

(2024) 03 CAL CK 0092
In the Calcutta High Court
Case No : Criminal Revision No. 2092 Of 2016

Chandana Sardar

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 28-03-2024

Acts Referred:

Indian Penal Code, 1860 — Section 376, 420, 493
Code Of Criminal Procedure, 1973 — Section 156(3), 167, 167(2), 167(5), 167(5)(iii), 482

Citation : (2024) 03 CAL CK 0092

Hon'ble Judges : Bibhas Ranjan De, J

Bench : Single Bench

Advocate : Kallol Mondal, Krishan Ray, Souvik Das, Anamitra Banerjee, Jayanta Narayan Chatterjee, Moumita Pandit, Jayashree Patra, Ritushree Banerjee, Sreeparna Ghosh, Imran Ali

Final Decision : Dismissed

Judgement

Bibhas Ranjan De, J

1. The instant revision application has been preferred assailing the order dated 03.03.2016 passed by Ld. Additional Sessions Judge, South 24 Parganas, corresponding to Criminal Motion no. 24 of 2015 arising out of an order dated 17.04.2015 passed by Ld. Additional Chief Judicial Magistrate (for short A.C.J.M.), Diamond Harbour in connection with Usthi Police Station Case no. 286 of 2010 dated 30.10.2010 under Sections 376/420/493 of the Indian Penal Code (for short IPC).

Background:-

2. After demise of the husband of the petitioner in the year 2003, the opposite party no. 2, being a friend of the deceased husband of the petitioner, used to frequently visit the house of the petitioner. From time to time the opposite party no. 2 used to help the petitioner financially. Gradually, the opposite party no. 2

gained the trust of the petitioner and picked up a relation with her. In the year 2004, the petitioner obtained a substantial amount from the office of her deceased husband. During that period, the opposite party no. 2 approached the petitioner for some money for the purpose of setting up cable business. Accordingly, the petitioner, out of good faith, granted the opposite party no. 2 a loan of Rs. 1,98,000/-. Thereafter, the opposite party no. 2, being pressurized by the petitioner, prepared some papers of marriage wherein he obtained some signatures of the petitioner for the purpose of registration of their marriage. Afterwards, they started cohabiting. But, when the petitioner pressurized the opposite party no. 2 to marry socially, the petitioner disclosed that it was a fake marriage registration having no legal force. The petitioner, feeling deceived, cheated, and raped lodged complaint before the Superintendent of Police (for short S.P.), South 24 Parganas who in turn, issued a direction by virtue of which an FIR with Usthi Police Station was registered on 30.10.2010 as Usthi Police Station Case No. 286 of 2010 under Sections 493/376/420 of the IPC.

3. Thereafter, on 04.12.2010 the petitioner, being unaware of the direction of the S.P., South 24 Parganas, again lodged a complaint against the petitioner in the court of Ld. Chief Judicial Magistrate, Alipore on the self same incident under Section 156(3) of the Code of Criminal Procedure (for short Cr.P.C.) with a prayer for investigation. Accordingly, Bishnupur Police Station Case no. 597 of 2010 dated 04.12.2010 under Sections 376/420/493 of IPC was started which was subsequently quashed by the Co-ordinate Bench of this Hon'ble Court on the ground that a person cannot be vexed twice for the same offence and the complaint under Section 156(3) was filed on the self same offences and cause of action with that of the FIR lodged with Usthi Police Station dated 30.10.2010, which is not permissible in the eye of law and is liable to be quashed.

4. Thereafter, according to the Provision of Section 167 (5) (2) of Cr.P.C the Investigating Officer in connection with Usthi Police Station Case No. 286 of 2010 made a prayer before the Ld. Magistrate for recording the statement of the petitioner and for conducting medical examination of both the petitioner and the opposite party no. 2. Pursuant to such prayer, Ld. Magistrate vide order dated 17.04.2015 although rejected the prayer for medical examination but was pleased to extend the period of investigation by two months.

