

**HIGH COURT OF TRIPURA
AGARTALA
CRL. PETN NO.39 OF 2022**

Sri Kajal Sarkar,
S/o- Sri Gouranga Sarkar,
Of Madhya Charipara,
P.S. Amtali, Dist-West Tripura.

..... **Petitioner(s)**

Vs.

1) **The State of Tripura,**
Represented by Secretary,
Home Department,
New Secretariat Building,
New Capital/Complex, West Tripura.

2) **Officer-in-Charge,**
Amtali Police Station,

3) **Sri Swapan Barman,**
SI of Police,
I.O. of case No.2019AMT064.

4) **Bimal Sarker,**
S/o Sri Shefal Sarkar.

5) **Litan Miah,**
S/o Kayem Miah.

6) **Nazrul Miah,**
S/o Kayem Miah.

7) **Abdul Miah@Helal,**
S/o Tahar Miah.

8) **Rubel Miah,**
S/o Dulal Miah.

..... **Respondent(s)**

For the Petitioner(s) : Mr. B. Deb, Advocate.

For the Respondent(s) : Mr. R. Datta, P.P.
Mr. S. Debnath, Addl. P.P.

Date of hearing and delivery of
Judgment & Order : 09.01.2023.

Whether fit for reporting : YES/NO.

HON'BLE THE CHIEF JUSTICE(ACTING)

JUDGMENT AND ORDER(ORAL)

This instant petition has been filed under Section 482 of Cr.P.C. read with Section 173(2)(ii) & 173(8) of Cr.P.C. for invoking the inherent powers of this Court directing the I.O. of Amtali P.S. Case No.2019AMT064 corresponding to PRC(SP) 147/2020 to conduct further investigation for quashing/setting aside the impugned order dated 13.05.2022 passed by learned Judicial Magistrate 1st Class, Court No.2, Agartala West Tripura, in Case No.PRC(S) 147 of 2020 and to file charge-sheet after incorporating just and proper penal sections in the instant case.

2. The case of the petitioner herein is that he lodged an FIR before the O.C. Amtali P.S. against the accused persons herein, namely, i) Bimal Sarkar, ii) Litan Miah, iii) Najrul Miah, iv) Abdul Miah @ Helal and v) Rubel Miah. Based on the aforesaid written FIR, the Amtali Police Personnel registered Amtali P.S. Case No.2019AMT064 dated 23.05.2019 and took up the investigation. In course of the investigation, the petitioner herein tried to assist the investigating officer (*in short 'I.O.'*) requesting him several times to seize the mobile phone and memory card by

which he took picture of the accused-Bimal Sarkar holding pistol but the same was denied by the I.O. The petitioner also categorically stated the name of 6(six) persons who were present at the place of occurrence and witnessed the entire incident. But the I.O. only cited 4(four) persons as witnesses in the charge sheet. The I.O. of the instant case recorded their statement and out of them except 1(one) witness all other witnesses became hearsay witnesses. The I.O. filed the charge sheet under Section 341/506/34 of IPC against the above-accused persons. Thought the I.O. of the instant case filed charge-sheet on 21.10.2019. On 08.12.2021 he came to know that the police has filed the charge sheet under Section 341/506/34 of IPC. Thereafter, he contracted his Advocate requesting him to inspect the case record. On perusal, it was revealed that police filed charge-sheet in his case without any reflection of Section 307 of the Arms Act. After that on 04.02.2022, the petitioner filed one petition under Section 173(8) before the Trial Court for giving necessary direction to the I.O. to conduct further investigation and to submit charge-sheet after incorporating proper section. Vide order dated 13.05.2022, the Trial Court rejected the same.

3) Being aggrieved by the order dated 13.05.2022, the petitioner filed this instant petition and prayed for the following reliefs:-

"i) Admit the instant application,

ii) Issue notice upon the opposite party.

iii) Call for the lower Court records and relevant document from the respondents and to stay further proceedings of case No.PRC(SP)147 of 2020 till final disposal of the instant case.

iv) Pass an order directing the IO of Amtali PS CASE No.2019AMT064 corresponding to PRC(SP)147/2020 to conduct further investigation and to quash/setting aside the impugned order dated 13.05.2022 passed by Id. Judicial Magistrate 1st Class, Court No.2 Agartala, West Tripura in Case No.PRC(SP)147 of 2020 and to file charge-sheet after incorporating joust and proper penal sections in the instant case.

v) After hearing both the parties to pass any other order/orders as your Lordship may seem fit and proper."

