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**INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH**

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**FURTHER INVESTIGATION V. RE INVESTIGATION**- Dimpy Mittal<sup>1</sup>**ABSTRACT**

In India, it is a widely held belief that the police have the authority to investigate crimes, and that the judiciary should oversee the entire investigative process. When one examines the legal framework outlined in the CrPC<sup>2</sup>, it is apparent that the adjudicator must oversee the investigation process without a doubt. Police play a significant part in investigations as well, and they are given the most latitude possible to ensure that they are not hindered by a lack of resources from stopping crimes. The distinctions between an investigation, further investigation, and re-investigation might be confusing. The difference between a case's further investigation and its re-investigation is significant. When the investigation is finished and the final form is filed in accordance with section 173(2)<sup>3</sup> of the CrPC, further investigation starts under section 173(8)<sup>4</sup> of the CrPC. This study paper seeks to fully comprehend the concepts by exploring their nuances and differentiating between them.

**INTRODUCTION**

The term "investigation" has been defined by law to include all actions taken by a law enforcement officer or by anyone else (other than a magistrate) with a magistrate's permission to gather evidence pursuant to the Code of Criminal Procedure (CrPC). As a result, any action conducted by a police officer or someone authorised by a magistrate to gather evidence relating to an offence would fall under the definition of "investigation" as stated in the Code. The apex court has established that an investigation typically involves several steps, as defined by this ruling: (1) arriving at the location, (2) acquiring knowledge of the facts and circumstances of the case, (3) locating and apprehending the suspected offender, and (4) collecting evidence related to the commission of the offense, which might involve interviewing various individuals, including the accused, and, if required, recording their statements in writing. After gathering the evidence, the investigator must form an opinion

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<sup>2</sup> The Code of Criminal Procedure, 1973.

<sup>3</sup> The Code of Criminal Procedure, 1973, S 173.

<sup>4</sup> *Ibid.*

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about whether it supports the prosecution's case and decide if the accused should be brought before a magistrate for trial. If so, they must take the necessary steps, including submitting a charge sheet in accordance with Section 173<sup>5</sup> of the CrPC. It is important to note the importance of the phrase "facts and circumstances of the case and collection of evidence relevant to the commission of the offence."<sup>6</sup> They unquestionably demonstrate that the investigating officer must examine the facts and gather evidence in the state they are in, whether they support or refute the prosecution. It is not just his responsibility to support a prosecution case with evidence that might help a court find a defendant guilty, but also to reveal the whole, unadulterated truth.

Since the objective of an investigation is to uncover the truth, it is not only illegal but also very immoral for a law enforcement official to fabricate, pad, or create evidence—all significant legal offenses in order to convict a known predator. An investigator's job is to "gather evidence," not to produce it. Sadly, some dishonest police, even those in higher positions, still appear to believe that if the perpetrator is actually recognised, there is no harm in fabricating some evidence or providing the gaps in the chain of evidence to obtain his conviction in order to protect society from his misdeeds.<sup>7</sup> This is absurd. Justifying the fabrication of false evidence for the purpose of punishing a known offender based on the commendable objective could lead to a situation where the worst criminal could also justify their heinous crime using noble motives. Employing unethical means to achieve a good end is never acceptable. Gandhiji stressed the importance of both the means and the goal being pure.

## STRUCTURE OF CRIMINAL INVESTIGATION

Criminal investigations can either be proactive, where they take place before and during the commission of the offence, or reactive, when a crime has already been committed and the police are called.

The process of a reactive criminal investigation involves several steps. Phase one is the initial discovery and response. Naturally, a criminal inquiry cannot begin until either the police are informed that a crime has been committed or until the victim (or witness) becomes aware of the incident and calls the police. Usually, the first person to detect a crime has occurred and contact the police is the complainant. The victim's location or the crime scene are then often visited by a patrol officer.

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<sup>5</sup> *Ibid.*

<sup>6</sup> Pillai KN Chandrasekharan, 'Criminal Investigation in India – Human Rights Perspective' (2006) 48 Journal of the Indian Law Institute 435.