5. Being aggrieved and dissatisfied with such order the opposite party no. 2 preferred a revisional application before the Ld. Additional Sessions Judge, South 24 Parganas, corresponding to Criminal Motion no. 24 of 2015 wherein the Ld. Judge after hearing the matter was pleased to allow such revision thereby setting aside the order passed by Ld. A.C.J.M. and discharged the opposite party no. 2 from the case vide order dated 03.03.2016. Being dissatisfied with the impugned order passed by Ld. Additional Sessions Judge, the petitioner filed the instant application with a prayer for setting aside the same.

Arguments advanced:-

6. Ld. Counsel, Mr. Kallol Mondal, appearing on behalf of the petitioner, has submitted that the previous case for the same cause of action was started on the basis of a complaint addressed to S.P., subsequently forwarded to the Officer-in-charge of Usthi police Station, without the knowledge of the petitioner and that is why petitioner, subsequently, filed one application under Section 156(3) of Cr.P.C before the Ld. Chief Judicial Magistrate, Alipore.

7. Mr. Mondal has further contended that subsequent application under Section 156(3) of Cr.P.C was quashed by the Co-ordinate Bench of this Hon'ble Court only on the technical ground of subsequent complaint for the same cause of action. Mr. Mondal has further submitted that this Court empowered under Section 482 of Cr.P.C. can pass an order directing the evidence collected during investigation in the subsequent case to be tagged with the earlier case in connection with Usthi Police Station Case No. 286 of 2010 in spite of no specific prayer to that effect in writing. Thereby, Mr. Mondal departed with the prayer of the instant revision application assailing the impugned order of the Ld. Additional Sessions Judge who set aside the order of Ld. A.C.J.M. allowing two months time to the Investigating Officer of Usthi Police Station for completion of investigation.

8. Per contra, Ld. Counsel, Mr. Jayanta Narayan Chatterjee, appearing on behalf of the opposite party no. 2 has drawn my attention to the impugned order passed by Ld. Additional Sessions Judge dated 03.03.2016 as well as order passed by the Ld. A.C.J.M. dated 17.04.2015.

9. Mr. Chatterjee supported the order passed by Ld. Additional Sessions Judge submitting inter alia that Ld. Magistrate cannot allow two months time to the Investigation Officer for investigation of this case which was lodged 5 (five) years back. It is submitted that according to West Bengal Amendment Act, 24 of 1988 investigation of a case triable by a Court of Sessions shall have to be concluded within a period of 3 (three) years.

10. In support of his submission, Mr. Chatterjee relied on a case of Shrinorain Sureka Vs. State of West Bengal reported in 1997 C Cr LR (Cal) 186 wherein a Co-ordinate Bench of this Court held in paragraph 6 as follows:-

"6. Mr. Bose, learned Counsel appearing on behalf of the petitioner submits that the ratio of the said decision was followed by this court in a Special Bench decision in Saktisadhan Majhi's case, reported in 1993 (I) C.H.N. 154 though the decision of the apex court was not there in 1993. Actually, the process of ratiocination of the apex court was followed by the said Special Bench by its own logic. In that case the same view has been taken as has been taken by their Lordships of the apex court to the effect that in case of investigation of a pending case was concluded before the coming into force of the West Bengal Act, as referred to, the amendment would not apply. The said amendment would be applicable in the case where the investigation was continuing upto the date when the West Bengal Amendment Act came into operation. There is no dispute that the investigation was not completed on the date on which the West Bengal

Amendment Act came into effect, that is, on 2.5.89. Therefore, this is a case where the provisions of the West Bengal Amendment Act will apply with its force. In view of the decision of the apex court as referred to above and in view of the decision of the Special Bench (supra), the only course which is open to the learned Magistrate is to extend the period of investigation or to pass an appropriate order which he has not done. Under the statutory mandate, the learned Magistrate was obliged to record the stop-proceeding order and after making that order to discharge of the petitioner. If he does not do so, that fact will not take away the benefit which had occurred to the accused persons for which the revisionist came here. The remissness on the part of the learned Magistrate had caused prejudice to the petitioner as he was entitled to an order of discharge. Thus his liberty has been jeopardized from the date on which the stipulated period of three years expired due to non-recording of the order as per statutory mandate. The further continuance of the proceeding from that date became an abuse of the process of court. Therefore, it is liable to be quashed."

