

21.6.2022
S.D.
26.

C.R.R. 370 of 2021
With
CRAN 1 of 2021

Shri Hemanta Kumar Das
Vs.
The State of West Bengal & 13 Ors.

Mr. Raj Kumar Sain

...For the petitioners.

Mr. Imran Ali
Ms. Debjani Sahu

....For the State.

Mr. Tapan Dutta Gupta
Mr. Parvej Anam

...For O.P. Nos. 2 to 4.

This revisional application under Section 401 and 482 of the Cr.P.C. has been filed by the defacto complainant assailing order dated 20.1.2021 passed by learned Additional Judicial Magistrate-II, Haldia, Purba Medinipur rejecting the prayer for further investigation in connection with Mahishadal Police Station Case No. 266 of 2019 dated 5.8.2019 under Section 341/323/325/379 of the IPC and Section 3 of the Scheduled Caste and Schedule Tribe (Prevention of Atrocities) Act, 1989.

The facts leading to filing up the application is that on 3.7.2019, the petitioner filed a complaint under Section 156(3) of the Cr.P.C. disclosing the offence under Section 341/323/325/379 of the IPC and Section 3 of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989.

It was registered as Mahishadal Police Station Case No. 266 of 2019 dated 5.8.2019.

The contention of the petitioner is that police without holding any investigation in proper manner and without examining any witness under Section 161 of the Cr.P.C. has submitted charge sheet before the Jurisdictional Court, leaving aside the provision under Section 379 of the IPC and Section 3 of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 from the charge sheet.

The petitioner filed an objection against the charge sheet before the Jurisdictional Court on 23.12.2020 praying for further investigation, but the learned Magistrate rejected the same in a mechanical way without assigning any reason.

It is urged that the impugned order dated 20.10.2021 passed by learned Additional Chief Judicial Magistrate-II, Haldia in G.R. Case No. 1163 of 2019 is liable to be set aside and an order may be passed for further investigation of the case under Section 173(8) of the Cr.P.C. to be conducted by some impartial police officers, other than the officer who has submitted charge sheet in the case.

Learned advocates for the State vehemently opposed the prayer for further investigation and submitted that the Investigating Officer has examined several witnesses in this case and recorded their statements. Learned advocates referred to pages 27, 28 and 30 of the Case Diary wherefrom it appears that the defacto complainant, Hemanta Kumar Das, Manashi Das, the wife of Hemanta Kumar Das and other family

members, namely Bandana Das and Bechu Das, the father of the complainant have been examined and their statements were recorded under Section 161 of the Cr.P.C. The Investigating Officer has also examined the doctor, prepared rough sketch map of P.O. with index and collected injury report of the defacto complainant.

The contents of the Case Dairy reveal that the Investigating Officer has visited the place of occurrence and examined witnesses. The statement recorded by the Investigating Officer cannot be prima facie disbelieved only due to the fact that the petitioner in paragraph 9A of the revisional application has stated that the petitioner including their family members have been prevented by the opposite party from entering their house for seventeen months. Such statements in paragraph no. 9A have not been mentioned in the FIR. Prima facie, the case appears to be one of assault. There is no averment in the FIR that theft has been committed in respect of any property. The allegations also do not attract the provisions of Section 3 of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989. Learned advocate for the petitioner tried to impress the Court that the alleged pulling of clothes by the accused persons would attract Section 3(iii) of the Act.

I find that in case of forcible removal of clothes from the person of a member of Scheduled Caste or Scheduled Tribe or parading him naked or with painted face or body or committing similar acts derogatory to his human dignity would attract Section 3(iii) of the Act. In the instant case,

neither the FIR nor the statement of the witnesses disclosed any such occurrence.

Under such circumstances, I am of the considered view that there is no merit in the revisional application and the circumstances do not demand any further investigation in the case. Charge sheet has been submitted.

Learned Magistrate is directed to proceed with the case in accordance with law.

The revisional application is dismissed on merit.

All related applications are also disposed of.

Case Diary be returned.

Interim order, if any, stands vacated.

Let a copy of this order be communicated to learned Additional Chief Judicial Magistrate, Haldia for information.

(Ananda Kumar Mukherjee, J.)