
(2005) 06 CAL CK 0044
In the Calcutta High Court
Case No : C.R.R. No. 939 of 2005

Sandhya Ghosh

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 24-06-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156(3), 401, 482
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2005) 3 CHN 646

Hon'ble Judges : S.K. Gupta, J

Bench : Single Bench

Advocate : Biplab Mitra, Debabrata Achariyya and Arindam Sen, for the Appellant; S.S. Roy, Ashim Roy and Rupa Bandopadhyay for the O. P. Nos. 2, 3 and 7, for the Respondent

Final Decision : Allowed

Judgement

S.K. Gupta J.

1. This revisional application has been preferred u/s 401 read with Section 482 of the Cr.PC against the order dated 28.12.2004 passed by the Id. Chief Judicial Magistrate, Barasat in C Case No. 446 of 2004.

2. The case of the petitioner is that she filed an application u/s 156(3) of the Cr.PC alleging therein that on 11.05.2004 the O. P. Nos.2-7 along with police of Teheti Police Camp called on Sanat Ghosh and Ramprasad Ghosh and thereafter said Sanat Ghosh was taken away in a matador van. It has been alleged that the O. P. Nos. 2-5 ransacked the home of the defacto complainant and other villagers and destroyed the household articles and outraged modesty of the women. Said Sanat Ghosh and Ramprasad Ghosh did not return and subsequently the petitioner came to know that they were found dead in a field. It has been further contended in the said petition of complaint that the complainant was prevented by the O. P. Nos. 2-7, with the active assistance of the police personnel, to lodge a complaint. Said petition filed u/s 156(3) of the Cr.PC. was forwarded by the Id.

Magistrate on 18.05.2004 to the O. C., Barasat Police Station for causing investigation after treating the same as FIR. On 14.08.2004, the Inspector-in-Charge of Barasat P. S. submitted a report before the Id. Magistrate stating therein that Barasat P. S. has already started a case being No. 274 of 2004 dated 11.05.2004 u/s 302/34 of the Indian Penal Code in respect of the murder of Sanat Ghosh and in the said case Biswajit Ghosh, Moni Ghosh and others have been implicated as accused persons. Said Biswajit Ghosh is the son of the present petitioner. It has been alleged in the report that in order to save Biswajit Ghosh and Moni Ghosh from that case, this petitioner filed the petition u/s 156(3) Cr.PC and as such police prayed for dropping the matter.

3. The petitioner, on 06.12.2004 filed a protest application before the Id. Chief Judicial Magistrate, Barasat stating therein that the investigating officer without visiting the place of occurrence and examining any witness filed the final report against the O. P. Nos. 2-7. Said protest application and the report, both were taken into consideration by the Id. Magistrate, who by his impugned order was pleased to observe that as a case has already been started over the self-same incident, so the petition filed by the present petitioner u/s 156(3) of Cr.PC was not maintainable. Said order has been challenged by the petitioner on the ground that as per provisions of Section 154 of Cr. PC whenever a cognizable offence is committed, it is the duty of a police officer to record a FIR and then to proceed with the investigation of the case. Since the petition was forwarded by the Id. Magistrate to the concerned O. C., it was his duty to investigate into the matter and thereafter to submit a report in final form. But the Id. Magistrate by his order dated 28.12.2004 was pleased to accept the report of the concerned O. C. and the complaint filed by the present petitioner, was dropped. Being aggrieved by, and dissatisfied with, the said order of the Id. Magistrate, this revisional application has been preferred.

