 152 in Spl. Case No. 921/2021

The Investigating Officer has filed a report under Sec.169 of Cr.P.C. (Exh.128) on 17/03/2025, stating that there is no evidence against the accused No.6- Jaydeep Taware to prosecute him in this crime. The report was taken on record and the entire investigating papers were called, as they were not submitted along with the report. The notice was issued to the informant calling say on the said report. This was the third time such report was submitted. The informant filed her protest petition (Exh.152) against this report on 08/08/2025. They are being decided by this common order.

2. The FIR was lodged by the informant Rohini Taware against 6 accused to Baramati Taluka Police Station vide C.R.No.350/2021 under Sec.307,120-B, 504, 506, under Sec.3(25),27,4(25) of the Arms Act. The permission to invoke the provisions of MCOCA against the accused No.1 to 5 was sought under Sec.23(1) (a) which was granted and they were prosecuted under Sec.3(1)(ii), 3(4) of the MCOCA.

3. During investigation of this crime, the accused No. 6- Jaydeep Taware was arrested on 06/07/2021. The Investigating

Officer filed report under Section 169 of Cr.P.C. on 21/07/2021, stating that no *prima facie* involvement of the accused Jaydeep Taware in the alleged crime has been disclosed. The informant filed protest petition (Exh.17) against the said report. By hearing both the sides, my learned predecessor, by order dated 16/08/2021, accepted the protest petition and refused to accept the report filed u/s 169 of Cr.P.C. He directed the Investigating Officer to carry further investigation considering the material against the accused No. 6, as mentioned in the order. The accused No.6 was on interim bail and he was ordered to be surrendered before the investigating officer on or before 18/08/2021.

4. It was *inter alia* observed by this Court in the order (Exh.17) in para 10 to 12 thus-

> "10] I have considered these submissions. I had gone to the case diary and entire investigating papers. It is not disputed that the complainant Rohini Taware lodged an FIR on 01/06/2021 about the alleged incident of firing upon her husband. She named about 3 persons and 1 unknown person in the FIR. The name of accused No. 6 is not figured in the FIR. It is to be noted that, on 19/06/2021 the statement of injured Raviraj Taware came to be recorded. In his statement, he narrated the political background of accused No. 6, himself, his wife (complainant) and details of previous enmity. It is not disputed that, prior to this incident, there was 2 NC complaints i.e. NC No. 64/2021 dated 16/01/2021 and NC No. 196/2021 dated

15/02/2021 lodged by the injured against accused No. 6 and others. Those complaints established the strong motive against the accused No. 6 to commit the offence of conspiracy. The investigating officer in his report contended that the mobile location of the injured and accused No. 6 was mismatched, therefore, involvement of accused No. 6 is not revealed to him in the alleged crime. The investigating officer recorded the statement of Pramila Lokhande, (Gaon-Kamgar Talathi) on dated 13/07/2021 and one Shailesh Dandavate on 05/07/2021. In the statements of both these witnesses, there is reference of accused No. 6 revealed about putting of the political pressure in their activities.

11] It is admitted fact on record, on 06/07/2021 the accused No. 6 came to be arrested in connection with the alleged crime. He was sent in police custody for 8 days, and suddenly on 22/07/2021, the report u/s 169 of Cr.P.C. to release the accused No. 6 is filed by I.O. It is to be noted that, the maximum limit for filing charge-sheet under MCOCA is upto 180 days. Within a span of 15 days of arrest of accused No. 6, I.O. filed report under Section 169 of Cr.P.C. stating that the evidence against accused No. 6 is deficient. At the very outset, I may note that, before completion of 180 days, the investigating officer despite having evidence against accused No. 6 filed discharge report i.e. 169 of Cr.P.C. which is premature in nature.

12] Considering the statement of injured, statements of Pramila Lokhande and Shailesh Dandvate and political influence of accused No. 6, at

> this juncture I find sufficient evidence on record against accused No. 6 as a conspirator in the commission of alleged crime. The report of I.O. is premature. The detailed investigation is required. I found substance in the Protest Petition filed by Complainant".

5. The accused No. 6 preferred W.P. No. 3207/2021 before the Hon'ble High Court challenging the aforesaid order passed by this Court. The said Writ Petition was dismissed on 06/10/2021 noting detailed considerations regarding the material available against the accused No. 6. It was *inter alia* observed in para No. 20 and 21 that,

> "20] In the case at hand, the petitioner was arrested on 6th July, 2021 in the offence punishable under the MCOCA. His police custody was sought on the grounds which I have reproduced in paragraph 8 hereinabove. After going through the case-papers, the learned judge remanded him to the police custody till 14th July, 2021. Whereafter, he was remanded to magisterial custody for thirty days. All of sudden within fifteen days of petitioner's arrest, investigating officer moved an application, taking recourse to Section 169 of Cr.P.C. and sought release of the petitioner. The learned judge although granted interim bail to petitioner but after hearing the complainant in support of the protest petition and after going through the investigation record noted his satisfaction in paragraphs 10 and 12 of the impugned order that there is sufficient material against the petitioner-accused which was founded on material

i.e. statement of Raviraj Taware (Injured); statement of complainant; statement of public servant Pramila Lokhande, Shailesh Dandwate and details of previous enmity between the injured and gang leader, Prashant Popatrao More. According to the learned judge this material, prima facie, establishes strong motive against accused No. 6 (petitioner) and thus, noted; "There is sufficient evidence on record against accused No. 6 as conspirator in commission of alleged crime.

