

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 197 of 2018

**Sk. Hamid
-Versus-
The State of West Bengal & Anr.**

**For the Petitioner : Mr. Debasish Roy, Adv.,
Mr. Avik Ghatak, Adv.,
Mr. Subhankar Das, Adv.**

**For the State : Mr. Rana Mukherjee, A.P.P.,
Mrs. Debjani Sahu, Adv.**

Heard & Judgment On : 21st June, 2021.

The instant criminal revision under Section 482 of the Code of Criminal Procedure (hereafter described as the Code, for short) is filed by one Sk. Hamid (hereafter described as the petitioner) challenging an order dated 29th November, 2017 passed by the Learned Additional Chief Judicial Magistrate, Bishnupur in Sessions Case No. 2 (08) of 2017 arising out of G.R. Case No. 67 of 2016 (IndAs Police Station Case No. 8 of 2016 dated 24th January, 2016).

At the outset, it is recorded that the matter was previously fixed on 18th June, 2021. On that date the opposite party no. 2 was not

represented. The matter was adjourned and today is fixed for hearing of the matter in presence of both sides only to facilitate the opposite party no. 2 to appear before this Court. However, the opposite party no. 2 remains absent. Accordingly, the instant criminal revision is heard in presence of the learned Advocate for the petitioner and the learned Advocate for the opposite party no. 1, State of West Bengal.

Before dealing with the contention raised by the Learned Counsels for the petitioner and the opposite party no. 1, the following facts are required to be stated:-

One Mousumi Begum, opposite party no. 2 herein filed a written complaint before the jurisdictional Police Station on 24th January, 2016 stating, *inter alia*, that F.I.R. named accused persons, of which the petitioner is the one, assaulted her husband with the help of rod, shabal, lathi etc. caused grievous injury and also took away a sum of Rs. 50,000/- and a gold chain from his possession. The husband of the *de facto* complainant succumbed to his injury. On the basis of the said complaint police registered Indas Police Station Case No. 8 of 2016 under various penal provisions along with 302 of the Indian Penal Code against the F.I.R. named accused persons. Investigation was taken up and on completion of investigation charge-sheet was filed on 24th April, 2016. In the said charge-sheet, the petitioner and one Sk. Shamim was not charge-sheeted and the Investigating Officer

prayed for discharging them from the case. The course of investigation and final report in the form of charge-sheet was duly communicated to the *de facto* complainant, opposite party no. 2 herein. Subsequently, on 9th May, 2016 the *de facto* complainant made an application under Section 173(8) of the Code of Criminal Procedure along with affidavit filed by two persons claiming to be the eye witnesses of the occurrence with a prayer to implicate the petitioner and Sk. Shamim on further investigation. The said application was, however, dismissed by the Learned Additional Chief Judicial Magistrate, Bishnupur vide order dated 27th July, 2016 on being not pressed by the *de facto* complainant. Subsequently, the *de facto* complainant filed an application under Article 226 of the Constitution on the allegation that the petitioner and the Sk. Shamim were threatening him to withdraw the case. The matter was duly informed to the police authority but police failed to give proper protection to her so that his life and personal liberty may be protected. The said writ petition was disposed of by a Coordinate Bench of this Court on 24th November, 2016 directing the police authority attached to Indas Police Station to provide police protection to the opposite party no. 2. The opposite party no. 2 also moved before the State Human Rights Commission and the Chairman, State Human Rights Commission passed some order directing the police

authority in connection with the case. It is important to note that prior to moving the Human Rights Commission the opposite party no. 2 again moved an application before the Learned Additional Chief Judicial Magistrate under Section 173(8) of the Code for reinvestigation of the case. The Learned Additional Chief Judicial Magistrate rejected the said application on the ground that the *de facto* complainant has no further scope to pray for reinvestigation of the case. It is only the Investigating Officer who can pray before the Court to seek leave for reinvestigation, especially when on the basis of the charge-sheet the Court has taken cognizance.

The case thereafter was committed to the Court of Sessions for trial. It was then transferred to the Court of the Learned Additional Sessions Judge, Bishnupur for trial. Before the Trial Court, the Learned Public Prosecutor filed an application under Section 319 of the Code. The said application has not yet been disposed of.

Peculiarly enough after the case was committed to the Court of Sessions, the Officer-in-Charge, Indas Police Station filed an application under Section 173(8) of the Code before the Learned Additional Chief Judicial Magistrate for reinvestigation and the said application was allowed vide order dated 29th November, 2017.

The said order was impugned in the instant revision. It is submitted by Mr. Roy, Learned Counsel for the petitioner that after

the case is committed to the Court of Sessions the Learned Additional Chief Judicial Magistrate cannot pass any order in the said record because he was not in seisin over the matter.

Mr. Rana Mukherjee, Learned Public Prosecutor-in-Charge has not opposed the factual averment made by the petitioner in the instant case. He also concedes to the submission made by Mr. Roy that the Learned Additional Chief Judicial Magistrate had no authority to pass the impugned order after the case being committed to the Court of Sessions.

Having taken consideration of the facts and circumstances of the case as well as the submission made by the Learned Advocates for the petitioner and the opposite party no. 1, I like to state that power of a police officer under Section 173(8) of the Code is unrestricted. Moreover, a Magistrate before whom a report under Section 173(2) is filed, is empowered in law to direct further investigation and require the police to submit a further or a supplementary report. The provisions of Section 173(8) runs thus:-

"Nothing in this Section shall be deemed to preclude further investigation in respect of an offence after a report under Sub-Section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a

further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-Section (2)".

However, the unfettered power of the Magistrate remains in force till the report under Section 173(2) of the Code lies in the jurisdiction of the Learned Magistrate. When a sessions case is committed to the Court of Sessions, after such commitment he cannot pass any order under Section 173(8) of the Code of Criminal Procedure. At the same time, this Court is of the view that any observation of the State Human Rights Commission is not binding upon the Court and no order of further investigation can be passed on the basis of some opinion passed by the State Human Rights Commission.

However, this Court is not unmindful to take note of the provision of Section 319 of the Code which runs thus:-

"319. Power to proceed against other persons appearing to be guilty of offence. – (1) *Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may*

proceed against such person for the offence which he appears to have committed.

(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

(4) Where the Court proceeds against any person under subsection (1) then –

- (a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;*
- (b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”*

Purpose of enacting Section 319 in the Statute Book is that the real culprit should not get away unpunished. This is part of concept of fair trial. Section 319 can always be applied to advance the object and cause of justice. If in course of trial it appears that real culprit

has been left out, the Trial Court can take recourse of Section 319 of the Code.

It is learnt from the submission made by Mr. Rana Mukherjee, Learned Public Prosecutor-in-Charge that the application under Section 319 of the Code filed by the Public Prosecutor is still pending in the Trial Court.

In view of the above discussion, the impugned order dated 29th November, 2017 is liable to be set aside. Accordingly, the instant criminal revision is allowed on contest, however, without cost. The order dated 29th November, 2017 is set aside.

Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the parties on the usual undertakings.

(BIBEK CHAUDHURI, J.)