

(2022) 07 CAL CK 0114

In the Calcutta High Court

Case No : Criminal Revision No. 2313 Of 2021 & Criminal Revision No. 2409 Of 2021

Liza Ghosh & Anr.

APPELLANT

Vs

State Of West Bengal & Anr.

RESPONDENT

Date of Decision : 29-07-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 154(1), 154(3), 156(3), 401, 482
Indian Penal Code, 1860 — Section 323, 341, 379, 406, 506

Citation : (2022) 07 CAL CK 0114

Hon'ble Judges : Rai Chattopadhyay, J

Bench : Single Bench

Advocate : Debabrata Roy, Soumik Mondal, Sarbani Mukhopadhyay, Santanu Chatterjee, Ansuman Bera

Final Decision : Allowed

Judgement

Rai Chattopadhyay, J

1. Petitioners Liza Ghosh and Souvik Dutta have preferred to file the present Criminal Revision Case under Sections 401 and 482 of the Code of Criminal Procedure 1973 to challenge and with the prayer to set aside the impugned order dated 08.09.2021 of the Additional Chief Judicial Magistrate, Chandannagore in C.R Case No.361 of 2021.

2. By dint of the impugned order dated 08.09.2021 the trial court has allowed prayer of the opposite party No.2 to take cognizance of her compliant dated 04.09.2021 and to pass directions invoking its power under Section 156 (3) of Cr.p.c 1973. The trial court has allowed such prayer and directions were issued by dint of the impugned order dated 08.09.2021, upon the concern police authorities, to register the specific police case on the basis of the compliant dated September 4, 2021, by the present opposite party No.2.

3. In compliance with the said order, Chandannagore Police Station Case No.207

of 2021 dated 11.09.2021 was registered under Sections 341, 323, 379, 406 and 506 of the Indian Penal Code against the present petitioners. Record reveals that the connected GR case number is G.R.No. 1313 of 2021.

4. The present opposite party No.2 made allegations in the trial court inter alia as follows:-

The present petitioners are the daughter and the son-in-law respectively of the opposite party No.2. The opposite party No.2 has alleged in her compliant filed before the trial court that the petitioner No.1 married petitioner No.2 contrary to the desires of the opposite party No.2, i.e, the complainant/mother. It is further stated therein that, since after marriage both the petitioners in collusion between themselves have extracted huge amount of money on several occasions from the opposite party No.2/mother, on various pretexts including medical treatment etc. It is further alleged in the said compliant that the petitioner No.1 for one reason or another, have always caused hindrance to the due education and upbringing of her younger sister, that is, younger daughter of opposite party No.2 and during indisposition of their father due to Covid-19, when the entire expenditure of treatment of more than Rs.5 lakhs was made by the said younger daughter of opposite party No.2, the petitioner No.1 have wrongfully interfered to the detriment of better management of such treatment as well as good health and proper recovery of the said patient. Even, allegedly, petitioner No.1 suppressed the fact of her father having suffered heart attack and thus at that crucial period of time he could not be supported with appropriate treatment due to the non-cooperative behavior of petitioner No.1. It is submitted further that, all these lackadaisical attitude of petitioner No.1 has resulted into negligence in treatment of her father due to which her father died on 30.05.2021. Opposite party No.2 has further stated in her complaint that petitioner No.1 having wrongfully accessed to the ATM Card etc. of the opposite party No.2 have misused the fund in the bank account as well as endeavored to even grab the four wheeler purchased by the opposite party No.2.

5. The other specific allegation against petitioners, in the said compliant dated 04.09.2021, is that on 22.08.2021 both the petitioners came to the house of opposite party No.2, tried to open the gate and the door of the house forcefully, hurled abusive languages, physically assaulted the opposite party No.2 and also her brother namely, Goutam Neogy. More so, the opposite party No.2 has alleged in the said compliant that on the said date of incident, that is, on 22.08.2021, the petitioners particularly petitioner No.1 tried to commit murder of opposite party No.2 by strangulation and also stole gold ornaments of an amount of 1.5 Bhuri.

