



2026:AHC:151239

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD
CRIMINAL APPEAL No. - 12592 of 2024**

Ravi Shankar and 2 others

.....Appellant(s)

Versus

State of U.P. and another

.....Respondent(s)

Counsel for Appellant(s)	:	Gulab Chandra Tiwari, Uday Shankar Tiwari
Counsel for Respondent(s)	:	Dilip Kumar Dubey, G.A., Prabhat Kumar Tiwari

Court No. - 93

HON'BLE SANTOSH RAI, J.

1. Heard Sri Gulab Chandra Tiwari, learned counsel for the appellants, Sri Prabhat Kumar Tiwari, learned counsel for opposite party no.2 and learned A.G.A. and perused the record.

2. This criminal appeal under Section 14 A (1) of S.C. & S.T. Act has been filed against order dated 16.01.2019 passed by Special Judge (SC/ST) (Prevention of Atrocities) Act, Jaunpur in Session Trial No 18/2019 (State Vs. Devraj & others) arising out of Case Crime No. 188 of 2016, under Sections 323, 504 and 506 I.P.C. and Section 3(1) (x) SC/ST Act, P.S. Mokhalishaban, District Jaunpur, Bihar.

appellants, the investigating officer recorded witness statements under Section 161 of the Cr.P.C. and initially compiled a final report on June 9, 2016, concluding that no offences were made out against the appellants; this report was submitted before the superior officer. In the light of direction of superior police officer, the investigating officer forwarded Charge Sheet No. 27/2017 on May 3, 2017 against four persons under Sections 323, 504, 506 of the IPC and Section 3(1)(x) of the SC/ST Act, noting that the first accused, Devraj, had passed away.

4. Briefly, the grounds of the appeal are that the impugned order dated 16.01.2019 passed Special Judge (SC/ST) (Prevention of Atrocities) Act, Jaunpur is totally unjust improper and is based upon surmises and conjunctures which is not supported by any documentary evidence.

5. Learned counsel for the appellants submitted that the trial court has wrongly taken cognizance in this case whereas during course of investigation, the investigating officer has sent charge-sheet before the Superior Police Authority. The Superior Police Authority has not empowered to issue direction for further investigation as provided under section 173(8) CRPC. On the basis of direction given by the Superior Police Authority, charge-sheet was filed whereas, initial FR was submitted, and he draw attention of the Court towards the SCD parcha III, which is annexed as Annexure 2.

6. Learned counsel for the opposite party no.2 vehemently opposed the submission of learned counsel for the appellants, and submitted that the trial court has not committed any legal error by taking cognizance. The final report was not submitted before the court. Admittedly, after

Authority/Additional S.P. Gramin, Jaunpur, returned along with instructions. In the light of instructions received through Superior Police Authority, the I.O. again conduct the further investigation and submitted the charge-sheet. Thereafter, cognizance was taken in this case.

7. In the light of submission of learned counsel for both the parties, in this regard, it would be just, and proper to refer the provision of Section 36 CrPC/Section 30 BNSS "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." Consequently, the Superintendent of Police, Additional Superintendent of Police, Deputy Superintendent of Police, Circle Officer and other superior police officers possess co-extensive powers of investigation and are competent to supervise, direct or themselves undertake investigation in accordance with law.

8. The legal position has been explained by the Hon'ble Supreme Court in *Pramod Kumar v. State of U.P.*, (2026) 5 SCC 308, particularly in paragraphs 28 to 32 as under :-

28. The issue regarding the procedure to be followed for directing further investigation in a case has been dealt with by this Court in *Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762, wherein this Court while dealing with the contours of Section 173(8)CrPC relating to further investigation, propounded that the police ought to follow the procedure of seeking permission from the Court to conduct "further investigation" and file a supplementary charge-sheet. The relevant paragraphs from the judgment are reproduced as under : (SCC p. 790, para 40)

"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

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.”
(emphasis supplied)

29. In this very judgment, this Court while noting that although there is no explicit mandate under Section 173(8) CrPC to seek leave of the Court before conducting further investigation, nevertheless, over the time, a practice has been developed to seek permission of the Court. Therefore, the practice of seeking the leave of the Court will have to be read into the provisions of Section 173(8) CrPC, and it is essentially a prerequisite for directing further investigation. This Court therein held as follows : (Vinay Tyagi case [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , SCC p. 793, paras 49-50)

“49. Now, we may examine another significant aspect which

“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 a view can be supported from two different points of view: 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.”

