

(2017) 08 CAL CK 0011
In the Calcutta High Court
Case No : 2805 of 2014

Chandrani De Bhowmick

APPELLANT

Vs

The State of West Bengal & Anr

RESPONDENT

Date of Decision : 04-08-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 173](#) - Report of police officer on completion of Investigation
[Indian Penal Code, 1860](#), [Section 211](#) - False charge of offence

Citation : (2017) 08 CAL CK 0011

Hon'ble Judges : Debi Prosad Dey

Bench : SINGLE BENCH

Advocate : Debajyoti Deb, Hillol Saha Poddar, Debjani Sahu, Imran Ali

Final Decision : Disposed off

Judgement

1. Being aggrieved by and dis-satisfied with the order passed by learned Additional Chief Judicial Magistrate, Baruipur in GR case no. 1645 of 2014 dated 07.06.2014, the petitioner/ defacto complainant has filed this revisional application on amongst other grounds that no notice was served upon the defacto-complainant at the time of filing the report in final form by the investigating officer before learned Additional Chief Judicial Magistrate and that without serving any notice upon the defacto complainant learned Additional Judicial Magistrate has taken cognizance of the offence under Section 211 of the Indian Penal Code against the present petitioner. Learned Advocate appearing on behalf of the petitioner contended that the case was initiated at the instance of the present petitioner but the investigating officer submitted report in final form

exonerating the accused from such charges with a prayer for drawing up proceeding under Section 211 of the Indian Penal Code against the present petitioner. It is submitted that in terms of the settled principle of law, it was incumbent upon the Court as well as upon the investigating officer to serve notice upon the defacto complainant to apprise her of the final result of such investigation but without giving any opportunity to the defacto complainant, learned Additional Chief Judicial Magistrate has taken cognizance of the offence under Section 211 of the Indian Penal Code against the petitioner in violation of the decision of the Apex Court reported in 1985 (2) SCC 537 (Bhagwant Singh Vs. Commissioner of Police & Anr.).

2. Learned Advocate appearing on behalf of the State fairly contended that no notice was served upon the defacto complainant at the time of filing such report in final form under Section 173 Cr.P.C. before learned Additional Chief Judicial Magistrate at Baruiapur. The certified copies of the order sheet also do not reveal that any attempt was made on the part of the learned Court below to serve notice upon the defacto complainant in respect of such report in final form submitted by the investigating officer. That clearly goes to show that the order of cognizance passed by learned Court below without giving any opportunity to the defacto complainant in respect of the report in final form, appears to be contrary to the law as enunciated in the decision referred to herein above. In that view of this case the order of cognizance dated 07.06.2014 passed by learned Additional Chief Judicial Magistrate, Baruiapur in respect of GR case no. 1645 of 2014 arising out of Sonarpur police station case no. 416 of 2014 dated 25.03.2014 is thus set aside.

3. Learned Magistrate is directed to issue notice to the defacto complainant in respect of the report in final form submitted by the investigating officer and after hearing the defacto complainant and the state shall dispose of the case in accordance with law. Learned Magistrate is at liberty to decide the fate of the prosecution submitted under Section 211 of the Indian Penal Code against the defacto complainant in accordance with law only after giving an opportunity to

the defacto complainant to submit her views in respect of the report in final form submitted by the investigating agency of the state.

4. Let a copy of this order be forwarded the learned Additional Chief Judicial Magistrate, Baruipur at once for his information and necessary action.

5. The criminal revisional application is thus disposed of.

No order as to costs.

6. Urgent photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible.