

IN THE COURT OF THE JUDICIAL MAGISTRATE,
ADDITIONAL MAHILA COURT, DINDIGUL

Present : **J. KIRUBHA PRIYADHARSHINI BA.LLB**
Judicial Magistrate, Additional Mahila Court,
Dindigul.

Monday the 28th day of July 2025
CRL MP. NO. 19277 /2022

In
C.C.NO: 466 / 2014

Thenmozhi

..Petitioner

/Vs/

State through Inspector of Police,
All Women Police Station
Dindigul
Crime No. 31/2014

.. Respondent

1. P. Somasudaram
S/o. Perumal
2. Annakodi
W/o. Selvam
2

..Accused 1 and

This petition came up before me on 24.07.2025 for final hearing before me in the presence of Advocate Thiru.N. Ramesh Kumar for the petitioner and Learned Assistant Public Prosecutor appearing for the respondent, after hearing both sides and considering the records this court delivers the following :

ORDER

PETITIONER'S CONTENTION

The petitioner states that the 1st accused is her husband and a child namely Shivani was born to them out of wedlock. In the DVC No. 2/2018 petition filed by the petitioner, it was stated that her husband, the first respondent, specifically denied the existence of the marriage. However, he did not explicitly deny that the second petitioner, who is the petitioner's daughter, was born to him. However, DVC petition was dismissed stating that paternity was

not established through DNA test. The investigating officer in this criminal case also failed to take any steps to conduct a test as part of the investigation. The petitioner further states that she had disputes with the accused persons even before the child was born and that the 1st accused denies their marriage. Therefore, it is necessary and just to prove that the first respondent is indeed the father of her child. Hence, it is essential to conduct a DNA test involving the first respondent, the petitioner, and their child Shivani. Hence the petitioner sought for a direction from this court for further investigation under section 173(8) CrPC.

COUNTER FILED BY THE PROSECUTION

The prosecution states that since the accused has not explicitly denied that the girl Shivani is his daughter, there appears to be no necessity for further investigation by the Investigating Officer in this case. Therefore, requested that the petition filed under Section 173(8) CrPC by the petitioner/the Defacto complainant be dismissed.

ISSUE FOR CONSIDERATION

Whether the Magistrate, after taking cognizance of offences on the basis of the chargesheet submitted by the police, can direct further investigation of the case at the instance of a de facto complainant?

DISCUSSION AND LEGAL ANALYSIS

The matter of directing further investigation under Section 173(8) Cr.P.C. post-cognizance has been the subject of divergent views across various High Courts. In the case of ***Smt. Nandita Sethi @ Behera vs State of Orissa and Others***, the Hon'ble Orissa High Court held: *“Conduct of impartial and unbiased investigation is the hallmark of any criminal investigation. If it is unfair, improper and one-sided and important materials are not collected or ignored deliberately which will have a far-reaching consequence in proving the*

guilt or otherwise of the accused, it would amount to defective investigation. Such investigation will not be in the interest of justice and it would be against the public confidence on the investigating agency. Even though after taking cognizance of the offence by the Magistrate upon the chargesheet or final report submitted by police, the right of the police to further investigate the case is not exhausted after seeking formal permission from the Magistrate but a Magistrate cannot direct further investigation of the case at the instance of a de facto complainant after taking cognizance of offences on the basis of chargesheet submitted by police.”

Thus, the Orissa High Court took the view that after cognizance has been taken, the Magistrate cannot direct further investigation at the instance of a private party or de facto complainant. However, the Hon’ble Supreme Court has taken a broader and more authoritative view in ***Vinubhai Haribhai Malaviya vs. The State of Gujarat and Another*** [(2019) 17 SCC 1]. The Hon’ble Apex Court, after examining various earlier judgments and provisions of the Cr.P.C., clarified the legal position in the following words:

“40. Having analysed the provisions of the Code and the various judgments as aforeindicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

40.1. The Magistrate has no power to direct “reinvestigation” or “fresh investigation” (de novo) in the case initiated on the basis of a police report.

40.2. A Magistrate has the power to direct “further investigation” after filing of a police report in terms of Section 173(6) of the Code.

40.3. The view expressed in sub-para 40.2 above is in conformity with the principle of law stated in *Bhagwant Singh case* [*Bhagwant Singh v. Commr. of Police*, (1985) 2 SCC 537 : 1985 SCC (Cri) 267] by a three-Judge Bench and thus in conformity with the doctrine of precedent.

40.4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

40.5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report, but intended to curtail the power of the court to the extent that even where the facts of the case and the ends of justice demand, the court can still not direct the investigating agency to conduct further investigation which it could do on its own.

40.6. It has been a procedure of propriety that the police has to seek permission of the court to continue "further investigation" and file supplementary charge-sheet. This approach has been approved by this Court in a number of judgments. This as such would support the view that we are taking in the present case."

From the above authoritative pronouncement, it is evident that the Magistrate retains the power to direct *further investigation* under Section 173(8) Cr.P.C. even after cognizance has been taken, and even suo motu, if the facts of the case and the interests of justice so demand. There is no bar in the Code against such power being exercised at the instance of a de facto

complainant. The emphasis of the Supreme Court in *Vinubhai Haribhai Malaviya* was on justice and fairness, rather than on a rigid procedural bar.

In the present case, the allegation is that a crucial aspect namely, the establishment of paternity through DNA analysis was omitted by the Investigating Officer. Given that this fact has a material bearing on the outcome of the prosecution, and in light of the judgment of the Hon'ble Supreme Court in *Vinubhai Haribhai Malaviya* (2019) 17 SCC 1, this Court is of the considered view that the request for further investigation under Section 173(8) Cr.P.C. deserves to be allowed.

In the result, this petition is allowed. The Investigating Officer is directed to conduct further investigation under Section 173(8) Cr.P.C. of the case and a report on the further investigation shall be filed by the investigating officer within a reasonable period.

Directly typed by me in my laptop, corrected and pronounced by me in Open court on this 28th day of July 2025.

Sd/-J.Kirubha Priya dharshini

Judicial Magistrate,
Additional Mahila court,
Dindigul.