

THE HIGH COURT OF TRIPURA

AGARTALA

Crl. Pet. No. 25 of 2015

Petitioner :

Smt. Ayemeli Debnath,
W/o. Sri Nabarun Debnath,
D/o. Sri Naresh Chandra Debnath of
Dighalia, Nutannagar, P.S-Airport, Dist.-
West Tripura.

By Advocates :

Mr. P. Saha, Adv.
Mr. B. Majumder, Adv.

Respondents :

1. Sri Nabarun Debnath,
S/o. Sri Nripendra kumar Debnath.

2. Smt. Nandita Debnath,
W/o. Sri Nripendra Kumar Debnath

3. Sri Nripendra Kumar Debnath,
S/o. Lt. Akshay Debnath.

All are residents of Adarsha Palli, Milan
Chakra, P.S. A. D. Nagar, Dist. Tripura
West, Pin-799003.

Proforma-Respondent :

4. The State of Tripura.

By Advocate :

Mr. A. Ghosh, P. P.

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA

Date of hearing & : **8th July, 2015**
Judgment & Order

Whether fit for reporting :

Yes	No

J U D G M E N T & O R D E R(oral)

This criminal petition is directed against the judgment dated 26.03.2015 passed by the Additional Sessions Judge, Court No.2, West Tripura, Agartala whereby he allowed the revision petition filed by the respondents herein who are the accused before the trial Court and set aside

the order of the Judicial Magistrate, First Class, Agartala dated 30.05.2014 whereby he had permitted the police to further investigate the matter.

[2] Briefly stated the facts are that a complaint was made by the petitioner-wife that she had been treated with cruelty by her husband and his family members and therefore, an offence under Section 498A had been committed by all of them. On the basis of the complaint charge sheet under Section 498A read with Section 34 IPC was filed against the accused. The trial started and four witnesses were examined. Thereafter it appears that some efforts were made to get the matter mutually settled between the parties. After the settlement failed, the Officer-in-charge of the West Agartala Women Police Station filed an application which reads as follows:

**"In the Court of
Ld. Chief Judicial Magistrate,
West Tripura, Agartala.**

**Ref:- West Agartala P.S Case No.151/12 dated
21-06-12 u/s 498(A)/34 I.P.C.**

**Sub:- Prayer for pass necessary order for re-
investigation of the case.**

**Sir, In reference to the above I beg to inform
your honour that after completion of investigation
West Agartala P.S case No. 151/12 u/s 498(A)/34
IPC ended in charge sheet vide West Agartala PS C/S
No. 158/12 dated 30-07-12 u/s 498(A)/109/506/34
IPC against all the FIR named A/Ps.**

**It is pertinent to be mentioned here that after
submission of charge sheet more evidences come up
in c/w the case. As such, necessary order may kindly
be passed for re-investigation of the above noted
case for the interest of the case.**

**This is for favour of your kind information and
necessary action please.**

**Yours faithfully
Sd/-
(Officer-in-charge)
West Agt. Women P.S
Dated 25-09-13"**

Thereafter she filed another application on the next date in which it was mentioned that the word reinvestigation be read as further investigation.

[3] This Court is treating this to be an application for further investigation. The learned trial Court allowed this application by a long judgment but without discussing what was the nature of the further investigation to be carried out and what was the fault in the previous investigation. The accused persons filed a revision petition being Criminal Revision Petition No.38 of 2014 before the Sessions Judge and the learned Additional Sessions Judge held that further investigation cannot be ordered and basically his judgment is to the fact that in almost no cases can further investigation being ordered.

[4] I am not in agreement with the judgment of either of the two Courts below. As far as the Sessions Judge is concerned, his observation to the effect that in view of the judgment in ***Vinay Tyagi Vrs. Irshad Ali*** reported in ***2013 AIR SCW 220***, no further investigation can be carried out is wholly incorrect. The observations which he has referred to relate to an order of fresh investigation. These observations are not in relation to further investigation. Para-23 of the said judgment reads as follows:

