

**IN THE COURT OF SH. PAWAN KUMAR JAIN  
ADDITIONAL SESSIONS JUDGE-01 ( CENTRAL), THC: DELHI**

**SC No. 41/2008  
ID No. 02401R0249812005**

**STATE  
(Through Chief Wildlife Inspector)**

*versus*

- 1. Sudesh Kumar @ Suresh Chand**
- 2. Ritu d/o Sh. Lalita Prashad**
- 3. Babu s/o Budhai Rai**
- 4. Badal s/o Vishnu**  
*(Proclaimed offender vide order dated 17.09.2009)*
- 5. Sansar Chand @ Sansar Saini s/o Munni Lal**
- 6. Narain s/o Munni Lal**
- 7. Preetam s/o Shyam**
- 8. Lalita Parsad s/o Munni Lal**

**AND**

**SC No. 42/2008  
ID No. 02401R0009792006**

**STATE  
(Through C.B.I)**

*versus*

- 1. Sudesh Kumar @ Suresh Chand s/o Tirath Ram**
- 2. Ritu d/o Lalita Parsad**

3. Babu s/o Budhai Rai
4. Badal s/o Vishnu Ram  
(Proclaimed offender vide order dated 4.12.2004)
5. Sansar Chand @ Sansar Saini s/o Munni Lal
6. Satya Bhan s/o Jotram

**AND**

SC No. 46/2011  
ID No. 02401R0504382011

**STATE**

*versus*

1. Narain s/o Munni Lal
2. Hira Lal Khatik s/o Hardava Khatik
3. Jagdish Parsad Khatik s/o Late Dhanna Ram Khatik

Present : Mr. Y.K. Saksena, learned Special Public Prosecutor for the  
CBI  
Mr. P.K. Dubey Advocate, counsel for accused Sansar  
Chand, Narain and Sudesh  
Mr. Saurav Verma, Advocate, Advocate, counsel for accused  
Lalita Prasad, Ritu and Preetam  
Sh. Manish Kumar, Advocate, counsel for Babu  
Sh. Neeraj Kumar Mishra, Advocate, counsel for Satya Bhan

**ORDER :**

1. Sessions cases No. 41/08, 42/08 & 46/2011 are the subject matter of this order.

2. **Learned** counsels appearing for accused persons seek discharge of the accused persons on the following legal questions:

*(a) Whether CBI can conduct further investigation under Section 173 (8) Cr.P.C in a complaint case?*

*(b) Whether CBI can file a supplementary complaint in a complaint case?*

*(c) Whether the 'charge-sheet' mentioned in Section 2 (1)(d) of MCOCA includes the complaint cases or not?*

3. **Before** dealing with the contentions raised by learned counsels appearing for accused persons, I deem it appropriate to narrate necessary facts of the case in brief.

4. **Facts** of the case are that on January 31, 2005, SI Antriksh Alok of Special Staff, Central District, PS Kamla Market along with other members of raiding party seized wild animals skins and their derivatives from accused Sudesh @ Suresh, Ritu, Babu and Badal. Accordingly, an FIR No. 82/2005 was got lodged against them and they were arrested. During their disclosure statement, they divulged that they were associates of accused Sansar Chand, Narain and Preetam. During investigation, it was revealed that accused Lalita Parsad was in possession of the premises from where wild animals' skins were recovered from the accused Ritu. Accordingly, the said persons were also impleaded as accused in the criminal complaint filed by Mr. S. S. Negi, Wild Life Inspector to whom the investigation was assigned later on. The said complaint was filed before the Court of learned Additional Chief Metropolitan Magistrate on March 29, 2005. Accordingly, Court had taken the cognizance on March 29, 2005 itself

and issued summons to the accused persons.

5. **Vide** letter No. F.82/CWLW/Delhi/2005/1468 dated May 20, 2005, Chief Wild Life Warden transferred the investigation of the case to CBI, accordingly, CBI registered a fresh case as RC-SIB/2005/E0003 in EOU.V Branch. The said letter was ratified by an order of Government of NCT, Delhi vide letter No. F13/32/2005/HP/Estt./876 dated 02.06.2005.

6. **Accordingly**, on December 12, 2005, CBI filed a supplementary complaint against five accused persons namely Sudesh Kumar @ Suresh Chand, Ritu, Babu, Badal and Sansar Chand for the offence punishable under Section 120B IPC read with Section 51 of Wild Life (Protection) Act 1972 read with Section 3(1)(ii), 3(4) of MCOCA. At the time of filing supplementary complaint, it was recited that further investigation under Section 173(8) Code of Criminal Procedure against accused Narain, Preetam, Lalita Parsad and Satya Bhan was going on. The said supplementary complaint was registered as SC No. 42/2008. Later on, CBI filed second supplementary complaint against accused Satya Bhan in SC No. 42/2008.

7. **Thereafter**, on August 26, 2011 another supplementary complaint was filed against three persons namely Narain, Hira Lal Khatik and Jagdish Parsad Khatik for the offences punishable under Section 120B IPC read with 51 of Wild Life (Protection) Act read with Sections 3 (1)(ii), 3(2) & 3(4) of MCOCA. The said supplementary complaint was registered as SC No. 46/2011. Since, it was not cleared, which procedure was to be followed, counsel appearing for CBI sought time to clear the confusion. Thus, in the said case, the Court had not taken the cognizance till date.

