

**IN THE COURT OF THE PRINCIPAL DISTRICT & SESSIONS JUDGE,
COIMBATORE.**

Present: Tmt. G. VIJAYA, B.A., M.L., PGDCFS,
Principal District & Sessions Judge, Coimbatore.

Wednesday, this the 13th day of August, 2025

C.M.P.No.5/2025 in S.C.No.51/2012

State Rep. by the Inspector of Police,
Singanallur Police Station,
Coimbatore.
(Crime No.964/2009)

... Petitioner / Complainant

//vs//

T. Mani,
S/o.Thangavel

... Respondent / A-2

This petition came up for final hearing before this Court in the presence of **Thiru.V.Ravichandran, Public Prosecutor**, represented the State and of **Tvl.R.Pradeep Kumar, A.Vijay Abimanyu and Praveena.P.**, Advocates for the respondent / A-2, upon hearing both side arguments, perusing petition, counter and other relevant records, having stood over for consideration till this date, this Court passes the following:-

ORDER

The prosecution has filed the present petition, u/s.173(8) of Cr.P.C., praying for further investigation for the specific purpose of conducting DNA Comparison between the right femur bone of the deceased and the blood sample of 1. Mrs.Saranya, D/o.Raju (22/2009-at present 38/2025) and 2. Mrs.Sathya @

Bharathi, D/o.Raju (27/2009-at present 43/2025) who are the alleged daughters of the deceased Raju.

2. **BRIEF AVERMENTS CONTAINED IN THE PETITION:-**

(i) The present case has been registered in Crime No.964/2009, on 10-11-2009 as Man Missing and subsequently altered as Sec.302 and 201 of IPC and the same has been transferred based on the jurisdiction point from Avinashi Police Station, in Crime No.1610/2009, dated 08-11-2009. The case files were received by the Singanallur Police Station from the Commissioner of Police, Coimbatore.

(ii) The name of the deceased is N.Raju, S/o.Neeliyappan whose body was discovered on 08-11-2009 at the garbage dumping place situated at Paramasivampalayam Pirivu NH 47 Road, Coimbatore to Erode which comes within the jurisdiction of Avinashi Police Station. From the above said place, a pair of black shoes, a pair of socks, black belt, burnt shirt piece, brown colour tape were recovered which belongs to the deceased and post-mortem examination was conducted on 11-11-2009 over the unknown decomposed deceased body with burns. Further after the postmortem of the said decomposed burnt body certain items such as viscera, a Right femur bone, skull bone and chest bone which belongs to the deceased were preserved for other chemical analysis, DNA analysis and superimposition test. Further in the DNA

Division Department, DNA Profile of the deceased has been maintained in Forensic No.CHE/DNA/220/2009 at the Forensic Science Department, Mylapore, Chennai - 600 004.

(iii) During the ongoing trial, witness examination commenced on 18-04-2018 and certain material facts come to light necessitating further investigation to establish the identity of the deceased and to confirm the link to the said crime.

Specifically it is proposed to conduct a DNA comparison between

(a) The right femur bone preserved from the unknown decomposed deceased body, believed to belong to the deceased in the case

(b) A blood sample to be collected from 1. Mrs.Saranya, D/o.Raju and Mrs.Sathya @ Bharathi, D/o.Raju, who is the alleged daughters of the deceased.

(iv) That the DNA comparison is critical to:-

(a) Confirm the identity of the deceased, as the right femur bone is the only biological material available.

(b) Establish a biological link between the deceased and 1.Mrs.Saranya, D/o.Raju and 2. Mrs.Sathiya @ Bharathi, D/o.Raju, who are alleged daughters of the deceased, thereby

aiding in the investigation of the circumstances of death and identifying the potential suspects.

(c) Ensure the truth is unearthed and justice is served, as mandated under section 173(8) of Cr.P.C.

(v) Sec.173(8) of Cr.P.C. empowers the Investigating Officer to conduct further investigation after submission of the final report under section 173(2) of Cr.P.C., without requiring prior permission from the Court, but in the interest of the transparency and judicial oversight, this petitioner is filed to seek direction for the proposed DNA Testing.

