

(2015) 02 CAL CK 0007
In the Calcutta High Court
Case No : C.R.R. No. 2843 of 2014

Debasish Bose and Others

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 04-02-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 156(3), 2, 2(wa), 302, 482
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 465, 467

Citation : (2015) CriLJ 2252 : (2015) 3 Crimes 547 : (2015) 2 RCR(Criminal) 106

Hon'ble Judges : Shib Sadhan Sadhu, J.

Bench : Single Bench

Advocate : Sompyapriya Chowdhury and Soumyadeep Das, for the Appellant;
Ayan Bhattacharya, Advocates for the Respondent

Judgement

Shib Sadhan Sadhu, J.—In the instant Revisional Application petitioners have laid challenge to the order dated 20th June, 2014 passed by the Learned Chief Judicial Magistrate, Alipore in connection with CGR No. 2817 of 2011 arising out of Gariahat P.S. Case No. 303/11 dated 05.08.2011 under Sections 406/420/465/467/468/471/474/506/120B of the Indian Penal Code whereby and whereunder the Learned Chief Judicial Magistrate, Alipore permitted the Opposite Parties herein to proceed with the case in place of the original de-facto complainant (since deceased) and has also permitted them to file Naraji Application (Protest Petition).

2. Mr. Somyapriya Chowdhury, Learned Counsel appearing on behalf of the petitioners submitted that the petitioners have come forward with this petition seeking for setting aside the impugned order dated 20th June, 2014 passed by the Learned Chief Judicial Magistrate, Alipore in CGR No. 2817 of 2011 allowing the petition filed under Section 302 Cr.P.C. seeking permission to the de-facto complainant's daughters to conduct the prosecution on behalf of the deceased de-facto complainant and also to file Naraji Petition.

3. He further contended that the Learned Magistrate has passed the order without considering the infirmities involved in this matter in respect of filing of Protest Petition by the O.P.s. He contended yet further that the right to file the Protest Petition is conferred only on the Informant who lodged the First Information Report and none else. The O.P.s. being the legal heirs of the Informant have no locus standi to file Protest Petition. At best, they can appear before the Learned Magistrate at the time of consideration of the final report and if they want to make any submission in regard to such report the Learned Magistrate is bound to hear them. Therefore, according to Mr. Chowdhury, the Learned Magistrate acted illegally by vesting the right of the de-facto complainant upon the Opposite Parties who are her legal heirs, to file the Naraji Petition. He concludingly submitted that the impugned order so far as it relates to filing the Naraji Petition by the Opposite Parties is liable to be set aside. He placed reliance on the decision of the Hon"ble Supreme Court reported in Bhagwant Singh Vs. Commissioner of Police and Another, and Sanjay Bansal and Another Vs. Jawaharlal Vats and Others, .

4. Mr. Danish Haque, Learned Counsel appearing on behalf of the Opposite Parties, on the other hand, contended that there is no infirmity or illegality in the order passed by the Learned Magistrate allowing the Opposite Parties to represent their deceased mother who was the de-facto complainant and to continue the prosecution by filing a Naraji Petition. He further submitted that the Opposite Parties filed a petition under Section 302 Cr.P.C. seeking permission to continue the prosecution by filing a Naraji Petition. He continued to contend that the Learned Magistrate was quite justified in allowing such petition otherwise it would have been a meaningless exercise only by permitting the Opposite Parties to continue with the prosecution without giving them also the permission to file the Naraji Petition since they are the worst victims of the fraud, cheating and forgery committed by the petitioners/accused upon their mother and thereby depriving them of their legitimate share in their paternal house. Mr. Haque also placed reliance on the very same decision relied on by his Learned Adversary e.g. Bhagwant Singh Vs. Commissioner of Police and Another, and yet on three more decisions of the Hon"ble Supreme Court reported in Ashwin Nanubhai Vyas Vs. State of Maharashtra and Another, , Jimmy Jahangir Madan Vs. Bolly Cariyappa Hindley (Dead) by LRs., and Rashida Kamaluddin Syed and Another Vs. Shaikh Saheblal Mardan (Dead) through Lrs. and Another, in support of his contention.

5. Mr. Ayan Bhattacharya, Learned Counsel appearing for the State, subscribed to the contention made by the Learned Counsel appearing on behalf of the Opposite Parties. He added further that it would be fallacious not to allow the Opposite Parties to file the Naraji Petition when they have been given the right of making their submission by appearing before the Learned Magistrate.

6. I have carefully considered the rival contentions put forward by the Learned Counsels appearing for the parties. I have perused the decisions cited by them. I

have also gone through the entire materials available on record with special attention to the impugned order.

