

**A FAIR COMMENT ON THE VERDICT OF THE HON'BLE APEX COURT ABOUT
SECTION 173(8) CR. P.C.**

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"Every criminal trial is a voyage of discovery in which truth is the quest"

(Ritesh Tiwari v. State of U.P. (AIR 2010 SC 3823)

The spirit and message of the above classic words of the Hon'ble Apex Court is apparent from the wordings itself. Determination of truth however difficult and taskful is the goal to be achieved. All barriers and barricades fettering discovery of truth has to be removed. The horizon of criminal jurisprudence in our nation has been widening in its true letter and spirit for the past two decades. Some far reaching and progressive illustrations are the following:-

Once our courts were insisting the practice that prosecution should prove its case beyond the shadow of any doubt. But now a days courts do not follow the principle of proof beyond the shadow of any doubt. The concept of proof beyond shadow of doubt was replaced by proof beyond reasonable doubt. Our criminal jurisprudence has crossed a hundred miles hazardous journey through this new concept. Thereafter our courts dared to declare that the foreign concept of '*Falsus in uno Falsus in omnibus*" (false in one-thing, false in everything) is not at all applicable to Indian conditions. Our Hon'ble Apex Court in its quench for finding out the truth declared that a duty is cast upon the courts to separate the chaff from grain and falsehood from truth. Truly, if both are inextricably mixed up, there is no other option left to the court but to acquit the accused. Thereafter our Hon'ble Apex Court reconstructed the old and conservative principle of evaluation of evidence that the benefit of faulty investigation should go in favour of the accused.

In *State of Karnataka v. Yarappa Reddy* (1999 (3) KLT 456 (SC)), our Hon'ble Apex Court observed that criminal trial should not be made the casualty for the wrong committed by the investigating officer. In its historical judgment in *Ram Babu v. State of U.P.* ((2004) SCC (Cr) 959), our Hon'ble Apex Court observed that acquittal on the ground of illegality or irregularity on the part of the investigating officer is not correct and warned the courts that such contaminated conduct would be deprecated. Thus the horizon of criminal jurisprudence has been growing day by day with the intellectual interference of our Hon'ble Apex Court. But the recent decision reported in (2017 (1) KLT 707 (SC)) (*Amritabai Shambubai Patel v. Sumanbai Kaushalbai Patel*) is totally disappointing and is really a hindrance to the free voyage to the determination of truth. It is really a set back of administration of justice. It does not make a hallow around our system. The 41st report of the Law Commission of India deals with the concept of reopening of investigation for the determination of truth. Before that the concept was that once a final report is filed, police cannot touch the case again and cannot reopen the investigation. But after the incorporation of S.173(8) Cr.P.C., our nation witnessed a drastic change in the sphere of investigation and trial. In *Bengal Immunity Co Ltd. v. State of Bihar* (AIR 1995 SC 661), the Hon'ble Apex Court adopted the methodology of construing an Act as follows:-

1. What was the prior law?

2. What was the mischief or defect?
3. What is the remedy of law now provided?
4. What is the reason for the remedy?

On going through the parameters referred above, it is crystal clear and transparent that introduction of S.173(8) Cr.P.C. is a powerful remedy which is capable to rule out the evil of defect in the investigation. The nail and tooth of S.173(8) Cr.P.C. functioned excellently due to the timely interference of the courts, the advocates, the prosecutors, the litigants as well as the aggrieved and affected parties. Now due to the recent decision referred above, S.173(8) Cr. P.C. became a toothless legislation.

To arrive at the conclusion, the Hon'ble Apex Court relied much on the decision of *Reetha Nag v. State of West Bengal* (2009 (4) KLT Suppl. 917 (SC) = AIR 2010 SC 410). It is interesting to note that in *Chandra Babu v. State through Inspector of Police* (2015 (3) KLT Suppl. 81 (SC) = AIR 2015 SC 3566), our Hon'ble Apex Court relied on the decision rendered in *Vinay Thyagi v. Irshad Ali* (2013 (1) KLT SN 69 (C.No.57) SC = AIR 2013 SC 252 = (2013) 5 SCC 762) and held the different view that *Reetha Nag's* case and *Randhip Singh's* case had not considered the views expressed in *Bhagavath Singh v. Commissioner of Police* ((1985) 2 SCC 537). It is pertinent to note that the judgment in *Bhagavath Singh's* case was delivered by three Judges Bench. In *Vinay Thyagi's* case the Hon'ble Apex Court relying on the decision of the *Bhagavath Singh's* case held that the following three decisions are *per incuriam*. They are:-

1. *Reetha Nag v. State of West Bengal* (2009 (4) KLT Suppl. 917 (SC) = AIR 2010 SC 401)
2. *Ram Naresh Prasad v. State of Jharkhand* (AIR 2009 SC (Suppl.) 219)
3. *Randhir Singh Rana v. Delhi Administration* (AIR 1997 SC 639).