<sup>7</sup> Sankaran SR, 'Criminal Justice System: A Framework for Reforms' (1999) 34 Economic and Political Weekly 1316.

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The next stage, known as the initial investigation, entails the patrol officer's post-crime actions as soon as he or she gets at the crime site. During the initial investigation, the patrol officer's duties include locating and speaking with witnesses, gathering and preserving additional evidence, and arresting the offender (if known and present).

If the offender is not caught during the initial investigation, the case may be selected for a follow-up investigation, the third step in the reactive investigation process. Further investigative steps are conducted in connection with a case as part of the follow-up inquiry, which is frequently handled by a detective. Case screening refers to the procedure used to determine which cases require further investigation. This choice is typically made by a detective supervisor, who is typically influenced by the severity of the crime (such as the extent of the victim's property loss or injury) and solvability factors (important details about the crime that, if known, increase the likelihood that an arrest will be made).

Finally, the matter may be resolved and the inquiry may end at any point along the procedure (For instance, the investigation may be terminated if the victim withdraws their complaint, if the alleged crime is deemed baseless, if there are no further leads to pursue, or if a suspect is apprehended.) The prosecutor's office frequently assumes full control of the case when an arrest is made or an arrest warrant is issued. The investigator then assists the prosecutor in assembling the evidence so that it can be reviewed further. Criminal investigations that are carried out proactively depend on undercover investigations. The most well-known type of undercover strategy is probably the sting or "buy-bust" method, which often includes a police officer posing as someone who wants to acquire particular illegal goods (for example, drugs). Once a seller is identified and the particulars of the illicit transaction are known, authorities stationed around can make an arrest. Another common strategy is to appear as undercover police officers and tell lies in order to encourage street crime by offering offenders a chance to do so (for instance, a law enforcement officer pretends to be a stranded driver in a location known for frequent criminal activity. If someone tries to rob them, other officers who are nearby can apprehend the suspect.)<sup>8</sup> Undercover operations can lead to entrapment, hence they are debatable. The usual norm is that the police can offer the opportunity or even persuade the offender to act, but they cannot force the behavior—a very fine line—despite the fact that there have been numerous court rulings on this topic.

The terms "further investigation" & "re investigation" are sometimes used interchangeably, however there is a significant distinction between the two. To comprehend these two dissimilar ideas, we must delve into their complexities.

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<sup>8</sup> *Ibid.*

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## UNDERSTANDING THE CONCEPT OF FURTHER INVESTIGATION

The CrPC's Section 173(8)<sup>9</sup> addresses additional research and supplemental reports. There was no equivalent to Section 173(8)<sup>10</sup> of the Code of Criminal Procedure from 1973 in the previous law code. CrPC has a recently added clause that says the same thing. The Law Commission's 41st Report's recommendation that the police should have the legal authority to conduct additional investigations was added.

When new facts surfaced, after the police report was submitted and the Magistrate had taken cognizance, there was no provision in the 1898 Code dictating the process the police had to follow for a fresh investigation. Additionally, there was no explicit clause that forbade the police from conducting further investigation.

In the case of *Divakar Singh v. A. Ramamurthi Naidu*<sup>11</sup>, a two-judges bench of the Madras High Court first requested that the aforementioned omission be corrected, where it was noted that: "Another contention is put forward that when a report of investigation has been sent in under Section 173, Criminal P.C., the police has no further powers of investigation, but this argument may be briefly met by the remark that the number of investigations into a crime is not limited by law and that when one has been completed another may be begun on further information received".

According to the Hon. Apex Court, the definition of "further investigation" in Section 173(8) CrPC is even farther, wider, or auxiliary in *Rama Chaudhary v. State of Bihar*<sup>12</sup>. Therefore, "Further investigation" refers to the continuation of the prior investigation rather than a new or reinvestigation that is initiated from scratch and completely overwrites the earlier investigation.

Section 173(8)<sup>13</sup> of the Code of Criminal Procedure, 1973 provides:-

*"Nothing in this 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-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."*<sup>14</sup>

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<sup>9</sup>Supra note 2

<sup>10</sup>Ibid.