21] Thus, having gone through the material on record which *prima facie* reveals petitioner's complicity in the crime and in view of the satisfaction recorded by the learned judge, founded on the material produced by the investigating officer, the impugned order rejecting the report under Section 169 of the Cr.P.C. cannot be interfered in supervisory jurisdiction of this Court. In my view, the learned judge has not committed any error in exercise of the jurisdiction, the order impugned is not perverse. Thus, the order cannot be faulted with, Writ Petition is dismissed".

6. Feeling aggrieved thereby, the accused No. 6 filed Spl. Leave Petition (Cri.) No. (s) 8135/2021 before the Hon'ble Supreme Court. However, the said SLP was also dismissed on 29/10/2021 holing that the Hon'ble Spreme Court is not inclined to interfere with the impugned order. However, it was clarified that if the bail application is filed, the same would be considered on

merits and in accordance with law. Ultimately, the accused No. 6 was again arrested on 22/11/2021.

7. The Investigating Officer thereafter, filed the charge-sheet against accused Nos. 1 to 5 but he again filed the report u/s 169 of Cr.P.C. on 03/12/2021 in favour of the accused No. 6 reiterating the stand that no incriminating material has been found against the accused No. 6 during investigation. The informant again filed protest petition (Exh.32) against the said report. My learned predecessor heard both the sides and by order dated 28/03/2022, he again accepted the protest petition and rejected the report u/s 169 of Cr.P.C. filed in favour of the accused No. 6. The Investigating Officer was again directed to carry further investigation on the basis of material pointed out in the order and file charge-sheet against the accused No. 6. It was *inter alia* observed in para 14 to 16 on Exh. 32 thus -

> "14] It is to be noted that, the investigating officer recorded the statement of Pramila Lokhande, (Gaon-Kamgar Talathi) on dated 13/07/2021 and one Shailesh Dandavate on 05/07/2021. In the statements of both these witnesses, there is reference of accused No. 6 revealed about putting of the political pressure in their activities.
>
> 15] It is pertinent to note that, the IO has ignored the investigation of N.C. No. 64/2021 dated 16/01/2021 and N.C. No. 196/2021 dated 15/02/2021 filed by the injured against accused No. 6 and others. Those offences clearly established a

strong motive against accused No. 6 to commit the offence of conspiracy. The provisions of MCOC Act clearly applied to accused No. 6. He is member of organized crimes syndicate headed by co-accused No.1 Prashant More. The investigating officer ignored the detailed statement of injured implicating accused No. 6 in the alleged crime. The videos loaded on social media, spreading threatening news in vicinity of village of injured itself goes to show the involvement of accused No. 6 in the crimes syndicate.

16] Considering the statement of injured-Raviraj Taware, statements of Pramila Lokhande and Shailesh Dandavate and political influence of accused No. 6, I find sufficient evidence on record against accused No. 6 as a conspirator in the commission of alleged crime. The stand taken by investigating officer that, the CDR analysis of accused No. 6, confessional statement of co-accused recorded u/s 18 of MCOCA and statement of witnesses u/s 164 of Cr.P.C. does not show the complicity of the accused No. 6 in the present crime is proved to be far from reality".

8. The accused No. 6 filed Cri. Appeal No. 1075/2021 against the said order. The informant and her injured husband filed Writ Petition No. 3595/2021 contending that the investigation of this crime has been conducted by three Investigating Officers but every time, the report under Section 169 of Cr.P.C. is being filed against the accused No. 6, so as to protect him even though the material against him has been pointed out by this Court and the observations of this Courts have been accepted upto the Hon'ble

Supreme Court. Thus, according to them, they have no trust on investigating agency that they would conduct the investigation in this crime fairly. They therefore, prayed that the investigation of the crime against accused No. 6 be handed over to CID.

9. The Hon'ble High Court decided both Cri. Appeal and Writ Petition with common order on 11/06/2024. The Hon'ble High Court found fault with the order of this Court directing the Investigating Officer to file chargesheet against the accused No.6 and that direction came to be set aside. However, the Hon'ble High Court reached to the conclusion that there would not be fair investigation at the hands of investigating agency against the accused No. 6 and the prayer of the informant and the injured deserves to be allowed. The Hon'ble High Court therefore, directed that the investigation against the accused No. 6 be transferred to CID, State of Maharashtra and it was further directed that the Addl. Director General of Police of State CID to appoint an officer not below the rank of Superintendent of Police and preferably from IPS cadre to investigate the present crime. The new Investigating Officer was directed to take into consideration the observations made by this Court in its orders dated 16/08/2021 and 09/12/2021 and the observations made by the Hon'ble Single Judge of the Hon'ble High Court in its judgment dated 06/10/2021 in W.P. No. 3207/2021 and also the observations made by the Hon'ble High Court in the said Cri. Appeal. It was also directed to

take into consideration to role, if any, played by Shri Ravindra Kale, as alleged by the informant and injured at the time of investigating the present crime. It was observed in para 16 thus-