"23. This judgment, thus, clearly shows that the Court of Magistrate has a clear power to direct further investigation when a report is filed under Section 173(2) and may also exercise such powers with the aid of Section 156(3) of the Code. The lurking doubt, if any, that remained in giving wider interpretation to Section 173(8) was removed and controversy put to an end by the judgment of this Court in the case of Hemant Dhasmana v. CBI, [(2001) 7 SCC 536] where the Court held that although the said order does not, in specific terms, mention the power of the court to order further investigation, the power of the police to conduct further investigation envisaged therein can be triggered into motion at the instance of the court. When any such order is passed by the court, which has the jurisdiction to do so, then such order should not even be interfered with in exercise of a higher court's revisional jurisdiction. Such orders would normally be of an advantage to achieve the ends of justice. It was clarified, without ambiguity, that the magistrate, in exercise of powers under Section 173(8) of the Code can direct the CBI to further

investigate the case and collect further evidence keeping in view the objections raised by the appellant to the investigation and the new report to be submitted by the Investigating Officer, would be governed by sub-Section (2) to sub-Section (6) of Section 173 of the Code. There is no occasion for the court to interpret Section 173(8) of the Code restrictively. After filing of the final report, the learned Magistrate can also take cognizance on the basis of the material placed on record by the investigating agency and it is permissible for him to direct further investigation. Conduct of proper and fair investigation is the hallmark of any criminal investigation."

[5] The power for further investigation can be exercised *suo muto* by the Magistrate before the trial commences, during the course of trial or even at the end of trial. There are no limitations to his power. But an essential feature is that before exercising his power he must record his reasons why in the particular facts and circumstances of the case further investigation is necessary.

[6] As far as this case is concerned no reasons whatsoever were given either in the application filed which has been quoted hereinabove or by the learned trial Court. The only reason given was that further evidence was collected and this required investigation. It has not even been stated what is the further evidence collected. The Court must be satisfied that the further investigation is necessary to ensure that if the previous investigation has been faulty or the Investigating Officer has not examined some very essential witnesses then it may be necessary to examine further evidence. However, if the witnesses who had been examined do not support the prosecution that is not a ground for further investigation. The Investigating Officer will also have to give reasons as to why he did not examine those witnesses or evidence at an earlier stage.

[7] We must remember that justice is to be done not only to the victim but also to the accused. In our system there is a presumption of innocence attached to the accused. Another right of the accused is to get a speedy trial. If the investigating agency has been totally negligent in performing his duty then the accused should not suffer for it. It is only in those cases where either it is shown that some important evidence has come to light after the previous investigation has taken place or where it is shown that the Investigating Officer was in league with the accused or any such ground of this type that further investigation can be allowed. It cannot be allowed as a matter of course.

[8] As far as the present case is concerned the application which I have quoted hereinabove is totally silent with regard to the reasons why further evidence is required. Therefore, on grounds totally different from those which weighed with the learned Assistant Session Judge I set aside the order of the trial Court.

[9] The learned Additional Session Judge has further ordered transfer of the case from the file of Court No.7 to the Court of the CJM on the ground that the Judge holding the post of Judicial Magistrate in Court No.7 does not have power of the First Class Magistrate. In this behalf reference be made to section 408 of the Code of Criminal Procedure which empowers the Sessions Judge to transfer cases on appeal. However, this power should normally be exercised on the application of a party interested in the case.

[10] In the present case nobody had filed a transfer application before the Court. A transfer application has to be first filed before the

Session Judge and it is up to the Session Judge to decide which of the Additional Session Judges will hear such transfer application. The Additional Session Judge to whom the case was transferred was only to hear the criminal revision petition filed before him and I am afraid that he had no power to transfer the case. If he felt that the case have to be transferred he should have either send it to the Session Judge to pass appropriate orders or should have referred the matter to the CJM who could have passed orders under Section 410 of the Cr. P.C. A Session Judge or a CJM have the power under Section 409 and 410 Cr. P.C to transfer, withdraw and reassigned the cases but an Additional Session Judge has no such powers.

Therefore, this portion of the order of the Session Judges is illegal and set aside. In exercise of the power vested in this Court under Article 227 of the Constitution of India I direct that the matter shall be listed before the Ilaka Magistrate concerned (Court No.7) since this Court will be vested with the powers of Magistrate Grade-I in the near future.

[11] With these observations, the Criminal Petition stands disposed of.

CHIEF JUSTICE