(vi) The proposed DNA Test is scientifically reliable and admissible under section 45 of the Indian Evidence Act, 1872, as opined by Courts in cases such as Patangi Balaram Venkata Ganesh Vs State of AP (2003). The test will be conducted by a Government - accredited forensic laboratory, ensuring compliance with chain of custody and confidentiality protocols.

(vii) The further investigation will not cause undue delay in the trial, as the DNA testing process is time-bound and the results will be promptly submitted this Court. The investigation is essential to prevent miscarriage of justice and to strengthen the prosecution's case.

(viii) No prejudice will be caused to any party by allowing this petition, as the objective is to ascertain the truth in the interest of justice. Hence, the petition has been filed.

3. BRIEF AVERMENTS CONTAINED IN THE COUNTER FILED BY A-2 / RESPONDENT:-.

(a) In this case, a Charge Sheet has been filed by the petitioner / complainant after recording the statement of 40 witnesses against the respondent / accused, u/s.302 r/w 201 of IPC on 12-08-2011.

(b) In the said case, P.W.1 to P.W.23 were examined and Ext.P-1 to Ext.P-27 were marked. After examination of P.W.23, the petitioner / complainant closed the evidence and posted for 313 questioning. The respondent / accused was questioned u/s.313 of Cr.P.C. on 15-04-2025. Thereafter the case was posted for argument on 24-06-2025. On the said date, the petitioner / complainant filed a petition u/s.173(8) of Cr.P.C. for the purpose of further investigation. The said petition has been filed after 16 years from the date of occurrence and the same cannot be entertained. Further no notice was given to the counsel on record.

(c) In this case, one Raju, aged about 58 years went missing on 07-11-2009 at Coimbatore. The daughters of the said Raju preferred a complaint on 10-11-2009 which was registered in Crime No.964/2009 on the file of

Singanallur PS, Coimbatore. While so, on 08-11-2009, a body aged about 30 years was found at a Garbage Dumping place situated at Paramasivampalayam Pirivu, Avinashi, Coimbatore which was registered by the Avinashi Police Station, in Crime No.1610/2009. The body was completely charred thereafter identification was not done. In this regard, the petitioner is working out a strategy that the missing person and the dead person are one and the same based on the circumstantial evidence.

(d) A postmortem was conducted over the unknown decomposed deceased body with burns. It is not correct to state that the viscera, a right femur bone, skull bone, chest bone which belongs to the deceased were preserved for chemical analysis, DNA analysis and Superimposition Test at the Forensic Department. Now it is clearly understood that since 2009, they are only preserving and did not carry out any such test which was requisite for identification at that time as there were changes of contamination, concoctions as well as mishandling. This clearly exhibits the game played by the petitioner / complainant to falsely implicate the accused.

(e) It is also pertinent to note that till now i.e., after 16 years no final forensic report has been produced which is mandated by Article 621 of the Tamil Nadu Medical Code. In this case, postmortem was conducted on 11-11-2009, but the Forensic Report is not yet filed even after 16 years.

(f) As far as DNA analysis, the Hon'ble Supreme Court of India has held that non-production and non-explanation for not producing the DNA profiling report before the Court was not justified. In this case, the samples were alleged to have been preserved in the year 2009 itself is doubtful and therefore by producing a report now is in violation.

(g) There is no reasonable basis and neither exceptional circumstances are there in this case as the petitioner/complainant had the ample time and opportunity 16 years back to do such a test and there was no reason for not doing so. There is no merit in this petition and the same is liable to be dismissed.

4. **Point for consideration in this petition is,** as to whether further investigation is to be ordered or not?

