
(2016) 02 CAL CK 0011
In the Calcutta High Court
Case No : Criminal Revision No. 2585 of 2013

Ruma Ghosh @ Sabana Begum

APPELLANT

Vs

State of West Bengal & Ors.

RESPONDENT

Date of Decision : 08-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 401, 482
Penal Code, 1860 (IPC) — Section 120B, 325, 406, 420, 498A

Citation : (2016) 2 AICLR 254

Hon'ble Judges : Ranjit Kumar Bag, J.

Bench : Single Bench

**Advocate : Sanjay Banerjee and Sukanta Ghosh, Advocates, for the Appellant;
Sabir Ahmed, Advocate, Iqbal Hussain, Advocate, for the Respondent**

Final Decision : Disposed off

Judgement

Ranjit Kumar Bag, J. - The petitioner has preferred this revision under Section 401 read with Section 482 of the Code of Criminal Procedure challenging the judgment and order dated April 17, 2013 passed by learned Additional Sessions Judge, 9th Court, Alipore in Criminal Motion no. 289 of 2012, by which learned Additional Sessions Judge affirmed the order dated July 17, 2012 passed by learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas in G.R. no. 3690 of 2011.

2. The backdrop of preferring the present revision by the petitioner is as follows:

The petitioner, being the complainant, filed a petition of complaint before the court of learned Judicial Magistrate, Alipore, praying for forwarding the said petition of complaint to the Officer-in-Charge of the concerned police station for registration of FIR and causing investigation. Accordingly, Sonarpore Police Station Case no. 775 of 2011 dated October 15, 2011 came into force. The Investigating Officer investigated the said criminal case and submitted charge-sheet against the opposite party nos. 2 to 8 disclosing offence under Section 498A/406/420/325/120B of the Indian Penal Code. On June 13, 2012, the

petitioner filed an application before the court of learned Magistrate praying for further investigation on the ground that relevant witnesses have not been examined by the Investigating Officer and relevant documents have not been seized by the Investigating Officer in course of investigation and thereby the petitioner is highly prejudiced. On July 17, 2012, learned Magistrate rejected the prayer of the petitioner for further investigation of the said case. The petitioner challenged the order dated July 17, 2012 before the court of Sessions by preferring criminal revision. On April 17, 2013, learned Additional Sessions Judge, 9th Court, Alipore, disposed of the said Criminal Motion no.289 of 2012 by affirming the order passed by learned Magistrate.

The judgment and order passed by learned Additional Sessions Judge is under challenge in the instant case.

3. Mr. Sanjay Banerjee, learned counsel for the petitioner contends that learned Additional Sessions Judge failed to appreciate that learned Magistrate did not consider the perfunctory investigation conducted by the Investigating Officer. Mr. Banerjee submits that the Investigating Officer did not examine and record the statements of Dr. K.B.Jana of S.S.K.M. Hospital, Calcutta, Dr. Jnandi Pankar of Baghajatin State General Hospital, Dr. H. Nandi and Dr. Sher Mohammed. He further submits that one Tanusmita (Das) Chakraborty, daughter-in-law of the petitioner, who was present at the place of occurrence, was also not examined. He has also argued that one Bhagirath Pyne, domestic help of the petitioner who is well aware of the incident of physical torture of the petitioner has not been examined by the Investigating Officer. He has further argued that the Investigating Officer did not collect the medical report of Dr. H. Nandi who treated the son and daughter-in-law of the petitioner who suffered injury in the same incident of throwing acid by the husband of the petitioner. He has also pointed out that the outdoor ticket and the prescription of the doctor of S.S.K.M. Hospital and the medical reports of the doctor of Baghajatin State General Hospital have not been collected by the Investigating Officer in course of investigation of the case. Mr. Banerjee also submits that the salwar kameez of the petitioner was handed over to the Investigating Officer immediately after the incident of throwing acid, but the same was not shown to have been seized in connection with this case by the Investigating Officer. By pointing out the above lacunae in the investigation, Mr. Banerjee has urged this Court to consider the prayer for further investigation of the case by invoking inherent power under Section 482 of the Code of Criminal Procedure.

4. Mr. Sabir Ahmed, learned counsel for the opposite party/State has tried his best to defend the investigation carried out by the Investigating Officer in this case, but he has failed to produce the case diary.

5. Mr. Iqbal Hussain, learned counsel for the opposite party nos.3 to 7 has vehemently opposed the prayer for further investigation of the case. Mr. Hussain contends that this Court has passed an interim order in connection with another revision staying further proceeding of G.R. no. 3690 of 2011 so far as the

opposite party nos. 3 to 7 are concerned. Relying on the decision of Supreme Court in "Reeta Nag v. State of West Bengal" reported in (2009) 2 C Cr LR (SC) 820, Mr. Hussain submits that the petitioner, being the de facto complainant, has no right under the law to pray for further investigation of the criminal case. Again, relying on the decision of the Supreme Court in "Rajan Kumar Machananda v. State of Karnataka" reported in 1990 (Supp) SCC 132, Mr. Hussain submits that the instant second revision against the order of learned Magistrate is clearly barred under Section 397(3) of the Code of Criminal Procedure.

