

(2014) 07 CAL CK 0019
In the Calcutta High Court
Case No : C.R.R. 3871 of 2008

Moqbul Hossain and Others

APPELLANT

Vs

The State and Others

RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 173, 173(2), 173(8), 195(1) (b)

Penal Code, 1860 (IPC) — Section 211, 307, 326, 34, 379

Citation : (2014) 07 CAL CK 0019

Hon'ble Judges : Ranjit Kumar Bag, J

Bench : Single Bench

Advocate : Sovanlal Hazra and Debabrata Ray, Advocates for the Appellant

Judgement

Ranjit Kumar Bag, J.—This criminal revision is preferred by the petitioners challenging the judgment and order dated 28.07.2008 passed by the learned Additional Sessions Judge, Fast Track, 6th Court, Malda in Criminal Revision No. 09 of 2007 arising out of order dated 30.12.06 passed by the learned Chief Judicial Magistrate, Malda in G.R. Case No. 688/2004, by which learned Judge of the court below directed learned Chief Judicial Magistrate, Malda to consider the application filed by the Opposite Party No. 2 against acceptance of the final report submitted by the Investigating Officer in the light of the observations made in the body of the judgment.

2. For proper appreciation of the submissions made by learned counsels of both parties it is necessary to delineate the background of passing the order challenged by way of criminal revision before the learned Additional Sessions Judge, Fast Track, 6th Court, Malda. The Opposite Party No. 2 being the de facto complainant made allegation on the basis of which Ratua Police Station Case No. 53 of 2004 dated 04.04.2004 under Sections 379/326/307/34 of the Indian Penal Code was started against the present petitioners. On completion of investigation the police submitted final report on 29.07.2004 as sufficient

evidence could not be collected for prosecuting the present petitioners in the said criminal case. However, the Investigating Officer made prayer before the learned Chief Judicial Magistrate, Malda for prosecuting the Opposite Party No. 2 on the allegation of committing offence under Section 211 of the Indian Penal Code on the ground that the Opposite Party No. 2 procured forged documents in order to prosecute the present petitioners by initiating Ratua Police Station Case No. 53 of 2004 dated 04.04.2004. By passing order on 04.08.2004 learned Chief Judicial Magistrate, Malda accepted the final report submitted by the Investigating Officer without giving the Opposite Party No. 2 any opportunity of hearing and also proceeded under Section 204 of the Code of Criminal Procedure and issued warrant of arrest against the Opposite Party No. 2. The Opposite Party No. 2 was arrested on the strength of warrant of arrest issued by the learned Chief Judicial Magistrate, Malda and was released on bail on 09.08.2004. The application filed by the Opposite Party No. 2 challenging the order of acceptance of the final report and praying for further investigation of the case was taken up for hearing by learned Chief Judicial Magistrate, Malda on 23.09.2004. By passing order on 23.09.2004 learned Chief Judicial Magistrate, Malda observed that notice was not given to the Opposite Party No. 2 before acceptance of the final report submitted by the Investigating Officer due to mistake on the part of the officer of the court, but next date was fixed for hearing of the application submitted by the Opposite Party No. 2 for obtaining explanation from the concerned officer of the court. Ultimately, the application filed by the Opposite Party No. 2 against acceptance of the final report submitted by the Investigating Officer was taken up for hearing by learned Chief Judicial Magistrate, Malda on 30.12.2006. On 30.12.2006 learned Chief Judicial Magistrate, Malda rejected the application filed by the Opposite Party No. 2 on the ground that he has already accepted the final report and discharged the accused persons and started proceeding against the Opposite Party No. 2 under Section 211 of the Indian Penal Code and as such the said order cannot be reviewed or recalled for want of jurisdiction on the part of learned Chief Judicial Magistrate, Malda.

3. The Opposite Party No. 2 challenged the said order dated 30.12.2006 passed by learned Chief Judicial Magistrate, Malda before the court of learned Additional Sessions Judge, Fast Track, 6th Court, Malda disposed of the said criminal revision No. 09 of 2007 on 28.07.2008. Learned Additional Sessions Judge, Fast Track, 6th Court, Malda had set aside the order passed by learned Chief Judicial Magistrate and directed learned Chief Judicial Magistrate, Malda to consider the application filed by the Opposite Party No. 2 against final report submitted by the Investigating Officer in the light of the observation made in the body of the judgment. It is pertinent to point out that learned Additional Sessions Judge, Fast Track, 6th Court, Malda has observed in the body of the judgment that the order of further investigation and submission of report under Section 173(8) of the Code of Criminal Procedure would not have amounted to review of the earlier order passed by learned Chief Judicial Magistrate, Malda. It is also observed by learned Additional Sessions Judge, Fast Track, 6th Court, Malda that learned

Chief Judicial Magistrate, Malda should not have accepted the final report submitted by the Investigating Officer without giving opportunity of hearing to the Opposite Party No. 2. The judgment and order passed by learned Additional Sessions Judge, Fast Track, 6th Court, Malda in criminal revision No. 09 of 2007 has been challenged by the petitioners before this court in the instant criminal revision.

