

Form J(2)

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

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

**CRR 685 of 2018**

**Pulak Mondal  
-Versus-  
The State of West Bengal & Anr.**

**For the Petitioner : Mr. Prosenjit Mukherjee.**

**For the State : Mr. Rana Mukherjee,  
Ms. Faria Hossain.**

**Heard & Judgment On : 22<sup>nd</sup> June, 2021.**

This is an application under Section 482 of the Code of Criminal Procedure filed by the *de facto* complainant of Rampurhat Police Station Case No. 161 of 2014 dated 3<sup>rd</sup> July, 2014 and G. R. Case No. 664 of 2014 with a prayer to quash impugned order dated 26<sup>th</sup> February, 2018 passed by the Learned Additional Chief Judicial Magistrate, Rampurhat, Birbhum.

It is pertinent to mention at the outset that petitioner and opposite party no. 2 are the sons of one Sagar Chandra Mondal, since deceased. The said Sagar Chandra Mondal died on 19<sup>th</sup> February,

2004 leaving behind the petitioner and the opposite party no. 2, his widow and two daughters. It is alleged that as per the law of succession the legal heirs and representatives succeeded to the properties left behind by the said Sagar Chandra Mondal, since deceased. After the death of the father of the petitioner and private opposite party no. 2, the opposite party no. 2 produced a forged deed before the BL & LRO and recorded his name in the revenue records in respect of the entire property left by the father of the parties depriving lawful share of the petitioner and other co-owners. The petitioner conducted search in respect of the genuineness of the said deed in the local registry office and came to know that there was no existence of any deed of gift dated 31<sup>st</sup> December, 1987 delivering the property to the opposite party no. 2 by the said Sagar Chandra Mondal. It is alleged that the opposite party no. 2 prepared a forged deed to grab entire ancestral property of the legal heirs and representatives of the said Sagar Chandra Mondal, since deceased. It was also alleged that the property in question was not physically delivered and handed over to the opposite party no. 2 by his father.

The above-mentioned purported act and conduct by the opposite party no. 2 prompted the petitioner to lodge a complaint before the local Police Station on the basis of which Rampurhat Police Station Case No. 161 of 2014 dated 3<sup>rd</sup> July, 2014 under Sections

464/465/468/471 of the Indian Penal Code was registered against opposite party no. 2. During investigation, police seized various documents from the possession of the petitioner and examined the witnesses. However, within three years of registration of Rampurhat Police Station Case No. 161 of 2014 the Investigating Officer failed to file charge-sheet on conclusion of investigation. On 13<sup>th</sup> September, 2017, the investigating Officer filed an application for extension of time to file charge-sheet in the case. The said application came up for hearing before the Learned Additional Chief Judicial Magistrate and vide order dated 26<sup>th</sup> February, 2018 which is impugned here the Learned Additional Chief Judicial Magistrate, Rampurhat stopped investigation under Section 167 (5) of the Code and discharged the accused/opposite party no. 2.

The said order is under challenge in the instant revision.

I have heard the Learned Advocate for the petitioner and the Learned Public Prosecutor-in-Charge on behalf of the State of West Bengal, opposite party no. 1 herein. Opposite party no. 2 has not appeared in spite of service of summons.

Section 167(5) of the Code as amended vide West Bengal Act 24 of 1988 runs thus:-

*"(5) If in respect of –*

- (i) *any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months, or*
- (ii) *any case exclusively triable by a Court of Session or a case under Chapter XVIII of the Indian Penal Code (45 of 1860) the investigation is not concluded within a period of three years, or*
- (iii) *any case other than those mentioned in clauses (i) and (ii) the investigation is not concluded within a period of two years from the date on which the accused arrested or made his appearance,*

*The Magistrate shall make an order stopping further investigation into the offence and shall discharge the accused unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the periods mentioned in this sub-section is necessary."*

From the impugned order it is ascertained that the Investigating Officer made an application on 13<sup>th</sup> September, 2017 stating, *inter alia*, that from the inception of the case, several Investigating Officers were entrusted with the investigation, the case was pending for seizure of documentary evidence from the accused, examination of

the said documents by expert, collection of the status report and other matters. So further time for conclusion of investigation was sought for by the Investigating Officer. The Learned Magistrate rejected the said prayer of the Investigating Officer relying on a decision of this Court in the case of ***Dilip Kumar Das –Vs.- State of West Bengal*** reported in ***1993 Cr.L.J. 837 (Cal)***. In the said report it was held by this Court that the Investigating Officer must file application for extension of time for further investigation before lapse of the period as envisaged in Section 167(5)(ii) of the Code. Since the Investigating Officer made such prayer after the expiry of three years the Trial Court rejected the said application.

Rampurhat Police Station Case No. 161 of 2014 was initiated on 3<sup>rd</sup> July, 2014. From the formal F.I.R. it is not found that the accused was arrested immediately after lodging of the F.I.R. The impugned order shows that the accused was arrested on 9<sup>th</sup> August, 2014. The Investigating Officer submitted the application for extension of time for investigation beyond the period of three years on 13<sup>th</sup> September, 2017.

Be that as it may, the Learned Additional Chief Judicial Magistrate, Rampurhat failed to consider a Full Bench decision of this Court in the case of ***Sashi Bhusan Mahapatra –Vs.- State of West Bengal*** reported in ***(2007) 2 C Cr. L.R.(Cal) 67***. In the aforesaid

report the main question that was raised before the Hon'ble Full Bench of this Court is whether investigation continued beyond the statutory period as provided under Section 167 (5) of the Code would be rendered invalid and whether the cognizance of offence taken on the basis of the charge-sheet submitted beyond the statutory period would be bad in law. The Hon'ble High Court held that the materials gathered during investigation at least within the statutory period as provided in Section 167(5) of the Code, i.e., prayer to the stoppage of investigation, shall be relevant for the purpose of deciding whether there is any basis or evidence to connect the accused with the commission of the offence and whether cognizance can be taken on the basis of such materials. It is further held that it is the duty of the Magistrate to look into the records of investigation done during the statutory period along with extended period to ascertain the progress of investigation and thereafter he will pass appropriate order. If after examining the records of investigation, the Magistrate is satisfied that there are sufficient materials for taking cognizance of the offence, he will pass appropriate order to that effect. Order of stoppage of investigation and discharge of accused by the Magistrate without applying his mind would be improper.

The Learned Magistrate failed to consider the materials on the Case Diary in connection with Rampurhat Police Station Case No. 161

of 2014 to ascertain as to whether any case was made out against the accused persons on the basis of the investigation carried out till the statutory period of time. If the materials in Case Diary *prima facie* suggest availability of a case against the accused/opposite party no. 2 the Learned Magistrate is empowered to take cognizance on the basis of such material. The impugned order does not contain any such finding and accordingly, the impugned order is liable to be set aside.

Therefore, the instant criminal revision is **allowed**. The impugned order dated 26.02.2018 is set aside. The Learned Magistrate is directed to consider the Case Diary closely and come to a specific finding as to whether any penal offence is *prima facie* made out against the opposite party no. 2 on the basis of the materials in case record. If such material is *prima facie* found, the Learned Magistrate is open for taking cognizance of such offence against the opposite party no. 2.

The instant revision is, thus, **disposed of**.

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.)**