

(2016) 02 CAL CK 0030
In the Calcutta High Court
Case No : C.R.R. No. 4037 of 2015

Sayantan Chatterjee

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 29-02-2016

Acts Referred:

Constitution of India, 1950 — Article 227

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), Section 401, Section 482

Penal Code, 1860 (IPC) — Section 279, Section 304A, Section 337, Section 427

Citation : (2016) 02 CAL CK 0030

Hon'ble Judges : R.K. Bag, J.

Bench : Single Bench

Advocate : Sekhar Kumar Basu, Arka Pratim Chowdhury, Sharmistha Poddar and Dhruba Chattopadhyay, for the Appellant; Manjit Singh, PP and Ayan Basu, for the Respondent

Final Decision : Disposed off

Judgement

R.K. Bag, J.—1. The petitioner has challenged the order dated June 25, 2015, passed by learned Chief Judicial Magistrate, Barasat, North 24-Parganas, in connection with New Town Police Station Case No. 332/2014, by preferring this revision under Article 227 of the Constitution of India read with Section 482 and Section 401 of the Code of Criminal Procedure.

2. It appears from the record that New Town Police Station Case No. 332/2014 under Sections 279/304A/337/427 of the Indian Penal Code was registered on the basis of a written complaint filed by the opposite party No. 2. On February 05, 2015, charge-sheet was submitted against the petitioner disclosing offence under Sections 279/304A/337/427 of the Indian Penal Code. On June 01, 2015, the opposite party No. 2 filed an application before the Court of learned Magistrate praying for further investigation of the case. On June 25, 2015, learned Magistrate gave direction for further investigation to the Inspector-in-Charge of the New Town Police Station.

3. Mr. Sekhar Kumar Basu, learned senior counsel appearing on behalf of the petitioner contends that learned Magistrate gave direction to the Inspector-in-Charge of New Town Police Station to investigate the case further either personally or by any other competent officer other than the previous investigating officer of the case and to file supplementary report under Section 173(8) of the Code of Criminal Procedure. However, the State has transferred the investigation to the Inspector of Detective Department, Commissionerate of Police, Bidhannagar, without informing learned Magistrate. Mr. Basu specifically submits that further investigation is not being carried out as directed by learned Magistrate and learned Magistrate is not informed of the change of investigating agency by the State. Mr. Basu has relied on a decision of the Supreme Court in "Chandra Babu v. State Through Inspector of Police" reported in , (2015) 8 SCC 774, in support of the contention that learned Magistrate cannot give direction for further investigation by another investigating agency, which is done in the present case without informing learned Magistrate. He has also referred to other decisions of the Supreme Court in support of the contention that the petitioner being accused has the right to challenge the order for further investigation before this Court, though he has not specifically challenged the order of further investigation. What has been challenged by Mr. Basu on behalf of the petitioner is the change of investigating agency in violation of the direction given by learned Magistrate by keeping learned Magistrate in dark.

4. Mr. Ayan Basu, learned counsel for the State submits that the petitioner being the accused has no right to challenge the order of further investigation. He has relied on the decision of the Supreme Court in "Narender G. Goel v. State of Maharashtra" reported in (2009) 2 SCC (Cri.) 933 in support of his above contention. The further contention of Mr. Ayan Basu is that the further investigation is required for full discovery of facts and to bring the real culprit into book for the offence committed by him.

5. Mr. Phiroze Edulji, learned counsel for the opposite party No. 2 has referred to the orders passed by the learned single Judge in WP 18865 (W) of 2015 and submits that the petitioner challenged the tardy investigation before the writ Court with a prayer for fair and impartial investigation by Central Bureau of Investigation. According to Mr. Edulji, the transfer of investigation to the Inspector of Detective Department, Commissionerate of Police, Bidhannagar is done with the approval of the writ Court for fair and impartial investigation. Mr. Edulji has pointed out from the orders passed by the writ Court that the writ Court approved the order of further investigation by another investigating agency in presence of the petitioner who was impleaded as respondent in the said writ petition. The gist of submission of Mr. Edulji is that the petitioner is not prejudiced at all for transfer of investigation from the local police to the Detective Department for the sake of fair and impartial investigation, at least during the stage of further investigation of the case.

6. Before deciding the legality and validity of the order passed by learned

Magistrate, I would like to decide whether the petitioner has right to challenge the order of further investigation. In "Narender G. Goel v. State of Maharashtra " reported in (2009) 2 SCC (Cri.) 933, it is held by the Supreme Court in paragraph 11 that the accused has no right to be heard at the stage of investigation. Relying on the case of "Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P." reported in , (1999) 5 SCC 743 the Supreme Court observed in paragraph 11 of the report as follows:--

"11..... There is nothing in Section 173(8) to suggest that the Court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard"

The ratio laid down in the above report is that the accused has no right of hearing at the stage of investigation or further investigation of the case. The issue whether the accused has right to assail the order of further investigation is not discussed in this report. The decision is only an authority of what it actually decides. Since the report does not lay down any law whether the accused can assail the order of further investigation, the said report has no relevance in the facts of the present case. The petitioner may have no right to be heard before the Court of learned Magistrate at the time of giving direction by the learned Magistrate for further investigation, but the petitioner can challenge the order of further investigation before this Court by invoking the jurisdiction of this Court either under Article 227 of the Constitution of India or by invoking the inherent power of this Court under Section 482 of the Code of Criminal Procedure.