> "16] As noted earlier and at the cost of repetition, we hasten to note that, the then investigating officer filed first report under Section 169 of Cr.P.C. within a period of 15 days from the date of arrest of appellant. The second report under Section 169 of Cr.P.C. has been filed within a period of about 11 days after the appellant was arrested for the second time. Perusal of second report under Section 169 of Cr.P.C. dated 2nd November, 2021 clearly reveals that, the concerned investigating officer except reproducing the facts of the case, has not given any detailed analysis of evidence, though was directed by the trial court by its order dated 16th August, 2021. In the report dated, 2nd December 2021 filed under Section 169 of Cr.P.C., the investigating officer has exhibited audacity to say that there is no evidence at all against the appellant and has conveniently overlooked the observations made by the learned Single Judge of this court. Likewise, perusal of Affidavit-in-Reply dated 31/01/2022 of Shri Ganesh P. Ingale, Sub. Div. Police Officer, Baramati, clearly discloses that, he has also not considered the observations made by this court which have been upheld by the Supreme Court. He has also given more importance to CDR record than, the statements of eye-witnesses for forming a conclusion that, no case of conspiracy is made out. Though this court has categorically observed that, there is sufficient material against the appellant to

> infer his complicity in the crime, Mr. Ingale on oath has stated that, he has not found any connection of the appellant with the incident dated 31st May 2021 or conspiracy thereof. It appears to us that, second report under Section 169 of Cr.P.C. has been filed only to protect the appellant and nothing else. We find substance in the submission of the learned Advocate for the Petitioners that the statement of petitioner No. 2 i.e. injured has been conveniently disbelieved and irrelevant material is considered by the investigating officer only to give leverage to the appellant. After perusing entire record, we are constrained to observe that, all the investigating officers and/or the present investigating agency are bent upon to protect the appellant Jaydeep Taware from the clutches of law".

10. Investigating Officer i.e. the Superintendent of Police, CID Pune conducted the investigation as per the order of the Hon'ble High Court but he has also filed report under Sec.169 of Cr.P.C. (Exh.128) on 17/03/2025 stating that after investigation, no material has been found against the accused No.6- Jaydeep Taware. The said report was taken on record and the investigating papers are called from the Investigating Officer and the say of the informant was called on the said report. The learned Spl. P.P. was not present before the Court and it was submitted on her behalf that she is attending the Hon'ble High Court. Therefore, the report (Exh.128) has not been filed through her. The informant has filed protest petition (Exh.152) against the final report (Exh.128) on

08/08/2025 making all the allegations as made earlier on two occasions.

11. This propels me to come to the alleged incident. The informant Rohini Taware is the wife of the injured Raviraj and she was present at the spot of incident. She was the member of Zilla Parishad, Pune and was active in politics and social work. The wife of the accused No.1- Prashant More namely Rekha was the member of Grampanchayat, Malegaon (Br.). Raviraj Taware was extending help to his wife in development work and they gained popularity, with which, Prashant More was dissatisfied. He was feeling that Raviraj Taware is getting all the contracts of public works by using political position of his wife and he is not getting any such contracts. Raviraj Taware was responsible for his financial loss. He developed rivalry against Raviraj Taware and he started abusing, threatening and assaulting the workers of Raviraj Taware. Three months prior to the incident, the worker of Raviraj Taware namely Rahul Gavhane was seriously assaulted by the accused No.1 to 3. Raviraj Taware extended help to Rahul Gavhane in that matter to ensure that the accused are arrested. The accused No.1-Prashant More was believing that his son Akash (the accused No.3) in this crime who is the assailant) was falsely implicated in that crime, though he had no concern to that incident. The accused No. 1 to 3 had therefore, grudge in their mind about Raviraj Taware. They therefore, hatched conspiracy to eliminate Raviraj Taware.

12. On 31/05/2021 at about 6 p.m., the informant and her husband Raviraj were proceeding to the house of the brother of Raviraj to take back their daughter Jeeja. They ordered Vada-Pav to one Sad Shaikh and they reached to the house of Sad Shaikh to take delivery of the parcel of Vada-pav at about 6.45 p.m. by their car. The informant remained in the car and Raviraj Taware went to the house of Sad Shaikh to take parcel. In the meantime, two boys came by their white coloured Bullet motorcycle and stopped near the car. The informant identified the pillion rider to be the son of Prashant More namely Akash (accused No.3). When Raviraj Taware was returning toward the car with Vada-pav parcel, Akash alighted from the motorcycle and fired a round from the pistol in his hand. Raviraj Taware started running towards opposite direction and Akash tried to fire second round at him but it could not be fired. He shouted that he will not leave Raviraj alive and he would be eliminated. He then sat on the motorcycle and fled away from the spot. Raviraj Taware sustained bullet injury to his chest. Nearby people rushed to the spot and Dada Jarad and Saurabh Gaikwad took Raviraj Taware by their Alto car to Baramati hospital and then to Giriraj hospital. Raviraj Taware fortunately survived.

