

(2023) 11 CAL CK 0028
In the Calcutta High Court
Case No : Criminal Revision No. 1251 Of 2019

State Of West Bengal & Anr.

APPELLANT

Vs

Sudan Chandra Gorai And Ors.

RESPONDENT

Date of Decision : 24-11-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Code Of Criminal Procedure, 1973 — Section 156(3), 173(3), 173(6), 173(8), 482

Citation : (2023) 11 CAL CK 0028

Hon'ble Judges : Shampa Dutt (Paul), J

Bench : Single Bench

Advocate : Sudip Ghosh, Saryati Datta, Aritra Bhattacharya

Final Decision : Allowed

Judgement

Shampa Dutt (Paul), J

1. The present revision has been preferred by the State of West Bengal against an order dated 01.02.2019 passed by the learned Sessions Judge, Purulia in connection with Criminal Revision No. 50 of 2013, thereby affirming the order dated 15.03.2013 passed by the learned Additional Chief Judicial Magistrate, Raghunathpur in G.R. Case No. 352 of 2012.
2. The facts in brief is that on the basis of a complaint filed by one Sudan Chandra Gorai under Section 156(3) Cr.P.C., Para Police Station, Case No. 57/12 was registered on the direction of the Court.
3. On completion of investigation, final report being FRMF No. 02/13 was submitted.
4. The complainant filed a 'Naraji' petition. Vide order dated 05.02.2013, the learned Additional Chief Judicial Magistrate was pleased to direct the Deputy SP, DEB, Purulia to reinvestigate the case and submit a report on completion of the investigation. By way of complying with the said order, Deputy SP, DEB, Purulia

took up investigation of the case.

5. That before the Deputy SP, DEB, Purulia could submit his report of investigation, the informant preferred another petition on 15.03.2013 before the learned Additional Chief Judicial Magistrate, Raghunathpur, being G.R. Case No. 352/12, for transferring the case to Criminal Investigation Department, West Bengal for investigation.

6. Vide an order dated 15.03.2013 the Court directed Superintendent of Police, Purulia to send the case diary to the CID, West Bengal for further investigation.

7. On 20.12.2013, CID, West Bengal preferred a criminal revision, being Criminal Revision No. 50/2013 before the learned Sessions Judge, Purulia, praying for reconsidering the order of the learned Additional Chief Judicial Magistrate, Raghunathpur dated 15.03.2013 in G.R. Case No. 352/12 and to direct the Deputy SP (DEB) Purulia to investigate the case.

8. The Criminal Revision Case No. 50/13 was disposed of by the learned Additional District Sessions Judge, Raghunathpur by an order dated 01.02.2019, wherein the order dated 15.03.2013 passed by the learned Additional Chief Judicial Magistrate, Raghunathpur in G.R. Case No. 352/12 was affirmed.

9. Hence the revision.

10. The petitioner/State has filed a supplementary affidavit in support of the orders of the learned Magistrate.

11. Mr. Sudip Ghosh, learned counsel for the State has relied upon the judgment of the Supreme Court in Chandra Babu alias Moses vs State through Inspector of Police & Ors., (2015) 8 SCC 774, where in the Court held:-

"20. We have reproduced the conclusion in extenso as we are disposed to think that the High Court has fallen into error in its appreciation of the order passed by the learned Chief Judicial Magistrate. It has to be construed in the light of the eventual direction. The order, in fact, as we perceive, presents that the learned Chief Judicial Magistrate was really inclined to direct further investigation but because he had chosen another agency, he has used the word "reinvestigation". Needless to say, the power of the Magistrate to direct for further investigation has to be cautiously used. In Vinay Tyagi [(2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] it has been held : (SCC p. 791, para 41)

"41. ... The power of the Magistrate to direct ?further investigation? is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of

the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.”

21. In the said case, the question arose, whether the Magistrate can direct for reinvestigation. The Court, while dealing with the said issue, has ruled that : (Vinay Tyagi case [(2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557] , SCC p. 791, para 43)

“43. At this stage, we may also state another well-settled canon of the criminal jurisprudence that the superior courts have the jurisdiction under Section 482 of the Code or even Article 226 of the Constitution of India to direct ‘further investigation’, ‘fresh’ or ‘de novo’ and even ‘reinvestigation’. ‘Fresh’, ‘de novo’ and ‘reinvestigation’ are synonymous expressions and their result in law would be the same. The superior courts are even vested with the power of transferring investigation from one agency to another, provided the ends of justice so demand such action. Of course, it is also a settled principle that this power has to be exercised by the superior courts very sparingly and with great circumspection.”

And again : (SCC p. 794, para 51)

“51. ... Whether the Magistrate should direct ‘further investigation’ or not is again a matter which will depend upon the facts of a given case. The learned Magistrate or the higher court of competent jurisdiction would direct ‘further investigation’ or ‘reinvestigation’ as the case may be, on the facts of a given case. Where the Magistrate can only direct further investigation, the courts of higher jurisdiction can direct further, reinvestigation or even investigation de novo depending on the facts of a given case. It will be the specific order of the court that would determine the nature of investigation.”

22. We respectfully concur with the said view. As we have already indicated, the learned Chief Judicial Magistrate has basically directed for further investigation. The said part of the order cannot be found fault with, but an eloquent one, he could not have directed another investigating agency to investigate as that would not be within the sphere of further investigation and, in any case, he does not have the jurisdiction to direct reinvestigation by another agency. Therefore, that part of the order deserves to be lanced and accordingly it is directed that the investigating agency that had investigated shall carry on the further investigation and such investigation shall be supervised by the Superintendent of Police concerned. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with law. We may hasten to add that we have not expressed any opinion relating to any of the factual aspects of the case.”

12. In the present case, in spite of there being a pending further investigation, the Magistrate directed further investigation by another agency, which is clearly an abuse of the process of law/Court and thus being not in accordance with law

in liable to be set aside in the interest of justice.

13. CRR 1251 of 2019 is allowed.

14. Accordingly, order dated 01.02.2019 passed by the learned Sessions Judge, Purulia in connection with Criminal Revision No. 50 of 2013, thereby affirming the order dated 15.03.2013 passed by the learned Additional Chief Judicial Magistrate, Raghunathpur in G.R. Case No. 352 of 2012, is set aside.

15. Keeping with the guidelines of the Supreme Court in Chandra Babu alias Moses vs State through Inspector of Police & Ors. (Supra), it is directed that the investigating agency that had investigated the present case shall carry on the further investigation and such investigation shall be supervised by the Superintendent of Police concerned. After the further investigation, the report shall be submitted before the learned Chief Judicial Magistrate who shall deal with the same in accordance with law.

16. There will be no order as to costs.

17. All connected Applications, if any, stand disposed of.

18. Interim order, if any, stands vacated.

19. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

20. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.