7. Now the question for consideration is whether the learned Magistrate has the jurisdiction to direct for further investigation. In "Vinay Tyagi v. Irshad Ali" reported in , (2013) 4 SCC (Cri.) 557, the Supreme Court has held in paragraph 40 that learned Magistrate or the higher Court of competent jurisdiction would direct for further investigation or reinvestigation, as the case may be, on the facts of a given case. It is held in the said report that where the Magistrate can only direct further investigation, the Courts of higher jurisdiction can direct further investigation or reinvestigation or even investigation de novo depending on the facts of the given case. It will be the specific order of the Court which would determine the nature of investigation.

8. In "Chandra Babu v. State" reported in , (2015) 8 SCC 774, the Supreme Court has held in paragraph 21 that the Magistrate does not have the jurisdiction to direct reinvestigation by any agency. The Supreme Court directed that the investigating agency that had investigated would carry on further investigation and such investigation would be supervised by the concerned Superintendent of Police. In "Krishan Lal v. Dharmendra Bafna" reported in , (2009) 3 SCC (Cri.) 611 the Supreme Court held in last part of paragraph 10 that learned Magistrate or the superior Courts can direct further investigation, if the investigation is found to be tainted and/or otherwise unfair or is otherwise necessary in the ends

of justice.

9. In the instant case, learned Magistrate gave direction to the Inspector-in-Charge of New Town Police Station to make further investigation either personally or by engaging any competent officer other than the previous investigating officer of the case on the ground that some vital evidence was not collected during the previous investigation of the case. The opposite party No. 2, being the de facto complainant of the case filed a writ petition being WP No. 18865 (W) of 2015 before this Court on the ground that further investigation is not being carried out effectively for collection of proper evidence and full discovery of facts. It appears from order dated August 24, 2015 passed in the said writ petition that learned single Judge of this Court directed opposite party No. 2 to implead the petitioner as the respondent in the said writ petition. It further appears from order dated August 31, 2015 passed by learned single Judge in the said writ petition that the present petitioner raised objection against further investigation before the writ Court and the said objection was turned down by the learned single Judge. It also appears from the order dated September 14, 2015 passed by learned single Judge in the said writ petition that learned single Judge gave liberty to the Inspector of Police, Detective Department, Bidhannagar Police Commissionerate, to proceed in accordance with law to carry out further investigation in connection with the New Town Police Station Case No. 332/2014. The fact that investigation carried out by the Inspector of Detective Department, Commissionerate of Police, Bidhannagar, was informed to learned Magistrate on September 22, 2015. In view of the proposition of law laid down by the Supreme Court in "Chandra Babu v. State Through Inspector of Police (supra), learned Magistrate cannot give direction either for reinvestigation or for carrying out further investigation by another investigating agency. In the instant case, further investigation is being carried out by the Inspector of Detective Department of the Commissionerate of Police, Bidhannagar, and thereby investigation is transferred from the local police to the Detective Department. This change of investigating agency is subsequently approved by learned single Judge of this Court in passing various orders in W.P. No. 18865 (W) of 2015, wherein the present petitioner was impleaded as the respondent and he was given opportunity of hearing by the learned single Judge. It is true that by transfer of investigation from the local police to the Detective Department, the State has violated the direction given by the learned Magistrate in carrying out further investigation. Since transfer of further investigation from the local police to the Detective Department in violation of the order of learned Magistrate is subsequently approved by learned single Judge on September 14, 2015 in W.P. No. 18865(W) of 2015 and since I am also satisfied about the need of further investigation after going through the materials available in the Case Diary, I would like to hold that the irregularity committed by the State by transferring investigation from the local police to the Detective Department is cured by the writ Court. On consideration of the background of passing the order of further investigation by learned Magistrate, I am also of the view that the

petitioner is not prejudiced at all by the order of further investigation.

10. There is no doubt that this Court can give direction for further investigation by another investigating agency other than the previous agency which carried out investigation of the case. In view of the proposition of law laid down by the Supreme Court in "Chandra Babu v. State Through Inspector of Police" (supra) I would like to hold that further investigation carried out by the Inspector of Detective Department, Commissionerate of Police, Bidhannagar, will be supervised by the Deputy Commissioner of Police, Detective Department, Commissionerate of Police, Bidhannagar, so that further investigation is carried out fairly, impartially, in accordance with law and supplementary report is submitted under Section 173(8) of the Code of Criminal Procedure before the Court of learned Magistrate.

11. With the above direction, the criminal revision is disposed of. The department is directed to forward a copy of this order to the learned Court below and another copy to the Deputy Commissioner of Police, Detective Department, Commissionerate of Police, Bidhannagar, for favour of information and necessary action.

Criminal Section is directed to supply urgent photostat certified copies of this judgment to the parties on priority basis, if applied for, upon compliance of all necessary formalities.