<sup>11</sup>AIR 1919 Mad 751

<sup>12</sup>(2009) 6 SCC 346

<sup>13</sup>Supra note 2

<sup>14</sup>Ibid.

To simplify the aforementioned clause, it can be expressed as follows:

- (1) After receiving a report under Section 173(2) related to an offense, it is possible to carry out further investigation.
- (2) During this additional investigation, the officer-in-charge is empowered to (a) collect more oral or recorded evidence, and (b) submit one or more additional reports to the magistrate about this evidence in the prescribed format.
- (3) The regulations specified in Subsections (2) to (6) are applicable to these supplementary reports to the extent possible.

Section 173 of the Criminal Procedure Code mandates that every police investigation should be concluded promptly. As per this section, the officer-in-charge of the police station is required to submit a report in the format designated by the State Government to a Magistrate, who has the jurisdiction to take notice of the offense based on a police report, immediately after the investigation is completed.

After the investigation is over, the police must file a police report (charge-sheet or Challan) in accordance with Section 173 subsection (2).

Subsection (8) of Section 173 clarifies that Section 173 does not restrict any future investigation into an offense after submitting a report under Subsection (2) to the Magistrate. Hence, even if the police have already filed a charge-sheet or Challan under Subsection (2) of Section 173, they can still conduct further investigations into the offense under Subsection (8) of Section 173 CrPC.

### **RE-INVESTIGATION**

Re-investigations are not permitted under the CrPC. The Magistrate cannot order a new investigation under the terms of the CrPC or for the police to reinvestigate the matter.

The Court may order a new investigation into the case during a re-investigation. This is not an additional action like an investigation. It is a completely new process.

Among the characteristics of re-investigation are:

- Only the higher courts in the hierarchy, such the High Courts or the Supreme Court, have the authority to order a new investigation. No magistrate may demand a new investigation.
- Re-investigation cannot be done by the police on their own. Re-investigation requires a specific order from the court. However, even without a court order, the police can conduct additional inquiries under Section 173(8) CrPC.

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- The term "re-investigation" is not mentioned in the Code of Criminal Procedure.
- Only in extreme situations, where the investigation's impartiality is so great that it offends the Court's judicial conscience, can it be ordered.

According to the ruling in *Vinay Tyagi*<sup>15</sup>, a re-investigation may be requested if the judge finds that the investigation was unfair, tainted, dishonest, or otherwise suspected.

In the case of *Babubhai v. State of Gujarat and Others*<sup>16</sup>, the Supreme Court held in this historic ruling that a fair investigation is an essential component of the fundamental rights protected by Article 20 and 21 of the Constitution of India . As a result, it is forbidden to let an investigative agency conduct a skewed or compromised investigation. The court highlighted that in situations where neglecting to act might ultimately result in a miscarriage of justice, it is required to step in and appoint an independent authority to conduct a fresh investigation.

In another case *Rubabbuddin Sheikh & Gudalure M. J. Cherian*<sup>17</sup>, the Supreme Court ruled that in most circumstances, once the police have finished their investigation and a charge sheet has been filed to the court, the inquiry shouldn't be reopened by a specialised agency such as the CBI. Re-investigation by a different agency, however, may be mandated in a specific circumstance to ensure fairness between the parties and public confidence. Thus, it was accepted that the primary reason for allowing the handing over of the investigation to the CBI would be to advance the cause of justice and to inspire trust in both the public and the victims.

Further in *Samaj Parivartan Samudaya & others v. State of Karnataka*<sup>18</sup>, it was determined that the primary objective of an investigation should be to establish the truth through a thorough, law-abiding probe and to ensure that those found guilty will face punishment. The court's authority to ensure a proper and equitable investigation is stronger under an adversarial system of criminal administration than it is under an inquisitorial one, and it must take precautions to prevent taking an interest or powerful parties from tampering with the investigation or hijacking it entirely in order to prevent a fair investigation from taking place and the offenders from facing the full force of the law. It was stated that any lapse would result in jurisdictional error.