8. **Learned** counsels appearing for accused persons contended that CBI had no power to investigate the matter under Section 173 (8) of the Code of Criminal Procedure in complaint cases. It was submitted that the provisions of Section 173 (8) Code of Criminal Procedure are applicable to the police report cases and not to the complaint cases. It was further contended that even in police report cases, further investigation under Section 173 (8) Code of Criminal Procedure can be conducted by the same agency and not by any other agency as had been conducted in this case by the CBI. It was further argued that the different agency can conduct the investigation only in rare circumstances under the specific order of the Court and admittedly in the instant case, no Court had permitted the CBI to carry on investigation under Section 173(8) Code of Criminal Procedure. It was, thus, contended that the entire investigation conducted by CBI is contrary to the provisions of Code of Criminal Procedure, thus, no reliance can be placed on such illegal investigation. It was also submitted that the 'charge-sheet' mentioned in Section 2(1)(d) of MCOCA does not include complaint case, thus, CBI has also failed to fulfill the mandatory requirement to invoke the stringent provisions of MCOCA. In support of his contentions, learned counsels relied upon the following judgements:-

***(i) Ajit Narayan Haksar & others Vs. Assistant Commissioner of Central Excise (Legal), Bangalore 2002 (4) Kar. LJ 107;***

***(ii) T. T. Antony Vs. State of Kerala & others (2001)6 SCC 181;***

***(iii) K. Chandrashekher Vs. State of Kerala & Others (1998) 5 SCC 223;***

***(iv) Vinay Tyagi Vs. Irshad Ali @ Deepak & others, Crl. Appeal Nos. 2040-2041 of 2012 decided on December***

**13, 2012.**

9. **Per** contra, learned counsel appearing for CBI refuted the said contentions by arguing that in a Writ Petition (Civil) No. 202/1995, Hon`ble Supreme Court of India directed that CBI should investigate thoroughly not only about persons who may be apparently doing illegal trade of wild life animals and derivatives as carrier or agents but also about those persons who may be responsible behind such illegal trade/transaction so as to reach to the depth of the matter. It was contended that though the aforesaid directions were issued by the Apex Court at the time of transferring another case of Delhi Police of PS Timar Pur, yet it was considered worth while in order to comply with the directions of the Apex Court in its letter and spirit.

10. **It** was further contended that CBI had not taken over the investigation of its own, rather it was transferred to the CBI by Chief Wild Life Warden, Govt. of NCT, Delhi vide its letter No. F.82/CWLW/Delhi/2005/1468 dated 20.5.2005 and same was ratified by Government of NCT, Delhi vide its order No. F.13/32/2005/HP/Estt./876 dated 02.06.2005, thus, it was argued that CBI was competent to investigate the matter and strongly relied upon the judgment titled **Moti Lal Vs. CBI, AIR 2002 SC 1691.**

11. **It** was further contended that CBI had filed the supplementary complaints because Wild Life Inspector had already filed a complaint before the Court of learned Additional Chief Metropolitan Magistrate otherwise CBI would have filed supplementary charge-sheet in terms of Section 173(8) of Cr.P.C. It was contended that it was nothing but a mis-nomenclature, thus

Court can consider it either as a supplementary challan or a supplementary complaint. It was submitted that during the bail application No.1626 of 2009 moved by accused Sudesh Kumar @ Suresh Chand before the Hon`ble High Court of Delhi, counsel for CBI had made detail submissions and the same were not set-aside by the Hon`ble High Court of Delhi. It was contended that though in the said matter, bail was granted to the accused Sudesh Kumar, but it was granted on technical ground under Section 167(2) of the Cr.P.C and not on the ground that CBI had no power to investigate or CBI had done anything illegal by filing a supplementary complaint in the matter. In support of his contention, he relied upon the order passed in ***bail application No.1626/2009 decided on 16.01.2012.***

12. It was further contended that the 'charge-sheet' mentioned in Section 2(1)(d) of MCOCA also includes complaint cases as its main purpose is to analyse the previous criminal involvement of the accused persons. It was argued that there is no bar to include the complaint case under Section 2(1)(d) of MCOCA. No other contention was raised by counsel for the CBI.

13. It is pertinent to state that whenever this Court insisted to advance arguments, CBI came with a new counsel and it is evident from the record that during April 2011 to November 2012, CBI had changed as many as six counsels. At last, CBI had appointed Mr. Y. K. Saxena, Advocate as Special Public Prosecutor to represent the CBI in the matter.

14. I have heard rival submissions advanced by counsel for both the parties, perused the record carefully and gave my thoughtful consideration to their contentions.

15. **Before** adverting to the contentions raised by counsel for the parties, I deem it appropriate to have a look over some of the relevant provisions of law.

16. **Section 173(2) Cr.P.C** reads as under:-

*Section 173(2) (i) As soon as it (investigation) is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government, stating-*

*(a) the names of the parties;*

*(b) the nature of the information;*

*(c) the names of the persons who appear to be acquainted with the circumstances of the case;*

*(d) whether any offence appears to have been committed and, if so, by whom;*

*(e) whether the accused has been arrested;*

*(f) whether he has been released on his bond and, if so, whether with or without sureties;*

*(g) whether he has been forwarded in custody under section 170.*

*(ii) The officer shall also communicate, in such manner as may be prescribed by the State Government, the action taken by him, to the person, if any, by whom the information relating to the commission of the offence was first given.*

17. **'Police Report'** is defined under Section 2(r) Code of Criminal Procedure and same runs as under:



*“Police report” means a report forwarded by a police officer to a Magistrate under sub-Section 2 of Section 173.”*

18. **'Complaint'** is defined under Section 2(d) of the Cr.P.C and same reads as under:-

*“Complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.*

*Explanation: A report made by a police officer in a case, which discloses, after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint and the police officer by whom such report is made shall be deemed to be the complainant.”*

19. **From** the above provisions of law, it becomes crystal clear that a 'police report' can not be a complaint; similarly a 'complaint' does not include 'police report'.

