



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Criminal Writ Petition No. 532 of 2021

Shubham Satyaniwas Arjunwar and Another
Vs.

State of Maharashtra, through Police Station Officer, Police Station
Wathoda, Nagpur

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.V. Bhutada, Advocate for the petitioners
Ms. Shamsi Haider, APP for the respondent

CORAM: MANISH PITALE, J.

RESERVED ON: AUGUST 05, 2021

PRONOUNCED ON: AUGUST 10, 2021

The petitioners (original accused) are aggrieved by an order dated 23/07/2021, passed by the Court of Additional Sessions Judge-7, Nagpur (hereinafter referred to as the "Sessions Court"), whereby two applications for calling additional witnesses have been allowed. The petitioners further claim that the Sessions Court could not have allowed the prosecution to file supplementary charge-sheets on 24/06/2021 and 15/07/2021, since the trial had already begun and twelve witnesses already stood examined.

2. In the present case, a First Information

Report (FIR) was registered against the petitioners for offences under the Indian Penal Code (IPC) read with Schedule 26 of the Drug Prices Control Order 2013, read with provisions of the Drugs and Cosmetics Act, 1940, as also the Essential Commodities Act, 1955. The FIR was registered on 18/04/2021 and charge-sheet was filed on 03/05/2021. In the charge-sheet, it was claimed that the petitioners were liable to be prosecuted for offences under Sections 420, 188, 381 read with 34 of the IPC, as also Sections 18(c), 27(b)(ii) of the Drugs and Cosmetics Act, 1940 and Sections 3 and 7 of the Essential Commodities Act, 1955. The petitioners were arrested and while the petitioner No.2 was released on bail, the petitioner No.1 continues to be behind bars. The allegation against the petitioners is that they were hoarding and blackmarketing medicines and drugs required for treatment of Covid-19 virus, in violation of relevant Government Notifications and Orders, thereby committing the said offences. Charge was framed against the petitioners on 23/06/2021. Thereafter, examination of the prosecution witnesses commenced from 25/06/2021.

3. A supplementary charge-sheet was submitted on 24/06/2021 and recording of evidence of the prosecution witnesses continued. On 15/07/2021, another supplementary charge-sheet was placed on the record, upon which the Sessions

Court passed an order. By this time, nine prosecution witnesses had been examined.

4. Thereafter, on 20/07/2021 and 23/07/2021, the Special Public Prosecutor filed two applications for permission to examine additional witnesses on behalf of the prosecution. By this time, twelve prosecution witnesses were already examined. In the said applications, the Special Public Prosecutor stated that some documents could not be filed with the original charge-sheet and they were placed on record along with supplementary charge-sheets and that in the light of the documents filed along with the supplementary charge-sheets, additional witnesses were required to be examined. On 23/07/2021, the Sessions Court, by a common order, allowed both the applications for examining additional witnesses (Exhs.69 and 88), after hearing the Special Public Prosecutor as well as the petitioners. Summons were issued to the additional witnesses sought to be examined.

5. At this stage, the petitioners filed the present Writ Petition contending that supplementary charge-sheets could not have been filed before the Sessions Court under Section 173(8) of the Code of Criminal Procedure (Cr.PC.), for the reason that charges were already framed and the trial had begun. It was submitted that twelve witnesses were already examined and that such supplementary charge-sheets

with additional documents could not have been placed on record after commencement of trial, as it caused prejudice to the petitioners i.e. the original accused. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of **Vinubhai Haribhai Malaviya and Others Vs. State of Gujarat and Another (2019) 17 SCC 1**. This Court issued notice for final disposal in the Writ Petition on 29/07/2021.

6. The Writ Petition was taken up for final disposal, wherein the learned counsel for the petitioners and the learned A.P.P. were heard at length.