POINT:-

5. Heard both sides and perused the relevant records. The prosecution has filed the present petition u/s.173(8) of Cr.P.C. seeking for further investigation for the specific purpose of conducting DNA Comparison between the right femur bone of the deceased and the blood sample of 1. Mrs.Saranya, D/o.Raju (22/2009-at present 38/2025) and 2. Mrs.Sathya @ Bharathi, D/o.Raju (27/2009-at present 43/2025) who are the alleged daughters of the deceased Raju.

6. The learned Public Prosecutor would argue that initially the case has been registered in Crime No.964/2009, on 10-11-2009, as Man Missing before the Singanallur PS. Later based upon a dead body found lying in a garbage dumping yard at Parasivampalayam Pirivu at Tiruppur District Jurisdiction complaint was registered by concerned VAO at Avinashi Police Station in Crime No.1610/2009. During investigation, the Singanallur Police came to understand that the dead body found in the garbage dump yard in Crime No.1610/2009 and the man missing registered Crime No.964/2009 on the file of Singanallur PS is one and the same and the case in Crime No.964/2009 on the file of Singanallur PS is altered as Sec.302 and 201 of IPC and case in Crime No.1610/2009 on the file of Avinashi PS has been transferred to Singanallur Police Station based on the jurisdiction point and the case files were received by the Singanallur Police Station from the Commissioner of Police, Coimbatore.

7. The learned Public Prosecutor would further argue that, the name of the deceased is N.Raju, S/o.Neeliyappan whose body was discovered on 08-11-2009 at the garbage dumping yard situated at Paramasivampalayam Pirivu NH 47 Road, Coimbatore to Erode which comes within the jurisdiction of Avinashi Police Station and post-mortem was conducted and after the postmortem of the said decomposed burnt body certain items such as viscera, a Right femur bone, skull bone and chest bone which belongs to the deceased were preserved for other chemical analysis, DNA analysis and superimposition

test and in the DNA Division Department, DNA Profile of the deceased has been maintained in Forensic Science Department, Chennai.

8. The learned Public Prosecutor would further argue that, in this case, trial was commenced and certain material facts came to light necessitating further investigation to establish the identity of the deceased and to confirm the link to the said crime. Specifically it is proposed to conduct a DNA comparison which will aid the prosecution for identifying the potential suspects.

9. The learned Public Prosecutor would further argue that, the further investigation will not cause undue delay in the trial, as the DNA testing process is time-bound and the results will be promptly submitted to this Court and the investigation is essential to prevent miscarriage of justice and to strengthen the prosecution's case and no prejudice will be caused to any party by allowing this petition, as the objective is to ascertain the truth in the interest of justice and prays to allow the petition.

10. The learned counsel for the respondent / A-2 would argue that, in this case, Charge Sheet has been filed by the petitioner / complainant after recording the statement of 40 witnesses against the respondent / accused, u/s.302 r/w 201 of IPC on 12-08-2011 and thereafter trial was commenced and as many as 23 witnesses have been examined and 27 documents have been marked and

thereafter, the prosecution side closed the evidence and respondent / accused has been questioned under section 313(1)(b) of Cr.P. and as of now, the case is posted for argument and at this state, the petitioner / complainant has filed the present petition after 16 years from the date of occurrence. The learned counsel would further argue that initially case has been registered as man missing and subsequently, a male body aged about 30 years was found and the body was completely charred thereafter identification was not done and thereafter, postmortem was done. The learned counsel would further argue that, since 2009, they are only preserving the material object and did not carry out any such test which was requisite for identification at that time as there were changes of contamination, concoctions as well as mishandling. The learned counsel would further argue that, the samples were alleged to have been preserved in the year 2009 itself is doubtful and therefore by producing a report now is in violation. There is no merit in this petition and prays to dismiss the same.

11. This Court has considered the rival submissions made by both sides and perused the records. Before going into the merits of the petition, for the easy understanding of the case, facts relating to the main case are stated below;

12. Initially a case was registered in Crime No.964/2009 on 10-11-2009 on the file of the Singanallur Police Station, as “Man Missing” based on the complaint dated 10-11-2009 given by one Saranya.

