

GAHC040018322025



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
(ITANAGAR BENCH)

Case No. : Crl.Petn./249/2025

Nong Jamoh
Son of Tasing Jamoh, resident of Village Yagrung, PO Yagrung, PS Pasighat, East
Siang District, Arunachal Pradesh

VERSUS

The State of AP and Anr
represented by the PP of AP 2:Tara Singh Gibo
Age: 0
Occupation :
Son of Shri Kado Gibo
resident of Nyejir Koche Village
PO and PS Likabali
Lower Siang District
Arunachal Pradesh

Advocate for the Petitioner : Niranjan Sarma, Abanso Gamre,B Padung

Advocate for the Respondent : P P of AP, Jaya Doji,Legal Aid Counsel

BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA

ORDER

Date : 04.06.2026

Heard Mr. N. Sarma, the learned counsel for the petitioner. Also
heard Ms L. Hage, the learned Additional Public Prosecutor for the State

Respondent no. 1 and Ms J. Doji, the learned Legal Aid Counsel for the respondent no. 2/informant.

2. This is an application under Section 528 of the BNSS, 2023 read with Article 227 of the Constitution of India for quashing the order dated 01.08.2025, passed in an application filed by the prosecution in Criminal Misc. Application No. 21/2025 in PSD SC (POCSO) Case No. 25/2022, thereby allowing the prayer of the prosecution to recall the I.O. of the case as a prosecution witness, and further consequential order dated 01.08.2025 whereby, summon has already been issued to the I.O.

3. It is submitted by Mr. N.Sarma, learned counsel for the petitioner that the present case has been pending for a long time. After closure of the defense evidence, the case was fixed on 09.12.2024 for recording of the statement of the accused petitioner and thereafter, on 19.03.2025, a petition was filed for prosecution under Section 311 Cr.PC to call for the Investigating Officer for his re-examination and also for exhibiting the supplementary charge sheet, which was brought before the court belatedly. It is submitted by Mr. Sarma, learned counsel for the petitioner that from the record as well as from the order passed by the learned Special Judge, it is evident that the supplementary charge-sheet was filed only on 29.01.2024, whereas the Investigating Officer (I.O.) had already been examined as PW-14 on 10.03.2023, i.e., nearly eleven months prior to the filing of the supplementary charge-sheet. In such circumstances, the prayer for recalling the Investigating Officer does not appear to be justified. In this regard, the accused petitioner had also filed an objection, but the objection filed by the petitioner was not considered by the learned Special Judge, and the prayer for recalling the investigating officer to

exhibit the supplementary charge sheet was accordingly, allowed by the learned Special Judge.

4. It is submitted by the learned counsel that the contents of the supplementary charge sheet was brought before the court at the time of adducing evidence by the Investigating Officer and other prosecution witnesses, and thus, the accused did not get any opportunity to agitate the contents of the supplementary charge sheet, wherein the FSL report was submitted by the Investigating Officer. The learned counsel has further submitted that the prayer for 311 Cr.PC can be allowed only for the ends of justice and also to arrive at a just decision of the case, but it cannot be allowed which can cause prejudice to the accused person. The court is duty-bound to see that the fair justice is done, and it cannot cause any prejudice to the accused by depriving him to take his proper defence.

5. Mr. Sarma, learned counsel has relied on a decision of the Apex Court in the case of ***Vinay Tyagi vs. Irshad Ali Alias Deepak and Others***, reported in ***(2013) 5 SCC 762***, and emphasised on paragraphs- 40.6, 41, 42, 49, and 50 of the said judgment, wherein the Apex Court had expressed the view that the police should seek the permission from the court to continue further investigation and to file a supplementary charge sheet. There has to be some valid reason for filing a supplementary charge sheet with due permission of the court. There is no bar for the police officer to conduct further investigation or to file supplementary charge sheet with the leave of the court and with the prior permission of the court. The paragraph 49 and 50 of the said judgment reads as under:-

“49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the

courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 173(8) of the Code to conduct "further investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct "further investigation" and/or to file a "supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of contemporanea expositio will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is supported by law should be accepted as part of the Interpretative process.

50. Such firstly, through the doctrine of precedent, as aforenoticed, since quite often the courts have taken such a view, and, secondly, the investigating agencies which have also so understood and applied the principle. The matters which are understood and implemented as a legal practice and are not opposed to the basic rule of law would be good practice and such interpretation would be permissible with the aid of doctrine of contemporanea expositio. Even otherwise, to seek such leave of the court would meet the ends of justice and also provide adequate safeguard against a suspect/accused."