7. Mr. S.V. Bhutada, learned counsel appearing for the petitioners submitted that in terms of the law laid down by the Hon'ble Supreme Court in the case of **Vinubhai Haribhai Malaviya Vs. State of Gujarat** (supra), once the trial had commenced upon framing of charges and recording of evidence was being undertaken, the Investigating Officer could not have placed supplementary charge-sheets along with additional documents on the record of the Sessions Court. By referring to certified copies of applications filed by the Investigating Officer before the Sessions Court, the learned counsel for the petitioners submitted that such brief applications could not have been entertained by the Sessions Court as the trial had commenced. It was brought to the notice of this

Court that insofar as the application for seeking to place on record supplementary charge-sheet on 24/06/2021 was concerned, there was no order of the Sessions Court granting any permission, while a very short order was passed on the application dated 15/07/2021, whereby second supplementary charge-sheet was sought to be placed on record. According to the learned counsel for the petitioners, this procedure adopted by the Investigating Officer was unknown to law. It was further submitted that the applications at Exs.69 and 88 for permission to examine additional witnesses, in the light of filing of supplementary charge-sheets along with additional documents, could also not have been entertained and allowed by the Sessions Court, for the reason that the two supplementary charge-sheets after commencement of trial could not have been permitted to be placed on record by the Sessions Court. Attention was invited to relevant paragraphs of the judgment of the Hon'ble Supreme Court in the case of **Vinubhai Haribhai Malaviya Vs. State of Gujarat** (supra), in order to support the aforesaid contentions. On this basis, it was submitted that the Writ Petition deserved to be allowed, impugned order dated 23/07/2021, passed on Exhs.69 and 88 deserved to be set aside and a direction was required to be issued to the Sessions Court not to consider the two supplementary charge-sheets placed on record after commencement of trial.

8. On the other hand, Ms. Shamsi Haider, learned A.P.P. appearing on behalf of the respondent – State submitted that supplementary charge-sheets could be placed on record in terms of power available to the Investigating Officer under Section 173(8) of Cr.P.C. It was submitted that the whole purpose of the trial was to ascertain the truth and the supplementary charge-sheets along with additional documents, as also prayer for examining additional witnesses, were steps taken on behalf of the prosecution, in order to assist the Sessions Court to arrive at the truth of the matter. The learned APP further submitted that the present case concerned serious offences committed by the petitioners in the backdrop of the Covid-19 pandemic. The petitioners were alleged to have hoarded and sold vital medicines, including remdesivir required in the treatment of Covid-19, at very high prices in violation of the Drugs and Cosmetics Act, 1940, as also the Drug Prices Control Order, 2013 and the Essential Commodities Act, 1955, apart from committing offences under the IPC. The learned APP invited attention of this Court to the relevant dates in the present case. It was pointed out that FIR was registered on 18/04/2021, charge-sheet was immediately filed on 03/05/2021 and charges were framed on 23/06/2021. This was in the backdrop of the serious offences alleged to have been committed by the petitioners and specific orders passed by the Division Bench of this Court in **Suo Motu Criminal**

Application No.01/2021. By inviting attention to orders dated 29/04/2021 and 06/05/2021, passed by the Division Bench of this Court in the said proceedings, it was submitted that supplementary charge-sheets along with vital additional documents were required to be placed on record of the Sessions Court and in that light the additional witnesses were sought to be examined.

9. The learned APP placed reliance on the judgments of the Hon'ble Supreme Court in the cases of **Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh 1999 (5) SCC 740**, **Hasanbhai Valibhai Quereshi Vs. State of Gujarat 2004 (5) SCC 347** and **Rama Chaudhary Vs. State of Bihar (2009) 6 SCC 346**, as also judgment of this Court in the case of **Niwas Keshav Raut Vs. The State of Maharashtra 2016 ALL MR (Cri) 3742**. By relying upon the said judgments, it was submitted that the supplementary charge-sheets could certainly be filed in the facts and circumstances of the present case and that, therefore, the Writ Petition deserved to be dismissed.

10. Heard learned counsel for the rival parties. The principal contention raised on behalf of the petitioners is that the supplementary charge-sheets placed on record along with the additional documents on 24/06/2021 and 15/07/2021, could not have been permitted by the Sessions Court, for

the reason that charges already stood framed on 23/06/2021 and trial had commenced, with recording of evidence of the prosecution witnesses. Reliance was specifically placed on the judgment of the Hon'ble Supreme Court in the case of **Vinubhai Haribhai Malaviya Vs. State of Gujarat** (supra), to contend that once the trial commences, power available to the Investigating Officer under Section 173(8) of the Cr.P.C. could not be exercised and consequently, the Sessions Court was not empowered to permit the supplementary charge-sheets and additional documents to be placed on record, in pursuance of such defective exercise of power by the Investigating Officer. It was also claimed that there was no ground made out on behalf of the Investigating Officer or the Prosecutor for placing such supplementary charge-sheets along with additional documents on record and consequently, there was no question of permitting examination of additional witnesses relevant to the documents sought to be brought on record along with supplementary charge-sheets.

