

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. NO. 18 OF 2021

ANCHAL ADHIKARY

-VERSUS-

THE STATE OF WEST BENGAL AND ANOTHER

For the petitioner : Mr. Arka Pratim Chowdhury, Adv.,
Ms. Saswati Chatterjee, Adv.,
Mr. Sunny Nandy, Adv.,
Mr. Shubha Pathak, Adv.

For the opposite party : Mr. Debasis Kar, Adv.,
Mr. Subhajit Chowdhury, Adv.

For the State : Mr. Rana Mukherjee, Adv.,
Mr. Arijit Ganguly, Adv.

Hearing concluded on : 02.08.2021

Judgment on : 25.08.2021

Kausik Chanda, J.:-

In this revisional application, the petitioner has prayed for the following reliefs:-

“Under the aforesaid facts and circumstances, Your Petitioner humbly prays that Your Lordship may graciously be pleased to direct the concerned authority and/or by some other investigating agency to initiate further investigation and give necessary reports afresh after an investigation in accordance with law within a stipulated period of time before the competent Court of Law in connection with Titagarh P.S. Case No. 10 of 2020 dated 04.01.2020 or may pass any other order or orders, direction or directions, rule or rules as to this Hon’ble Court may deem fit and proper.”

2. The factual background in which the aforesaid reliefs were prayed for is summarised as follows.

3. A complaint was lodged by a de-facto complainant/petitioner before the Officer-in-Charge, Titagar Police Station, on January 04, 2020, following which the relevant Police Station registered an FIR on January 04, 2020, under Sections 417/376/506/120B of the Indian Penal Code, 1860. The relevant investigating officer submitted a charge sheet against the opposite party no. 2 within five days on January 09, 2020, under

Sections 417/376/506 of the Indian Penal Code, 1860. After filing the charge sheet, the learned Additional Chief Judicial Magistrate, Barrackpore, committed the case to the Court of Session, and the case was registered as S.C. Case No. 41 of 2020. The said case was transferred to the Court of Additional Sessions Judge, 3rd Court, at Barrackpore.

4. The learned Sessions Judge fixed the hearing of the case on November 19, 2020, for consideration of charge when the learned Sessions Judge came to a finding that the charge sheet was not filed in compliance with Section 173 (5) of the Code of Criminal Procedure, 1973 hereinafter referred to as “the Code.” It was found that the charge sheet was not supported by any materials. The relevant investigating officer, as against the serial no. 11, had made no endorsement to suggest that nothing has been seized and relied upon by the prosecution. No medical report of the victim girl was to be found in the record. The learned Sessions Judge fixed the hearing of the case on the next date for an explanation from the concerned investigating officer.

5. On the next date, after hearing the investigating officer as well as the de facto complainant, the learned Sessions Judge, observed as follows:-

“However, this court is not on the issue as to whether the relevant materials were placed before the learned Magistrate at the time of taking cognizance of the matter, but it is high time to record that there is serious lapses on the part of the investing officer in not complying the provision of Section 173(5) of the Code of Criminal Procedure, 1973, and not proceeding for conducting the medical examination of the VG.

The investigation of this case under Sections 417/376/506 of the Indian Penal Code, 1860, has not been concluded as per direction and of rule of law. The conduct of the investigating officer in the matter of investigating this case appears to be doubtful having the effect of harboring the accused person, which warrants not only the invocation of the provision of Section 166 of the Indian Penal Code, 1860 as amended but it's a fit case in which the provision of Section 173(8) of the Code of Criminal Procedure, 1973, should be set in motion.

Let the copy of the order dated, 19.11.2020, along with this Order be sent to the Commissioner of Police at Barrackpore for taking necessary action before the matter is taken up for consideration of charge on 13/04/2021.

Accused person is to remain present. Prosecution is to take steps."

6. The petitioner submits that the present revisional application has been filed against the perfunctory investigation carried out by the investigating agency. By referring to the representation dated October 22, 2020, to the Commissioner of Police, Barrackpore, the petitioner submits that her representation before the said authority for further investigation of the case has not been accepted.

7. The petitioner, in support of the application, relies upon the cases reported at **(2009) 9 SCC 610 (Babubhai Jamnadas Patel v. State of Gujarat)** and **(1996) 2 CHN 147 (Pradip Kumar Patra v. The State of West Bengal)**.

8. On the other hand, the opposite party no. 2 submits that the order dated November 20, 2020, is not sustainable since it was not within the competence of the learned Sessions Judge in the Court below to direct

further investigation. It has further been submitted by the opposite party no. 2 that there was no prayer before the learned Sessions Judge for further investigation, and as such, the learned Sessions Judge could not suo motu direct the police for making a further investigation in terms of Section 173(8) of the Code. In support of such submissions, reliance has been placed on a judgment reported at **(2019) 2 AICLR 367 (S.C.) (Bikash Ranjan Rout v. State)**.

9. By placing reliance upon a judgment reported at **(2004) 2 Crimes 145 (SC) (Hasanbhai Valibhai Qureshi v. State of Gujarat)**, it has been submitted that the learned Sessions Judge was competent to add or alter the charge and to act accordingly as the exigencies of the case warrant or necessitate. Therefore, further investigation, in the facts of the present case, was uncalled for.