13. Similarly based upon a dead body found lying in a garbage dumping yard at Parasivampalayam Pirivu at Tiruppur District, complaint was registered by concerned VAO at Avinashi Police Station in Crime No.1610/2009 for the offences u/s.302 and 201 of IPC.

14. Later, in the case registered in Crime No.964/2009 of Singanallur PS, during investigation, the Singanallur Police came to understand that the man missing registered Crime No.964/2009 of Singanallur PS and the dead body found in the garbage dump yard in Crime No.1610/2009 on the file of the Avinashi PS, is one and the same and the case in Crime No.964/2009 is altered as Sec.302 and 201 of IPC and case in Crime No.1610/2009 has been transferred to Singanallur Police Station based on the jurisdiction point from Avinashi Police Station. The case files were received by the Singanallur Police Station from the Commissioner of Police, Coimbatore since during the relevant point of time Tiruppur District was not bifurcated.

15. Thereafter, based upon the request of the Inspector of Police, Avinashi PS, vide letter dated 04-02-2011, the then learned Judicial Magistrate, Avinashi

(FAC) sent a communication to the learned Judicial Magistrate No.3, Coimbatore and thereby transmitting all the records including the chemical analysis report along with the photograph of the deceased kept in sealed cover in respect of Crime No.964/2009 on the file of B-5 Singnallur PS (Crime No.1610/2009) to the learned Judicial Magistrate No.3, Coimbatore on the point of jurisdiction.

16. Thereafter after investigation final report was filed by the Singnallur PS before the Learned Judicial Magistrate No.III Coimbatore on 12-08-2011 in Crime No.964 of 2009 against A-1 Venkatesh @ Venkatasubramaniam and A-2 Mani and later numbered as PRC.No.26 of 2011 and the case properties were received in PR.No.110/10.

17. Later vide Committal order dated 08-02-2012, of the learned Judicial Magistrate No.3, Coimbatore, committed the case to the District Court, Coimbatore and it was numbered as S.C.No.51 of 2012 and made over to III Additional District Court for disposal which was received by the said Court on 11-07-2012.

18. Before the III Additional District Court both A-1 and A-2 preferred an application on 26-07-2012 for discharge which was numbered as C.M.P.No.111

of 2012. However as both the accused failed to appear before the said court the said application was dismissed on 19-10-2012.

19. Later on 11-12-2012, A-1 alone preferred a petition in C.M.P.No.173 of 2012, u/s.228 of Cr.P.C seeking for translation of necessary case records which was dismissed on merits on 02.07.2013. Pending the said petition, A-1 also preferred another petition in C.M.P.No.173 of 2012 to adduce his side of evidence. The said Petition was rejected as not maintainable.

20. Thereafter A-2 preferred a Petition u/s.228 of Cr.P.C on 12-07-2013. However the said petition was dismissed on the same day as devoid of merits, and charges were framed and read out against A-1 and A-2 in the open Court. And while the charges were read out in the open Court, A-1 fell down and hence could not continue. Thereafter both A-1 and A-2 were continuously absent one after another and hence NBW was issued against A-2. Though bail was granted to A-2 by the Hon'ble High Court despite the order of the Hon'ble High Court A-2 failed to appear before the said Court. And A-1 was also continuously absent and both the accused failed to cooperate with the regular court proceedings.

21. Subsequently A-1 made a complaint against the then Judicial Officer of the III Additional District Court, Coimbatore before the Hon'ble High Court

and the then Officer also submitted her remarks/Explanation to that and in view of the compliant the Learned Officer had also requested the Hon'ble High Court to transfer the session case to some other court. Hence vide order dated 01-10-2013 passed in CrI.O.P.No.18861/13, the S.C.No.51 of 2012 was transferred to this Court and the then Learned Officer transmitted the case bundle to this Court vide letter dated 03-12-2013.

22. After the case was transferred to this Court from 01-02-2014, it is been pending before this court for disposal. Even before this Court A-1 and A-2 failed to make their presence and were absent one after another and hence charges could not be read out to them. Hence NBW were issued against both the accused.