7. Before entering into the merits, I think it better and profitable to make a brief reference to the relevant facts to understand the controversy raised in this Revision. The de-facto complainant Madhurilata Bose, a 70 years old lady, wife of Late P.C.Bose used to reside at her husband's place at 78, Ballygunge Place, Kolkata-700019 since the year 1993. Her husband died in the year 1995. Even thereafter she lived there till the year 2003 along with her youngest daughter Sonali Rakshit (O.P. No. 3 herein). Between the period from 2003 to 2009 she lived with her eldest daughter Smt. Ratna Basu Roychowdhury (O.P. No. 2 herein). In the year 2009 her son Debasish Bose (Petitioner No. 1 herein) fraudulently and dishonestly induced her to believe that he intended to help her financially by inducting tenants in the ground floor of the said premises and he made her sign a few papers. She was then suffering from various ailments including vision problem and she was in dire need of money for treatment. In the year 2010 the petitioner No. 1 further represented to her that the said premises required renovation to fetch maximum rent from the tenants and asked her to stay with the O.P. No. 3 at Uttarpara. Believing such representation to be true she began to reside at Uttarpara with O.P. No. 3. Since then the petitioner No. 1 did not allow her to come back. During the end part of 2010 the petitioner No. 1 along with the petitioner No. 2 Smt Kalyani Biswas who is her second daughter, threatened her not to ever think of returning to the said premises and disclosed that it has been mutated in the name of petitioner No. 1. Having realized that she was defrauded by the petitioners she filed a petition of complaint in the Court of Chief Judicial Magistrate, Alipore against them alleging commission of offence punishable under Sections 406/420/465/467/468/471/474/506/120B of the Indian Penal Code and praying for investigation under Section 156(3) of the Criminal Procedure Code. On receipt of the complaint the Learned Magistrate sent the same to the Officer-in-Charge, Gariahat P.S. for investigation and submission of report. On the basis of such complaint, Gariahat P.S. Case No. 303/11 dated 05.08.2011 under the aforesaid Sections of the IPC was registered and on completion of investigation Final Report was submitted on 28.06.2012. Thereafter notice was issued to the de-facto complainant Madhurilata Bose but she died on 24.07.2012. So the present Opposite Parties filed an application on 04.12.2012 praying for permission to continue with the case in place of their deceased mother by filing Naraji Petition and that application was allowed by the impugned order.

8. The question as to whether the heirs of the de-facto complainant can be allowed to continue the prosecution is no longer res integra as the same has been concluded by the aforesaid decisions of the Hon"ble Supreme Court cited by the Leaned Counsels for the parties. It has also been held by the Hon"ble Supreme Court that the injured person or relative of the deceased is entitled to appear before the Magistrate and can make his submission at the time of consideration of the report by the Magistrate. Thus the core question which falls

for consideration now is as to whether the legal heirs of the deceased de-facto complainant who are the victims can be permitted to file Naraji Petition.

9. Before 31.12.2009 the concept of "victim" was foreign to the Code of Criminal Procedure. By the Code of Criminal Procedure (Amendment) Act, 2008, widespread amendments were made not only introducing the definition of victim as Section 2(wa) w.e.f.31.12.2009 but various other provisions were also included in the Code for benefit of the victim. Thereby recognizing the importance and relevance of a "victim" in the process of investigation, enquiry, trial, appeal, revision, etc.

10. The term "victim" has been defined in newly introduced S. 2(wa) Cr.P.C. The relevance of victim has further been recognized in other parts of the Code which is evident from the newly introduced amended provisions by way of Code of Criminal Procedure (Amendment) Act, 2008. This Amendment Act was introduced basing upon the Statement of objects and reasons which mentioned inter alia that "At present, the victims are the worst sufferer in a crime and they do not have much role in the Court proceedings. They need to be given certain rights and compensation, so that there is no distortion of the Criminal Justice System."

11. Amendment of section 2. - In Section 2 of the Code of Criminal Procedure, 1973 (2 of 1974), after clause (w), the following clause shall be inserted, namely:-

"(wa) "victim" means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression "victim" includes his or her guardian or legal heir:" 12. In view of the above, it is evident that "victim", who is the ultimate sufferer in the commission of a crime, has been given recognition as an aggrieved party by introducing the abovesaid amendment in Cr.P.C. There is no manner of doubt that right from the occurrence of the incident till the decision of trial, appeal or revision, till the highest Court of law, the "victim" is as much interested in the decision as is the accused or the State. In fact, the "victim" on account of being the injured person and the sufferer, deserves to be recognized as the most aggrieved party in a crime. It is a happy state of affairs that the stand of the victim are now vindicated in shape of amendment in the Cr.P.C.

13. This Court has, thus, no hesitation to hold that the victim is an aggrieved person not only in a crime, but also in an investigation, enquiry, trial, appeal, revision, review and also the proceedings by which the inherent powers of this Court under Section 482, Cr.P.C. are invoked.

14. Pertinently, the said decisions of the Hon"ble Supreme Court were rendered much prior to coming into effect of the Amended Code of Criminal Procedure in 2008 and, therefore, when in the era of absence of statutory recognition granted to the victim, the Hon"ble Supreme Court laid down the abovesaid law, it goes without saying that in the post amendment era, the victim has become nearly as

indispensable as the accused or the Investigating Agency in a Criminal Trial.

15. From the discussion made above, it becomes clear as day that the law now recognizes importance of victim in a crime and also in all the subsequent proceedings contemplated by the Code, which take place right from lodging of an FIR till decision in appeal or revision.

16. Therefore, in view of the discussion made in the foregoing paragraphs, I am unable to find any illegality or infirmity in the impugned order passed by the Learned Chief Judicial Magistrate, Alipore allowing the petition filed the present Opposite Parties under Section 302 Cr.P.C. and by permitting them to file Naraji Petition, so as to warrant any interference by this Court. I am, therefore, constrained to dismiss the Revision as devoid of merits. No order as to costs.

17. Criminal Section is directed to deliver urgent Photostat certified copy of this judgment to the parties, if applied for, as early as possible.