

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

Present:

The Hon'ble **Justice Kausik Chanda**

**C.R.R. NO. 1027 OF 2020**

**With**

**C.R.A.N. NO. 1 OF 2021**

**With**

**C.R.A.N. NO. 2 OF 2021**

**SMT. (DR.) SIULI CHOUDHURY**

**-VERSUS-**

**THE STATE OF WEST BENGAL AND ANOTHER**

For the petitioner : Mr. Kaushik Gupta, Adv.,  
Mr. Siddhartha Sarkar, Adv.,  
Mr. Anirban Tarafder, Adv.,  
Mr. Arnab Nandi, Adv.

For the opposite party no. 2 : Mr. Prantick Ghosh, Adv.

For the State : Ms. Sukannya Bhattacharyya, Adv.,  
Mr. Md. Kutubuddin, Adv.

Hearing concluded on : 12.07.2021

Judgment on : 20.09.2021

**Kausik Chanda, J.:-**

The petitioner/de-facto complainant/wife lodged a complaint before the Madhyamgram Police Station, following which Madhyamgram Police Station Case No. 771 of 2015 under Sections 498A/406/506 of the Indian Penal Code, 1860 was registered against the opposite party no. 2/accused/husband.

2. Upon completion of the investigation, a charge sheet was filed by the investigating agency under Sections 498A/406/506 of the Indian Penal Code, 1860 against the opposite party no. 2. The petitioner, however, was not satisfied with the investigation, and she filed a petition under Section 173 (8) of the Code of Criminal Procedure, 1973 for further investigation of the case.

3. In the said petition, the petitioner alleged that the investigating agency had failed to record the statement of the de-facto complainant or the statements of her brothers and mother.

4. It has further been alleged that the opposite party no. 2 siphoned off a sum of Rs.27,55,675/- from a joint account without knowledge and consent of the petitioner, and in spite of bringing the said fact to the notice of the investigating officer, the charge sheet was silent about that. It was alleged that the investigation was carried out in a partisan manner to shield the opposite party no. 2 and had not been carried out in a proper and objective manner.

5. The said petition was taken up to hearing before the learned Judicial Magistrate, 1<sup>st</sup> Court, at Barasat, 24-Parganas (North), and by an order dated December 18, 2019, the learned Magistrate directed the petitioner to serve a copy of the said petition under Section 173 (8) of the Code of Criminal Procedure, 1973 to the opposite party no. 2. The learned Magistrate observed that hearing of the said petition should be done in presence of the opposite party no. 2 in compliance with the principle of natural justice.

6. Challenging the said order dated December 18, 2019, the present revisional application has been filed.

7. Mr. Kaushik Gupta, learned advocate appearing for the petitioner, submits that the learned Magistrate was not justified in directing the petitioner/de-facto complainant to serve a copy of the said petition upon the accused/opposite party no. 2 inasmuch as there is no provision in the Code of Criminal Procedure, 1973, that the accused should be heard in deciding an application under Section 173 (8) of the Code of Criminal Procedure, 1973. It has been, further, submitted by Mr. Gupta that a further investigation is carried out in terms of Section 156 (3) of the Code of Criminal Procedure only and since at the investigation stage the accused has no right of hearing, the accused need not be heard at the time of deciding a petition under Section 173 (8) of the Code of Criminal Procedure filed at the behest of the de-facto complainant.

8. Mr. Gupta, in support of his submission, relied upon the following judgments: **(1985) SCC (Cri) 267 (*Bhagwant Singh v. Commissioner of Police*)**, **(1999) 5 SCC 740 (*Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwandadha Maharaj v. State of Andhra Pradesh*)**, **(2009) 6 SCC 65 (*Narendra G. Goel v. State of Maharashtra*)** and **(2020) 4 SCC 22 (*Satishkumar Nyalchand Shah v. State of Gujarat*)**.

9. Mr. Prantick Ghosh, learned advocate appearing for the opposite party no. 2, opposes the submission advanced on behalf of the petitioner and submits that the principle of natural justice requires that the accused should be heard at the time of deciding a protest petition under Section 173 (8) of the Code of Criminal Procedure for the ends of justice.

10. The only point of law that arises for consideration is whether an accused has a right of hearing at the time of deciding a protest petition under Section 173 (8) of the Code of Criminal Procedure before the learned Magistrate.

11. The said issue appears to have been decided by the judgment delivered in ***Sri Bhagwan Samardha*** case.

12. It has been held in the said judgment by the Supreme Case as follows:-

“**10.** Power of the police to conduct further investigation, after laying final report, is recognised under Section 173(8) of the Code of Criminal Procedure. Even after the court took cognizance of any offence on the strength of the police report

first submitted, it is open to the police to conduct further investigation. This has been so stated by this Court in *Ram Lal Narang v. State (Delhi Admn.)*. The only rider provided by the aforesaid decision is that it would be desirable that the police should inform the court and seek formal permission to make further investigation.

**11.** In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation.”

13. The said view of the Supreme Court was followed in the subsequent judgments delivered by the Supreme Court in ***Narendra G. Goel*** (*supra*) and ***Satishkumar Nyalchand Shah*** (*supra*). The same issue was answered in negative also by a Full Bench judgment of Allahabad High Court reported at **(2000) CRI. L.J. 2738 (*Ranjeet Singh v. State of U.P.*)**.

14. The principle of natural justice is attracted in a case where it is shown that an accrued right is sought to be taken away. It has to be noted that when the police file a final report under Section 173 (2) of the Code of Criminal Procedure, 1973 before the learned Magistrate, the accused gets no indefeasible right to be discharged. In terms of Section 173 (8) of the Code of Criminal Procedure, 1973, it is open for the investigating agency or for the Court to direct further investigation even after filing the final report,

till the charge is framed [**See: (2019) 17 SCC 1 (Vinubhai Haribhai Malaviya v. State of Gujarat)**]. It is a settled law that an accused has no right to have any say as regards the manner and method of investigation [**See: 1993 Supp (4) SCC 260 (Union of India v. W.N. Chadha)**].

15. Therefore, the accused cannot have any right of hearing while a petition under Section 173 (8) of the Code of Criminal Procedure seeking further investigation is taken up for consideration by the learned Magistrate.

16. In view of the aforesaid discussion, I am of the opinion that the learned Magistrate in the Court below was not justified in holding that the accused should be heard to comply with the principle of natural justice in deciding the petition under Section 173 (8) of the Code of Criminal Procedure filed by the de-facto complainant.

17. In my view, the judgment reported at **(1985) SCC (Cri) 267 (Bhagwant Singh v. Commissioner of Police)** is not relevant to the present case since the said case dealt with the right of the de-facto complainant and the victim or his relatives to be heard at the time of considering the final report filed by the investigating agency.

18. In view of the discussion above, the order dated December 18, 2019, passed by the learned Magistrate at Barasat is set aside.

19. The learned Magistrate shall decide the petition under Section 173 (8) of the Code of Criminal Procedure, 1973, filed by the petitioner within a

period of four weeks from date without giving any notice to the opposite party no. 2/accused.

20. The revisional application being **CRR No. 1027 of 2020** is allowed, and the connected applications, being **CRAN No. 1 of 2021** and **CRAN No. 2 of 2021** are accordingly, disposed of.

21. 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.)**