11. Since specific reliance is placed on the judgment of the Hon'ble Supreme Court in the case of **Vinubhai Haribhai Malaviya Vs. State of Gujarat** (supra), it would be appropriate to refer to the specific question that the Hon'ble Supreme Court considered in the said judgment. It was recorded in paragraph 10 of the said judgment as follows:

“10. The question of law that therefore arises in this case is whether, after a charge-sheet is filed by the police, the Magistrate has the power to order further investigation, and if so, up to what stage of a criminal proceeding.”

12. It was further specifically recorded in paragraph 20 of the said judgment as follows:

“20. With the introduction of Section 173(8) of Cr.PC, the police department has been armed with the power to further investigate an offence even after a police report has been forwarded to the Magistrate. Quite obviously, this power continues until the trial can be said to commence in a criminal case. The vexed question before us is as to whether the Magistrate can order further investigation after a police report has been forwarded to him under Section 173?”

13. While considering the position of law in the context of the said specific question framed by the Hon’ble Supreme Court, it was observed in paragraphs 42 and 43 as follows:

“42. There is no good reason given by the Court in these decisions as to why a Magistrate’s powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri Vasu V. State of U.P., (2008) 2 SCC 409 : (2008) 2 SCC 409 :

(2008) 1 SCC (Cri) 440, Samaj Parivartan Samudaya V. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365, Vinay Tyagi V. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557 and Hardeep Singh V. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86 having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusions that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation

should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain person, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Quereshi V. State of Gujarat*, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603. Therefore, to the extent that the judgments in *Amrutbhai Shambhubhai Patel V. Sumanbhai Kantibhai Patel* (2017) 4 SCC 177 : (2017) 2 SCC (Cri) 331, *Athul Rao V. State of Karnataka*, (2018) 14 SCC 298 : (2019) 1 SCC (Cri) 594 and *Bikash Ranjan Rout V. State (NCT of Delhi)*, (2019) 5 SCC 542 : (2019) 2 SCC (Cri) 613 have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana V. State (Delhi Admn.)* (1997) 1 SCC 361 and *Reeta Nag V. State of W.B.* (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051 also stand overruled.

43. We now come to certain other judgments that were cited before us. *King Emperor v. Khwaja Nazir Ahmad* AIR 1945 PC 18, was strongly relied upon by Shri Basant for the proposition that unlike superior Courts, Magistrates did not possess any inherent power under the CrPC. Since we have grounded the power of the Magistrate to order further investigation until charges are framed under Section 156(3) read with Section 173(8) of the CrPC, no question as to a Magistrate exercising any inherent power under

the CrPC would arise in this case.”

14. The Hon’ble Supreme Court answered the question framed in the aforesaid manner. The learned counsel appearing for the petitioners has emphasized on the observation made in paragraph 42 quoted above to the effect that “power of the police to further investigate the offence continues right till the stage the trial commences”. On this basis, it is contended that since the trial in the present case had admittedly commenced, as charges stood framed on 23/06/2021 and the recording of evidence of witnesses have also begun, supplementary charge-sheets placed on record on 24/06/2021 and 15/07/2021, could not have been permitted to be placed on record by the Sessions Court.

15. A perusal of the judgments relied upon by the learned APP would show that in the case of **Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj Vs. State of Andhra Pradesh** (supra), the Hon’ble Supreme Court in the context of power under Section 173(8) of the Cr.P.C. has held as follows:

“11. In such a situation the power of the Court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in section 173(8) to suggest that the Court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the Court would

only result in encumbering the Court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As law does not require it, we would not burden the Magistrate with such an obligation.”

16. In the case of **Hasanbhai Valibhai Quereshi Vs. State of Gujarat** (supra), in this context, the Hon’ble Supreme Court held as follows:

“12. Sub-sec. (8) of Sec. 173 of the Code permits further investigation, and even de hors any direction from the Court as such, it is open to the police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.

