

RAJASTHAN HIGH COURT

सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 2809/2019

Taimoor S/o Zuhroo, aged about 21 Years, R/o Village Pathroda,
P.S Malakhera, District Alwar, Raj.

-----Petitioner

Versus

State of Rajasthan, Through PP.

-----Respondent

For Petitioner(s)	:	Mr. Aamir Aziz Mr. Navdeep Singh Mr. Shubham Dular
For Respondent(s)	:	Mr. Gaurav Gupta-Asstt.G.A Mr. Avtar Singh Rathore for Mr. Rajveer Singh

JUSTICE ANOOP KUMAR DHAND

Order

1.	Date of conclusion of arguments	19/05/2026
2.	Date on which the order was reserved	19/05/2026
3.	Whether the full order or only the operative part is pronounced	Full Judgment
4.	Date of pronouncement	25/05/2026

Reportable

1. The instant misc. petition is listed before this Court in pursuance of the directions issued by the Hon’ble Apex Court in the case of **Vijay Kumar and Ors. Vs. State of Rajasthan** (Petition for Special Leave to Appeal (Crl.) No. 773/2026, decided on 15.01.2026), wherein the Hon’ble Apex Court observed that in various matters, interim orders have been passed in criminal revision petitions and petitions filed under Section 482 Cr.P.C., as a result of which trial relating to serious offences such as murder,

rape, dacoity, dowry death, etc., could not proceed and remained stalled/held up due to the passage of considerable time.

2. Directions have been issued to this Court and other High Courts to take up such like matters which are pending since long, on priority and decide the same expeditiously without deferring the hearings to subsequent dates.

3. By way of filing the instant criminal misc. petition, a prayer has been made to quash the entire criminal proceedings qua the petitioner, arising out of the impugned FIR No. 30/2019 registered at the Police Station Malakhera, District Alwar for the offences punishable under Sections 498A and 304B IPC.

4. Learned counsel for the petitioner submits that the impugned FIR was registered on 14.01.2019 by the complainant- Rafi Mohammad with regard to unnatural death of the deceased- Rihana. Counsel submits that the names of the petitioner and all other family members were mentioned in the aforesaid FIR, however, during the course of investigation, statements of twelve witnesses, namely, Rafi Mohammad (brother of the deceased), Umarddam, Mohabbat, Jasmal, Nizamuddin, Nisar, Shahrukh Khan, Shafi Khan, Hanif Khan, Arsheeda, Naseeban, and Hafeezan were recorded on 15.01.2019. Counsel submits that none of these witnesses stated anything against the petitioner rather they stated that only the husband Shahrukh Khan and the mother-in-law, Aliman, have tortured and harassed the deceased for demand of dowry and caused her death. Counsel submits that on the basis of the statements of the aforesaid witnesses so recorded, involvement of only two accused persons i.e. Shahrukh Khan and Aliman was found to be proved and the involvement of rest of the

accused persons including the petitioner was not found to be proved in the instant case. The Superintendent of Police, (SP) Alwar vide order dated 21.02.2019, directed the Additional Superintendent of Police, (Addl. SP) Alwar (Rural) to conduct further investigation and on the pretext of further investigation, now re-investigation has been conducted and the statements of the above named twelve witnesses were recorded on 13.03.2019, 27.03.2019, 28.03.2019 and 01.04.2019. Counsel submits that the orders were passed for conducting further investigation against Taimoor, Arsheeda, Johru Khan and Aasif. Counsel submits that this time again the police did not find any involvement of the accused Arsheeda and Johru Khan and the police was bent upon to submit charge-sheet against the petitioner and that is why the investigation has kept pending under Section 173(8) Cr.P.C. Counsel submits that a clear distinction exists between an order directing further investigation and one directing re-investigation; however, in the instant case, under the garb of further investigation, re-investigation has effectively been conducted by re-recording the statements of the same witnesses and obtaining supplementary statements from others. Counsel further submits that the Superintendent of Police, Alwar was not having any authority to pass such order for conducting further investigation and this power lies with the concerned Courts only.