20. **Chapter XII** Code of Criminal Procedure deals with the provisions relating to information to the police and their powers to investigate whereas Chapter XIV of the Code of Criminal Procedures deals with the provisions relating to complaints to Magistrate.

21. **Section 173(8)** Code of Criminal Procedure falls in Chapter XII of the Code and empowers the police to conduct further investigation and same reads as under:-

*“Nothing in the Section shall be deemed to preclude further investigation in respect of an 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-Section (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)”*

22. **A Combined** reading of Section 173(2) & 173(8) Cr.P.C proves that where a report has been forwarded to the Magistrate under sub-Section 2 to Section 173 Cr.P.C, police is empowered to conduct further investigation on receipt of further evidence, oral or documentary and officer in-charge of the police station shall forward a further report or reports of such evidence to the concerned Magistrate in the format prescribed. It means whenever police received any further evidence oral or documentary after submitting the report under Section 173(2) Cr.P.C, police is empowered to conduct further investigation and after investigation, police shall forward a report or reports as the case may be to the Magistrate in the prescribed format. However, it is pertinent to point out that Section 173(8) Cr.P.C is applicable only to cases where the police has forwarded a report under Section 173 (2) Cr.P.C and not otherwise.

23. **First** question emerges for adjudication is as to whether CBI is

empowered to conduct fresh/re-investigation/further investigation when cognizance has already been taken by the Court of competent jurisdiction on a complaint filed by Wild Life Inspector?

24. **Similar** question arose in ***Vinay Tyagi v/s. Irshad Ali (supra)***. In said case CBI conducted further investigation in pursuance of the directions passed by the High Court of Delhi and filed a supplementary charge-sheet before the Trial Court wherein it was concluded that there was no evidence against the accused to prosecute him. On the converse, as per the charge-sheet filed by the Special Cell of Delhi Police, there was sufficient evidence to prosecute the accused for various offences. Question arose before the Apex Court as to whether the investigation conducted by the C.B.I is to be considered at the time of framing charge or not? Relevant paras are reproduced as under:-

*13. Having noticed the provisions and relevant part of the scheme of the Code, now we must examine the powers of the Court to direct investigation. Investigation can be ordered in varied forms and at different stages. Right at the initial stage of receiving the FIR or a complaint, the Court can direct investigation in accordance with the provisions of Section 156(1) in exercise of its powers under Section 156(3) of the Code. Investigation can be of the following kinds:*

*(i) Initial Investigation.*

*(ii) Further Investigation.*

*(iii) Fresh or de novo or re-investigation.*

*14. The initial investigation is the one which the*

empowered police officer shall conduct in furtherance to registration of an FIR. Such investigation itself can lead to filing of a final report under Section 173(2) of the Code and shall take within its ambit the investigation which the empowered officer shall conduct in furtherance of an order for investigation passed by the court of competent jurisdiction in terms of Section 156(3) of the Code.

15. 'Further investigation' is where the Investigating Officer obtains further oral or documentary evidence after the final report has been filed before the Court in terms of Section 173(8). This power is vested with the Executive. It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. Scope of such investigation is restricted to the discovery of further oral and documentary evidence. Its purpose is to bring the true facts before the Court even if they are discovered at a subsequent stage to the primary investigation. It is commonly described as 'supplementary report'. 'Supplementary report' would be the correct expression as the subsequent investigation is meant and intended to supplement the primary investigation conducted by the empowered police officer. Another significant feature of further investigation is that it does not have the effect of wiping out directly or impliedly the initial investigation conducted by the investigating agency. This is a kind of continuation of the previous investigation. The basis is discovery of fresh evidence and in continuation of the same offence and chain of events relating to the same occurrence incidental thereto. In other words, it has to be understood in complete contradistinction to a 'reinvestigation', 'fresh' or 'de novo' investigation.

16. However, in the case of a 'fresh investigation'.

'reinvestigation' or 'de novo investigation' there has to be a definite order of the court. The order of the Court unambiguously should state as to whether the previous investigation, for reasons to be recorded, is incapable of being acted upon. Neither the Investigating agency nor the Magistrate has any power to order or conduct 'fresh investigation'. This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of 'fresh'/'de novo' investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the Court, the Court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a 'fresh investigation'.

17. Here, we will also have to examine the kind of reports that can be filed by an investigating agency under the

scheme of the Code. Firstly, the FIR which the investigating agency is required to file before the Magistrate right at the threshold and within the time specified. Secondly, it may file a report in furtherance to a direction issued under Section 156(3) of the Code. Thirdly, it can also file a 'further report', as contemplated under Section 173(8). Finally, the investigating agency is required to file a 'final report' on the basis of which the Court shall proceed further to frame the charge and put the accused to trial or discharge him as envisaged by Section 227 of the Code.

19. Now, we come to the former question, i.e., whether the Magistrate has jurisdiction under Section 173(8) to direct further investigation.

