

08.8.2022
Court No.33
Sl. No.72
SD

CRR 629 of 2020

In the matter of: Srimanto Mondal

....Petitioner.

Mr. Amitabha Ghosh
Ms. Nabanita Chatterjee

... for the Petitioner.

Mr. Saswata Gopal Mukherjee
Mr. Madhusudan Sur
Mr. Dipankar Paramanick

... for the State.

Ajoy Kumar Mukherjee, J. (Oral):

Affidavit of service filed by the petitioner in Court today be kept with the record. In spite of service, none appeared on behalf of opposite party no.2.

Being aggrieved by the impugned order dated August 30, 2019 passed by the learned Additional Chief Judicial Magistrate, Bishnupur in connection with acceptance of final report in the form of mistake of fact being FRMF No.181 of 2016 dated 30.11.2016 arising out of GR No.1105 of 2016 corresponding to Bishnupur Police Station Case No.206 of 2016 dated 19.11.2016 under Sections 447/379/34 of the Indian Penal Code, petitioner has preferred the present application under section 482 read with section 401 of code of criminal procedure.

The petitioner has contended that the defacto complainant being failed to get any response from the concerned police personnel attached with Bishnupur Police Station, filed an application under Section 156(3) of the Code of Criminal Procedure, inter alia, stating that the accused person being the opposite party no.2 herein, along with his anti-social associates, theft 3000 eucalyptus trees planted by the petitioner over a land measuring

about 14 acres and 60 satak, comprising of different plots under Mouza Darasole, pursuant to an agreement dated 02.7.2007 with the owners of the said land. On the basis of a direction made by the learned Magistrate for investigation, the investigating officer started investigation and at the end of investigation, he filed aforesaid final report in the form of FRMF (final report on the ground of mistake of fact) being No.181 of 2016 dated 30.11.2016.

Being aggrieved by filing of the said final report, the petitioner/defacto complainant filed a protest petition under Section 173 of the Code of Criminal Procedure against the said impugned FRMF No.181 of 2016 dated 30.11.2016.

Learned Additional Chief Judicial Magistrate, Bishnupur, Bankura after hearing learned counsel appeared on behalf of the respective parties was pleased to accept the impugned FRMF No.181 of 2016 dated 30.11.2016 vide impugned order dated 30.8.2019 and thereby discharged the accused person from the case.

Mr. Amitabha Ghosh, learned counsel appearing on behalf of the petitioner, submits that FRMF was filed without causing any investigation and learned trial court without appreciating the merit of the contents of the complaint, was pleased to accept the said report without considering the necessity for further investigation. Learned trial court misread and misinterpreted the terms and conditions mentioned in the agreement executed by and between the complainant being the petitioner hereof and the accused persons with the owners of the land in question and thereby failed to appreciate that the accused persons committed breach of trust and disposed of the plants in order to make wrongful gain. The

investigating agency never attempted to seize the original agreement and there is no reflection that the investigating officer ever asked for the original agreement from the petitioner.

Mr. Ghosh further submits that the trial court ought to have considered that failure on the part of the concerned investigating officer to seize the original agreement cannot vitiate the contents of the complaint. It was negligence on the part of the investigating agency to call for those documents under section 91 of the code and also seize those relevant documents.

Mr. Saswata Gopal Mukherjee, learned public prosecutor appearing on behalf of the State, submits that the order passed by the learned Magistrate on 30.8.2019 goes to show that the defacto complainant did not produce the original documents to the investigating officer in spite of service of notice and finally the investigating officer came to the conclusion that complainant lodged the FIR before the Court against the accused Nitya Mondal on fake and false grounds and statement of witnesses also does not implicate the accused Nitya Mondal with the alleged crime.

On perusal of the case diary, it appears that a xerox copy of the agreement is lying with the case diary. However, Mr. Mukherjee submits that the petitioner never produced the original deed of agreement and that is why FRMF was filed. However, Mr. Mukherjee in his usual fairness submits that if the petitioner is willing to produce the original agreement along with other original documents as required for investigation, before the investigating agency, there is no bar to make further investigation in respect of the present case, under the legislative intent laid down in section 173 (8) of the code of criminal procedure.

It appears from certified copy of FRMF that the main cause for filing final report by the investigating officer in the form of FRMF runs as follow:-

“ I perused the BLL & RO’s report in which has written 1st Party & 2nd Party members names. which is not same hand writing. In the 2nd Party members name was written Sri Mantu Mandal in making duplicasy one. I also requested to the complainant to produce the original. But he did not produce the same.

*.....
This case will be reopened if any clued could be detected in future.”*

Having considered the aforesaid facts and circumstances of the case, the order impugned dated 30.8.2019 is hereby quashed.

Petitioner is directed to produce the original agreement along with the other original documents, if any, in support of his case before the investigating officer within a period of 30 days from the date of communication of the order and petitioners having complied the same, the investigating agency will make further investigation under section 173(8) of the code and will submit report within a period of three months thereafter. In case of failure on the part of petitioner to comply aforesaid order , the investing agency will also be at liberty to submit report before the magistrate concerned accordingly.

Accordingly, CRR 629 of 2020 is disposed of.

However, there will be no order as to costs.

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.

(Ajoy Kumar Mukherjee, J.)