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<sup>15</sup>(2013) 5 SCC 762

<sup>16</sup>AIR 1979 SC 1791

<sup>17</sup>(1992) 1 SCC 397

<sup>18</sup> (2012) 3 SCC 550.

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*Upon the defendant's acquittal at trial, the same allegations are not investigated again.*

A person cannot be investigated again for the same allegations after being exonerated in court. Due to the prohibition against double jeopardy, which is a safeguard guaranteed by Article 20(2) of the Indian Constitution, this is the case. Double jeopardy will result from any additional inquiries into the same charges for which the defendant was convicted and judged guilty or innocent.

As per Section 300(1)<sup>19</sup> of the Code of Criminal Procedure, if a person has been prosecuted for an offense and convicted or acquitted by a competent court, they cannot be prosecuted again for the same offense while the order of conviction or acquittal remains valid. Further investigations can only be conducted when new charges are brought against the accused based on credible new evidence.

### LEADING JUDICIAL PRONOUNCEMENTS

According to the case *Dharam Pal v. State of Haryana*<sup>20</sup>, the police officer's authority under section 173(8)<sup>21</sup> is unrestricted. Although the Magistrate cannot intervene, it would be preferable for the Investigating Officer to inform the Court even though the Magistrate has no right to do so. Some of the witnesses were called and questioned during the course of the investigation. The extra chargesheet served as the foundation for the magistrate's summons order. It was determined that this was legal.

No more inquiry can be required in the case once the court has recognised the offence. The Supreme Court has ruled that higher courts have the authority to order "further inquiry," "re-investigation," or even "investigation de novo" based on the case's circumstances when the Magistrate can simply order "further investigation."

After reviewing the Code's provisions and the aforementioned pertinent judgments, the court in *Vinay Tyagi v. Irshad Ali*<sup>22</sup> declared the following conclusions on a magistrate's competence under Section 173(2) read with Section 173(8) and Section 156(3) of the Code:

The Magistrate does not have the authority to order "reinvestigation" or "new investigation" in a case that was initiated based on a police report (de novo).

According to Section 173(6) of the Code, a Magistrate has the power to request "additional investigation" after receiving a police report.

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<sup>19</sup> The Code of Criminal Procedure, 1973, S 300.

<sup>20</sup> (2006) SCC 524

<sup>21</sup> *Supra note 2*

<sup>22</sup> (2013) 5 SCC 762

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The aforementioned viewpoint is in line with both the doctrine of precedent and the legal argument put out by a three-judge panel in the Bhagwant Singh case.

The Magistrate is not prohibited from using this power by the Code's general structure or any particular article. The wording of Section 173(2) cannot be construed so strictly as to divest the Magistrate of such powers, particularly given the provisions of Section 156(3) and also the language of Section 173(8). In essence, Section 173 must be considered while determining such a power. The Code being a procedural text, it must be construed in a way that advances both the cause of justice and the current legislative goal. The decision by the legislature to authorize the police to conduct further investigations after submitting a report seems illogical, as it limits the court's power to the extent that it cannot direct the investigating agency to conduct additional research, even if the case facts and justice demand it, when the agency could have done so on its own.

In *Chandra Babu v State*<sup>23</sup>, the Supreme Court determined that the Chief Judicial Magistrate had the right to order additional investigation, but that he was not authorised to tell another agency to conduct its own investigation since it was outside the purview of additional investigation.

#### **DIFFERENCE BETWEEN "FURTHER INVESTIGATION" AND "REINVESTIGATION"**

Naturally, "reinvestigation" and "further investigation" have various legal statuses. However, no higher court, such as the Honorable Supreme Court or the High Court, could or would normally issue such an order because ordering a reinvestigation is against the law.