23. Thereafter on 19-08-2017, case was split against A-1 and numbered as S.C.No.183/2017, and charges were framed against A-2 and read out to A-2 alone on 23-08-2017 and on 18-04-2018, trial was commenced against A-2 Mani in S.C.No.51 of 2012 and examined all the prosecution witnesses and A-2 was questioned u/s.313(1)(b) of Cr.P.C and the case is posted for arguments.

24. Even after the case against A-1 was split in S.C.No.183/2017, NBW against A-1 was pending for long time and was executed only on 27-01-2022. Further as A-1 was under custody in connection with some other criminal case

the concerned police also failed to produce him before this Court on PT Warrant. And finally charges against A-1 was framed and read out to him on 25-04-2022 and trial was commenced on 05-07-2022 and PW-1 was partly heard. And later on 20-06-2025 PW-1 was examined in full and PW-2 was also examined and Ext.P-1 to Ext.P-3, P.M.O.No.1 to P.M.O.9 were marked. As of now, P.W.1 to P.W.4 were examined. At these stage of both the cases now the prosecution has preferred these petitions seeking for further investigation u/s.173(8) of Cr.P.C.

25. In the above said background now it is to be seen as to whether further investigation is to be ordered or not. On perusal of the records it reveals that, before the case in Crime No.1610/2009, is transferred to Singanallur PS to be investigated along with Crime No.964 of 2009, the Inspector of Police, Avinashi Police Station, [now comes under Tiruppur District] has handed over the Femur Bone and chest bone of the unknown male deceased preserved by the Post-mortem Doctor on 11-11-2009 available at CMC Hospital, Coimbatore, before the learned Judicial Magistrate, Avinashi [now comes under Tiruppur District] along with the history of the case with request to send those items to the Director of Forensic Science Department, Chennai for conducting DNA test and to find out identification of the human origin and any other important features during DNA Test.

26. On 02-12-2009, the learned Judicial Magistrate, Avinashi, Tiruppur District sent a communication with regard to sending of articles along with a written requisition of the Inspector of Police, Avinashi PS for analysis and report of Femur Bone of the unknown male deceased for conducting DNA Test and Analysis and report which was preserved by the Medical Officer, CMC Coimbatore on 11-11-2009 during postmortem examination. Further the then learned Judicial Magistrate, Avinashi, [now comes under Tiruppur District] sent those case properties to the Director, Forensic Science, Chennai along with requisition of the Inspector of Police, Avinashi Police Station through messenger Thiru.Esunesan, Gr. I PC 1502 of Avinashi Police Station.

27. Vide letter dated 04-12-2009, No.CHE/DNA/220/2009, those two items were received by the Forensic Science Department, Chennai and in the said letter, the Director of Forensic Science Department, has mentioned that those two items were received “1 Sealed cardboard box under MO seal, Conditions of seals of sender: Correct and Intact”.

28. Thereafter vide communication dated 14-05-2010, the Assistant Director, DNA Division, Forensic Science Department sent communication to the then learned Judicial Magistrate, Avinashi, [now comes under Tiruppur District] requesting to deputy a police constable to receive the FTA cards for collection of blood samples from the admitted parents of the unknown deceased. Copy

was addressed to the Inspector of Police, Avinashi PS [now comes under Tiruppur District].

29. Thereafter, on 15-06-2010, the then learned Judicial Magistrate, Avinashi [now comes under Tiruppur District] sent a communication in D.No.907/2010, deputing one Thiru.Vellingiri, Gr.I PC 1947 to receive the FTA cards for collection of blood samples from the admitted parents of the unknown male deceased along with the specimen signature of the said Vellingiri. Further Vide communication dated 17-08-2010, the learned Judicial Magistrate, Avinashi [now comes under Tiruppur District] handed over the skull of the unknown male deceased and post card size photo of the deceased for analysis report, DNA Test and Superimposition Test and for analysis and report.