4. I have heard the submission of the Id. Advocate for the petitioner as well as the Id. Advocate for the State and the private O. P.s. At the very outset, Id. Advocate for the State drew my attention that the petitioner has stated in the revisional application that he filed a Naraji petition before the Id. Magistrate against the report, submitted by the Officer-in-Charge. But if we closely look into the revisional application, then it will appear that in fact said petition, which has been described as Naraji petition, was filed as objection against the report submitted by the Officer-in-Charge. Be that as it may, the fact remains that a case u/s 302/34 of the Indian Penal Code was started against the son of the present petitioner and others and that case ended in submission of the chargesheet. It appears from this revisional application that the present petitioner filed a petition u/s 156(3) of Cr.PC making allegations against some other persons and that petition of complaint also to some extent related to the incident of the murder of one Sanat Ghosh for which charge-sheet has been submitted against the son of the petitioner and others. There is no dispute that when the petition of complaint was filed before the Id. Magistrate by the present petitioner, at that time the Id. Chief Judicial Magistrate, Barasat after perusal of

the petition of complaint, was pleased to send the same to the O. C., Barasat P. S. for investigation u/s 156(3) Cr.PC by treating the same as FIR. When such a direction was given by a competent Criminal Court, then it was incumbent upon the concerned Officer-in-Charge of the P. S. to record an FIR and then to investigate the matter. But it appears that so far as the present case is concerned, the Officer-in-Charge of the said P. S. did not start a specific case by recording an FIR., as directed by the Id. Magistrate. The Officer-in-Charge of a police station is a creature of the statute and he is certainly bound to obey the direction of the Magistrate. Here in this case, clear direction was given upon the said Officer-in-Charge to investigate the matter by starting a specific case. But the Officer-in-Charge without starting the case submitted an interim report before the Id. Magistrate stating therein that in order to save her son and others from another murder case, the petitioner filed this petition of complaint falsely and on the basis of the said report the Id. Magistrate was pleased to drop the proceeding. So, the fact remains that the said Officer-in-Charge of the P. S. did not investigation the case at all. It is always open for him to submit a final report after making proper investigation and to say that there was no prima facie material for submitting chargesheet against the accused persons. Without doing that, it is not permissible for an Officer-in-Charge of of a P. S. to recommend for dropping of a criminal proceeding. I fail to understand as to how the Id. Magistrate could concede to such a proposal of the concerned Officer-in-Charge. In this respect, Id. Advocate for the petitioner cited decision reported in 2005 SCC 211, Upkar Singh v. Ved Prakash and Ors., wherein the Hon"ble Apex Court has observed that second complaint in regard to same incident, filed as a counter-complaint, held not prohibited under Cr.PC and as such on refusal by police to register counter-complaint, Magistrate can direct the police, at any stage-to register the complaint and investigate the same. So far as the present case is concerned, it appears that over the alleged incident, an earlier FIR was lodged which resulted in submission of chargesheet. Another petition of complaint was filed by the present petitioner arising out of the self-same incident and that petition of complaint was referred to the P. S. for treating the same as FIR u/s 156(3) of Cr. PC. I have already pointed out that an Officer-in-Charge of the P. S. is certainly bound to record an FIR., and to investigate the same and then to submit a report in final form. So far as the present case is concerned, it appears that the said Officer-in-Charge did not record the FIR. and instead submitted a written report of his own to the Id. Magistrate praying for dropping the proceeding, which the Id. Magistrate readily complied. I have got no hesitation to hold that the order of the Id. Magistrate in dropping the said proceeding is thoroughly improper and against the statutory provisions and it has certainly caused failure of justice. To my mind, it is a fit case where this Court should interfere into the said order of the Id. Magistrate and he should be directed to ask the O. C. concerned to lodge an FIR. on the basis of the petition of complaint, as forwarded to him u/s 156(3) of Cr. PC and thereafter he should be directed to make investigation and to submit a report in final form. Then and then only the Magistrate will be in a position to pass a final order, so far as this

case is concerned.

5. Considering all these things, the revisional application is allowed on contest. The order dated 28.12.2004 passed by the Id. Chief Judicial Magistrate, Barasat in C Case No. 446 of 2004 is set aside. He is directed to ask the O. C., Barasat P. S. to register an FIR. on the basis of the petition of complaint which was sent to him u/s 156(3) of the Cr.PC and to investigate the same and then to submit a report in final form. After the said report is submitted, the Id. Magistrate is directed to take appropriate step and to pass appropriate order in accordance with law.

6. Send a copy of this order to the Id. Court below at once.

7. Xerox certified copy, if applied, may be handed over to the parties on urgent basis.