

23.11.2021

Item No.33

Ct.No.3

dc.

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION**

**C.R.R. 159 of 2021
(Via Video Conference)**

**Md. Abdul Habib Sarkar
versus
The State of West Bengal & Ors.**

In Re: An Application under Sections 401 and 397 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. Anirban Dutta,
Md. Nazmul Alam Sarkar,
Mr. Debajit Kundu

... For the Petitioner.

Mr. A. S. Chakraborty, Id. APP,
Mr. Sourav Ganguly

... For the State.

This revisional application has been preferred against the order dated 22.09.2021 passed by the learned Chief Judicial Magistrate, Cooch Behar. Presently the grievance of the petitioner, who is a *de facto* complainant, is restricted to copies relied upon by the investigating agencies for arriving at their opinion in respect of the report submitted under Section 173 of the Code of Criminal Procedure.

Mr. Dutta, learned advocate appearing for the petitioner submits that until and unless the copies are supplied, effectively, an application under Section 173 (8) of the Code of Criminal Procedure cannot be preferred at their instance. The learned advocate disputes the fact that it is only cases where the accused persons have been discharged,

the *de facto* complainant has a right to pray for further investigation.

Learned advocate for the State is present and submits that so far as the issues are concerned, the same relate to professional rat race amongst the individuals within the locality concerned.

Without expressing any opinion on the merits of the case, I beg to differ with the observations of the learned Chief Judicial Magistrate, Cooch Behar that *de facto* complainant is only entitled to copies of the documents in case there is a FRT (closure report) and not in a case where charge-sheet has been submitted. The very purpose of the Hon'ble Apex Court for which copies were directed to be supplied in ***Jakia Nasim Ahesan and others Vs. State of Gujarat and others*** reported in ***(2011) 12 SCC 302*** was that the complainant should have an opportunity to file an application under Section 173 (8) of the Code of Criminal Procedure after coming to know regarding what is the case of the investigating agency/prosecution which according to him, has been ineffectively conducted.

Having regard to the submissions made by the learned advocates for the petitioner and the State, I direct that the learned Chief Judicial Magistrate, Cooch Behar will take proper steps for supply of copies, which the prosecution has relied upon for filing the charge-sheet within a period of six weeks from date. Once the same is handed over to the present petitioner/*de facto* complainant, the *de facto*

complainant would get another six weeks time to prefer an application under Section 173 (8) of the Code of Criminal Procedure, if any and if so advised.

The learned Magistrate would thereafter dispose of the application under Section 173(8) of the Code of Criminal Procedure, if preferred by the *de facto* complainant, in accordance with law.

The relevant part of the observation so passed by the learned Magistrate in the order dated 22.9.2021 is hereby set aside.

Accordingly, the revisional application being CRR 159 of 2021 is partly allowed.

Pending application, if any, is consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

(Tirthankar Ghosh, J.)