23. This judgment, thus, clearly shows that the Court of Magistrate has a clear power to direct further investigation when a report is filed under Section 173(2) and may also exercise such powers with the aid of Section 156(3) of the Code. The lurking doubt, if any, that remained in giving wider interpretation to Section 173(8) was removed and controversy put to an end by the judgment of this Court in the case of Hemant Dhasmana v. CBI, [(2001) 7 SCC 536] where the Court held that although the said order does not, in specific terms, mention the power of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by the court, which has the jurisdiction to do so, then such order should not even be interfered with in exercise of a higher court's revisional jurisdiction. Such orders would normally be of an advantage to achieve the ends of justice. It was clarified.

without ambiguity, that the magistrate, in exercise of powers under Section 173(8) of the Code can direct the CBI to further investigate the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the new report to be submitted by the Investigating Officer, would be governed by sub-Section (2) to sub-Section (6) of Section 173 of the Code. There is no occasion for the court to interpret Section 173(8) of the Code restrictively. After filing of the final report, the learned Magistrate can also take cognizance on the basis of the material placed on record by the investigating agency and it is permissible for him to direct further investigation. Conduct of proper and fair investigation is the hallmark of any criminal investigation.

30. Having analyzed the provisions of the Code and the various judgments as afore-indicated, we would state the following conclusions in regard to the powers of a magistrate in terms of Section 173(2) read with Section 173(8) and Section 156(3) of the Code:-

1. The Magistrate has no power to direct 'reinvestigation' or 'fresh investigation' (de novo) in the case initiated on the basis of a police report.
2. A Magistrate has the power to direct 'further investigation' after filing of a police report in terms of Section 173(6) of the Code.
3. The view expressed in (2) above is in conformity with the principle of law stated in Bhagwant Singh's case (supra) by a three Judge Bench and thus in conformity with the doctrine of precedence.
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).

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.

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.

31. The power of the magistrate to direct 'further investigation' is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the Court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the Court, including that of the Magistrate or by the police of its own



accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.

33. At this stage, we may also state another well-settled canon of criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct 'further investigation', 'fresh' or 'de novo' and even 'reinvestigation'. 'Fresh', 'de novo', and 'reinvestigation' are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.

34. We have deliberated at some length on the issue that the powers of the High Court under Section 482 of the Code do not control or limit, directly or impliedly, the width of the power of Magistrate under Section 228 of the Code. Wherever a charge sheet has been submitted to the Court, even this Court ordinarily would not reopen the investigation, especially by entrusting the same to a specialized agency. It can safely be stated and concluded that in an appropriate case, when the court feels that the investigation by the police authorities is not in the proper direction and that in order to do complete justice and where the facts of the case demand, it is always open to the Court to hand over the investigation to a specialized

*agency. These principles have been reiterated with approval in the judgments of this Court in the case of Disha v. State of Gujarat & Ors. [(2011) 13 SCC 337]. Vineet Narain & Ors. v. Union of India & Anr. [(1998) 1 SCC 226], Union of India & Ors. v. Sushil Kumar Modi & Ors. [1996 (6) SCC 500] and Rubabbuddin Sheikh v. State of Gujarat & Ors. [(2010) 2 SCC 200].*

*35. The power to order/direct 'reinvestigation' or 'de novo' investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the Court may, by declining to accept such a report, direct 'further investigation', or even on the basis of the record of the case and the documents annexed thereto, summon the accused.*

*36. The Code does not contain any provision which deals with the court competent to direct 'fresh investigation', the situation in which such investigation can be conducted, if at all, and finally the manner in which the report so obtained shall be dealt with. The superior courts can direct conduct of a 'fresh'/de novo' investigation, but unless it specifically directs that the report already prepared or the investigation so far conducted will not form part of the record of the case, such report would be deemed to be part of the record. Once it is part of the record, the learned Magistrate has no jurisdiction to exclude the same from the record of the case. In other words, but for a specific order by the*

*superior court, the reports, whether a primary report or a report upon 'further investigation' or a report upon 'fresh investigation', shall have to be construed and read conjointly. Where there is a specific order made by the court for reasons like the investigation being entirely unfair, tainted, undesirable or being based upon no truth, the court would have to specifically direct that the investigation or proceedings so conducted shall stand canceled and will not form part of the record for consideration by the Court of competent jurisdiction.*

*37. The scheme of Section 173 of the Code even deals with the scheme of exclusion of documents or statements submitted to the Court. In this regard, one can make a reference to the provisions of Section 173(6) of the Code, which empowers the investigating agency to make a request to the Court to exclude that part of the statement or record and from providing the copies thereof to the accused, which are not essential in the interest of justice, and where it will be inexpedient in the public interest to furnish such statement. The framers of the law, in their wisdom, have specifically provided a limited mode of exclusion, the criteria being no injustice to be caused to the accused and greater public interest being served. This itself is indicative of the need for a fair and proper investigation by the concerned agency. What ultimately is the aim or significance of the expression 'fair and proper investigation' in criminal jurisprudence? It has a twin purpose. Firstly, the investigation must be unbiased, honest, just and in accordance with law. Secondly, the entire emphasis on a fair investigation has to be to bring out the truth of the case before the court of competent jurisdiction. Once these twin paradigms of fair investigation*

*are satisfied, there will be the least requirement for the court of law to interfere with the investigation, much less quash the same, or transfer it to another agency. Bringing out the truth by fair and investigative means in accordance with law would essentially repel the very basis of an unfair, tainted investigation or cases of false implication. Thus, it is inevitable for a court of law to pass a specific order as to the fate of the investigation, which in its opinion is unfair, tainted and in violation of the settled principles of investigative canons.*

*38. 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 contemporaneous exposito 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.*

*40. We have already noticed that there is no specific embargo upon the power of the learned Magistrate to*