13. The informant Rohini Taware lodged complaint against Prashant More, his brother Vinod @ Tom More, Akash More (the assailant who was the son of Prashant More) and unknown motorcycle rider (who identified to be Rahul @ Ribel Yadav- the

accused No.4). The crime was registered and during investigation, the statement and supplementary statement of the injured Raviraj Taware were recorded. Based on the same, Ajinkya @ Pappu Bhosale and Jaydeep Taware were arrayed as the accused. The injured Raviraj Taware also named Ravindra Kale to be one of the conspirators but he was not made an accused. As already stated, Jaydeep Taware has been exonerated from the crime by filing the report under Sec.169 of Cr.P.C. for three times.

14. The Investigating Officer has reported that he carried out the investigation as per the directions of the Hon'ble High Court and has submitted the events-wise report. He has stated that in view of allegations regarding threats given by the accused No.6 in the month of July, 2019, he recorded the statement of the witness Santosh Jadhav on 24/12/2024 and this witness was working with the injured Raviraj Taware since 13 years. He stated that to be loyal to the injured, he has given statement against the accused No.6 falsely under his pressure and no incident as stated by the injured has taken place. One Branch Engineer from PWD namely Sanjiv Patil was also present at the time of alleged incident and his statement was recorded. He states that the injured and the accused No.6 had come face to face at the site of the work of laying drain line which was being carried out by the contractor Vijayendra Shinde but there was no altercation or abuses between them as

alleged by the injured. The Investigating Officer states that there are no CDR details available of that incident.

15. As regards the incident dated 13/07/2020, the Investigating Officer states that he recorded statement of the witness Swati Gaikwad, who was the Circle Officer. He also recorded the statements of Bapu Saste and Bapu Awaghade who were the tractor drivers. It was alleged that the accused No.1, 5 and 6 came to the site and took false objection that the injured is excavating derbies (murum) illegally. The Talathi Smt. Lokhande was also present there. Swati Gaikwad stated that the injured was found to be excavating derbies (murum) illegally and therefore, the legal action was taken against him and a report was submitted to the Tahasildar on 11/08/2020. There was no altercations or abuses between the accused 1,5,6 and the injured at that time. Bapu Saste was the Supervisor working with the injured since 16 years and he has stated that there were altercations between the accused No.1 5 and 6 when Talathi Smt. Lokahnde took legal action against excavating derbies (murum) illegally by the injured. Bapu Awadhade was working as driver with the injured since 20 years and he states as per the statement of Bapu Saste.

16. Regarding the alleged incident on 19/03/2020 of restraining the injured by the accused No.1 and 6 at the gate of Farreo Company, the Investigating Officer recorded the statement

of the driver of the injured namely Santosh Jadhav and he has stated that no incident as alleged by the injured has taken place on that day and he has given the statement before police earlier under pressure of the injured.

17. As regards the abuses given by the accused No.6 to the injured on phone, the investigating officer states that the non-cognizable offence has been registered on the complaint of the injured on 15/02/2021 and there are CDR details available which show that there was talk between the injured and the accused No.6 for 3.30 minutes.

18. As regards the alleged threats given by the accused No.6 to the injured in presence of Sailesh Dandawate in the premises of Panchayat Samiti on 24/05/2021, the Investigating Officer sates that the CDR details do not show the location of all of them together at that place. Based on this investigation, the investigating officer concluded that there is no evidence of the involvement of the accused No.6 in the alleged crime.

19. The informant, in her protest petition (Exh.152) has categorically stated about the material available against the accused No.6 which was noticed by this Court twice and also by the Hon'ble High Court twice. The conclusion arrived at by the Investigating Officer is under teeth of those orders and the same is

absolutely unacceptable. The Investigating Officer has not only ignored the material pointed out by this Court and the Hon'ble High Court but has recorded the statements of the witnesses who state otherwise. There is complete non-application of mind by the Investigating Officer to the material evidence already collected and he has failed to consider that evidence in perspective of the observations in the four orders of the Courts. In substance, it is contended that the report under Sec.169 of Cr.P.C. is unacceptable and therefore, it should be rejected and the protest petition should be allowed and the accused No.6 shall be dealt with in accordance with law.

20. The protest petition was filed on 08/08/2025 after coming into force of Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS). It was trite law prior to this Sanhita that the accused has no right of hearing on protest petition against the report under Sec.169 of Cr.P.C., as such proceeding is at per-cognizance stage and such report favours the accused. There are certain precedents about the procedure to be followed on such report. It has been held in some of the rulings that when the report has to be rejected and protest petition has to be allowed, the procedure under Sec.200 to 204 is required to be followed. However, there is new provision in BNSS which provides that no cognizance of the an offence shall be taken by the Magistrate without giving the accused an opportunity of being heard. Since this Court is the Special Court under MCOCA,

it has power qua the Magistrate. Thus, by way of abundant precaution, the say of the accused was called on the protest petition. The accused has appeared through advocate and has filed say (Exh.156) opposing the protest petition and supporting the report filed under Sec.169 of Cr.P.C.