6. Upon the compliant, as above, of the opposite party No.2, being filed on 04.09.2021, the trial court has passed an order on 08.09.2021, which is as follows:-

"Order dated 08.09.2021

Petitioner Ila Ghosh filed an application u/s 156(3) Cr.P.C against accused Lija Ghosh & Anr. With a prayer to send the same to the I.C Chandannagar P.S. for investigation by treating the same as F.I.R along with an affidavit stating that no case has been initiated upon the same allegations before any P.S.

Perused the petition and photo copies of documents. It appears that a cognizable case is made out. Thus the petition u/s 156(3) Cr.P.C is allowed. The I.C Chandannagar P.S is directed to investigate the case as per law treating the petition as F.I.R and to report compliance.

Let the complaint along with copy of order be sent to the I.C. Chandannagar P.S. concerned."

7. The petitioners are aggrieved of the order dated 08.09.2021 of the trial court as enumerated above and also of the initiation of criminal proceedings on the basis of the said compliant lodged by the opposite party No.2.

8. Learned advocate on behalf of the petitioners has assailed the impugned order and impugned criminal proceedings on the ground, firstly, that the compliant is based only on frivolous and baseless allegations which are not substantiated by any cogent material on record. It is submitted that the entire proceeding is initiated on the basis of ill-will and malice and such malicious proceeding should not be allowed to continue.

9. Secondly, that the learned trial court, while taking cognizance of the compliant of the opposite party No.2 has erred in law by not observing the mandates of law while taking cognizance of a compliant like this under Section 156 (3) Cr.P.C 1973. On this point on behalf of the petitioners, following two reported judgments of the Hon'ble Apex Court have been relied on, i.e,

(I) (2015) 6 SCC 287 (Priyanka Srivastava & Anr. Vs. State of Uttar Pradesh & Ors.)

(II) (2022) 5 SCC 639 (Babu Venkatesh & Anr. Vs. State of Karnatak & Anr.)

10. It is submitted that in Priyanka Srivastava's case the Hon'ble Apex Court has been pleased to hold that primary duty of the Magistrate is to verify the truth and veracity of the allegations. It has further being held that there has to be prior applications under Sections 154 (1) and 154 (3), both of Code of Criminal Procedure 1973, before the Magistrate, while a petition is filed under Section 156 (3) Cr.p.c. That, both the aspects, as necessitated in the above stated provisions of law, should be clearly spelt out in the application before the Magistrate, to be examined by him and necessary documents to that effect should also be filed. According to the petitioners, order of the trial court is devoid of any findings as to all these requisites.

11. Opposite party No.2 has preferred to file an affidavit-in-opposition in this case. In the same she has categorically denied the allegation of any fabricated and malicious proceedings to have been brought against the petitioners. Instead,

she has reiterated her allegations made in the compliant before the trial court. Also in the said affidavit the opposite party No.2 has denied and disputed the contention of the petitioners that the due process under law has not been exhausted by her before filing the complaint before the trial court, in order to seek the trial court to invoke jurisdiction under Section 156 (3) Cr.p.c.

12. By submitting certain documents she endeavored to state before the court that all the requisite pre-conditions under law have duly been fulfilled by her.

13. In compliance with the directions by the court, the state has furnished a report of the Inspector-in-Charge, Chandannagar Police Station, Chandannagar Police Commissionrate dated 23.02.2022, wherein the informant writes that on the basis of the court's order in C.R Case No. 361 of 2021, a specific police case being Chandannagar Police Station Case No.207 of 2021 dated 11.09.2021 under Sections 341, 323, 379, 406, 506 I.P.C was started. Investigation proceeded in its due course. After investigation the Investigating Officer has submitted charge-sheet being Chandannagar Police Station charge-sheet No. 225 of 2021 dated 30.09.2021 under Sections 341, 323, 379, 406, 506 I.P.C. It is further submitted in the said report that the case is now pending for adjudication at the trial court.