In support of his contentions, counsel for the petitioner has placed reliance upon the judgments passed by the Hon'ble Apex Court in the cases of **Pradeep Kumar Maurya and Ors. Vs. State of U.P. and Anr.**, reported in **2025 SCC OnLine All 1201**; **Vinay Tyagi Vs. Irshad Ali and Ors.**, reported in **2013 CrI.LJ**

754; Devendra Kumar Srivastava and Ors. Vs. State of UP and Ors., reported in **2025 SCC OnLine All 3206**; and **Geddamm Jhansi and Anr. Vs. State of Telangana and Ors.** while deciding Special Leave to Petition (Criminal) No. 9556/2022 on 07.02.2025.

5. *Per contra*, learned Public Prosecutor as well as counsel appearing on behalf of the complainant-respondent oppose the arguments raised by counsel for the petitioner and submits that the allegations were levelled against the petitioner along with other co-accused persons indicating that they have tortured and harassed the deceased for demand of dowry and the deceased has expired in unnatural circumstances, within seven years of her marriage. Counsel submits that on earlier occasions also, the previous Investigating Officer did not conducted the investigation in a fair and impartial manner and that is why directions were issued by the SP to the Addl. SP, Alwar (Rural) to conduct further investigation but this time also, the involvement of the petitioner was found to be prima facie proved. He further submits that the SP is quite competent to issue such directions because till date, no charge-sheet against the other accused persons has been submitted. Counsel submits that under these circumstances, the judgments so relied upon by counsel for the petitioner are not applicable in the facts and circumstances of the present petition. Lastly, he argued that till date, the petitioner has not joined the investigation and he is not entitled to get any relief from this Court and the present petition is liable to be rejected.

6. In rebuttal, counsel for the petitioner submits that after passing of the interim order dated 17.07.2019 by this Court

directing not to take any coercive action against the petitioner, he appeared before the SP on 22.07.2019 along with a copy of the aforesaid interim order passed by this Court. Counsel further submits that under these circumstances, appropriate orders be passed.

7. Heard and considered the submissions made at Bar and perused the material available on record.

8. The facts of the present case lie in a narrow compass.

9. A perusal of the impugned FIR and statements of the witnesses—namely Rafi Mohammad, Umarddam, Mohabbat, Jasmal, Nizamuddin, Nisar, Shahrukh Khan, Shafi Khan, Hanif Khan, Arsheeda, Naseeban and Hafeezan indicate that although the names of the accused persons, including the Petitioner (Taimoor), find mention therein but the specific allegations, contained in the operative portion of the statements so recorded on 27.03.2019, remain confined exclusively to the co-accused Shahrukh Khan and Aliman. Hence, the investigating Officer found *prima facie* case only against Shahrukh Khan and Aliman and involvement of the petitioner and rest of the accused persons was not found to be proved.

10. It is noteworthy to mention here that no charge-sheet was submitted against the accused -Shahrukh Khan and Aliman and no Final Report (Negative) was submitted in favour of the petitioner and the co-accused persons till 21.02.2019.

11. Upon perusal of the aforesaid investigation report, the SP found the investigation carried out by the earlier Investigation Officer to be unsatisfactory. Therefore, vide order dated

21.02.2019 he directed the Addl. S.P, Alwar (Rural) to conduct further investigation. Thereafter, the Addl.S.P. recorded the statements of the above twelve witnesses along with other witnesses namely Fajri, Mubeena, Mahmal, Shahrana, Manjeet, Aneesa, Afsana, Ruksana and Raghuveer and kept the matter pending for further investigation against the petitioner under Section 173(8) Cr.P.C., upon finding a *prima facie* case against him and charge-sheet was submitted against the two accused persons- Shahrukh Khan and Aliman on 10.04.2019 for the offence under Section 498A, 304 B IPC before the concerned Court.

12. Till date, the investigation is pending against the petitioner under Section 173(8) Cr.P.C and no charge-sheet has been submitted against him but the petitioner has approached this Court for quashing of the impugned FIR.

13. Now the question which remains for consideration before this Court is "whether the Superintendent of Police can issue an order for conducting further investigation prior to submission of report under Section 173 Cr.P.C. before the concerned Court?"