21. Shri. Sudhir Shah, the learned advocate for the accused submits that this accused has no concern to the alleged incident and he is tried to be falsely implicated in this crime. His prosecution is politically motivated. The learned advocate for the accused further submits that this accused is not the member of any organized crime syndicate nor was indulged in any continuing criminal activity and therefore, the provisions of MCOCA cannot be applied against this accused. Even this Court cannot take cognizance of such offences in absence of sanction under Sec.23(2) of MCOCA. To lend support to this submission, he has relied on the judgment of the Apex Court in ***Jamiruddin Ansari v/s CBI [AIR 2009 SC 2781].***

22. The reliance is also placed on the judgment in ***Vinubahi Malaviya v/s State of Gujarat [AIR 2019 SC 5233]***. This judgment is basically cited on the point of the stage at which further investigation can be directed. However, there are valuable reference of various provisions and the precedents which are relevant to decide the issue before this Court and therefore, some

of them are required to be reproduced here. Para-50 and 51 read as under-

> "50. Sections 169 and 170 do not talk of the submission of any report by the police to the Magistrate, although they do state what the police has to do short of such submission when it finds at the conclusion of the investigation (1) that there is not sufficient evidence or reasonable ground of suspicion to justify the forwarding of the Accused to a Magistrate (Section 169) or (2) that there is sufficient evidence or reasonable ground as aforesaid (Section 170). In either case the final report of the police is to be submitted to the Magistrate under Sub-section (1) of Section 173. Sub-section (3) of that Section further provides that in the case of a report by the police that the Accused has been released on his bond (which is the situation envisaged by Section 169), the Magistrate shall make "such order for the discharge of such bond or otherwise as he thinks fit".
>
> Now what are the courses open to the Magistrate in such a situation? He may, as held by this Court in *Abhinandan Jha v. Dinesh Mishra [AIR 1968 SC 117]*:
>
> (1) agree with the report of the police and file the proceedings; or
> (2) not agree with the police report and
> (a) order further investigation, or
> (b) hold that the evidence is sufficient to justify the forwarding of the Accused to the

> Magistrate and take cognizance of the offence complained of.
>
> 51. The appropriate course has to be decided upon after a consideration of the report and the application of the mind of the Magistrate to the contents thereof. But then, the problem to be solved is whether the order passed by the Magistrate pertains to his executive or judicial capacity. In my opinion, the only order which can be regarded as having been passed by the Magistrate in his capacity as the supervisory authority in relation to the investigation carried out by the police is the one covered by the course 2(a). The order passed by the Magistrate in each of the other two courses, that is, (1) and (2)(b), follows a conclusion of the investigation and is a judicial order determining the rights of the parties (the State on the one hand and the Accused on the other) after the application of his mind. And if that be so, the order passed by the Magistrate in the proceeding before us must be characterised as a judicial act and therefore as one performed in his capacity as a Court".

23. Para-27 of the judgment is equally important which reads as under-

> "27. *Ram Lal Narang v. State (Delhi Administration) [(1979) 2 SCC 322]*, is an early judgment which deals with the power contained in Section 173(8) after a charge-sheet is filed. This Court adverted to the Law Commission Report and to a number of judgments which recognised the right

of the police to make repeated investigations under the Code of Criminal Procedure, 1898. It then quoted the early Supreme Court judgment in *H.N. Rishbud v. State of Delhi [AIR 1955 SC 196]* case as follows:

17. In *H.N. Rishbud v. State of Delhi [AIR 1955 SC 196]* this Court contemplated the possibility of further investigation even after a Court had taken cognizance of the case. While noticing that a police report resulting from an investigation was provided in Section 190 Code of Criminal Procedure as the material on which cognizance was taken, it was pointed out that it could not be maintained that a valid and legal police report was the foundation of the jurisdiction of the court to take cognizance. It was held that where cognizance of the case had, in fact, been taken and the case had proceeded to termination, the invalidity of the precedent investigation did not vitiate the result unless miscarriage of justice had been caused thereby. It was said that a defect or illegality in investigation, however serious, had no direct bearing on the competence of the procedure relating to cognizance or trial. However, it was observed:

It does not follow that the invalidity of the investigation is to be completely ignored by a Court during trial. When the breach of such mandatory provision is brought to the knowledge of the Court at a sufficiently early stage, the Court, while not declining cognizance, will have to take the necessary steps to get the illegality cured and the defect rectified, by ordering such re-investigation as the circumstances of an individual case may call for. This

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

The Court then went on to hold:

20. Anyone acquainted with the day-to-day working of the criminal courts will be alive to the practical necessity of the police possessing the power to make further investigation and submit a supplemental report. It is in the interests of both the prosecution and the defence that the police should have such power. It is easy to visualise a case where fresh material may come to light which would implicate persons not previously Accused or absolve persons already Accused. When it comes to the notice of the investigating agency that a person already Accused of an offence has a good alibi, is it not the duty of that agency to investigate the genuineness of the plea of alibi and submit a report to the Magistrate? After all the investigating agency has greater resources at its command than a private individual. Similarly, where the involvement of persons who are not already Accused comes to the notice of the investigating agency, the investigating agency cannot keep quiet and refuse to investigate the fresh information. It is their duty to investigate and submit a report to the Magistrate upon the involvement of the other persons. In either case, it is for the Magistrate to decide upon his future course of action depending upon the stage at which the case is before him. If he has already taken cognizance of the

offence, but has not proceeded with the enquiry or trial, he may direct the issue of process to persons freshly discovered to be involved and deal with all the Accused in a single enquiry or trial. If the case of which he has previously taken cognizance has already proceeded to some extent, he may take fresh cognizance of the offence disclosed against the newly involved Accused and proceed with the case as a separate case. What action a Magistrate is to take in accordance with the provisions of the Code of Criminal Procedure in such situations is a matter best left to the discretion of the Magistrate. 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".

24. The learned advocate has placed reliance on Para 38 of the judgment but it would be useful to refer Para 37 as well, in which, the entire law has been laid down which would resolve the controversy before this Court. They read as under-

> "37. This judgment was followed in a recent Division Bench judgment of this Court in *Athul Rao v. State of Karnataka and Anr. [(2018) 14 SCC 298]* at paragraph 8. In *Bikash Ranjan Rout v. State through the Secretary (Home), Government of NCT of Delhi [(2019) 5 SCC 542]*, after referring to a number of decisions this Court concluded as follows-
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> 7. Considering the law laid down by this Court in the aforesaid decisions and even considering the relevant provisions of Code of Criminal Procedure, namely, Sections 167(2), 173, 227 and 228 Code of Criminal Procedure, what is emerging is that after the investigation is concluded and the report is forwarded by the police to the Magistrate Under Section 173(2)(i) Code of Criminal Procedure, the learned Magistrate may either (1) accept the report and take cognizance of the offence and issue process, or (2) may disagree with the report and drop the proceedings, or (3) may direct further investigation under Section 156(3) and require the police to make a further report. If the Magistrate disagrees with the report and drops the proceedings, the informant is required to be given an opportunity to submit the protest application and thereafter, after giving an opportunity to the informant, the Magistrate may take a further decision whether to drop the proceedings against the Accused or not. If the learned Magistrate accepts the objections, in that

case, he may issue process and/or even frame the charges against the Accused. As observed hereinabove, having not been satisfied with the investigation on considering the report forwarded by the police Under Section 173(2)(i) Code of Criminal Procedure, the Magistrate may, at that stage, direct further investigation and require the police to make a further report. However, it is required to be noted that all the aforesaid is required to be done at the pre-cognizance stage. Once the learned Magistrate takes the cognizance and, considering the materials on record submitted along with the report forwarded by the police Under Section 173(2) (i) Code of Criminal Procedure, the learned Magistrate in exercise of the powers under Section 227 Code of Criminal Procedure discharges the Accused, thereafter, it will not be open for the Magistrate to *suo motu* order for further investigation and direct the investigating officer to submit the report. Such an order after discharging the Accused can be said to be made at the post-cognizance stage. There is a distinction and/or difference between the pre-cognizance stage and post-cognizance stage and the powers to be exercised by the Magistrate for further investigation at the pre-cognizance stage and post-cognizance stage. The power to order further investigation which may be available to the Magistrate at the pre-cognizance stage may not be available to the Magistrate at the post-cognizance stage, more particularly, when the Accused is discharged by him. As observed hereinabove, if the Magistrate was not satisfied with the investigation carried out by the investigating officer and the report

submitted by the investigating officer under section 173(2)(i) Code of Criminal Procedure, as observed by this Court in a catena of decisions and as observed hereinabove, it was always open /permissible for the Magistrate to direct the investigating agency for further investigation and may postpone even the framing of the charge and/or taking any final decision on the report at that stage. However, once the learned Magistrate, on the basis of the report and the materials placed along with the report, discharges the Accused, we are afraid that thereafter the Magistrate can *suo motu* order further investigation by the investigating agency. Once the order of discharge is passed, thereafter the Magistrate has no jurisdiction to *suo motu* direct the investigating officer for further investigation and submit the report. In such a situation, only two remedies are available: (i) a revision application can be filed against the discharge or (ii) the Court has to wait till the stage of Section 319 Code of Criminal Procedure However, at the same time, considering the provisions of Section 173(8) Code of Criminal Procedure, it is always open for the investigating agency to file an application for further investigation and thereafter to submit the fresh report and the Court may, on the application submitted by the investigating agency, permit further investigation and permit the investigating officer to file a fresh report and the same may be considered by the learned Magistrate thereafter in accordance with law. The Magistrate cannot *suo motu* direct for further investigation under section 173(8) Code of Criminal Procedure or direct re-investigation into a

case at the post-cognizance stage, more particularly when, in exercise of powers under section 227 Code of Criminal Procedure, the Magistrate discharges the Accused. However, Section 173(8) Code of Criminal Procedure confers power upon the officer in charge of the police station to further investigate and submit evidence, oral or documentary, after forwarding the report under Sub-section (2) of Section 173 Code of Criminal Procedure. Therefore, it is always open for the investigating officer to apply for further investigation, even after forwarding the report under Sub-section (2) of Section 173 and even after the discharge of the Accused. However, the aforesaid shall be at the instance of the investigating officer/police officer in charge and the Magistrate has no jurisdiction to *suo motu* pass an order for further investigation/re-investigation after he discharges the Accused.