14. The certified copy of the complaint lodged by opposite party No.2 being C.R No.361 of 2021 is annexed with the revision application. The date of incident has been mentioned there, at the first page, as "22.05.2021 to be continued till 30.05.2021". However in the same complaint at 3rd page, the date of incident has been narrated to be "22.08.2021". In the same page the complainant has also written to have sent two letters dated 25.08.2021 and 27.08.2021 respectively to I.C Chandannagar P.S and the Commissioner of Police Chandannagar Commissionarate. Hence, there appears a glaring discrepancy regarding the dates of occurrence. The complaint at the face of it appears to be non-specific so far as the date of incident of alleged assault and theft is concerned, which provides impetuous to the submissions made on behalf of the petitioner that the present case is only a malicious prosecution against the petitioners. So far as the specific allegation of assault by the petitioners or alleged theft by them, one can find no mention thereof in the report dated 23.02.2022 submitted by I.C Chandannagar P.S in court. To be more specific, the report dated 23.02.2022 submitted in court, does pertain elaborately to a complaint of a subsequent date, i.e, August 28, 2021, which is not the subject matter of this case, and not the police case instituted on the basis of the compliant dated September 4, 2021. The report only mentions to the extent that a specific police case having been started on the basis of the said complaint dated September 4, 2021, of the opposite party No.2, that is, Chandannagar Police Case No.207 of 2021 dated 11.09.202, has culminated into filing of charge sheet after completion of investigation. There is no material to be found in the said report regarding the finding in investigation of the specific allegations made by the opposite party No.2 in her said compliant. Hence, upon the two scores as above, the facts stated in the said report becomes only irrelevant, in this case.

As a matter of fact, it may be worthwhile to mention that the parties have been involved in filing cases against each other in connection with certain family discord and the materials strongly suggest lack of any cogent and sufficient of those which might have substantiated the allegations of opposite party No.2 as made in her said complaint. On perusal of the materials presented before this court I am constrained to hold that there appears to exist scanty reasons for the opposite party No.2 to have lodged such a complaint in the trial court, much less any cogent or sufficient of those. Needless to reiterate that the complainant/opposite party No.2 herself was inaccurate and vague in mentioning the date of incident differently at different places in her complaint dated 04.09.2021. Therefore the very foundation of the allegations made against the petitioners, is wobbled. Under such circumstances I have no hesitation to concur with the submission made before me that the present criminal proceedings against the accused persons is only an outcome of useless vengeance and malice, having no substantive ground on which it could have been successfully founded.

15. The other point raised is of procedural irregularity and noncompliance with the existing law regarding the trial court taking cognizance of the complainants petition dated 04.09.2021 and passing an order in terms of Section 156 (3) Cr.p.c that is, the trial court's order dated 08.09.2021, as discussed above.

16. Section 156 (3) is the enabling provision for the Magistrate to take cognizance of the complaint and issue directions for investigation thereof.

17. To emphasize his point learned Advocate on behalf of the petitioner has relied on the decision of Priyanka Srivastava as mentioned above. It has already been discussed that, in the said case Hon'ble Apex Court has been pleased to hold that the Magistrate shall be empowered under the said provision of law to verify the veracity of the allegations, regard being had to the nature of the allegations of the case. The Hon'ble court has been pleased to hold further that, before the Magistrate could take cognizance of certain allegations of any person he has to satisfy self about due compliance of provision under Section 154 (1) and 154 (3) Cr.P.C. as the bounden pre-conditions thereof. It has been held that power under Section 156(3) Cr.P.C. warrants application of judicial mind. The court of law is involved therein. The litigant at his own whim cannot invoke the authority of the Magistrate excepting who is really aggrieved and coming to court in clean hands. When litigant takes this route to harass their fellow citizens, the Hon'ble court is pleased to find, that efforts are be made to scuttle and curb the same.

18. Another judgment of (2022) 5 SCC 639 that is Babu Venkatesh & Ors. Vs State of Karnataka & Anr. pronounced by the Hon'ble Supreme Court has also been relied on by the petitioners. In the same the Hon'ble Supreme Court in dealing with a similar issue, has relied on the ratio in Priyanka Srivastava's case and has been pleased to decide accordingly.