6. The learned counsel for the petitioner has also relied on another decision of the Apex Court, passed in a criminal appeal arising out of Special Leave Petition (Criminal) 16149/2024, reported in **2026 INSC**

561, PaliniswamyVeeraraja& Ors. Vs. The State of Karnataka &Anr., and emphasized on paragraphs- 9 and 10 of the said judgment, which reads as follows:-

“9. On both these questions, the law is no longer *res integra*. True it is that, as held in **Rama Chaudhary v. State of Bihar**, the text of Section 173(8)CrPC does not explicitly mandate seeking of permission from the Magistrate and neither does 193(9) BNSS. However, the proviso to the said Section mandates that permission of the Court is explicitly required once the trial has begun. Even though the statute does not require express permission, the law as it has developed, has made abundantly clear that seeking of permission from the concerned Magistrate has evolved into a requirement. In **Vinay Tyagi v. Irshad Ali**, it has been held as follows:

"49. Now, we may examine another significant aspect which is how the provisions of Section 173(8) have been understood and applied by the courts and investigating agencies. It is true that though there is no specific requirement in the provisions of Section 175(8) of the Code to conduct "further investigation" or file supplementary report with the leave of the court, the investigating agencies have not only understood but also adopted it as a legal practice to seek permission of the courts to conduct "further investigation" and file "supplementary report" with the leave of the court. The courts, in some of the decisions, have also taken a similar view. The requirement of seeking prior leave of the court to conduct "further investigation" and/or to file a "supplementary report" will have to be read into, and is a necessary implication of the provisions of Section 173(8) of the Code. The doctrine of *contemporanea expositio* will fully come to the aid of such interpretation as the matters which are understood and implemented for a long time, and such practice that is

supported by law should be accepted as part of the interpretative process.

*This proposition was approved in **VinubhaiHaribhai Malaviya v. State of Gujarat** and reiterated in **Peethambaran v. State of Kerala**. Recently, in **Robert Lalchungnunga Chongthu v. State of Bihar**, this Bench observed as follows:*

"21. Before parting with this matter, we deem it fit to issue the following directions:

*(i) In view of Vinay Tyagi v. Irshad Ali, it can be seen that the 'leave of the court to file a supplementary charge sheet, is a part of Section 173(8) CrPC. That being the position, in our considered view, the Court is not rendered functus officio having granted such permission. **Since the further investigation is being made with the leave of the Court, judicial stewardship/control thereof, is a function which the court must perform.***

*(ii) Reasons are indispensable to the proper functioning of the machinery of criminal law. They form the bedrock of fairness, transparency, and accountability in the justice system. **If the Court finds or the accused alleges (obviously with proof and reason to substantiate the allegation) that there is a large gap between the first information report and the culminating charge sheet, it is bound to seek an explanation from the investigating agency and satisfy itself to the propriety of the explanation so furnished.***

The direction above does not come based on this case alone. This Court has noticed on many unfortunate occasions that there is massive delay in filing charge sheet/taking cognizance etc. This Court has time and again, in its pronouncements underscored the necessity of speedy investigation and trial as being important for the accused, victim and the society. However, for a variety of reasons there is still a lag in the translation of

this recognition into a reality.

*(iii) While it is well acknowledged and recognised that the process of investigation has many moving parts and is therefore impractical to have strict timelines in place, at the same time, the discussion made in the earlier part of this judgement, clearly establishes that investigations cannot continue endlessly. The accused is not out of place to expect, after a certain point in time, certainty- about the charges against him, giving him ample time to preparing plead his defence. **If investigation into a particular offence has continued for a period that appears to be unduly long, that too without adequate justification, such as in this case, the accused or the complainant both, shall be at liberty to approach the High Court under Section 528 BNSS/482 CrPC, seeking an update on the investigation or, if the doors of the High Court have been knocked by the accused, quashing. It is clarified that delay in completion of investigation will only function as one of the grounds, and the Court, if in its wisdom, decides to entertain this application, other grounds will also have to be considered.***

iv) Reasons are not only important in the judicial sphere, but they are equally essential in administrative matters particularly in matters such as sanction for they open the gateway to greater consequences. Application of mind by the authorities granting or denying sanction must be easily visible including consideration of the evidence placed before it in arriving at the conclusion.

[emphasis in original]"

10. Record reveals that although an application had been filed before the concerned Magistrate for further investigation a third time around, no order specifically granting permission is appended on record, neither it is a submission of the party that permission stood granted. In view of the

above judgments, submission of respondent no.2 that permission is not required has to be negated."