Realising the difficulty in concluding thus, the Court went on to hold:

10. However, considering the observations made by the learned Magistrate and the deficiency in the investigation pointed out by the learned Magistrate and the ultimate goal is to book and/or punish the real culprit, it will be open for the investigating officer to submit a proper application before the learned Magistrate for further investigation and conduct fresh investigation and submit the further report in exercise of powers Under Section 173(8) Code of Criminal Procedure and thereafter, the learned Magistrate to consider the same in accordance with law and on its own merits.

38 . There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an Accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, *Sakiri (supra), Samaj Parivartan Samudaya (supra), Vinay Tyagi (supra), and Hardeep Singh (supra); Hardeep Singh (supra)* having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an Accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section

> 2(h), and Section 173(8) of the Code of Criminal Procedure, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised *suo motu* by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculpating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi (supra)*. Therefore, to the extent that the judgments in *Amrutbhai Shambubhai Patel (supra), Athul Rao (supra) and Bikash Ranjan Rout (supra)* have held to the contrary, they stand overruled.
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> Needless to add, *Randhir Singh Rana v. State (Delhi Administration) [(1997) 1 SCC 361]* and *Reeta Nag v. State of West Bengal and Ors. [(2009) 9 SCC 129]* also stand overruled".

25. Smt. Ujjwala Pawar, the learned Spl.P.P. submits that the report submitted by the IO does not appear to be in full compliance of the directions given by the Hon'ble High Court. The report does not reflect that the material and the evidence referred by the Hon'ble High Court has been carefully taken into

consideration by the IO. He has just recorded the fresh statements of the witnesses who rescinded from the earlier statements and based on it he concluded that there is no material against the accused No.6. Thus, the report is not worth reliable.

26. She further submits that the accused No.6 would not have right of hearing on the protest petition filed by the informant. She relies on the judgment in ***Chiman Lal v/s State of Rajasthan [1991 SCC OnLine Raj. 409]*** wherein, it is held that the accused has no right to be heard before taking cognizance by the Court. The Magistrate has only to see the evidence produced by the complainant and not the case of the accused. She further submits that the offences were registered under IPC and the investigation was completed and the chargesheet has been filed on 27/11/2021, much prior to coming into force the BNSS. Therefore, the provisions of BNSS cannot be applied by the accused to claim the right of hearing. She relies on the judgment of the Hon'ble Madras High Court on this point delivered in ***S. Maniyam v/s State of Tamil Nadu [Cri.O.P. No. 25332/2024 decided on 17/10/2024]***.

27. The learned advocate for the accused relies on the judgment of the Hon'ble Kerala High Court in ***Abdul Kadar v/s State of Kerala [Cri. Appeal No.1186/2024 decided on 15/07/2024]*** wherein, the accused was convicted for the offences under IPC and the appeal was preferred under Sec.374(2) of

Cr.P.C on 10/07/2024. It was held that on commencement of the BNSS on 01/07/2024, the procedure prescribed therein shall apply to all appeals, applications, trial, enquiry and investigation commenced on or after that date. It was also held that the provisions of Sec.531 shall apply to "revision", "petition" as also "petition of complaint"(ordinarily referred to as complaint before Magistrate). The reliance is also placed on the judgment of the Hon'ble Bombay High Court in ***Chowgule and Company v/s The Public Prosecutor, State of Goa [Cri. Writ Petition No.618/2024 decided on 02/08/2024]*** wherein, it is held that the pending investigation would continue under the old Act but the bail application would be governed by the new Act.

28. The learned advocate for the accused submits that the protest petition has been filed on 08/08/2025 and therefore, it shall be governed by the provisions of BNSS. If that is so, as per proviso to Sec.223 of the BNSS, no cognizance of an offence shall be taken without giving the accused an opportunity of being heard. Thus, the right of hearing has been expressly provided under BNSS and thus, the accused has right of being heard. The protest petition would be governed by Chapter XVI of the BNSS and the procedure prescribed therein for complaint case shall be followed. This Court is not empowered to take cognizance without prior sanction under Sec.23(2) of MCOCA of the offences under that Act. This Court cannot take cognizance of IPC offences unless the case is

committed to it by the jurisdictional Magistrate as laid down in Sec.193.

29. Shri. Yogesh Pawar, the learned advocate for the informant has produced on record the compilation of the chargesheet and the statements of the witnesses to show that there was ample material against the accused No.6. The said material was said to be sufficient by this Court to proceed against him and that is why the further investigation was directed twice by this Court. The Hon'ble High Court has considered that material twice in its orders, while justifying the rejection of the reports filed under Sec.169 of Cr.P.C. The Hon'ble High Court has doubted the manner by which the investigation as regards involvement of this accused has been carried out and consequently, the further investigation was entrusted with CID, so that, there should be fair investigation of the information lodged by the informant and the injured. Even the Apex Court declined to interfere with the said orders. This Court may not direct the IO to file chargesheet but the IO ought to have carried investigation fairly with reference to shortcomings noticed by this Court and the Hon'ble High Court repeatedly.