13. In *Om Prakash Narang & Anr. V. State (Delhi Admn.)*, AIR 1979 SC 1791, it was observed by this Court that further investigation is not altogether ruled out merely because cognizance has been taken by the Court. When defective investigation comes to light during course of trial, it may be cured by further investigation if circumstances so permitted. It would ordinarily be desirable and all the more so in this case, that police should inform the Court and seek formal permission to make further investigation when fresh facts come to light instead of being silent over the matter keeping in view only the need for an early trial since an effective trial for real or actual offences found during course of proper investigation in as much relevant,

desirable and necessary as an expeditious disposal of the matter by the Courts. In view of the aforesaid position in law, if there is necessity for further investigation the same can certainly be done as prescribed by law. The mere fact that there may be further delay in concluding the trial should not stand on the way of further investigation if that would help the Court in arriving at the truth and do real and substantial as well as effective justice. We make it clear that we have not expressed any final opinion on the merits of the case.”

17. In the case of **Rama Chaudhary Vs. State of Bihar** (supra), the Hon’ble Supreme Court considered Section 173(8) of Cr.P.C. and held as follows:

“15. Among the other sub-sections, we are very much concerned about sub-section (8) of Section 173 which reads as under:

“173.(8) 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).”

A mere reading of the above provision makes it clear that

irrespective of the report under sub-section (2) forwarded to the Magistrate, if the office in charge of the police station obtains further evidence, it is incumbent on his part to forward the same to the Magistrate with a further report with regard to such evidence in the form prescribed. The abovesaid provision also makes it clear that further investigation is permissible, however, reinvestigation is prohibited.

16. The law does not mandate taking of prior permission from the Magistrate for further investigation. Carrying out a further investigation even after filing of the charge-sheet is a statutory right of the police, Reinvestigation without prior permission is prohibited. On the other hand, further investigation is permissible.

17. From a plain reading of sub-section (2) and sub-section (8) of Section 173, it is evident that even after submission of the police report under sub-section (2) on completion of the investigation, the police has a right to “further” investigation under sub-section (8) of Section 173 but not “fresh investigation” or “reinvestigation”. The meaning of “further” is additional, more, or 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.

18. Sub-section (8) of Section 173 clearly envisages that on completion of further investigation, the investigating agency has to forward to

the Magistrate a “further” report and not a fresh report regarding the “further” evidence obtained during such investigation.

19. As observed in *Hasanbhai Valibhai Queresh V. State of Gujarat (2004) 5 SCC 347 : 2004 SCC (Cri) 1603* the prime consideration for further investigating is to arrive at the truth and do real and substantial justice. The hands of the investigating agency for further investigation should not be tied down on the ground of mere delay. In other words

“ [t] the mere fact that there may be further delay in concluding the trial should not stand in the way of further investigation if that would help the court in arriving at the truth and do real and substantial as well as effective justice.” (SCC p.351, para 13)

20. If we consider the above legal principles, the order dated 19-02-2008 of the trial Court summoning the witnesses named in the supplementary charge-sheet cannot be faulted with.

21. It is true that after enquiry and investigation, charges were framed on 11-03-2004 and thereafter in the course of the trial about 21 witnesses were examined. In the meantime, the police submitted supplementary charge-sheet with certain new materials and on the basis of supplementary charge- sheet, the prosecution filed an application on 12-1-2008 in the pending Sessions Trial No. 63 of 2004 before the trial Court for summoning the persons named in the charge-sheet for their examination as prosecution witnesses. On a careful perusal of the application, the trial

Court, by order dated 19-2-2008, allowed the same and has summoned those witnesses named in the supplementary charge-sheet.

22. The law does not mandate taking prior permission from the Magistrate for further investigation. It is settled law that carrying out further investigation even after filing of the charge-sheet is a statutory right of the Police. (vide [K. Chandrasekhar vs. State of Kerala](#), (1998) 5 SCC 223 : 1998 SCC (Cri) 129.) The material collected in further investigation cannot be rejected only because it has been filed at the stage of trial. The facts and circumstances show that the trial Court is fully justified to summon witnesses examined in the course of further investigation. It is also clear from [Section 231](#) CrPC that the prosecution is entitled to produce any person as witness even though such person is not named in the earlier charge-sheet.”

18. It is significant that in the aforesaid case of **Rama Chaudhary Vs. State of Bihar** (supra), charges were already framed and 21 witnesses were already examined when the police submitted supplementary charge-sheet with new material and on that basis the prosecution filed an application before the Trial Court for summoning persons named in the supplementary charge-sheet as prosecution witness.