14. It has been well established that fairness is a facet of Article 21 of the Constitution of India. Such fairness in action is also required to be mandatorily be followed in a criminal investigation. The right to a fair investigation is not only a constitutional right but also a natural right as well. In **Sathyavani Ponrani V. Samuel Raj and Anr.**, reported in **2010 (4) CTC 833**, while discussing the right to fair investigation, the Madras High Court has held that the same is mandatory under Articles 14, 21 and 39

of the Constitution of India. The following paragraph would be apposite:

"66. Free and Fair Investigation and Trial is enshrined in Article 14, 21 and 39-A of the Constitution of India. It is the duty of the state to ensure that every citizen of the country should have the free and fair investigation and trial. The preamble and the constitution are compulsive and not facultative, in that free access to the form of justice is integral to the core right to equality, regarded as a basic feature of our Constitution. Therefore such a right is a constitutional right as well as a fundamental right. Such a right cannot be confined only to the accused but also to the victim depending upon the facts of the case. Therefore such a right is not only a constitutional right but also a human right. Any procedure which comes in a way of a party in getting a fair trial would be in violation of Article 14 of the Constitution."

15. In **Nirmal Singh Kohlon V. State of Punjab**, reported in **(2009) 1 SCC 441**, the Hon'ble Supreme Court further observed that:-

"28. An accused is entitled to a fair investigation. Fair investigation and fair trial are concomitant to preservation of fundamental right of an accused under Article 21 of the Constitution of India."

16. In **Subramanian Swamy v. CBI**, reported in **(2014) 8 SCC 682**, the Hon'ble Apex Court has ruled that any investigation into crime should be fair and should not be tainted. It has been further held that the Rule of Law is a facet of equality under Article 21 of the Constitution of India.

17. Chapter XII of the Code deals with the information to the police and their powers to investigate the matter. On conclusion of investigation section 169 provides that if it appears to the officer in-charge of police station upon investigation that there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of accused to a Magistrate, and accused is in custody

he shall release him on his executing bond with or without sureties or direct him to appear before a Magistrate empowered to take cognizance of the case. Section 172 says that every police officer making investigation under this Chapter shall enter his proceedings in the investigation in a diary day by day. Section 173(2) provides that as soon as the investigation is completed, the officer in-charge of police station shall forward a report in the form prescribed by the State Government, to the Magistrate empowered to take cognizance of offence on a police report. Section 173(3) provides that where a Superior Officer of the Police has been appointed under section 158, the report shall, in any case in which the state government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer in-charge of the police station to make further investigation. Section 173(8) provides that the officer in-charge of police station is empowered to forward a further report or reports regarding evidence obtained by him. After filing of further report, the Magistrate will exercise the jurisdiction for taking cognizance of the offence.

18. Section 36 of Criminal Procedure Code provides about the power of Superintending Authority of Police as under:

Police officers superior in rank to an officer in charge of a police station may exercise the same powers, throughout the local area to which they are appointed, as may be exercised by such officer within the limits of his station.

19. From the language used in Section 36 Cr.P.C. Superior Police Officer have also been conferred with the powers as Officer

incharge of police station, which infers that the Superior Officer of Police can also make investigation of the case. The legislative intendment of Section 36 of Cr.P.C. is that all the superior rank police officers above SHO including the Superintendent of Police should involve in supervising the investigation to ensure the integrity and quality. It is permissible for any Superior officer of police to take over the investigation from such officer incharge of police station either suo motu or on the direction of the superior officer even that of the Government. When any police office referred to in Section 36 conducts the investigation that cannot be called in question as without authority.

20. From the above provisions of the Code, it is clear that investigation has to be conducted by the officer in-charge of the police station or the superior officer. Upon conducting investigation, the officer in-charge of police station or the superior officer shall forward the accused, if he is under custody to the Magistrate empowered to take cognizance of the offence if it appears to him that there is sufficient evidence or reasonable ground of suspicion. After conducting investigation, the officer in charge of police station or superior officer shall forward a report to the Magistrate after collecting the evidence. If there is no sufficient material, he has to send final report to the Magistrate.

21. The officer in-charge of police station is empowered to conduct further investigation even after filling charge-sheet, as provided under Section 173(8) after investigating the case and collecting the evidence. The power of investigation is entirely vested in the officer in-charge of police station. There is no provision in the Code empowering any other officer, other than the

officer in-charge of police station, to file the police report, except the superior officer who has taken over the investigation himself.