*direct 'further investigation' on presentation of a report in terms of Section 173(2) of the Code. Any other approach or interpretation would be in contradiction to the very language of Section 173(8) and the scheme of the Code for giving precedence to proper administration of criminal justice. The settled principles of criminal jurisprudence would support such approach, particularly when in terms of Section 190 of the Code, the Magistrate is the competent authority to take cognizance of an offence. It is the Magistrate who has to decide whether on the basis of the record and documents produced, an offence is made out or not, and if made out, what course of law should be adopted in relation to committal of the case to the court of competent jurisdiction or to proceed with the trial himself. In other words, it is the judicial conscience of the Magistrate which has to be satisfied with reference to the record and the documents placed before him by the investigating agency, in coming to the appropriate conclusion in consonance with the principles of law. It will be a travesty of justice, if the court cannot be permitted to direct 'further investigation' to clear its doubt and to order the investigating agency to further substantiate its charge sheet. The satisfaction of the learned Magistrate is a condition precedent to commencement of further proceedings before the court of competent jurisdiction. Whether the Magistrate should direct 'further investigation' or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct 'further investigation' or 'reinvestigation' as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct*

further, re-investigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation. In this regard, we may refer to the observations made by this court in the case of *Sivanmoorthy and Others v. State* represented by *Inspector of Police [(2010) 12 SCC 29]*. In light of the above discussion, we answer the questions formulated at the opening of this judgment as follows:

Answer to Question No. 1

The court of competent jurisdiction is duty bound to consider all reports, entire records and documents submitted therewith by the Investigating Agency as its report in terms of Section 173(2) of the Code. This Rule is subject to only the following exceptions;

- a) Where a specific order has been passed by the learned Magistrate at the request of the prosecution limited to exclude any document or statement or any part thereof;
- b) Where an order is passed by the higher courts in exercise of its extra-ordinary or inherent jurisdiction directing that any of the reports i.e. primary report, supplementary report or the report submitted on 'fresh investigation' or 're-investigation' or any part of it be excluded, struck off the court record and be treated as non est.

Answer to Question No. 2

No investigating agency is empowered to conduct a 'fresh', 'de novo' or 're-investigation' in relation to the offence for which it has already filed a report in terms of Section 173(2) of the Code. It is only upon the orders of the higher courts empowered to pass such orders that

aforesaid investigation can be conducted, in which event the higher courts will have to pass a specific order with regard to the fate of the investigation already conducted and the report so filed before the court of the learned magistrate.

(emphasis supplied)

25. **From** the above judgment, it becomes abundantly clear that further investigation is permissible under Section 173(8) Cr.P.C but only superior Courts are empowered to transfer the investigation from one agency to another in appropriate cases. Indisputably, in the instant case, no superior Court had transferred the investigation to the CBI for further investigation.

26. **In *K. Chandershekhar vs. State of Kerala & Others (supra)*** on the recommendation of DIG of Police, Govt. of Kerala by way of notification dated December 2, 1994 accorded its consent under Section 6 of Delhi Special Police Establishment Act to investigate the case by CBI, accordingly CBI took up the investigation and filed its final report under Section 173 (2) Cr.P.C stating that charges were not proved and the same were false. Since, the Government of Kerala was not satisfied with the findings of CBI, Government had withdrawn its earlier consent by issuing a subsequent Notification dated June 27, 1996 and constituted a team of State Police officials to re-investigate the matter. However, by virtue of Notification dated January 8, 1996, Government of Kerala directed the team to conduct further investigation in the matter. Now question arose as to whether the Government could withdraw its consent to investigate the matter through CBI. It was held by the Apex Court:-

(d) From Section 173 Cr.P.C it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right of "further" investigation under sub-section (8) but not "fresh investigation" or "reinvestigation". The dictionary meaning of "further" (when used as an adjective) is "additional; more; supplemental". "Further" investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether.

(e) This conclusion is supported also by the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a "further" report or reports- and not fresh report or reports- regarding the "further" evidence obtained during such investigation. Once it is accepted that an investigation undertaken by CBI pursuant to a consent granted under Section 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that "further investigation" is a continuation of such investigation

(f) which culminates in a further police report under Section 173(8), it necessarily means that withdrawal of consent in the instant case would not entitle the State Police, to further investigate into the case. To put it differently, if any further investigation is to be made it is the CBI alone which can do so, for it was entrusted to investigate into the case by the State Government. Resultantly, the notification issued withdrawing the consent to enable the State Police to further investigate into the case is patently invalid and unsustainable in law.



*(emphasis supplied)*

27. **From** the above judgement, it becomes crystal clear that the further investigation, if any, is to be conducted by the same agency and not by any other different agency. In view of the aforesaid judgment, it becomes clear that if the matter was required further investigation, only Wild Life Inspector was competent to conduct further investigation and not the CBI. In the instant case, CBI could conduct further investigation only if superior Court had empowered it to investigate the matter as only superior courts can assign further investigation to a different agency as held in ***Viney Tyagi's case (supra)***.

28. **Since**, the counsel for CBI has strongly relied upon the judgment ***Moti Lal v/s. Central Bureau of Investigation (supra)***. I have perused the said judgment carefully. In the said case, the applicant was arrested by the police of Ghaziabad and an FIR was lodged and the case was registered as Crime No. 915/99 under Wild Life Act. By Notification dated March 21, 2000 issued by the Central Government, investigation was transferred to CBI. The said notification was challenged by filing a Writ Petition before the the High Court of Allahabad, which was dismissed, accordingly a criminal appeal was filed before the Apex Court. Para No. 7 of judgment is relevant and same is reproduced as under:-

*Para 7: "Admittedly, in exercise of the powers conferred by Section 3 of the Act, notification dated 24.1.1996 was issued by the Central Government specifying that offences punishable under Section 51 of the Wild Life Act could be investigated by the Delhi Special Police Establishment. Thereafter, the State of U.P. has issued*