30. Further Vide communication dated 31-12-2010 from the report of Forensic Sciences Department, it appears that the superimposition test could not be completed and hence, opinion could not be given on personal identity. Further it appears that it has been intimated that, Report on DNA analysis will be sent separately from DNA Division of this Department. And Vide communication dated 02-02-2011, the Deputy Director, Anthropology Division, Chennai, sent to the learned Judicial Magistrate, Avinashi [now comes under Tiruppur District] in respect of return of report and articles.

31. When things stand thus as narrated above, based upon the request of the Inspector of Police, Avinashi PS, vide letter dated 04-02-2011, the then learned Judicial Magistrate, Avinashi (FAC) sent a communication to the learned Judicial Magistrate No.3, Coimbatore and thereby transmitting all the records including the chemical analysis report along with the photograph of the deceased kept in sealed cover in respect of Crime No.964/2009 on the file of B-5 Singnallur PS (Crime No.1610/2009) to the learned Judicial Magistrate No.3, Coimbatore on the point of jurisdiction.

32. Further from the records, it appears that, after the case was transferred to Singanallur PS on the point of jurisdiction, they failed to enquire as to whether the above said Vellingiri of Avinashi PS collected the FTA Card and Blood Samples were taken or not. However, final report was filed by the Singnallur PS before the Learned Judicial Magistrate No.III Coimbatore on 12-08-2011 in Crime No.964 of 2009 against A-1 Venkatesh @ Venkatasubramaniam and A-2 Mani and later numbered as PRC.No.26 of 2011 and the case properties were received in PR.No.110/10. Subsequently vide Committal order dated 08-02-2012, of the learned Judicial Magistrate No.3, Coimbatore, committed the case to the District Court, Coimbatore and it was numbered as S.C.No.51 of 2012 and as narrated above it was made over to III Additional District Court, Coimbatore and later transferred to this court for disposal as per the order of the Hon'ble High Court.

33. Hence it is fact that, Femur bone was sent to FSL for chemical analysis / DNA Test in the year 2009, due to various circumstances as referred above, the concerned police failed to get the FTA cards from the FSL and to collect blood samples of concerned persons and without noticing the above, trial was commenced in both the cases and SC.No.51 of 2012 is posted for argument and S.C.No.183 of 2017 is posted for further LWs. At this stage only, the learned Public Prosecutor filed the present petition seeking for further investigation.

34. Further to conduct further investigation though the only condition is that the investigating agency / Police to inform the Court and seek formal permission however in the instant case considering the long years of the pendency of these two cases and for abundant caution the Petition filed by the prosecution was numbered and opportunity was given to both the accused to put forth their contentions.

35. In this aspect it is relevant to reproduce Sec.173(8) of Cr.P.C which reads as follows:-

“Nothing in this section shall be deemed to preclude further investigation in respect of any offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer-in-charge of the police station obtains further evidence, oral or documentary, he shall

forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)''.

36. Thus it is very clear that, nothing can stop the Investigation Officer to continue with further investigation after filing of the Charge Sheet when he comes across and obtained further evidence. Further it is useful to refer a judgment of our Hon'ble High Court in reported in **2021 (4) MLJ (Crl.) 205** in the case between Ravi @ Anubav Ravi Vs The Inspector of Police, Sholurmattam Police Station, Nilgris District in Crl.O.P.No.15030 of 2021, our Hon'ble High Court after discussing various judgments of the Hon'ble Apex Court has held in paragraph 25 that;

“thus in sum and substance as per Section 173(8) of Cr.P.C as well as by various decisions of the Hon'ble Apex Court further investigation by the Investigating Agency after presentation of the charge sheet under section 173(2) Cr.P.C., can be done.

