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**CIRCUIT BENCH OF CALCUTTA HIGH COURT
AT JALPAIGURI**

**C.R.R.14 of 2019
WITH
CRAN 1 of 2019**

**Shyamal Kanti Ghosh
Versus
The State of West Bengal & Ors.**

Mr. Ranadeb Sengupta,
Mr. Anirban Banerjee.
....for the petitioner.

Mr. Nilay chakraborty.
.....for the State.

Mr. Alokesh Dalai.
...for the opposite party no.2, 4, 5, & 6.

In Re: CRAN 1 of 2019

Application being CRAN 1 of 2019 under Section 5 of the Limitation Act is for condonation of delay in filing the revisional application.

Learned counsel for the petitioner submits that there is delay of 78 days in preferring the application which is unintentional so the same may be condoned.

In the interest of justice, the delay is condoned.

Application being CRAN 1 of 2019 is, thus, disposed of.

In Re: CRR 14 of 2019

By the instant application under Section 401 read with Section 482 of the Code of Criminal Procedure, the petitioner has assailed the order dated 11th October, 2018 passed by the Additional Sessions Judge, Fast Track, 2nd Court, Alipurduar, in

Sessions Case No.39 of 2018 arising out of Falakata P.S. Case No. 331 of 2014 dated 3rd May, 2014 under Section 302/120B/34 I.P.C. whereby a petition for further investigation under Section 173 (8) Cr.P.C. filed by the petitioner/de facto complainant was rejected and the case was posted for consideration of charge.

The backdrop of the case in brief is that on 16th October 2013 the petitioner herein lodged a complaint at Falakata P.S. alleging that on 13th October, 2013 the opposite party nos.2 to 8 herein, called his son from the house and took him with them. On the same day in the evening at about 8-30 p.m. the petitioner received an information that his son was lying in injured condition near Jateshwar High School. The petitioner's son was shifted to the hospital where he was declared dead. On the basis of the aforesaid complaint a proceeding being Falakata P.S. Case No.796 of 2013 dated 16.10.2013 was started under Section 279/304 of the I.P.C. Being aggrieved by the inaction on the part of the police authorities the petitioner filed an application under Section 156 (3) of the Code of Criminal Procedure before the Additional Chief Judicial Magistrate, Falakata which was registered as Misc. 13 of 2014. In the aforesaid case an order was passed directing the Inspector-in-charge Falakata P.S. to cause investigation of the case and file a report. On receipt of the report from the Inspector-in-charge, the learned Magistrate directed fresh investigation on the basis of the complaint under Section 156 (3) Cr.P.C. Not being satisfied with the progress in

investigation, the petitioner preferred an application under Section 226 of the Constitution of India before the High Court at Calcutta for fresh investigation by CBI or CID, West Bengal. By an order dated 5th August, 2014 the writ petition being W.P. No.17438 (W) of 2014 was disposed of with the observation that since the investigation was on, no further order need be passed except that investigation be completed expeditiously and final report be submitted to the concerned court. Since there was no progress in investigation, the petitioner once again filed another application under Section 226 of the Constitution being W.P.No.20836 (W) of 2015 wherein by an order dated 16.9.2015 the investigation of the case was handed over to the Criminal Investigation Department (CID), Govt. of West Bengal. In compliance with the order of the High Court the investigation by the CID was concluded and the charge sheet was submitted under Section 279/304 of the I.P.C. against one of the accused only. The investigating agency made a prayer for discharge of the other accused persons for want of evidence which was allowed by the Additional Chief Judicial Magistrate, Alipurduar. The petitioner then filed a petition under Section 173 (8) of the Cr.P.C. seeking further investigation. The aforesaid application was rejected by the trial court after contested hearing.

Learned counsel for the petitioner sought to impress that the investigation of the above mentioned case has not been conducted properly and the material witnesses who would have helped to unravel the truth have not been examined by the

investigating agency. The investigation was slipshod, perfunctory and lackadaisical.

Learned counsel for the opposite party nos. 2 to 8 submits that pursuant to the grievance of the petitioner, the CID was directed to take up the investigation of this case which resulted in the charge sheet under Section 279/304 of the I.P.C. against one of the accused. According to the learned advocate for the aforesaid opposite parties, further investigation will not serve any purpose.

Learned advocate for the State/opposite party no.1 contended that the impugned order does not suffer from any illegality and it is not a fit case for further investigation.

In course of hearing, learned counsel for the petitioner submits that the matter may be disposed of with liberty to the petitioner/de facto complainant to avail of the provisions of Section 311 of the Code of Criminal Procedure if necessary, during the trial.

I have considered the submissions with reference to the facts and circumstances of the case and the material on record. It is evident that there was an investigation by the police of Falakata P.S. whereafter on the prayer of the petitioner/de facto complainant the CID was entrusted with the investigation of the case pursuant to the order of the High Court. Investigation by the CID culminated in the submission of the charge sheet against one of the accused under Section 279/304 I.P.C. while no evidence could be collected against the other accused

persons. Upon perusal of the material on record it does not appear to be a deserving case for further investigation. Therefore, the order impugned does not warrant any interference.

However, the petitioner/de facto complainant shall be at liberty to invoke and take recourse to the appropriate provisions of law, if necessary, during the trial for the purpose of examining any witness or witnesses for the just decision of the case.

The application being CRR No.14 of 2019 is, thus, disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of requisite formalities.

(Asha Arora, J.)