*the Notification, as required under Section 6 of the Act wherein it has been stated that the State of Uttar Pradesh is pleased to accord the consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment in the investigation of the Offence(s) punishable relating to the seizure of skin of Tiger and Leopard under Schedule 1 of the Wild Life Act, namely, case Crime No. 915/99 under Sections 9/39(3), 44, 48, 49, 50, 51, 57, 58 of the Wild Life Act and also case Crime No. 11/2000 under Section 429/379/411 IPC and Section 49B/51 of the Wild Life Act and also under Section 10/15 of the Animal Cruelty Act. Subsequently, the Central Government had issued a Notification, as contemplated under Section 5 of the Act empowering members of Delhi Special Police Establishment for investigating the aforesaid cases. In view of the Notifications issued by the Central Government under Section 5 of the Act and the Notification issued by the State of U.P. according consent to the extension of powers and jurisdiction of the members of the Delhi Special Police Establishment to investigate the offences, the contention raised by the learned counsel for the appellant that the CBI does not have jurisdiction to investigate the matter is without any substance.”*

*(emphasis supplied)*

29. **To** my mind, the said judgment is not helpful to the prosecution in any manner because there is no dispute about the power of the CBI to investigate the matter relating to the offences under Protection of Wild Life

Act. The question in issue in the instant case is as to whether CBI can investigate the matter after taking cognizance by the Court on the criminal complaint filed by the Wild Life Inspector or not? In the above said case, the matter was transferred to the CBI at the very initial stage of the investigation and after completing the investigation, CBI had filed a criminal complaint in terms of provisions of Wild Life Act whereas in the instant case, CBI filed a supplementary complaint which is alien to the provisions of the Cr.P.C.

30. **In *Ajit Narayan Haskar v/s. State (supra)***, complainant initially filed a complaint against two accused persons, accordingly they were summoned by the Court. However, later on complainant filed a supplementary complaint under Section 200 Cr.P.C against as many as 21 persons. Accordingly, Court also summoned them. The said order was challenged before the High Court of Karnataka (Bangalore Bench) and a question arose whether supplementary complaint can be filed in complaint case or not? Para No. 5 of the judgment is relevant and the same is reproduced as under:

*Para 5: "At the outset, the procedure adopted by the learned Magistrate in permitting the additional accused to be brought in by way of what the complainant calls 'supplementary complaint' is to be found fault with. Here was the original complaint against two accused filed under Section 200 of the Criminal Procedure Code by the respondent. Learned Magistrate took cognizance. Complaint being from a public servant acting in discharge of his official duties, in view of Clause (a) of the proviso to Section 200 of the Criminal Procedure Code, complainant*

was not examined. On perusal of the complaint and the documents produced, learned Magistrate found sufficient ground to proceed with a direction issued to issue process against two accused, namely, ITC and Ashok Bhatia for offence under Section 9 and 9-AA of the Act. Thereafter, if any more accused were to be brought in, the only procedure known to law in a proceeding like the one that was there before the learned Magistrate, was by taking recourse to Section 319 of the Criminal Procedure Code and by invoking the said provision of the Criminal Procedure Code for the complainant to go on filing supplementary complaint/s to bring in some accused at one point of time, and by the other supplementary complaint to bring in some other accused at another point of time, etc. Once the learned Magistrate has taken cognizance under Section 190(1)(a) of the Criminal Procedure Code upon a complaint presented under Section 200 of the Criminal Procedure Code and has directed issuance of process, the further course of action shall have to be governed by Chapter XIX or XX of the Criminal Procedure Code as the case may be. It is not legally permissible for the complainant to file what he calls 'supplementary complaint' and then bring in any other person as accused. In a case like the one that was there before the learned Magistrate initiated under Section 200 of the Criminal Procedure Code, the only course known to law to bring in as accused someone not there at the initial stage, would be by invoking Section 319 of the Criminal Procedure Code at the appropriate stage. Entertaining, by the learned Magistrate, of the supplementary complaint, therefore, is not legally sustainable."

(emphasis supplied)

31. **From** the above judgment, it becomes abundantly clear that there is no provision in the Code of Criminal Procedure which permits the complainant to file a supplementary complaint. Indisputably, in the instant case, the CBI has filed three supplementary complaints under Section 173 (8) Cr.P.C despite the fact that neither Section 173 (8) Cr.P.C empowers the CBI to file a supplementary complaint in a complaint case nor any other provisions of Cr.P.C empower the CBI to file such supplementary complaints.

32. **Now** coming to the contentions relating to the letters dated May 20, 2005 and June 2, 2005.

33. **Vide** letter dated May 20, 2005 Chief Wild Life Warden, Delhi had written a letter to the Dy. Director (Administration), CBI, New Delhi and same is reproduced as under:

***Urgent  
Secret Letter***

***No. F.82/CWLW/DELHI/2005/1468  
Government of N.C.T. of DELHI  
OFFICE OF THE CHIEF WILD LIFE WARDEN  
'A' BLOCK VIKAS BHAWAN,  
IP ESTATE, NEW DELHI.***

***DATED 20.05.2005***

To

*The Dy. Director (Administration)  
C.B.I. (HQ), CGO, Complex,  
New Delhi.*

Sir,

*With reference to your letter No. 100/2/1/2005/SCU-V dated*

16<sup>th</sup> May, 2005 regarding transfer of case record of case FIR No. 82/2005 dated 31.01.2005, PS Kamla Market, New Delhi, I am to inform you that in this case a complaint has already been filed in the Court of Law which is sub-judice in the hon'ble court of Shri Manoj Jain, Additional Chief Metropolitan Magistrate, Room No. 42, ground floor, prosecuted after completing the investigation.