19. It is also held in the case of **Dharam Pal Vs. State of Haryana**, reported in (2016) 4 SCC 160 that power of the Police Officer under section

173(8) of the Cr.PC. is unrestricted and that the Magistrate has no power to interfere but it would be appropriate on the part of the Investigating Office to inform the Court. Reference is also made to the abovementioned judgment of the Hon'ble Supreme Court in the case of **Rama Choudhari v. State of Bihar** (supra). The relevant portion of the said judgment in the case of *Dharam Pal v. State of Haryana* (supra) reads as follows:

“21. In this context, we may notice the statutory scheme pertaining to investigation. Section 173 CrPC empowers the police officer conducting investigation to file a report on completion of the investigation with the Magistrate empowered to take cognizance of the offence. Section 173(8) CrPC empowers the officer-in-charge to conduct further investigation even after filing of a report under Section 173(2) CrPC if he obtains further evidence, oral or documentary. Thus, the power of the police officer under Section 173(8) CrPC is unrestricted. Needless to say, the Magistrate has no power to interfere but it would be appropriate on the part of the investigating officer to inform the Court. It has been so stated in *Rama Chaudhary V. State of Bihar*.”

20. In the aforementioned judgment of **Vinubhai Haribhai Malaviya Vs. State of Gujarat** (supra), the Hon'ble Supreme Court relied upon judgment in the case of **Hasanbhai Valibhai Quereshi Vs. State of Gujarat** (supra), which in turn was also relied upon in the said judgment in the case of **Rama Chaudhary Vs. State of Bihar** (supra).

Although the Hon'ble Supreme Court in the case of **Vinubhai Haribhai Malaviya Vs. State of Gujarat** (supra), specifically overruled certain judgments, the judgments in the cases of **Hasanbhai Valibhai Quereshi Vs. State of Gujarat** (supra) and **Rama Chaudhary Vs. State of Bihar** (supra), were not overruled. In fact, as noted hereinbefore, the judgment in the case of **Hasanbhai Valibhai Quereshi Vs. State of Gujarat** (supra), was relied upon.

21. Apart from this, in the case of **Vinubhai Haribhai Malaviya Vs. State of Gujarat** (supra), the Hon'ble Supreme Court had framed specific question in paragraphs 10 and 20, quoted above concerning the issue as to whether the Magistrate can order further investigation after a police report has been forwarded to him under Section 173 of Cr.PC. While answering the said specific question, certain observations have been made, which the petitioners herein are relying upon to claim that the two supplementary charge-sheets filed in the present case could not have been accepted by the Sessions Court and that, therefore, the supplementary charge-sheets along with the additional documents cannot be looked into. Consequently, it is argued that the applications filed by the Special Public Prosecutor for examining the additional witnesses based on the documents filed along with the two supplementary charge-sheets

could not have been allowed.

22. Considering the position of law laid down by the Hon'ble Supreme Court in the above-mentioned judgments, the contentions raised on behalf of the petitioners cannot be accepted. A criminal trial is required to be fair to all the stake holders i.e. the accused, the prosecution and the victim. The purpose of a criminal trial is to ascertain the truth about the allegations levelled against the accused persons and it is not just about a bout over technicalities and over-zealous protection of rights available to the accused. A criminal trial to be conducted in a fair manner has to be undertaken as an objective and unbiased search for the truth so that justice is done to the stake holders i.e. the accused, the prosecution and the victim, avoiding injustice in the process.

23. In the present case, the petitioners are being prosecuted for alleged offences in the backdrop of the Covid-19 pandemic and the allegation is that they had violated the Drug Prices Control Order 2013, relevant Government Notifications and directions as also provisions of the Drugs and Cosmetics Act, 1940 and the Essential Commodities Act, 1955, by selling remdesivir and other such drugs at an inflated price. It is not only in the interest of the victims, who form part of the collective that all relevant

material is brought before the Sessions Court in the trial, but, it is also in the interest of justice and in furtherance of the search of truth that such material is placed on record before the Sessions Court. In the present case, the proceedings before the Sessions Court have proceeded in a swift manner. The FIR was registered on 18/04/2021, charge-sheet was filed immediately on 03/05/2021 and charges were framed on 23/06/2021. In the proceedings before the Division Bench of this Court i.e. Suo Motu Criminal Application No.1/2021, the aforementioned orders dated 29/04/2021 and 06/05/2021, were passed, directing that trials in cases where there was black marketing of life saving drugs like remdesivir, which were being sold at astronomical prices, proceedings ought to be undertaken swiftly. In such a situation, the Investigating Officer moved the aforesaid applications on 24/06/2021 and 15/07/2021, to place on record supplementary charge-sheets along with documents to further the case of the prosecution. The Special Public Prosecutor moved the applications at Exhs.69 and 88, in order to examine the additional witnesses, in the light of the documents filed with the two supplementary charge-sheets.

