

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

CRR 2955 of 2018

Subhadip Pal

Vs.

State of W.B. & ors.

For the Petitioner	: Mr. Ayan Bhattacharya : Mr. Sharequl Haque : Mr. Aditya Ratan Tiwary : Mr. Amitabrata Hait
For the State	: Mr. Saibal Bapuli, Ld.APP : Mr. Arani Bhattacharya
For the O.P.	: Mr. Md. Shahjahan Hossain : Mr. Supriyo Das

Heard on: 3rd February, 2021

Judgment on : 3rd February, 2021

The Court:

This is an application challenging the judgment and order dated 30.08.2018 passed by the learned Additional Sessions Judge, Bench 2, City Sessions Court, Bichar Bhavan, Calcutta in Criminal Revision No. 195 of 2017, thereby affirming the order dated 15th June, 2017 passed by the Metropolitan

Magistrate, 5th Court at Calcutta in G.R. No. 2219 of 2015, dismissing an application under Section 173 (8) of the Code.

Affidavit of service filed on behalf of the petitioner is taken on record.

Let a copy of the application be served upon Mr. Saibal Bapuli, learned Additional Public Prosecutor and Mr. Arani Bhattacharyya, learned advocates, who are present in court today. Their engagement may be regularised in due course by the competent authority of the State.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is the defacto-complainant of the case. Since he was aggrieved with the charge-sheet submitted in this case, he preferred an application under Section 173 (8) of the Code claim for further investigation before the learned trial Court. The learned Magistrate kept the application pending. Aggrieved by this, the petitioner challenged the same before the learned Sessions Court. By the impugned order, the learned revisional Court dismissed the application, *inter alia*, on the ground that in view of the decisions of the Hon'ble Apex Court passed in Athul Rao –vs- State of Karnataka, Reeta Nag –vs- State of W.B. & ors. and Amrutbhai Shambhubhai Patel –vs- Sumanbhai Kanytibhai Patel & ors., further investigation cannot be directed after

cognizance of the offence is taken. Reliance is placed on a decision of the Hon'ble Apex Court in case of Vinubhai Haribhai Malaviya -vs- State of Gujarat reported in 2019 (14) SCALE I and it is submitted that the relevant ratios laid down in the earlier decisions of the Hon'ble Apex Court in Athul Rao -vs- State of Karnataka, (2018) 14 SCC 298, Reeta Nag -vs- State of West Bengal reported in (2009) 9 SCC 129 and Amrutbhai Shambhubhai Patel -vs- Sumanbhai Kantibhai Patel reported in 2017 SCC online SC 86, were overruled in the case of Vinubhai Haribhai Malaviya (supra). In view of the same, there is no bar on the learned Magistrate to direct further investigation even after taking cognizance. In this regard, reliance is also placed on a decision of this Court in Shuvra Dutta -vs- State of West Bengal & another reported in 2019 SCC Online Cal 7294.

Learned counsel appearing on behalf of the opposite party/defacto complainant submits as follows. The position of law is well-settled in view of the decision of the Hon'ble Apex Court in the case of Vinubhai Haribhai Malaviya (supra). It will be open to the learned Magistrate to consider the question of directing further investigation into the offences till charges are framed. However, the learned Magistrate may be directed to conclude such proceeding in a time bound.

Learned counsel appearing on behalf of the State submits that in view of the settled position of law, the learned Magistrate may be directed to conclude the hearing of the application under Section 173 of the Code at the earliest.

I have heard the submissions of the learned counsels appearing on behalf of the parties and have perused the revision petition.

In view of the decision of the Hon'ble Apex Court in *Vinubhai Haribhai Malaviya (supra)*, it is abundantly clear that in an appropriate case, a Magistrate can direct further investigation even after taking of cognizance, in terms of under Section 173(8) of the Code.

Accordingly, the impugned order is set aside and the matter is remanded back for final consideration of the petitioner's application under Section 173 (8) of the Code as expeditiously as possible, preferably within a period of three months from the next date of hearing.

With these observations, the revisional application is disposed of.

Urgent photostat certified copies of this order may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta,J.)