(emphasis supplied)

30. The proposition of the law laid down in *Vinay Tyagi* [*Vinay Tyagi v. Irshad Ali*, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] has been further affirmed by the three-Judge Bench of this Court in *Vinubhai Haribhai Malaviya v. State of Gujarat* [*Vinubhai Haribhai Malaviya v. State of Gujarat*, (2019) 17 SCC 1 : (2020) 3 SCC (Cri) 228] .

31. This Court has dealt with a similar situation in *Peethambaran v. State of Kerala* [*Peethambaran v. State of Kerala*, (2024) 16 SCC 65] , wherein the District Police Chief i.e. Superintendent of Police, ordered further investigation. This Court therein, while quashing the order passed by the District Police Chief, held that the power to order further investigation rests either with the Magistrate concerned or a higher court, but not with the investigating agency. The relevant paragraphs from the judgment are reproduced as follows : (SCC pp. 74 & 77, paras 19-20 & 28)

“19. The Chief Police Officer of a district is the

specific requirement to seek leave of the court for further investigation or to file a supplementary report but the investigating agencies, have not only understood it to be so but have also adopted the same as a legal requirement. The doctrine of *contemporanea expositio* aids such an interpretation of matters which have been long understood and implemented in a particular manner to be accepted into the interpretive process. In other words, the requirement of permission for further investigation or to file a supplementary report is accepted within law and is therefore required to be complied with.

20. In the facts at hand, it is clear that such a permission was never taken, granted or ordered. Consequently, FR-II is without basis. In FR-I it has been stated that in the absence of any documents in respect of the financial transactions, the instant case may be treated as a false case. This, then would necessarily imply that after due investigation conducted by a duly authorised person, the conclusion is that the ingredients of the section mentioned in the FIR have not been met and no case is made out.

28. In terms of second question, the above discussion makes clear that the District Police Chief, Kottayam could not have ordered further investigation, as that power rests either with the Magistrate concerned or with a higher court and not with an investigating agency.”
(emphasis supplied)

32. In light of the legal position as settled by this Court through the above judgments, it is safe to say that the power to direct further investigation in a case rests solely at the discretion of the Magistrate/Court concerned. In the event, the police/investigating agency is of the opinion that further investigation is necessary in any particular case to cull out complete facts and truth in the case, it is binding upon them to file an appropriate application before the Magistrate/Court, without directing an order for further investigation by themselves. Once such an application is filed by the investigating agency, the Magistrate/Court would apply its judicial mind, in light of the facts and circumstances of the particular case and the reasons demonstrated by the investigating agency, in order to exercise its discretion for

taken over the investigation) is competent to submit the police report before the Magistrate. The report represents the opinion of the Investigating Officer. A superior administrative authority cannot compel the I.O to file a charge-sheet if the investigation discloses no offence. Although, CrPC/BNSS does not expressly use the words "return the case diary", supervisory power necessarily includes the authority to examine investigation and require further investigation before approval of the final report. Thus, the following principles emerge; examine case diary, point out defects, direct examination of omitted witnesses, direct collection of scientific evidence, direct recovery of documents, require compliance with legal provisions, send the file back to I.O for completion of investigation. This is part of '*supervisory jurisdiction*' flowing from Section 36 CrPC/Section 30 B.N.S.S. and UP Police Regulations. There is provisions in Para 109 and 122 of UP Police Regulation regarding completion of investigation and submission of charge-sheet or final report. However, the superior officer cannot substitute his own opinion merely to compel filing of charge-sheet without either, taking over investigation himself; or directing lawful instructions to the IO.

10. There is difference between 'Supervisory Power and Investigating Power'. Superior Officer may inspect investigation, issue instructions, return diary, monitor investigation. But ordinarily cannot dictate findings, fabricate evidence, compel filing of charge-sheet contrary to investigation. If he wishes to alter conclusions substantially, he should himself exercise powers under Section 36 CrPC/Section 30 BNSS and conduct investigation. Thus, Legal Position is that the scheme of the Code of Criminal Procedure recognizes that, before the police report

reaches the Court. Section 36 CrPC/Section 30 BNSS empowers police officers superior in rank to the Officer-in-Charge of a police station to exercise the same investigative powers within their territorial jurisdiction. Consequently, officers such as the Superintendent of Police, Additional Superintendent of Police, Deputy Superintendent of Police and Circle Officer are competent to supervise the investigation, examine the case diary, and ensure that all relevant facts have been properly investigated.