4. With the above factual matrix, Mr. Sovanlal Hazra, learned counsel appearing on behalf of the petitioners submits that the power and authority to give direction for further investigation and submission of police report under Section 173(8) of the Code of Criminal Procedure cannot be exercised by learned Magistrate on the basis of an application filed by the Opposite Party No. 2 after discharge of the petitioners from the criminal case on acceptance of the final report. Mr. Hazra, also contends that the issue of not giving opportunity of hearing to the Opposite Party No. 2 before acceptance of the final report submitted by the Investigating Officer cannot be taken into consideration by learned Magistrate after long lapse of more than 2 (two) years from the date of acceptance of the final report and after initiating proceeding against the Opposite Party No. 2 under Section 211 of the Indian Penal Code. According to Mr. Hazra, the court cannot pass dual order of reviving Ratua Police Station Case No. 53 of 2004 dated 04.04.2004 and issuance of warrant of arrest against the Opposite Party No. 2 giving rise to a separate proceeding under Section 211 of the Indian Penal Code. The last submission made by Mr. Hazra is that Opposite Party No. 2 cannot ventilate his grievances against the orders dated 04.08.2004 and 23.09.2004 passed by learned Chief Judicial Magistrate, Malda when those orders were not challenged by the Opposite Party No. 2 before higher forum within the prescribed period of limitation. Mr. Hazra has relied on the decision of the Supreme Court of India in the case of Reeta Nag Vs. State of West Bengal and Others, in support of his above contentions.

5. Mr. Milon Mukherjee, learned senior counsel appearing on behalf of the Opposite Party No. 2 has defended the judgment and order passed by learned Additional Sessions Judge, Fast Track, 6th Court, Malda in connection with Criminal Revision No. 09 of 2007. According to Mr. Mukherjee, the order passed by learned Chief Judicial Magistrate, Malda accepting the final report submitted by the Investigating Officer without giving opportunity of hearing to the Opposite Party No. 2 is patently illegal and not sustainable in law. Mr. Mukherjee has relied on the decision of Bhagwant Singh Vs. Commissioner of Police and Another, in support of his above contention. Mr. Mukherjee also contends that learned Chief Judicial Magistrate, Malda cannot initiate proceeding under Section 211 of the Indian Penal Code against the Opposite Party No. 2 in violation of the provisions of Section 195(1)(b) of the Code of Criminal Procedure, 1973. Mr. Mukherjee contends that the Opposite Party No. 2 came to know about the proceeding under Section 211 of the Indian Penal Code only after his arrest and production before the court on 09.08.2004 and the application filed by the Opposite Party No. 2 against the acceptance of final report submitted by the Investigating

Officer before the court of learned Chief Judicial Magistrate, Malda was not taken up for hearing by learned Magistrate till 30.12.2006 and as such the delay, if any, can be attributed to the system followed in the court of learned Magistrate. The gist of the submission of Mr. Mukherjee is that the final report submitted by the Investigating Officer should not have been accepted by the learned Magistrate without giving opportunity of hearing to the Opposite Party No. 2 and the initiation of a criminal proceeding under Section 211 of the Indian Penal Code against the Opposite Party No. 2 cannot sustain in law.

6. Having heard the learned counsels representing the respective parties and on consideration of the materials on record, I find that the order dated 30.12.2006 passed by the learned Chief Judicial Magistrate, Malda is corollary to the earlier orders dated 23.09.2004 and 04.08.2004 passed by learned Magistrate in the same case. Since learned Chief Judicial Magistrate, Malda accepted the final report submitted by the Investigating Officer without giving opportunity of hearing to the Opposite Party No. 2 and since the application submitted by the Opposite Party No. 2 challenging the acceptance of final report before the court of learned Chief Judicial Magistrate, Malda was taken up for hearing on 30.12.2006, I am of the view that the delay in ventilating grievances against the orders dated 04.08.2004 and 23.09.2004 by the Opposite Party No. 2 cannot be attributed to the Opposite Party No. 2 because the said delay took place due to failure of the system prevailing in the court of learned Chief Judicial Magistrate, Malda. It appears from the impugned judgment of learned Additional Sessions Judge, Fast Track, 6th Court, Malda challenged in this criminal revision that learned Chief Judicial Magistrate accepted the final report submitted by the Investigating Officer without giving opportunity of hearing to the Opposite Party No. 2. It is laid down by the Apex Court in Bhagwant Singh Vs. Commissioner of Police and Another, that "In a case where the Magistrate to whom a report is forwarded under sub-sec. (2) of S. 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the First Information Report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report."