7. In the same context, Mr. Sarma, learned counsel has also relied on the case of ***Robert Lalchungnunga Chongthu alias R.L. Chongthu Vs. State of Bihar***, reported in ***(2025) SCC online 2511***, wherein it has held that, *"If Investigation into a particular offence has continued for a period that appears to be unduly long, that too without adequate justification, such as In this case, the accused or the complainant both, shall be at liberty to approach the High Court under Section 528 BNSS/482 Cr.PC, seeking an update on the investigation or, if the doors of the High Court have been knocked by the accused, quashing. It is clarified that delay in completion of investigation will only function as one of the grounds, and the Court, if in its wisdom, decides to entertain this application, other grounds will also have to be considered."*

8. By relying on the above reported judgments, it is submitted by Mr. Sarma, the learned counsel that from the record and the order itself, it is seen that the supplementary charge sheet was filed even after 11(eleven) months later from recording of the evidence of the I.O. and the accused had no opportunity to cross-examine the prosecution witness on the basis of the said supplementary charge sheet. The case is already delayed, and if the prayer of the prosecution made under Section 311 is allowed, in that event, the other witnesses are also to be called for which will cause more delay in disposal of this case and which otherwise will cause prejudice to the present accused petitioner. Mr. Sarma, learned counsel, accordingly, submitted that it is a fit case wherein the order passed by the learned

Special Judge dated 01.08.2025, allowing the prayer of the petitioner to exhibit the supplementary charge sheet is liable to be set aside and quashed, and direction may be given to the learned Special Judge to proceed with the case further and to dispose of the case within a reasonable period of time.

9. Ms. L. Hage, the learned Additional Public Prosecutor has raised objection and submitted that as per provision of Section 311 Cr.PC, the court at any stage of inquiry, trial or other proceedings may summon any person as a witness or examine any person in attendance, though no summoned as a witness, or recall and re-examine any person already examined, and the court shall summon and examine or recall and re-examine any such person if his evidence appears to be essential for the just decision of this case. Thus, the court is empowered to summon any person as a witness at any stage of the proceeding and it is a settled law that if the conditions under this sections are satisfied, the court can call a witness not only on the motion or either the prosecution or the defense, but also it can do so even on own motion. She further submitted that herein the instant case, it is seen that the application was filed for recalling the Investigating Officer to exhibit the supplementary charge sheet, which was filed subsequent to the recording of evidence of the Investigating Officer. She further submitted that after filing of the preliminary charge sheet, there was a prayer for filing of the supplementary charge sheet after receipt of the FSL report, but as there was delay in receiving the FSL report, the supplementary charge sheet could be filed only in the year 2024, with a delay of about 1 year. There was no fault on the part of the Investigating Officer, the delay in filing the

supplementary charge-sheet occurred due to unavoidable circumstances, particularly on account of the non-receipt of the FSL report within the stipulated time. Consequently, the supplementary charge-sheet could only be filed upon receipt of the said report.

10. The learned Additional Public Prosecutor further submitted that it is also not a case that there was a prayer for fresh investigation wherein the permission is required from the court, but it is a case, wherein the sample for FSL was already collected during the investigation of the case, that is prior to the filing of the preliminary charge sheet. But as the FSL report was delayed, there was a prayer made by the I.O for filing the supplementary charge sheet after receipt of the FSL report. She further submitted that the case of ***Vinay Tyagi(supra)*** as relied by the learned counsel for the petitioner is also not applicable here in the instant case, wherein there was a prayer for filing of the 2(two) different charge sheet but herein the instant case, there is no prayer for any fresh investigation nor there is any prayer for filing any other charge sheet and it was only the prayer from the I.O. of the case that the supplementary charge may be filed after receipt of the FSL report. She has further submitted that the FSL report is very much essential to arrive at the just decision of this case and also for fair trial, which may benefit either for the prosecution or defense. She further submitted that the prayer for recalling witnesses under Section 311 Cr.PC can be made at any stage of the proceeding before pronouncement of the judgment and even after recording of the 313 Cr.PC, if it is required for just and fair trial. She accordingly, objected and submitted that this is not at all a fit case to set aside the order of the learned Special Judge dated 01.08.20205 passed in Criminal Misc.

Application No. 21/2025 in PSD SC (POCSO) Case No. 25/2022.