24. The question that arises for consideration is, as to whether such material could be looked into by the Sessions Court, in the facts and

circumstances of the present case and whether the additional witnesses could be permitted to be examined to ascertain the truth in the charges levelled against the petitioners. Fair trial in such situations needs to be viewed from the perspective of all relevant material being placed before the trial Court / Sessions Court so that the truth of the charges levelled against the accused (petitioners in this case), can be ascertained. The Hon'ble Supreme Court in the case of **Zahira Habibullah Sheikh & Anr vs State of Gujarat & Ors (2004) 4 SCC 158**, has quoted the following words from the case of **Jennison v. Baker 1972 (1) All ER 997**:

“The law should not be seen to sit by limply, while those who defy it go free, and those who seek its protection lose hope”

25. This does not mean that the trial should be victim centric, forgetting the valuable rights available to the accused, but, when the relevant material becomes available in accordance with law before the Trial Court, the accused cannot be heard to say that the same cannot be looked into for a fair trial. In the case of **Amitbhai Anilchandra Shah Vs. Central Bureau of Investigation and another (2013) 6 SCC 348**, the Hon'ble Supreme Court has held that administering criminal justice is a two-end process, where guarding the ensured rights of the accused under the Constitution is as imperative as ensuring justice to the victim. Therefore, it becomes clear that a fair trial envisages production of all

relevant material before the trial Court for discovering the truth of the matter. It is not as if the petitioners would be put to any prejudice if two supplementary charge-sheets and the additional documents are examined by the Sessions Court in the present case and the witnesses relevant to such documents are permitted to be examined. In the facts of the present case, filing of the supplementary charge-sheets has in no manner delayed the trial. In fact, the trial in the present case is proceeding in a swift manner, as is evident from the dates and events noted above.

26. Even otherwise, the learned counsel appearing for the petitioners is not justified in relying upon the above quoted observations made in the case of **Vinubhai Haribhai Malaviya Vs. State of Gujarat** (supra), regarding the prayer of the police to further investigate under Section 173(8) of Cr.P.C., for the reason that the Hon'ble Supreme Court has not laid down that supplementary charge-sheet cannot at all be filed once the trial has commenced. In fact, as noted above, in the case of **Rama Chaudhary Vs. State of Bihar** (supra), the Hon'ble Supreme Court approved the filing of supplementary charge-sheet and examination of the additional witnesses relevant to the supplementary charge-sheet after the trial had commenced and 21 witnesses had been examined in the trial. In such a situation, the supplementary charge-sheets can

certainly be placed on record by seeking permission of the Sessions Court.

27. In the present case on 24/06/2021 and 15/07/2021, the Investigating Officer forwarded the supplementary charge-sheets and additional documents with applications. On one such application, the Sessions Court recorded that the documents are official documents issued by public servants and, therefore, the production of the same is allowed for the just decision of the case. Therefore, in the facts and circumstances of the present case, it cannot be held that the Sessions Court committed an error in permitting supplementary charge-sheets along with additional documents to be placed on record. For the same reason, no interference is warranted in the impugned order dated 23/07/2021, whereby the Sessions Court allowed applications at Exhs.69 and 88 for calling additional witnesses in the light of the supplementary charge-sheets placed on record and in issuing summons to such additional witnesses. This Court is of the opinion that the Sessions Court adopted an approach expected in the course of conducting a fair trial, for ascertaining the truth of the charges levelled against the petitioners. As noted above, no prejudice has been caused to the petitioners, for the reason that they can certainly contest the veracity of the documents and also cross-examine the

additional witnesses sought to be examined on behalf of the prosecution.

28. In fact, the learned counsel appearing for the petitioners himself submitted that twelve witnesses were already examined. This indicates that the trial in the present case is being conducted in an expeditious manner and that filing of the supplementary charge-sheets has not in any manner delayed the proceedings resulting in any harassment to the petitioners.

29. In view of the above, this Court finds that there is no substance in the contentions raised on behalf of the petitioners. The contention that the petitioners are denied a fair trial in the present case is not supported on facts. Hence, the Writ Petition is dismissed.

JUDGE

MP Deshpande