10. By filing written notes of argument, it is suggested by the State that after commencement of the trial, a Magistrate is debarred from directing further investigation in view of the judgment reported at **(2019) 17 SCC 1 (Vinubhai Haribhai Malaviya v. State of Gujarat)** and the same restriction should also apply to a Sessions Judge.

11. It is further suggested that power to further investigation has been conferred upon the Magistrate by the Code and Sessions Judge cannot exercise such power on the ground of defect in the investigation. The Code of Criminal Procedure is exhaustive, and to remove the defect/laches in an

investigation, the Court empowers a Magistrate or Sessions Judge to take recourse to the Sections 311/310/ 216/319/91/92/93/293 of the Code. The learned Sessions Judge being empowered by the aforesaid Sections to remove the defect in the investigation, the order of further investigation was inappropriate.

12. In the aforesaid backdrop of the case and from the submissions of the respective parties, the following points of law arise for consideration.

- (a) Does a Sessions Judge have the power to give a direction for further investigation upon the police if he is not satisfied with the investigation?
- (b) If the Sessions Judge is empowered to pass an order for further investigation, at what stage such order can be passed?
- (c) Can the Sessions Judge exercise such power suo motu in the absence of any prayer made before him?

13. The answer to the aforesaid questions can be traced to Section 193 of the Code, which provides as follows:-

“193. Cognizance of offences by Courts of Session.—Except as otherwise expressly provided by this Code or by any other law for the time being in force, no Court of Session shall take cognizance of any offence as a Court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code.”

14. In the case reported at **(1993) 2 SCC 16 (*Kishun Singh v. State of Bihar*)** the Supreme Court specifically dealt with the import and scope of

Section 193 of the Code of Criminal Procedure, 1973. It has been held in the said case as follows:-

“**16.** We have already indicated earlier from the ratio of this Court's decisions in the cases of *Raghubans Dubey* and *Hareram* that once the court takes cognizance of the offence (not the offender) it becomes the court's duty to find out the real offenders and if it comes to the conclusion that besides the persons put up for trial by the police some others are also involved in the commission of the crime, it is the court's duty to summon them to stand trial along with those already named, since summoning them would only be a part of the process of taking cognizance. We have also pointed out the difference in the language of Section 193 of the two Codes; under the old Code the Court of Session was precluded from taking cognizance of any offence as a court of original jurisdiction unless *the accused* was committed to it whereas under the present Code the embargo is diluted by the replacement of the words *the accused* by the words *the case*. Thus, on a plain reading of Section 193, as it presently stands once *the case* is committed to the Court of Session by a Magistrate under the Code, the restriction placed on the power of the Court of Session to take cognizance of an offence as a court of original jurisdiction gets lifted. On the Magistrate committing the case under Section 209 to the Court of Session the bar of Section 193 is lifted thereby investing the Court of Session complete and unfettered jurisdiction of the court of original jurisdiction to take cognizance of the offence which would include the summoning of the person or persons whose complicity in the commission of the crime can prima facie be gathered from the material available on record.”

(emphasis supplied)

15. A Constitution Bench of the Supreme Court in the case reported at **(2014) 3 SCC 306 (*Dharam Pal v. State of Haryana*)** dealt with the issue as to whether Sessions Court is empowered on committal under Section 209 of the Code to proceed against the persons not named as accused in

the police report and issue summons to them under Section 193 of the Code even without waiting for Section 319 stage of the Code. The view expressed in ***Kishun Singh (supra)*** was approved by the said Constitutional Bench of the Supreme Court holding that upon a case being committed to a Court of Session, the Sessions Judge is empowered under Section 193 of the Code to summon other persons whose complicity in the commission of offences could, *prima facie*, be established from the materials available on record. It was held as follows:

“38.

The key words in the section are that “no Court of Session shall take cognizance of any offence as a court of original jurisdiction unless the case has been committed to it by a Magistrate under this Code”. The above provision entails that a case must, first of all, be committed to the Court of Session by the Magistrate. The second condition is that only after the case had been committed to it, could the Court of Session take cognizance of the offence exercising original jurisdiction. Although, an attempt has been made by Mr Dave to suggest that the cognizance indicated in Section 193 deals not with cognizance of an offence, but of the commitment order passed by the learned Magistrate, we are not inclined to accept such a submission in the clear wordings of Section 193 that the Court of Session may take cognizance of the offences under the said section.

39. This takes us to the next question as to whether under Section 209, the Magistrate was required to take cognizance of the offence before committing the case to the Court of Session. It is well settled that cognizance of an offence can only be taken once. In the event, a Magistrate takes cognizance of the offence and then commits the case to the Court of Session, the question of taking fresh cognizance of the offence and, thereafter,

proceed to issue summons, is not in accordance with law. If cognizance is to be taken of the offence, it could be taken either by the Magistrate or by the Court of Session. The language of Section 193 of the Code very clearly indicates that once the case is committed to the Court of Session by the learned Magistrate, the Court of Session assumes original jurisdiction and all that goes with the assumption of such jurisdiction. The provisions of Section 209 will, therefore, have to be understood as the learned Magistrate playing a passive role in committing the case to the Court of Session on finding from the police report that the case was triable by the Court of Session. Nor can there be any question of part cognizance being taken by the Magistrate and part cognizance being taken by the learned Sessions Judge.