In "*Ramachandran v. R. Udhayakumar*"<sup>24</sup>, the court expressed the following opinion: At this point, it would be important to highlight Section 173 of the Code. It is clear from a simple reading of the aforementioned section that the police have the right to continue their investigation under subsection (8) of Section 173 of the Code even after the investigation under subsection (2) has been completed, but not to conduct a new investigation or reinvestigation. As a result, there is a difference between a reinvestigation and a subsequent investigation. This distinction is also made in *Mithabhai Pashabhai Patel v. State of Gujarat*<sup>25</sup>. The breadth and ambit of "further investigation" as described in Section 173(8) of the CrPC were taken into consideration by the Hon'ble Supreme Court in Para 24 of the order. In light of this, it was decided that additional inquiry constituted a continuation of the earlier investigation rather than a "fresh investigation," "reinvestigation," or "de-

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<sup>23</sup> (2015) 8 SCC 123

<sup>24</sup>(2008) 5 SCC 413

<sup>25</sup>(2009) 6 SCC 332

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novo investigation" that was to be initiated from scratch and completely overwrite the former investigation.

## CONCLUSION

With its most recent ruling in *VinubhaiHaribhai Malaviya & Others v. State of Gujarat and Anr*<sup>26</sup>, the Honourable Supreme Court has now made an effort to end the discussion surrounding the illusive matter of more investigation requested by the magistrate. Claiming that a fair and just investigation would show that the police have the right to continue looking into an offence committed until charges are filed, subject, of course, to the Magistrate's approval under Section 173(8), but that the Magistrate's supervisory jurisdiction abruptly expires in the middle of the pre-trial proceedings, would be an outright travesty of justice. This is necessary to ensure that an innocent person is not wrongly condemned, which may necessitate further inquiry in some circumstances. Given that the magistrate's powers can be traced to Section 156(3) of the CrPC read in conjunction with Section 156(1), Section 2(h), and Section 173(8) of the CrPC, as was noted above, and would be available at all stages of the development of a criminal case prior to the beginning of the trial, there is no rationale for such a limited and restrictive interpretation of the magistrate's powers. Based on the particulars of each case, the Magistrate himself may even exercise this authority suo motu in the interest of justice. While choosing whether to order more investigation or not, the learned Magistrate will use this discretion based on the specifics of each case and in accordance with the law. It was further made plain in this instance that the investigation described in Section 156(3) would span the whole course of events, beginning with the collecting of evidence and continuing until the Court lays charges, at which point the trial is regarded to have begun.

Therefore, the Hon'ble Supreme Court observed that, in accordance with the definition of investigation found in Section 2 of the CrPC, when Section 156(3) of the CrPC states that a magistrate with the authority to order such an investigation under Section 190 of the CrPC may do so, such a magistrate may also order additional investigation under Section 173(8) (h). The Hon'ble Supreme Court reasoned that charges are framed before a criminal trial begins, not when cognizance is taken.

Currently, all that can be said is that the Hon'ble Supreme Court's reasoning and justification in *VinubhaiHaribhai* seem to be consistent with the legislative goal of the Code.

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<sup>26</sup>2019 SCC Online SC 1346

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**BIBLIOGRAPHY****Cases Referred: -**

Divakar Singh v. A. Ramamurthi Naidu AIR 1919 Mad 751

Rama Chaudhary v. State of Bihar (2009) 6 SCC 346

Rubabbuddin Sheikh and Gudalure M. J. Cherian (1992) 1 SCC 397

Vinay Tyagi v Irshad Ali (2013) 5 SCC 762

Babubhai v. State of Gujarat and Others AIR 1979 SC 1791

Samaj Parivartan Samudaya and others v. State of Karnataka (2012) 3 SCC 550.

Dharam Pal v. State of Haryana (2006) SCC 524

Chandra Babu v State (2015) 8 SCC 123

Ramachandran v. R. Udhayakumar (2008) 5 SCC 413

Mithabhai Pashabhai Patel v. State of Gujarat (2009) 6 SCC 332

VinubhaiHaribhai Malaviya & Others v. State of Gujarat and Anr 2019 SCC Online SC 1346

**Statutes Referred: -**

The Criminal Procedure Code, 1973

**Journals Referred: -**

- Pillai KN Chandrasekharan, '*Criminal Investigation in India – Human Rights Perspective*' (2006) 48 Journal of the Indian Law Institute 435.
- Sankaran SR, '*Criminal Justice System: A Framework for Reforms*' (1999) 34 Economic and Political Weekly 1316.

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