

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

Present:

The Hon'ble **Justice Kausik Chanda**

C.R.R. NO. 767 OF 2020

MRS. MAYA RANI MANNA

-VERSUS-

STATE OF WEST BENGAL AND OTHERS

For the petitioner : Mr. Chandra Sekhar Saha, Adv.,
Mr. Shiba Prosad Bhattacharjee, Adv.

For the opposite party : Mr. Sailen Parbat, Adv.,
no.2 & 3. Mr. Ashis Kumar Dutta, Adv.

For the State : Mr. Imran Ali, Adv.,
Ms. Debjani Sahu, Adv.

Hearing concluded on : 12.05.2022

Judgment on : 19.05.2022

Kausik Chanda, J.:-

In this revisional application, the petitioner sought to assail a judgment and order dated December 12, 2019, passed by the learned Judicial Magistrate, 3rd Court, Serampore, Hooghly, whereby the learned Magistrate rejected a petition under Section 173(8) of the Code of Criminal Procedure, 1973.

2. It appears that in the instant case, a charge sheet was filed by the Investigating Agency under Sections 323/325/506 of the Indian Penal Code, 1860.

3. The defacto complainant by filing the said petition under Section 173(8) of the Code of Criminal Procedure prayed for further investigation of the case, inter alia, on the ground that the investigating agency ought to have incorporated Sections 354A and 307 in the charge sheet.

4. The petition for further investigation was opposed by the State.

5. Learned Magistrate after hearing both the parties rejected the said application holding, inter alia, as follows:

“It can be found, thus, that only upon cogent basis of any new finding and subsequent developments by the Investigating Officer even after the final report is submitted, this provision comes into operation and not on any other ground. Upon careful perusal of the provision, it can be safely concluded that the Legislature has not whispered any other person other than Officer in charge of concerned P.S who can take shelter of this section. One Case authority in this point is **Amrutbhai Shambhubhai Patel vs Sumanbhai Kantibhai (2017) 2 SCC (Cr) 331 (2017)** wherein Apex Court observed that further investigation by the officer in charge of concerned police station can be allowed after report u/s 173(2)

CrPC had been forwarded to the Magistrate where after such investigation, he obtains further evidence, oral or documentary in nature. Now, post cognizance stage, neither the Magistrate suo motu nor on the basis of an application filed by the defacto complainant/informant, further investigation can be directed. I do find the submission of Ld. Defense Counsel tenable in this point.

In such premises, this Court finds it just and proper to consider and reject the instant application on contest without costs.

Fix 12.03.20 for Hearing of application dated 23-03-18.”

6. It has been argued before this Court that the victim suffered a fracture on her finger, but the provision of Section 326 of the Indian Penal Code, 1860 was not incorporated in the charge sheet. The investigation was carried out in a perfunctory manner and there is no bar to order further investigation even after the cognizance is taken. In support of such submission, the learned advocate for the petitioner relied upon the judgments reported at **(2015) 2 Cal LT 36 (Sakti Pada Ghosh v. State of West Bengal)** and **(2004) 5 SCC 347 (Hasanbhai Valibhai Qureshi v. State of Gujarat)**.

7. I am of the opinion that there was no scope to direct further investigation in the facts of the present case.

8. The law relating to further investigation has been settled by the Supreme Court in the judgment reported at **(2019) 17 SCC 1 (Vinubhai Haribhai Malaviya v. State of Gujarat)**, where it has been held that the power of the police to further investigate of the offence continues till the

stage of trial commences and a criminal trial commences only after the charges are framed. It was also held that in the interest of justice, the powers can be exercised by the Magistrate suo motu depending on the facts of the each case.

9. The judgment relied upon by the learned Magistrate reported at **(2017) 4 SCC 177 (Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel)**, in fact, has been partly overruled by **Vinubhai** (supra) on the point that whether the Magistrate can exercise the power to direct further investigation of the case suo motu.

10. In that view of the law laid down in **Vinubhai** case, there cannot be any doubt that in the present case there was no scope to order further investigation by the learned Magistrate since the petition for further investigation was filed after the framing of the charges and the commencement of trial.

11. The judgments reported at **(2015) 2 Cal LT 36 (Sakti Pada Ghosh v. State of West Bengal)** and **(2004) 5 SCC 347 (Hasanbhai Valibhai Qureshi v. State of Gujarat)** are not applicable in this case. Those two cases did not deal with a situation where the petition under Section 173(8) of the Code of Criminal Procedure, 1973 had been filed after the commencement of the trial.

12. In that view of the matter though the reasoning of the learned Magistrate is not approved, the ultimate conclusion arrived by him is not interfered with.

13. Accordingly, C.R.R. No. 767 of 2020 is disposed of.

14. Urgent certified website copies of this judgment, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Kausik Chanda, J.)