40. In that view of the matter, we have no hesitation in agreeing with the views expressed in *Kishun Singh case* that the Sessions Court has jurisdiction on committal of a case to it, to take cognizance of the offences of the persons not named as offenders but whose complicity in the case would be evident from the materials available on record. Hence, even without recording evidence, upon committal under Section 209, the Sessions Judge may summon those persons shown in column 2 of the police report to stand trial along with those already named therein.”

(emphasis supplied)

16. It is, therefore, clear that once the case is committed under Section 209 of the Code by the Magistrate to the Court of Session, the Sessions Judge assumes unfettered original jurisdiction to take cognizance of an offence by operation of Section 193 of the Code. In exercise of such jurisdiction, a Court of Session if, after considering all relevant materials, finds that the investigation is incomplete, it may direct further

investigation. Such power is implicit in the jurisdiction of the Court of Session to take cognizance of the offence.

17. Any argument to the contrary will lead to an anomalous situation where, in less serious offences, a Magistrate would have the power to order for a further investigation if he disagrees with the police report, but a Sessions Judge being a higher Court, dealing with the serious offences, would be powerless and a mute spectator when he is faced with a police report prepared on the basis of a flawed investigation.

18. The Supreme Court in the case reported at **(2010) 12 SCC 254 (Babubhai v. State of Gujarat)** has emphasized the need for a fair and impartial investigation in a criminal proceeding. The Supreme Court held as follows:

“44. A charge-sheet is the outcome of an investigation. If the investigation has not been conducted fairly, we are of the view that such vitiated investigation cannot give rise to a valid charge-sheet. Such investigation would ultimately prove to be a precursor of miscarriage of criminal justice. In such a case the court would simply try to decipher the truth only on the basis of guess or conjunctures as the whole truth would not come before it.”

45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in tainted and biased manner. Where non- interference of the court would ultimately result in failure of justice, the court must interfere.”

19. The scope and ambit of the Magisterial power to order further investigation has been elaborately and authoritatively decided by the

Supreme Court in the case reported at **(2019) 17 SCC 1** (***Vinubhai Haribhai Malaviya v. State of Gujarat***). The paragraph, relevant to this case, is quoted below:-

“42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, *Sakiri*, *Samaj Parivartan Samudaya*, *Vinay Tyagi*, and *Hardeep Singh* ; *Hardeep Singh* having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay

being caused in concluding the criminal proceeding, as was held in *Hasanbhai Valibhai Qureshi*. Therefore, to the extent that the judgments in *Amrutbhai Shambhubhai Patel*, *Athul Rao* and *Bikash Ranjan Rout* have held to the contrary, they stand overruled. Needless to add, *Randhir Singh Rana v. State (Delhi Admn.)* and *Reeta Nag v. State of W.B.* also stand overruled.”

20. A Magistrate, therefore, can exercise the power to give direction for further investigation suo motu if the facts and circumstances of the case so warrant. Authority to direct further investigation continues till the stage of the trial commences and the trial commences only after the charges are framed.

21. In the light of the judgment delivered in ***Vinubhai*** case, it has to be understood that the power of the Sessions Court to direct such further investigation can be exercised up to the stage of framing charges under Section 228 of the Code of Criminal Procedure, 1973 and such power, in an appropriate case can be exercised suo motu.

22. It has also to be noted that the case reported at **2019 (2) AICLR 367 (S.C.) (*Bikash Ranjan Rout v. State*)** relied upon by the opposite party no. 2, has been overruled in ***Vinubhai*** case, holding that power under Section 173(8) can be exercised suo motu. Therefore, there is no bar on the part of the learned Sessions Judge to give direction for further investigation even in the absence of such prayer before him, if facts and circumstances of the case warrant such exercise of the power.

23. In the present case, the learned Judge observes serious laches on the part of the investigating agencies and also in the manner in which the

charge sheet was filed. The investigation was completed with surprising promptitude by filing the charge sheet within five days from the date of lodging the FIR. The victim girl was not medically examined; nothing was seized. In such circumstances, the learned Judge observed that it is a fit case for further investigation.

24. In my opinion, no interference is called for with the said order dated November 20, 2020, passed by the learned Sessions Judge.

25. The learned Sessions Judge already observed that it is a fit case for further investigation and fixed the matter for further hearing. It is not necessary at this stage to again entertain the prayer for further investigation as made in this application. The petitioner/de-facto complainant, however, will be at liberty to approach this Court, if she is aggrieved by inaction or action on the part of the investigation agency at any subsequent stage.

26. With this observation, as aforesaid, the **CRR No. 18 of 2021** is disposed of.

27. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Kausik Chanda, J.)