Moreover, the Government of Delhi convey its consent to CBI for necessary action.

Yours faithfully,

(A.K. Sinha)

Chief Wild Life Warden: Delhi

34. **Thereafter**, vide its letter dated June 2, 2005 Government of NCT of Delhi had conveyed its consent to the transfer of the case to the C.B.I. Letter is reproduced as under:

**GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI  
DELHI SECRETARIAT, I.P. ESTATE, NEW DELHI-110002  
TEL. NO. 23392061, 23392157  
D.O. NO. F.13/32/2005/HP/ESTT./876**

**June 2, 2005**

**510/JD/SCII  
9-6-05**

Dear Shri Mishra

Kindly refer to your DO No. 15/2005/90/2/1(S)/2005-SCU-V dated 12<sup>th</sup> May 2005 requesting that a letter of consent be given to the CBI to take over the investigation of case FIR No. 82/2005 registered with Kamla Market Police Station on 31.01.2005 in connection with poaching of tigers in Sariska. In this regard I am directed to inform that the Government of the National Capital Territory of Delhi have no objection to the transfer of this case to the CBI as requested for by you. This issues with the approval of the Hon'ble Lt. Governor. The Commissioner of Police is being advised accordingly.

Yours sincerely,

(R.NARAYANASWAMI)

Sh. U. S. Mishra  
Director  
Central Bureau of Investigation  
Govt. of India  
CGO Complex, Block No. 3,  
Lodhi Road,  
New Delhi-110003

35. It is limpid from the former letter that Chief Wild Life Warden had intimated the CBI that after completing the investigation, complaint had already been filed against the 8 accused persons in the Court of law and matter was sub-judiced before the Court of Sh. Manoj Jain, the then learned Additional Chief Metropolitan Magistrate. However, it was also recommended that Government of Delhi may convey its consent to the C.B.I. Thereafter, vide subsequent letter, Government of NCT had conveyed its no objection of transfer of the case to the CBI. It is also evident from the said letter that no specific reason was assigned at the time of according its consent to transfer the case to the CBI.

36. No doubt during the pendency of investigation, investigation can be transferred to the CBI with the consent of State Government as held by the Apex Court in ***Moti Lal's case (supra)***. But in the instant case matter was transferred to the CBI after taking cognizance by the competent Court. As held by the Apex Court in ***Viney Tyagi's case (supra)*** only superior courts can transfer the investigation to another agency in appropriate matters with cogent reasons. Indisputably, in the instant matter, investigation was not assigned to the CBI by any superior court. Moreover, even after taking over the matter, CBI is supposed to follow the provisions of Code of Criminal Procedure and admittedly there is no provision of law, which may authorize the CBI to file a supplementary complaint in a complaint case.

37. **Indisputably**, in writ petition (civil) No. 202/1995, Hon'ble Apex Court directed the CBI to investigate thoroughly not only about the persons who may be apparently doing illegal trade of wildlife animals and derivatives as carriers or agents but also about those persons who may be responsible behind such illegal trade/transaction so as to reach to the depth of the matter. But it is also true that the said directions were not passed either in the present case nor against the accused persons. Rather, the same were passed in another matter of PS Timarpur and present accused were not party in the said matter. The said order was in a particular case and in consonance with the well settled law that the superior courts in appropriate matter can transfer the investigation of a case from one agency to another for further/reinvestigation/fresh investigation. The order passed in above writ petition (civil) is ipso-facto not sufficient to take over the investigation. Probably due to said reason, CBI had sought consent of the Government of NCT of Delhi to take over the matter.

38. **In** view of the above, I am of the opinion that by virtue of said letters and directions passed in the above writ petition (civil), CBI does not get any power either to conduct further investigation or file the supplementary complaint, which is otherwise unknown to the provisions of Code of Criminal Procedure.

39. **Now** adverting to the contentions relating to the order passed in Bail Application No. 1626/2009.

40. **Vide** order dated January 16, 2012 passed in the above Bail Application, Hon'ble High Court pleased to admit the accused Sudesh



Kumar @ Suresh Chand on bail mainly on the ground that CBI failed to file the supplementary complaint within 90 days of the re-arrest of the accused. There is nothing in the said order, which may show that Hon'ble Court had upheld the action of further investigation and filing of supplementary complaint of the CBI. To my mind, the issues raised by counsels for the accused persons were not addressed in the said bail application, thus, said bail order is not helpful to the prosecution in any manner.

41. **Now** coming to the next crucial question as to whether 'charge-sheet' recited in Section 2(1)(d) of MCOCA includes complaint cases or not?

42. Section 2(1)(d) of MCOCA reads as under:-

*“Continuing unlawful activity” means an activity prohibited by law for the time being in force, which is a cognizable offence punishable with imprisonment of three years or more, undertaken either singly or jointly, as a member of an organised crime syndicate or on behalf of such, syndicate in respect of which more than one charge-sheets have been filed before a competent Court within the preceding period of ten years and that Court has taken cognizance of such offence.”*

43. **The** word 'Charge-sheet' is neither defined under the MCOCA nor Code of Criminal Procedure. But simultaneously, it is also true that in common parlance 'Police Report' is termed as 'Charge-sheet'. As already stated that 'complaint' is defined under Section 2(d) Cr.P.C whereas 'Police Report' is defined under Section 2(r) Cr.P.C. It is evident from Section 2(d)

Cr.P.C that complaint does not include a police report. It means that complaint does include a charge-sheet.