11. The supervisory authority of superior police officers is also reflected in the U.P. Police Regulations, particularly Chapter XI relating to the duties of superior officers. Before a final report or charge-sheet is forwarded to the Court, the superior officer is entitled to scrutinize the case diary, identify deficiencies in the investigation, and return the record to the Investigating Officer with appropriate directions for conducting further investigation. Such directions may include examination of omitted witnesses, collection of additional documentary or scientific evidence, recovery of relevant material, removal of procedural defects, and compliance with statutory requirements. These 'supervisory directions' are intended to ensure that the investigation is complete, impartial and legally sound before the police report is submitted before the Magistrate. However, the supervisory jurisdiction of a superior police officer is distinct from the statutory function of the Investigating Officer. A superior officer cannot merely substitute his own opinion or compel the Investigating Officer to submit a charge-sheet contrary to the latter's independent assessment of the evidence. If the superior officer proposes to alter the conclusions of the investigation substantially, he must himself assume the investigation by exercising

12. The Hon'ble Supreme Court has consistently recognized this distinction. In ***State of Bihar v. J.A.C. Saldanha, (1980) 1 SCC 554***, it was held that the powers conferred under Section 36 CrPC are not confined merely to administrative supervision. A superior police officer possesses the same powers of investigation as the Officer-in-Charge of a police station and may himself investigate or supervise the investigation to ensure that the truth is discovered and justice is served. The object of such further investigation is not to nullify the earlier investigation but to supplement it by bringing all relevant facts before the Court. Similarly, in ***Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762***, the Supreme Court explained the distinction between a 'fresh or *de novo*' investigation, which ordinarily requires judicial sanction, and further investigation, which is a continuation of the earlier investigation for discovering the truth. The Court emphasized that the police possess the inherent authority to undertake further investigation before the report attains finality, subject to the statutory safeguards contained in Section 173(8) CrPC. The object of such further investigation is not to nullify the earlier investigation but to supplement it by bringing all relevant facts before the Court.

13. At the stage prior to the submission of the police report under Section 173(2) CrPC/Section 193(3) BNSS, the investigation remains under the 'statutory and administrative supervision' of the superior police authorities. During this stage, a superior police officer is fully empowered under Section 36 CrPC/Section 30 BNSS and relevant rules to examine the case diary, scrutinize the investigation, withhold the proposed police report, and direct the Investigating Officer to conduct further investigation wherever the investigation is found to be

14. The legal position changes once the police report has been submitted before the Magistrate under Section 173(2) CrPC/Section 193(3) BNSS. After submission of the police report, the superior police authority cannot unilaterally recall, withdraw, or cancel the charge-sheet already filed before the Court. At that stage, the investigation comes under the supervision of the Court, and any further investigation can only be undertaken in accordance with Section 173(8) CrPC/Section 193(9) BNSS by submitting a supplementary police report before the Magistrate. Thus, unlike the pre-submission stage, the superior police authority cannot exercise administrative powers to undo a police report that has already been filed before the Court. Any further investigation must follow the statutory procedure and remain subject to judicial supervision.

15. Thus, a clear distinction must be maintained between '*supervisory power*' and '*investigative power*'. A superior police officer is empowered to supervise the investigation by inspecting the case diary, pointing out defects, issuing lawful directions, and ensuring that the investigation is conducted properly. For example, the superior officer may direct the Investigating Officer to verify 'an alibi', collect CCTV footage, examine additional witnesses, recover relevant documents, or obtain scientific evidence, etc. However, the superior officer cannot compel the Investigating Officer to sign or submit an opinion which the Investigating Officer does not honestly hold. If the superior officer is of the view that the investigation requires substantial alteration, he must either exercise his own powers of investigation under Section 36 CrPC/Section 30 BNSS or entrust the investigation to another competent Investigating Officer authorized to conduct the investigation and submit

16. In *Bohatie Devi (Dead) through LRs v. State of Uttar Pradesh & Others, (2023) 16 SCC 349*, Hon'ble Supreme Court has explained the limits of administrative interference after submission of the police report. The Court held that the Secretary (Home) or any other executive authority of the State Government cannot bypass the provisions of the Code of Criminal Procedure and direct a fresh investigation, reinvestigation, or further investigation by another investigating agency after a charge-sheet has already been submitted before the Magistrate and cognizance has been taken. Once the matter enters the judicial domain, executive authorities cannot interfere with the statutory procedure prescribed under the Code.

17. The Supreme Court further observed that if an accused person is aggrieved by the filing of a charge-sheet or supplementary charge-sheet, the proper remedy is to invoke the jurisdiction of the competent Court by filing proceedings such as a petition under Section 482 CrPC, a discharge application, or any other remedy available under law. The accused cannot seek administrative intervention from the Government or executive authorities to nullify or circumvent the judicial process. The Court also clarified that Section 173(3) CrPC, read with Section 158 CrPC, merely prescribes the channel through which the police report is to be forwarded to the Magistrate through the superior police officer. These provisions do not confer any independent authority upon the Home Secretary or any executive officer to transfer the investigation to another agency after the charge-sheet has been submitted or after the Court has taken cognizance. In Paragraph 20 of the said judgment, the Supreme Court specifically interpreted Sections 173(3) and 158 CrPC and held that these provisions regulate only the manner in which the

further investigation. Therefore, the statutory power to direct further investigation before submission of the report remains with the superior police officer under the scheme of the Code.