11. Ms J. Doji, learned Legal Aid Counsel appearing for the respondent no. 2/informant, has also raised objection and submitted that it is necessary for the prosecution as well as the defense to bring the entire evidence on record for arrival of just decision. She has submitted that recalling of the Investigating Officer was only to exhibit the supplementary charge sheet as well as the FSL report, which was received belatedly during the trial of the case. She submits that if the prayer is allowed for exhibiting the supplementary charge sheet, the defense or the accused will also get ample opportunity to cross examine the I.O to that regard and will also get opportunity to adduce any evidence if required for just decision of this case. Mr. J. Doji, learned Legal Aid Counsel has relied on a decision of Karnataka High Court in the case of ***B.L. Udaykumar and Others Vs. State of Karnataka*** passed in ***Crl.P. No.4398/2018*** wherein in paragraphs -13 and 14 of the said judgment, it has been observed that the main object of the criminal trial is to discover the truth, necessarily all and every piece of evidence that can help the court to arrive at the just decision should be allowed to come on record. Therefore, it is immaterial, whether the "evidence" sought to be produced during the trial was either collected in the course of the investigation or subsequent thereto. Section 91 Cr. P.C., no doubt empowers the Court or the officer in charge of the police station to ensure the production of any document or other thing necessary or desirable for the purpose of any investigation, enquiry or other proceedings by issuing summons or written order to the person in whose possession or power such document or thing is. She further submitted that in the said judgment it is provided that it is the duty

of the Public Prosecutor to produce all the evidences relevant to the determination of the guilt or innocence of the accused. She accordingly, submits that in the instant case, it is very much essential to produce the FSL report which was submitted through supplementary charge sheet by the I.O. which is very much essential for arriving at the just decision and hence, the learned Special Judge, committed no error/mistake while passing the order allowing the prayer for prosecution to recall the I.O. as a witness to exhibit the supplementary charge sheet. She further submits that there is no need of any interference in the order passed by the learned Special Judge.

12. Heard the submissions made by the learned counsel for both the sides and also perused the case record and the order passed the learned Special Judge. It is a fact the supplementary charge sheet was filed belatedly after 11(eleven) months of recording of evidence of the I.O. but at the same time, it cannot be denied that prayer for furnishing of the supplementary charge sheet was made at the time of filing the preliminary charge sheet. It was specifically prayed that supplementary charge sheet will be filed after receipt of the FSL report and while accepting the preliminary charge sheet, the prayer of the I.O. for filing of the supplementary charge sheet was also accepted and case proceeded accordingly. From the order passed by the learned Special Judge, it is seen that the supplementary charge sheet was submitted belatedly and thereafter, coming to know about the submission of the supplementary charge sheet, the prayer for exhibition of the charge sheet was made by the prosecution by recalling the Investigating Officer. But it is also the fact that the samples were collected during the investigation and was sent for

examination before the CFSL, Kampur, Guwahati and it was only due to non-receipt of FSL report, the prayer for supplementary charge sheet was made by the I.O.

13. The case basically relied by the learned counsel for the petitioner i.e. the case of ***Vinay Tyagi(supra)***, it is seen that in the said case, the preliminary charge sheet was filed by the Delhi police and thereafter, the prayer for further investigation was submitted by the CBI, wherein it has been held by the Apex Court there has to be prior permission or leave of the court to conduct further investigation and to file supplementary charge sheet/report. But herein in this instant, it is not a case of fresh investigation or further investigation but only a prayer was made for filing a supplementary charge sheet on receipt of the FSL report in respect of the samples collected during the investigation. Therefore, the question of permission or leave of court for further investigation is not applicable in this case. However, it is a fact that there was sufficient delay in filing the supplementary charge sheet by Investigating Officer and the reason for which is explained that the FSL report from the laboratory was received belated and only after receipt of the report, the supplementary could be filed by the I.O. after his examination. More so, the learned Special Judge had passed a detailed order taking into consideration the objection raised by the accused petitioner and also considered the provision of Section 173(8) Cr.PC wherein there is no requirement of any permission for further investigation and it is also observed that it is not a case of fresh investigation. Therefore, considering all the situations and circumstances of the case, it is seen that the supplementary charge sheet was filed belated and the prayer for re-examination of I.O was also made about

1(one) year later only after receipt of the FSL report. It is rightly observed by the learned Special Judge, that meaning of prejudice in the criminal trial means that deprivation of a fair trial or a fair chance of defense. A mere irregularity without showing how it harmed the accused is not enough which based on the Judgment of the Apex Court passed in the case of ***Shivaji Sahabrao Vs. State of Maharashtra***, reported in **(1973) 2 SCC 793**. Herein, in this instant case also, it is seen that accused would get ample opportunity to cross examine the Investigating Officer and if required, he may also get the opportunity for adducing any other defense to disprove the case of the prosecution or to rebut the evidence of the Investigation Officer. Therefore, considering the entire facts and circumstances of the case, this Court is of the opinion that there is no infirmity in the order dated 01.08.2025 passed by the learned Special Judge in PSG CRL Misc App. No.21/2025 in PSG SC (POCSO) No.25/2022.

14. In view of the above, there is no merit in the present criminal petition and accordingly, the same is dismissed.

JUDGE

Comparing Assistant