11. Ld. Counsel, Mr. Imran Ali, appearing on behalf of the State has submitted that victim cannot suffer for the laches of the Investigating Officer who was in-charge of investigation of Usthi Police Station Case No. 286 of 2010. At the same time it has been submitted that Ld. Magistrate has no power to extend period of investigation under Section 167(5) of Cr.P.C.

Points for consideration:-

12. This Court is to adjudicate the issue whether the order dated 03.03.2016 passed by Ld. Additional Sessions Judge, Diamond Harbour, South 24 Parganas, is sustainable in the eye of law or not.

Analysis:-

13. Before entering into the issue it would be profitable to refer Section 167 of the Cr.P.C along with West Bengal Amendment Act 24 of 1988 Section 4, which runs as follows:-

"167. Procedure when investigation cannot be completed in twenty-four hours.

(1)Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.(2)The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit

it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction :Provided that - (a)[the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding, - [Substituted by Act 45 of 1978, Section 13, for paragraph (a) (w.e.f. 18-12-1978).](i)ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;(ii)sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;](b)[no Magistrate shall authorise detention of the accused in custody of the police under this Section unless the accused is produced before him in person for the first time and subsequently every time till the accused remains in the custody of the police, but the Magistrate may extend further detention in judicial custody on production of the accused either in person or through the medium of electronic video linkage.] [Substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (a) (i), for Cl.

(b). Prior to its substitution, Cl (b) read as under.-[(b) no Magistrate shall authorise detention in any custody under this Section unless the accused is produced before him;].](c)no Magistrate of the second class, not specially empowered in this behalf by the High Court, shall authorise detention in the custody of the police.[Explanation I - For the avoidance of doubts, it is hereby declared that, notwithstanding the expiry of the period specified in paragraph (a), the accused shall be detained in custody so long as he does not furnish bail.] [Original Explanation numbered as Explanation II thereof and Explanation I inserted by Act 45 of 1978, Section 13 (w.e.f. 18-12-1978).][Explanation II. - If any question arises whether an accused person was produced before the Magistrate as required under clause (b), the production of the accused person may be proved by his signature on the order authorising detention or by the order certified by the Magistrate as to production of the accused person through the medium of electronic video linkage, as the case may be:] [Substituted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), Section 14 (a) (ii), for Explanation II. Prior to its substitution, Explanation II read as under :- [Explanation II. - If any question arises whether an accused persons was produced before the Magistrate as required under paragraph (b), the production of the accused person may be proved by his signature on the order authorising detention].][Provided further that in case of woman under eighteen years of is, the detention shall be authorised to be in the custody of a remand home or recognized social institution.] [Inserted by the Code of Criminal Procedure

(Amendment) Act, 2008 (5 of 2009), Section 14 (b).][(2-A) Notwithstanding anything contained in sub-section or (1) sub-section (2), the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of a sub-inspector, may, where a Judicial Magistrate is not available, transmit to the nearest Executive Magistrate, on whom the powers of a Judicial Magistrate, or Metropolitan Magistrate have been conferred, a copy of the entry in the diary, hereinafter prescribed relating to the case, and shall, at the same time, forward the accused to such Executive Magistrate, and thereupon such Executive Magistrate, may, for reasons to be recorded in writing, authorise the detention of the accused person in such custody as he may think fit for a term not exceeding seven days in the aggregate; and, on the expiry of the period of detention so authorised, the accused person shall be released on bail except where an order for further detention of the accused person has been made by a Magistrate competent to make such order, and where an order for such further detention is made, the period during which the accused person was detained in custody under the orders made by an Executive Magistrate under this sub-section, shall be taken into account in computing the period specified in paragraph (a) of the proviso to sub-section (2) :