So it is too unsafe to rely the dictum held in *Reetha Nag's* case.

Here the dictum laid down by our Hon'ble Apex Court in *Krishnalal v. Dharmendra* reported in 2009 Cr.L.J. 3721 is worth mentioning. In that decision, the Hon'ble Court expanded the width and magnitude of S.173(8) Cr. P.C. and enlightened us for what S.173(8) Cr. P.C. stands. They are:-

1. Finding out what are the hidden truth required to be unearthed;
2. When certain aspects of the matter has not been considered;
3. If the investigation is found to be tainted and or otherwise unfair or is otherwise necessary in the interest of justice.

So it can be seen that the defects in a tainted and unfair investigation can be cured and rectified invoking S.173(8) Cr.P.C. If such a power is vested only with the police, who will rectify the defect? It is against the yardstick of 'check and balance principle' on which the constitutional principles rests. Now the question is who will check? The same authority who conducted the defective investigation? In this respect, it is pertinent to note the dictum of our Hon'ble Apex Court in *Hasan Bai v. State* reported in (AIR 2004 SC 2478 : ((2004) 5 SCC 347) that if defective investigation came to light during the course of trial it may be cured by further investigation.

Our Hon'ble High Court in *Abdul Latheef v. State of Kerala* (2013 (3) KLT 905) also expressed a similar view that public prosecutor who notices serious lapses committed by the investigating officer in not conducting the investigation properly can invite the attention of the court through an application for satisfying the court in respect of the necessity to invoke S.173(8) Cr. P.C. In *Ramachandran v. State of Bihar* (2009 (2) KLT 814 SC), it is held that if further investigation would help the court in arriving at the truth and to do real, substantial and effective justice, it has to be invoked.

In *Shaji v. State* (2003 (2) KLT 929), our Hon'ble High Court also expressed a similar view that if real culprits are not included in the final report, and if there is lacuna in the investigation which will cause failure of justice the Court is free to order further investigation u/S.173(8) Cr.P.C. It is significant to say that at the pre cognizance stage, it is not practical to find out the failure of investigation and hence the application of Section 156(3) Cr.P.C. will be of no use. Inclusion of the provision in Section 173(8) Cr. P.C. is definitely to prevent the misuse of the power by the investigating agency.

The next reason canvassed by the Hon'ble Apex Court in its judgment is the time limit in concluding the trial. It is significant to note at this juncture the decision laid down by the Hon'ble Apex Court in *Hasan Bai Sali Bai Khureshi v. State of Gujarat* (AIR 2004 SC 2078) wherein it is held that scope of further investigation cannot be ruled out merely because it may delay the trial as ultimate object is to arrive at the truth. In the decision reported in 2012 Cr.L.J. 4206 SC, it is also held the view that fixing time limit for conclusion of criminal trial is neither judicially permissible nor admissible. Last but not the least thing to be respectfully submitted is the fate and plight of the poor and downtrodden litigants who have to suffer at the hands of the investigating officers who are interested only in mocking at the system. By the recent verdict those helpless group are forced to knock at the doors of the constitutional courts under writ jurisdiction instead of straight away walking to the Magistrates' court which alone is the easiest forum of their access. They should not be allowed to feel that the system itself is mocking at them.

With due respect to the Hon'ble Apex Court, I may submit that neither S.311 Cr.P.C. nor S.319 Cr. P.C. is a substitute for S.173(8) Cr. P.C. . The function and object of S.311 Cr.P.C. and 319 Cr.P.C. are much different from that of S.173(8) Cr.P.C. Hence for the redressal of the grievances of our poor litigants *suo moto* reconsideration of the decision by the Hon'ble Apex Court is highly necessary for the interest of justice.