30. He refers the statements of some of the witnesses which clearly show the conspiracy of this accused with co-accused. The motive can be attributed from the record of threats given to the injured. The informant has produced on record the pen drive and

DVD of CDR analysis carried out through private expert, which the IO says not available. Under the circumstance, according to the learned advocate, the report submitted by IO may be rejected and the action in accordance with law may be taken against the accused No.6.

31. Having anxiously heard both the sides, the issue of right of hearing of the accused shall be addressed at the outset. Admittedly, the alleged offences were registered under IPC, those were investigated and chargesheet is filed against rest of the accused prior to coming into force the BNSS. Further investigation has been directed prior to and even after coming into force the BNSS. Needless to state that further investigation is the continuing investigation and not new investigation. Same is the position as regards the protest petitions filed by the informant. Thus, according to me, filing this protest petition is not new proceeding but it was continuing proceeding since prior to and after coming into force the BNSS. Therefore, the accused No.6 would have no right to be heard as the proceeding would be governed by the Cr.P.C.

32. As regards procedure, the protest petition is not a private complaint but it is an objection against the report filed under Sec.169 of Cr.P.C. Therefore, this protest petition would also be governed by the provisions of Cr.P.C. wherein, unlike BNSS, the

right of hearing at per-cognizance stage was not provided to the accused.

33. As such, the obvious question that may arise as to what procedure has to be followed to deal with the protest petition of the informant? According to me, the judgment in Vinubhai Malaviya *(supra)* will come in aid to answer to this question. This case is based on police report and not on private complaint wherein, the report under Sec.169 is filed. This Court being Special Court under MCOCA, the case need not be committed by the Magistrate and this Court is empowered to take cognizance of the same directly and it has taken the cognizance without there being committal order. This Court has all powers of custody remand and bail pertaining to the offences under MCOCA alike the Magistrate.

34. Sec.190 of Cr.P.C. speaks about the cognizance of the offence and in particular, Sub-sec. 1(b) states that the cognizance can be taken upon a police report constituting the offence. Sub-sec 1(c) states that the cognizance can be taken upon information received from any person other than a police officer, or upon Court's own knowledge, that such offence is committed. According to me, the protest petition makes the reference to the material collected during investigation pointing out the conspiracy of this accused to kill the injured. The protest petition gives information through the person other than a police officer that such offences

has been committed by the accused No.6. This Court has examined the record for two times and pointed out the *prima facie* material against the accused of his conspiracy with other accused to kill the injured. It was expected that police should make further investigation as regards material against him to invoke the offences under MCOCA, consider the material already collected from the perspective as suggested in the orders of this Court and the Hon'ble High Court and to take further steps in that regard. Thus, this Court had its own knowledge, that there is prima facie material against this accused which would constitute the offences under Sec.307, 504, 506 and 120-B of IPC. Thus, in my view, the cognizance of those offences can be taken under Sec.190 (1)(b) and (c) of Cr.P.C.

35. As regards the offences under MCOCA, the proposal under Sec.23(1)(a) has not been approved as against this accused. Since the report under Sec.169 of Cr.P.C. has been submitted against this accused, there would no question of sanction under Sec.23(2) as against this accused. Even otherwise, there is no material collected during investigation nor any material is paced on record by the informant to show that this accused is the member of any organized crime syndicate and he has indulged in any continuing unlawful activity. The alleged incident has background of political and business rivalry. There is evidence of constant communication among all the accused but it could be but natural

that they are from one political group, such communication must be there. The same cannot be far stretched to connect to commission of the offences under MCOCA. There should be further evidence to attend the test of attract basic ingredients to arract those offences. There is no material of the criminal antecedents of this accused commonly with other accused. Thus, no offence under MCOCA can be *prima facie* made out against this accused. Therefore, the bar to take cognizance of other offences for want of sanction under MCOCA will not operate in this case as against this accused.

36. Upshot of the above discussion is that the report submitted under Sec.169 of Cr.P.C. (Exh.128) shall be rejected and the protest petition (Exh.152) shall be allowed. The cognizance of the offences under Sec.307, 120-B 504 and 506 of IPC shall be taken against the accused No.6 and the process shall be issued against him. As the accused is on interim bail, summons should be issued to him for his appearance. Hence, the order.

ORDER

1. The report submitted under Sec.169 of Cr.P.C. (Exh.128) is rejected and the protest petition (Exh.152) is allowed.

2. Issue process and summons against the accused No.6-Jaydeep Dilip Taware for the offences under Sec. 307, 120-B, 504 and 506 of IPC r/o 28/10/2025.

Pune **(S.R. Salunkhe)**
Date: 13/10/2025 Special Judge (MCOCA), Pune.