37. Further in paragraph No.29 our Hon'ble High Court has further held that;

“Section 173(8) starts with non obstante provision. Nothing shall preclude further investigation in respect of an offence after the charge sheet filed under

Section 173(2) Cr.P.C., before the concerned Magistrate. When the officer in charge of the police station obtains further evidence both oral and documentary he shall proceed to collect the same and file report before the concerned Magistrate. Thus in clear terms it is mentioned that nothing can stop the investigating officer to continue with further investigation after filing of the charge sheet when he comes across and obtains further evidence... ”

38. In respect of, up to what stage of criminal proceedings, the Magistrate has power to order further investigation, in the same paragraph No.29 in the middle portion, and in paragraph No.30 our Hon’ble High Court has further held that;

“.... The Hon’ble Apex Court in the case of “Vinubhai Haribhai Malaviya Vs The State of Gujarat reported in 2019-17- SCC-1 dealt with the question of law whether after charge sheet is filed by the Police the Magistrate has power to order further investigation and if so up to what stage of criminal proceedings. Further the Hon’ble Apex Court had never intended or questioned the power of the Investigating Officer/Police. The accused therein had filed a petition seeking further investigation under Section.173(8) Cr.P.C., which was rejected by the Magistrate and thereafter a revision was filed before the Sessions Court. The Sessions Court ordered further investigation and the same was challenged before the High Court. The order of the Sessions Court was set aside by the High Court against which the accused approached the Hon’ble Apex Court. In

such situation, the question framed is that whether after charge sheet is filed by the Police the Magistrate has power to order further investigation on the application and if so up to what stage of criminal proceedings”

*“Thus. The point in which the Hon’ble Apex Court dealt with Section 173(8) of Cr.P.C is completely on a different preposition projected from the side of the accused. The authority and power envisaged to the Investigation officer/Police had never been questioned or dealt with. on the other hand the Hon’ble Apex Court in the case of “**Ram Lal Narang Vs State (Delhi Administration)** reported in **1979-2-SCC-322** had an occasion to deal with the provisions of the old code of criminal procedure, 1898 and new code of criminal procedure 1973....”*

39. Further in respect of the apprehension of delay caused on initiation of further investigation, our Hon’ble High Court has further held in paragraph 33 that;

*“...The apprehension of delay caused on initiation of further investigation has been dealt with in the case of “**Hasanbhai Valibhai Qureshi Vs State of Gujarat and Others** reported in **2004-5-SCC-347** wherein it had clearly held that further investigation may delay the trail, but the ultimate object is to arrive at the truth. When defective investigation comes to light during course of trail it may be cured by further investigation. The only condition is that the*

investigating agency/Police to inform the court seek formal permission to conduct further investigation. the law does not mandate taking prior permission from the Magistrate to carry out further investigation.....”

40. Further in the same judgment our Hon’ble High Court has categorically held that the object of criminal trial is to discover the truth and plausible evidence is to be brought on record whatever stage it may be.

41. In this regard it is relevant to quote the Hon’ble Apex Court’s judgment reported in **1999 AIR (SC) 2292** in the case between **Rajendra Prasad Versus Narcotic Cell through its Officer-in-charge, Delhi**. It has been held that;

“.....A lacuna in prosecution is not to be equated with the fallout of an oversight committed by a public prosecutor during trial, either in producing relevant materials or in eliciting relevant answers from witnesses. The adage 'to err is human' is the recognition of the possibility of making mistakes to which humans are prone. A corollary of any such laches or mistakes during the conducting of a case cannot be understood as the lacuna which a Court cannot fill up.

7. Lacuna in the prosecution must be understood as the inherent weakness or a latent wedge in the matrix of the prosecution case. The advantage of it should normally go to the accused in the trial of the case, but an over sight in the

management of the prosecution cannot be treated as irreparable lacuna. No party in a trial can be foreclosed from correcting, errors. If proper evidence was not adduced or a relevant material was not brought on record due to any inadvertence, the Court should be magnanimous in permitting such mistakes to be rectified. After all, function of the criminal Court is administration of criminal justice and not to count errors committed by the parties or to find out and declare who among the parties performed better.”