22. Hence, it is clear that a superior Police Officer had the authority to direct further investigation in the matter, if any evidence is available on the record, prior to the stage of submission of charge-sheet against the accused person, whose involvement stands established prima facie.

23. Similar situation came up before the Patna High Court in the case of **Abdul Sattar and Ors. Vs. State of Bihar and Ors.**, reported in **1989 SC Online Pat 316** and it was held in para No. 43 to 51, as under:-

"43. It is, thus clear from the aforementioned authorities that in a case of this nature, the superior officer had the authority to direct farther investigation and as new investigating officer satisfied himself by re-examining some of the witnesses named in the first information report, the satisfaction of the new investigating officer that prima facie case has been made out in view of the statements given before him by the said witnesses, would also come within the purview of the provisions of Sub-section (8) of Section 173 of the Code of Criminal Procedure.

44. In **C. Lohithakshan v. State of Kerala**, reported in **1989 Cr. L.J. 614**, it has been held as follows:-

"The Code thus recognized what was always implied. Codification is only a recognition, and not a restriction. When Section 173(8) gives recognition to an unqualified power, it cannot be read as importing a prohibition. Thus seeking a prohibition from Section 173(8), would be to go against the tenor and expressed intent of the section. For this reason, petitioner's contention must fail. The further grievance that the report would prejudice the petitioner, is without substance. The findings to be made cannot be predicted. Besides, evidentiary value of the report is to be determined by the trial court. There is no question of prejudice, at all.

Scheme of the Code is not to further the interest of accused alone by jettisoning material gathered by the investigation. As observed by the Supreme Court in *State of U.P. v. Anil Singh* of the Court to punish

the guilty, as it is its responsibility to protect the innocent. Both are public duties and both must be observed.”

45. Further in this case the question of seeking the permission of the Court before further investigation was directed to be made, did not arise in view of the fact that the original charge-sheet was not filed in this Court and thus there was no question of interference with the proceedings of the case.

46. As noticed hereinbefore the original charge sheet reached the Court after the supplementary charge sheet was received in court.

47. In any event the irregularity, if any, must be deemed to have been rectified in view of the order of the Magistrate dated 15-3-1986.

48. As has been held by the Supreme Court in Narang's case that final decision in such matter should be left to the discretion of the court.

49. However, in the instant case, from the impugned order, it is evident that the learned court below has not only taken into consideration the statements made in the charge-sheet as also the supplementary charge-sheet but has also taken into consideration the statements made before the police by the witnesses and other materials which have been brought on records during investigation.

50. The learned court below, therefore, as indicated hereinbefore was entitled to take cognizance of the offence as against the petitioners also, even if, a final form was submitted in their favour, as he was satisfied from a perusal of the case diary and other materials that a prima facie case is made out as against the petitioners also.

51. Taking thus into consideration all the facts and circumstances of this case, in my opinion, it must be held that the impugned order is neither illegal nor vitiated in law.”

24. Hence, it is clear that a Superior Officer had the authority to direct for further investigation and permission for conducting further investigation is not required to be obtained from the Court, if the original charge-sheet is not submitted.

25. It is settled position of law that after submission of the charge-sheet, such order of conducting further investigation can be passed by the concerned Court.

26. In the instant case, the order dated 21.02.2019 was passed by the S.P. Alwar directing the Addl.S.P., Alwar (Rural) to conduct further investigation. Thereafter, further investigation was carried out by the Addl.S.P. but while keeping the investigation pending against the petitioner under Section 173(8)Cr.P.C. the charge-sheet was submitted against the co-accused persons Shahrukh Khan and Aliman before the concerned Court.

27. Hence, it is clear that no illegality has been caused by the S.P. Alwar while passing the order dated 21.02.2019 for conducting further investigation.

28. In view of the discussions made herein above, this Court finds no merit and substance in the instant petition.

29. The instant criminal misc. petition stands disposed of, granting liberty to the petitioner to submit representation before the Addl. S.P., Alwar (Rural) who will consider the same and would conduct fair and impartial investigation in accordance with law.

30. Stay application and all pending application(s), if any, also stand disposed of.

(ANOOP KUMAR DHAND),J