6. Having heard learned counsel representing the respective parties and on consideration of the written complaint treated as FIR and the charge-sheet no. 378 of 2012 dated May 11, 2012 filed against the opposite party nos. 2 to 8, I find that the petitioner sustained injury on March 15, 2011, May 6, 2011 and September 8, 2011.

While on March 15, 2011, the petitioner sustained injury due to throwing of acid, on May 6, 2011 the petitioner sustained injury by the stroke of Boti (a sharp cutting weapon) and on September 8, 2011, the petitioner sustained injury near the left ear for throwing of heavy padlock. The petitioner was treated by two doctors of S.S.K.M. Hospital including Dr. K.B. Jana for the incident of throwing acid on March 15, 2011. The petitioner was also treated by one doctor of Baghajatin State General Hospital for sustaining injury on May 6, 2011 and the incident was recorded in the general diary no. 575 dated May 6, 2011 of the local police station. The petitioner was also treated at Baghajatin State General Hospital for sustaining injury near left ear due to throwing of padlock on September 8, 2011. Unfortunately, all the doctors who treated the petitioner for three different incidents have not been examined and their statements have not been recorded and the injury report and the prescription for providing medical treatment to the petitioner have not been seized by the Investigating Officer. It is relevant to point out that only one doctor of Baghajatin State General Hospital is cited as witness in the charge-sheet. On perusal of column no.3 of the charge-sheet, I find that the Investigating Officer did not seize the salwar kameez worn by the petitioner at the time of sustaining injury due to throwing of acid, though the said salwar kameez was handed over to the Investigating Officer by the petitioner.

The fact of examination of the doctors who treated the petitioner for three different incidents and examination of doctor who treated the son and daughter-in-law of the petitioner who sustained injury along with the petitioner due to throwing of acid, is conspicuously absent from the charge-sheet. If one witness is not examined in course of investigation, the said witness can be examined by learned Judge of the trial court by invoking the provision of Section 311 of the Code of Criminal Procedure. Similarly, if one or two documents which were in existence during investigation, but could not be collected by the Investigating Officer for some reasons, those documents also can be produced by the

prosecution in course of trial of the case. When series of documents have not been collected by the Investigating Officer and bunch of witnesses have not been examined and their statements have not been recorded during investigation of the case, there is need for further investigation for full discovery of facts and collection of relevant evidence to be placed before the court in course of trial of the case. The lacunae in the investigation of the present case, no doubt, call for further investigation by engaging a responsible Investigating Officer of senior rank in the police force.

7. In the instant case, learned Additional Sessions Judge affirmed the order of learned Magistrate, when learned Magistrate refused to grant prayer for further investigation at the instance of the petitioner.

On perusal of the order of learned Magistrate, I find that learned Magistrate refused to grant prayer for further investigation on the ground that learned Magistrate had taken cognizance of the offence.

Once learned Magistrate has taken cognizance of the offence, learned Magistrate has no authority under the law to give direction for further investigation under Section 173(8) of the Code of Criminal Procedure.

According, I do not find any illegality when learned Additional Sessions Judge has affirmed the order passed by learned Magistrate.

However, I have already observed that this is a fit case where I should invoke my inherent power under Section 482 of the Code of Criminal Procedure for giving direction for further investigation under Section 173(8) of the Code of Criminal Procedure.

8. In "Reeta Nag v. State of West Bengal" reported in (2009) 2 C CR LR (SC) 820 the Supreme Court has held in paragraph 26 that learned Magistrate was wrong in directing re-investigation on the basis of an application made by the defacto complainant. In the said report learned Magistrate gave direction for re-investigation, whereas in the instant case learned Magistrate refused to give direction for further investigation and as such the report cannot have any relevance in the facts of the present case. In "Rajan Kumar Machananda v. State of Karnataka" reported in 1990 (Supp) SCC 132 the Supreme Court has held that a second revision would not lie to the High Court where a revision petition is dismissed by the sessions court due to specific bar under Section 397(3) of the Code of Criminal Procedure. In the instant case, the petitioner has challenged the judgment and order passed by the court of sessions and as such the question of preferring second revision against the order of learned Magistrate does not arise.

The ratio of the said report cannot be made applicable in the facts of the present case.

9. In view of my above findings, the judgment and order dated April 17, 2013 passed by learned Additional Sessions Judge, 9th Court, Alipore in Criminal Motion no. 289 of 2012 affirming the order of learned Magistrate is set aside. The

Superintendent of Police, South 24 Parganas is directed to engage one police officer of the rank of Inspector for carrying out further investigation of Sonarpore Police Station Case no. 775 of 2011 dated October 15, 2011 under Section 498A/406/420/325/120B of the Indian Penal Code, so that he can carry out further investigation expeditiously and file a report under Section 173(8) of the Code of Criminal Procedure before the court of concerned learned Magistrate.

10. With the above observation, criminal revision is disposed of.

11. The department is directed to send down copy of this judgment to the learned court below and to the Superintendent of Police, South 24 Parganas, Alipore for favour of information and necessary action.

12. Urgent photostat certified copies of this judgment, if applied for, be given to the learned counsel for the parties on priority basis upon compliance of all necessary formalities.