44. **Though** the 'Charge-sheet' is not defined either in MCOCA or Code of Criminal Procedure, but we get reference of 'Charge-sheet' in Chapter XXVII of Punjab Police Rules. Rule 27.1 reads as under:

*"27.1. Charge-sheets—Preparations and scrutiny of -(1)  
(i) When an accused person is sent for trial the charge-sheet (form 25.56 (1) shall form the final report required by Section 173, Code of Criminal Procedure. Loose forms of charge-sheets shall be kept at each police station to enable investigating officers to prepare and submit them even when away from their police stations."*

45. **A** Combined reading of Section 2(r), 173 Cr.P.C and Rule 27.1 of Punjab Police Rules clearly establishes that 'charge-sheet' is nothing but a 'police report' as defined under Section 2(r) Cr.P.C. and referred to in Section 173 Cr.P.C. As already stated that as per Section 2(d) Cr.P.C. 'complaint' does not include a 'police report'. It means that the word 'charge-sheet' as recited in Section 2(1)(d) of MCOCA refers to 'police report' as defined under Section 2(r) Cr.P.C and referred to in Section 173 Cr.P.C.

46. **The** impact of the above is that prosecution has to satisfy that during the preceding ten years, State (Police/CBI) had filed more than one charge-sheets against the accused persons and Court had taken cognizance on such charge-sheets. In SC No. 42/08 at the time of invoking MCOCA, CBI has relied upon as many as six cases showing the continuing unlawful activities of accused persons. Similarly, in SC No. 46/11, CBI has

relied upon six cases showing the continuing unlawful activities of accused persons mentioned therein. Indisputably, all the cases mentioned in SC No.42/08 and SC No.46/11 are for the offences punishable under Wild Life (Protection) Act, 1972. Needless to say that to prosecute the accused persons for the offences of Wild Life (Protection) Act, investigating agency is bound to file a complaint under Section 55 of Wild Life (Protection) Act. As already discussed that to invoke the stringent provisions of MCOCA, prosecution has to establish that the Court has taken cognizance on more than one charge-sheet filed during the period preceding ten years. As discussed above, charge-sheet is nothing but a police report as defined under Section 2(r) of Code of Criminal Procedure and it does not include complaint. Similarly, complaint filed under-Section 55 of Wild Life (Protection) Act is a complaint as defined under-Section 2(d) of Code of Criminal Procedure and the same does not include a police report. Thus, to my mind, the cases relied upon by the CBI to satisfy the requirement of Section 2(1) (d) of MCOCA Act are not sufficient as in all the said cases, the Court has taken cognizance on the basis of complaint filed by the investigating agency and Court had not taken cognizance on the charge-sheet filed by the investigating agencies.

47. **In** the light of above discussion, I do not find any substance in the contention of learned counsel appearing for CBI that 'charge-sheet' mentioned in Section 2(1)(d) of MCOCA also includes the complaint cases filed by the State.

48. **A** conspectus of the aforesaid discussion is:

(i) **That** there is no provision under the Code of

*Criminal Procedure to file a supplementary complaint in complaint case;*

(ii) **That** provisions of Section 173(8) is applicable to the police report submitted under Section 173(2) Cr.P.C and not to the complaint cases.

(iii) **That** after taking cognizance, only superior courts can transfer the investigation to another agency in appropriate cases for further investigation/fresh investigation/reinvestigation.

(iv) **That** in the instant case, no superior court had transferred the investigation to the CBI authorizing it to conduct further investigation under Section 173(8) Cr.P.C., thus investigation conducted by CBI is without any jurisdiction.

(v) **That** since there is no provision under the Code of Criminal Procedure to file supplementary complaint in a complaint case, CBI can not file the supplementary complaints by invoking the provisions of Section 173(8) Cr.P.C.

(vi) **That** word 'charge-sheet' as recited under Section 2(1)(d) of MCOCA does not include 'complaint' as defined under Section 2(d) Cr.P.C.

(vii) **That** CBI has failed to satisfy the first mandatory requirement of Section 2(1)(d) of MCOCA to invoke the stringent provisions of MCOCA against the

*accused persons.*

49. **Pondering** over the ongoing discussion, I am of the considered opinion that the supplementary complaints (SC No.42/2008 and 46/2011) are the result of investigation conducted by the CBI without any jurisdiction and contrary to the provisions of law, thus, I hereby discharge all the accused persons of SC No.42/2008 and 46/2011. Since, accused Badal is proclaimed offender in SC No. 42/2008, he stands discharged in absentia.

50. **Accused** persons of SC No. 42/2008 be set at liberty forthwith if not required in any other case on furnishing a personal bond in the sum of ₹ 10,000/- each with one surety of the like amount in terms of Section 437A Cr.P.C for a period of six months with condition that they shall appear before the Higher Court if they receive any notice/summon during the said period.

51. **Since**, Court has not taken any cognizance in SC No. 46/2011, no bond is required under Section 437A Cr.P.C.

52. **Since**, the offences of SC No. 41/2008 are triable by the Court of Additional Chief Metropolitan Magistrate, case file of SC No. 41/2008 be sent back to the Court of learned Chief Metropolitan Magistrate with direction either to retain the file with him or assign the same to competent court for trial of the case in accordance with law.

53. **Copy** of this order be also placed in SC No. 42/2008 and 46/2011.

54. **File** of SC No.42/2008 and 46/2011 be consigned to record room.

***Announced in the open Court  
on this 16<sup>th</sup> day of July, 2013***

***(Pawan Kumar Jain)  
Additional Sessions Judge-01,  
Central, THC, Delhi***