7. In view of the above proposition of law laid down by the Apex Court the order of acceptance of the final report submitted by the Investigating Officer without issuing any notice to the Opposite Party No. 2 and without giving him any opportunity of hearing cannot sustain in law. Thus, the observation made by learned Additional Sessions Judge, Fast Track, 6th Court, Malda in the judgment is proper and valid in law.

8. The proposition of law laid down by the Supreme Court of India in paragraph 25 of the decision of Reeta Nag Vs. State of West Bengal and Others, , is as follows:--"What emerges from the abovementioned decisions of this Court is that once a charge-sheet is filed under Section 173(2) Cr.P.C. and either charge is framed or the accused are discharged, the Magistrate may, on the basis of a

protest petition, take cognizance of the offence complained of or on the application made by the investigating authorities permit further investigation under Section 173(8). The Magistrate cannot suo motu direct a further investigation under Section 173(8) Cr.P.C. or direct a reinvestigation into a case on account of the bar of Section 167(2) of the Code". In the instant case neither learned Chief Judicial Magistrate, Malda nor learned Additional Sessions Judge, Fast Track, 6th Court, Malda has given any direction for further investigation. The only direction given by learned Additional Sessions Judge, Fast Track, 6th Court, Malda is that learned Chief Judicial Magistrate, Malda will consider the application filed by the Opposite Party No. 2 against the acceptance of final report submitted by the Investigating Officer in the light of the observation made in the body of the judgment. Since no direction is given to the Investigating Officer either for further investigation or for re-investigation and since the order of discharge of the present petitioners on acceptance of the final report submitted by the Investigating Officer was passed without giving opportunity of hearing to the Opposite Party No. 2, I am of the opinion that the facts of the present case are clearly distinguishable from the facts of the case of Reeta Nag Vs. State of West Bengal and Others, . As a result, the ratio of the decision of Reeta Nag Vs. State of West Bengal and Others, will not be applicable in the facts of the present case.

9. The submission made on behalf of the petitioners that learned Magistrate cannot exercise the power under Section 173(8) of the Code of Criminal Procedure after discharge of the accused persons on acceptance of the final report has no merit, because the final report has been accepted by learned Magistrate and the accused persons have been discharged without giving opportunity of hearing to the Opposite Party No. 2 who happens to be the de facto complainant. The other submission on behalf of the petitioners that the Opposite Party No. 2 cannot ventilate the grievances against the orders of acceptance of final report and discharge of the petitioners after long lapse of two years, has no leg to stand on, because the delay cannot be attributed to the Opposite Party No. 2 as already pointed out by me.

10. The submission made on behalf of the Opposite Party No. 2 to the effect that learned Magistrate cannot initiate any proceeding under Section 211 of the Indian Penal Code without any complaint in writing filed by learned Magistrate as laid down in Section 195(1)(b) of the Code of Criminal Procedure, 1973 also cannot be accepted by this court on the ground that the offence in question is not alleged to have been committed in relation to any proceeding in the court. The offence, if any, committed by the Opposite Party No. 2 is in connection with the complaint filed before the police that is before the public servant.

11. In view of my above findings, I do not find any illegality in the order passed by learned Additional Sessions Judge, Fast Track, 6th Court, Malda and as such I am not inclined to interfere in the judgment and order passed by learned Additional Sessions Judge, Fast Track, 6th Court, Malda in Criminal Revision No. 09 of 2007. The upshot of my entire above observation is that the criminal

revision is dismissed. The judgment and order passed by learned Additional Sessions Judge, Fast Track, 6th Court, Malda on 28.07.2008 in Criminal Revision No. 09 of 2007 is hereby affirmed.

The department is directed to send down a copy of this judgment to the learned court below for favour of information and necessary action.

Urgent photostat certified copy of this judgment, if applied for, shall be given to the parties as expeditiously as possible, after compliance with all necessary formalities.