42. In this aspect, it is relevant to mention about the judgment reported in **2006 AIR (SC) 1367** in the case between **Zahira Habibullah Sheikh & Another Vs State of Gujarat & Others**. Wherein it has been succinctly held that;

“26.there may not be failure of justice on account of mistake of either party in bringing the valuable evidence on record or leaving ambiguity in the statements of the witnesses examined from either side. The determinative factor is whether it is essential to the just decision of the case.....the discretion conferred is to be exercised judiciously, as the wider the power the greater is the necessity for application of judicial mind.

27.It is a cardinal rule in the law of evidence that the best available evidence should be brought before the Court. Sections 60, 64 and 91 of the Indian Evidence Act, 1872 are based on this rule.....Sometimes

the examination of witnesses as directed by the Court may result in what is thought to be "filling of loopholes". That is purely a subsidiary factor and cannot be taken into account. Whether the new evidence is essential or not must of course depend on the facts of each case, and has to be determined by the Presiding Judge.

29. Right from the inception of the judicial system it has been accepted that discovery, vindication and establishment of truth are the main purposes underlying existence of Courts of justice. The operative principles for a fair trial permeate the common law in both civil and criminal contexts. Application of these principles involves a delicate judicial balancing of competing interests in a criminal trial, the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences.

43. Further it is relevant to mention here that, since the present case is based on the circumstantial evidence and not based on the eye witnesses; it is the contention of the accused that based on un-identified dead body, they were unnecessarily roped in this case and they have not committed any offence as alleged by the prosecution. Hence, if the DNA Test of the dead body is proved in the manner known to law, it will be easy for this Court to come to just

conclusion about the identity of the dead body and about the alleged involvement of the accused in this case.

44. Yes of course in the case hand the alleged offence is of the year 2009 and the case in S.C.No.51 of 2012 against A-2 Mani is in the argument Stage and the case in S.C.No.183 of 2017 against A-1 Venkatesh @ Venkatasubramaniam is in the further LWs stage and after nearly 16 years of the alleged offence and nearly after 13 years of the final report, further investigation is sought for by the prosecution. However it should not be forgotten the facts and circumstances of the case which is elaborately narrated in the previous paragraphs and the delay tactics adopted by both the accused after the case is made over to the III Additional District Court, Coimbatore and in this court and the situation which warranted this court to split the case against A1 after very long years.

45. Further it is fact that Femur bone was sent to FSL for chemical analysis / DNA Test in the year 2009, due to various circumstances as referred above, the concerned police failed to get the FTA cards from the FSL and to collect blood samples of concerned persons and without noticing the above, trial was commenced and completed and the case is posted for argument. At this stage only, the concerned police realized about the non-collection of DNA report from the FSL.

46. Though the learned defence counsel would contend that the material objects collected and not sent to FSL from the year 2009, would get contaminated and after 16 years DNA would be collected from the contaminated case property. However, it is science that at any point of time, DNA could be taken from the material object preserved properly by the FSL and even assuming that material object would not have been preserved properly, the prosecution may not be able to get any favourable results from their attempt and it is useful for the accused to strengthen their case. Further both parties are having enough opportunity to cross examine the concerned witnesses in respect of the alleged preservation and taking samples from the object which was received and preserved in the year 2009.

47. Hence, taking into consideration of all the above said aspects, though the learned Public Prosecutor has filed the present petition in the final stage of one of the cases, however, considering the nature and circumstance of the case and based on the judgment cited above and in one case only two witnesses were examined, this Court is inclined to give an opportunity to the prosecution to let in for further investigation and also let in further evidence as the defence has enough opportunity to cross examine the witnesses to be examined and no prejudice would be caused to them. Hence, this Court is inclined to allow this petition. Point is answered accordingly.

In the result, this petition is allowed.

Dictated to Steno-Typist, typed by her directly, and corrected and pronounced by me in open Court this the 13th day of August, 2025.

PRINCIPAL DISTRICT & SESSIONS JUDGE,
COIMBATORE.

//True copy//

Draft Order in
C.M.P.No.5/2025 in
S.C.No.51/2012
Dated:13-08-2025.