Provided that before the expiry of the period aforesaid, the Executive Magistrate shall transmit to the nearest Judicial Magistrate the records of the case together with a copy of the entries in the diary relating to the case which was transmitted to him by the officer-in-charge of the police station or the police officer making the [investigation] [Inserted by Act 45 of 1978, Section 13 (w.e.f. 18-12-1978).], as the case may be.](3)A Magistrate authorising under this section detention in the custody of the police shall record his reasons for so doing.(4)Any Magistrate other than the Chief Judicial Magistrate making such order shall forward a copy of his order, with his reasons for making it, to the Chief Judicial Magistrate.(5)If in any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the period of six months is necessary.(6)Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

WEST BENGAL.-

(1) (a) For sub-sec. (5) of Section 167 following sub-section shall substituted-"(5) If, in respect of –

(i) any case triable by a Magistrate as a summons case, the investigation is not

concluded within a period of six months, or

(ii) any case exclusively triable by Court of Session or a case under Chapter XVIII of the Indian Penal Code (45 of 1860), the investigation is not concluded within period of three years, or

(iii) any case other than those mentioned in clauses (i) and (ii), the investigation is not concluded within a period of two years, from the date on which the accused was arrested or made his appearance, the Magistrate shall make an order stopping further investigation into the offence and shall discharge the accused unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the periods mentioned in this sub-section is necessary."

(b) In sub-section (6) after the words "any order stopping further investigation into an offence has been made" the words "and the accused has been discharged" shall be inserted.

[W.B. Act No. 24 of 1988, Section 4]"

14. On careful perusal of the entire provision of Section 167 of Cr.P.C., I find that the issue that is to be resolved before this Court involves the provision of sub Section 5 of Section 167 of Cr.P.C along with West Bengal Amendment Act 24 of 1988 wherefrom it appears that in a Sessions Triable case investigation has to be concluded within a period of 3 (three) years. Otherwise, the Ld. Magistrate shall make an order stopping further investigation into the offence and shall discharge the accused irrespective of the nature of offence unless investigating officer satisfies the Ld. Magistrate that further continuation of investigation beyond the statutory period is necessary assigning special reasons and in the interest of Justice.

15. Therefore, after running out the statutory period Ld. Magistrate shall have no other option but to pass an order stopping investigation and to discharge the accused. On the other hand, Ld. Magistrate can pass an order for continuation of investigation beyond statutory period only if the investigating officer makes a prayer to that effect assigning special reasons that too prior to expiry of statutory period.

16. In a Sessions Triable Case statutory period of three years starts from the date of arrest of the accused or from the date of his first appearance. Here in the case at hand, opposite party no. 2 herein made his appearance before the Court by filing an application for anticipatory bail on 27.05.2011. So, the Investigating Officer in connection with Usthi Police Station Case No. 286 of 2010 either should have completed investigation and filed charge sheet within 27.05.2014 (i.e. 3 years from the date of first appearance of the accused) or should have made the prayer for continuation of investigation within the expiry of statutory period i.e. 27.05.2014.

17. But, in the case at hand, from careful scrutiny it has come to the notice of

this Court that Investigating Officer on 18.11.2014 made the prayer to that effect. So, the Investigating Officer failed to fulfill the mandatory obligation as per the statute. Therefore, this court finds hardly any necessity to look into the merit of the reason given by the Investigating Officer with respect to his efforts to grant it the status of a 'special reason'.

18. It is not disputed that Ld. Magistrate by his order dated 17.04.2015 allowed 2 (two) months time to the Investigating Officer to complete the investigation on the basis of the prayer made by the Investigating Officer on 18.11.2014 which is beyond the statutory period of 3 (three) years in violation of the provision of Section 167(5) (iii) of the Cr.P.C instead of passing an order of stopping investigation and discharging the accused.

19. In the aforesaid view of the matter, I am unable to find out any infirmity in the order dated 03.03.2016 passed by Ld. Additional Sessions Judge, Diamond Harbour, South 24 Pargans in connection with Criminal Motion No. 24 of 2015.

20. As a sequel the instant revision application being no. CRR 2092 of 2016 stands dismissed.

21. Case diary be returned.

22. Connected applications, if there be any, stand disposed of accordingly.

23. Interim order, if there be any, also stands vacated.

24. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

25. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.