18. Under the statutory scheme of the Code of Criminal Procedure and the U.P. Police Regulations, the investigation of a criminal case remains under the ‘general control and supervision’ of superior police officers until the police report under Section 173(2) CrPC/Section 193(3) BNSS is submitted before the Magistrate. The purpose of such supervision is to ensure that the investigation is complete, fair, lawful, and based upon all relevant evidence before the matter reaches the Court. In the ordinary course, after completing the investigation, the Investigating Officer prepares the case diary together with a draft final report or charge-sheet. Before the report is forwarded to the Magistrate, it is examined through the departmental hierarchy, such as the Station House Officer, Circle Officer, Deputy Superintendent of Police, Additional Superintendent of Police or Superintendent of Police, as the case may be. These superior officers exercise supervisory jurisdiction to ensure that the investigation has been properly conducted and that the proposed police report is legally sustainable. During such scrutiny, the superior police officer is entitled to verify whether all material evidence has been collected, whether the statements of witnesses have been properly recorded, whether the relevant provisions of law have been correctly applied, and whether any important witness, document or circumstance has been overlooked.

19. If the investigation is found to be incomplete or defective, the superior officer ‘*may return*’ the case diary and the draft police report to

directions and completes the investigation, the police report under Section 173(2) CrPC/Section 193(3) BNSS is submitted before the Magistrate through the prescribed channel. At that stage, the statutory obligation of the police to submit the report stands fulfilled. The internal administrative supervision exercised by superior police officers remains purely 'departmental in nature' and does not affect the jurisdiction of the Magistrate after the report has been filed.

20. Thus, the statutory scheme strikes a balance between effective departmental supervision and the independence of the investigating process. While superior police officers are duty-bound to ensure that investigations are thorough, impartial and legally sound before submission of the police report, they cannot substitute the opinion of the Investigating Officer or interfere with the 'judicial process' after the police report has been submitted before the competent Court.

21. Thus, the legal position may, therefore, be summarised as follows:

- (i) A superior police officer possesses the same statutory powers of investigation as the Officer-in-Charge of a police station under Section 36 CrPC/Section 30 BNSS.
- (ii) Before submission of the police report, the superior officer may examine the case diary and return it to the Investigating Officer with lawful directions for conducting further investigation to remove defects or collect relevant additional evidence. Such supervisory powers are recognized under the CrPC/BNSS as well as the U.P. Police Regulations.
- (iii) A superior officer cannot compel submission of a charge-sheet merely by substituting his own opinion unless he himself assumes the investigation under Section 36 CrPC/Section 30 BNSS.

(v) The 'Statutory Power' to direct further investigation before submission of police report to the Magistrate/Court, remains only with 'Superior Police Officer' under the scheme of CrPC/BNSS, not other authority.

22. In the above-mentioned case, an objection has been raised by the Supervising Officer/ Additional Superintendent of Police (Rural), Jaunpur, in SCD III, stating that "the medical examination of the complainant, Mr. Ram Pyare, and the injured person, Mr. Anuj Kumar Singh, has been conducted. On the basis of the medical report, for the legal disposal of the investigation of the said case, all original case records along with Final Report No. 24/16 (dated 09.06.2016) have been returned."admittedly, in this case, the final report had not been submitted before the court or magistrate, therefore, no cognizance has been taken up on the final report. The superior police officer/additional superintendent of police has not passed an order under section 173(8) CrPC, thus the argument of learned Counsel for the appellant that the superior police Authority has passed an order under section 173(8) CrPC, is not legally correct.

23. In the light of substratum of this case, the legal principals as discussed here in above detail, I am of considered view that the superior police officer in this case, has exercised 'administrative power' regarding return the case diary and final report draft to the investigating officer to conduct the investigation properly and legally in the light of instructions.

24. The Investigating Officer has adduced prima facie material

accused. Consequently, the present Criminal Appeal lacks merit and is hereby **dismissed**.

25. The order dated 16.01.2019, passed by the learned Trial Court is **affirmed**.

26. Before parting with the judgment, this Court records its appreciation for the sincere assistance extended by Research Associates, Mr. Shivansh Pandey and Mr. Sandeep Kumar Singh, in researching the legal issues involved and assisting in the preparation of this judgment. Their efforts are gratefully acknowledged.

(Santosh Rai,J.)

July 14, 2026

Asha