19. In this case it is found from the complaint dated 04.09.2021 that the

opposite party No.2 have stated to have written letters of complaint to the I.C Chandannagar Police Station and the Commissioner of Police Chandannagar Commissionerate on 25.08.2021 and 27.08.2021, respectively. In her affidavit-in-opposition she reiterates such fact and alleges that no action has been taken either in the Police Station or by the Police Commissioner. These are however, contain dates much later to the date of complaint, i.e, September 4, 2021. Even, for the sake of argument, if one accepts the allegations of inaction on part of the police authorities there is no specific material regarding how the opposite party No.2 has suffered "refusal" while filing her complaint before the police, keeping in mind the dates of so called letters as the same would have been the specific pre-condition for her to send her complaint in writing by post to the Superintendent of Police. In this case such explanation offered by the opposite party No.2 appears to be merely improbable and vexatious, considering the discrepancy in the dates of complaint and her sending letter to police as discussed above. Unfortunately the order dated September 8, 2021 of the trial court reflects only the erroneous approach of the Magistrate in considering the complaint dated September 4, 2021 wherein the aspects as discussed above have not even been touched, not to speak about consideration thereof. It is trait law that the direction under Section 156(3) Cr.P.C. is to be issued only after application of mind by the Magistrate. Where on account of credibility of information available or weighing the interest of justice, it is considered appropriate to straight away direct investigation, only in such a situation the Magistrate shall issue a direction like that. His satisfaction to the fact that sending matter for investigation would be conducive to justice, is the necessary prerequisite for him to pass an order. It is the court's duty under the statute to take note of the allegations in entirety, the date of incident and whether any cognizable case is remotely made out, which I am constrained to hold that the Magistrate has failed to perform in this case. The complainant/opposite party No.2 is absolutely non-specific and vague regarding the manner in which she has tried to set the criminal justice system in motion at the first instance. This should have precluded the trial court to take cognizance of the complaint dated 04.09.2021 of the opposite party No.2 following the principle laid down in Priyanka Srivastava's judgment. At this juncture if one looks at the order dated 08.09.2021 of the trial court, it can be found that the court has noted down regarding a cognizable case to have been made out without however specifying ingredients thereof which he might have gathered from the complaint. The glaring discrepancy regarding dates, as discussed above has also remained beyond cognitive assessment of the Magistrate, while considering the matter. I am constrain to hold that the order as above of the Magistrate is a depiction of less application of mind if not, not at all, as to the real purport of the case desired to be brought out before it. Therefore the said order of the Magistrate dated 08.09.2021 directing to register an FIR for the offences mention therein suffers from serious lack of application of mind as well as appropriate reasoning.

20. We may be benefited by referring to another judgment of the Hon'ble Apex

Court reported in (2013) 10 SCC 705, (Anil Kumar vs. M.K Aiyappa & Anr.), wherein the Hon'ble court has been pleased to hold that application of mind by the Magistrate should be reflected in the order. The mere statement that he has gone through the complaint, documents and heard the complainant, as such, as reflected in the order will not be sufficient. After going through the complaint, documents and hearing the complainant, what weighed with the Magistrate to order investigation under Section 156 (3) Cr.p.c should be reflected in the order, though a detailed expression of his views may not be required. This being the law as settled, I am constrained to hold that the court's coming to the findings regarding existence of cognizable case is based on merely insufficient material and reasons.

21. Therefore, in this case in my opinion there was nothing before the Magistrate to find regarding credibility of information available or if for the interest of justice an investigation in the matter was required. It was not warranted for the Magistrate to straight away embark upon exercising discretionary power under Section 156 (3) Cr.p.c for making directions to lodge specific police case and start investigation. In the light of the judgment of the Hon'ble Apex Court in Priyanka Srivastava's case the order dated 08.09.2021 of the trial court must be construed to be a non-speaking one not having been substantiated with application of judicial mind and proper reasons.

22. Therefore, on the discussion as above, I find that the present revisional application is legible to be allowed. Order of the trial court dated 08.09.2021 is liable to be set aside and the proceeding with respect to G.R Case No. 1313 of 2021 pending in the court of Additional Chief Judicial Magistrate Chandannagar is liable to be quashed.

23. Hence it is ordered that the present revisional application is allowed. Order of the trial court dated 08.09.2021 is set aside. The proceeding with respect to G.R Case No. 1313 of 2021 pending in the court of Additional Chief Judicial Magistrate Chandannagar is vitiated and quashed.

24. With these directions, this revisional application is disposed of.

25. There shall be no order as to costs.

26. Urgent photostat Certified Copy of this judgment, if applied for, be given to the parties, on priority basis.