4) Heard Mr. B. Deb, learned counsel appearing for the petitioner as well as Mr. R. Datta, learned P.P. along with Mr. S. Debnath, learned Addl. P.P. appearing for the respondents.

5) Mr. B. Deb, learned counsel appearing for the petitioner submitted that the petitioner was sitting in front of the Charipara BJP Office, at that time, the accused persons came to forcibly take possession of the party office. At that time, the petitioner along with others protested. At that time, the FIR named accused, namely, Bimal Sarkar suddenly took out firearms (pistol) from his pocket and fired three rounds upon the complainant i.e. the petitioner herein with a intention to kill him but he was luckily saved. The petitioner mentioned the same in the FIR. He also took some photographs of the said Bimal Sarkar with Pistol in hand but despite several requests, the I.O. of the case did not seize the photograph from the petitioner nor he seized the mobile phone or memory card by which he took the

said picture. The petitioner categorically stated 6(six) persons who were present at the place of occurrence and witnessed the entire incident of firing. But the I.O. did not cite them as witnesses in the instant case. The I.O. only cited 4(four) persons in the charge sheet without citing the name of other witnesses. The I.O. filed the charge sheet in such a manner that most of the witnesses became hearsay witnesses, though, all the witnesses witnessed the whole incident with their own eyes and they have given their 161 statement before the I.O. in the same manner which they have witnessed. Unfortunately, the I.O. twisted the statement and mechanically filed the charge sheet under Section 341/506/34 of IPC against the accused persons. There is no reflection of Section 307 of the Arms Act in the charge sheet. The I.O. of the instant case filed the charge sheet on 21.10.2019 but he did not comply the mandatory provision of Section 173(2)(ii) of Cr.P.C. as because the I.O. did not inform the informant of the present case.

On following the mandate of Section 173(2)(ii) of Cr.P.C., Mr. Deb learned counsel has referred to the order passed by the Division Bench of this Court in **W.P.(C)(PIL) No.07 of 2020** titled as **Sri Bhaskar Deb Vs. The State of Tripura** dated **01.03.2021**

6) Mr. R. Datta, learned P.P. appearing for the respondents submitted that this instant petition is not maintainable since prayer for further investigation by the petitioner before the Trial Court has been rejected and the same is just and proper. Learned P.P. further submitted that the I.O. of the case duly issued a notice upon the complainant informing her about the completion of the investigation but no objection was made at that time. But only at the stage of the trial, a prayer for further investigation was made.

To substantiate his argument, learned P.P. has relied upon the judgment of the Hon'ble Supreme Court titled as ***Vinubhai Haribhai Malaviya and ors. Vs. The State of Gujrat and anr.***, in case bearing registration No. ***Criminal Appeal Nos.478-479 of 2017*** dated ***16.10.2019***, wherein, the Hon'ble Apex Court held that a Magistrate has the power to order further investigation into an offence under Section 156(3) of Cr.P.C. post cognizance until the commencement of trial.

7) Heard both sides and perused the evidence on record.

8) The impugned trial case is now in the stage of recording evidence. Further, it is clear from the record that investigating officer of the case has duly issued a notice upon

the complainant informing him about the completion of the investigation, but, no objection was raised during that time. At the stage of trial, a petition for further investigation was submitted. The Trial Court rejected the same. Further, in terms of the principle laid down in ***Vinubhai Haribhai Malaviya(supra)*** wherein the Hon'ble Apex Court held that the Magistrate has the power to order further investigation into an offence under Section 156(3) of Cr.P.C., post cognizance until the commencement of trial, this Court is the view that this instant petition is devoid of the merit and same is liable to be dismissed. Accordingly, the same is dismissed.

Consequently, pending application(s) if any, is also closed.

CHIEF JUSTICE (ACTING)