

16.02.2022
S/L No.23
KS

(Via Video Conference)
C.R.R. 788 of 2014
Sriparna Maity
-Vs.-
The State of West Bengal & Ors.

Md. Salahuddin

Md. Raziuddin

.....For the Petitioner

Mr. Binoy Panda

Ms. Puspita Saha

.....For the State

Mr. Sridhar Chandra Bagari

.....For the Opposite Party Nos.2 to 5

The revisional application listed today is taken up for hearing.

In the revisional application filed by petitioner/wife under Sections 401 and 482 of the Code of Criminal Procedure has challenged an order dated 30.12.2013 passed by Learned Additional Chief Judicial Magistrate, Kakdwip, South 24 Parganas in G.R. Case No.1106 of 2010 in connection with Namkhana Police Station Case No.93 of 2010 under Sections 498A/406/384/34 of the Indian Penal Code, praying for setting aside/quashing of the order and pass any other order as deem fit and proper.

The contention of the petitioner is that on the basis of an application under Section 156(3) of the Code of Criminal Procedure, learned Additional Chief Judicial Magistrate, Kakdwip, South 24 Parganas directed the Officer-in-Charge, Namkhana Police Station to treat the complaint as First Information Report and to investigate into the allegations made in the

complaint. Namkhana Police Station Case No.93 of 2010 was registered under Sections 498A/ 406/ 384/34 of the Indian Penal Code, giving rise to G. R. Case No.1106 of 2010. During pendency of G.R. Case No.1106 of 2010, the opposite party no.2 preferred criminal revisional application before this Court being CRR No.86 of 2011 under Section 482 read with Section 397 and 402 of the Code of Criminal Procedure praying for quashing of G.R Case No.1106 of 2010. This Court passed an order in the revisional application staying further proceeding of G.R. Case No.1106 of 2010, but the same was not disclosed by opposite party no.2 in time and on the basis of the protest petition filed by the petitioner on 10.01.2012, Learned Additional Chief Judicial Magistrate, Kakdwip passed an order on 20.01.2012 for re-investigation of the case in which final report had been submitted.

The petitioner has contended that on 20.03.2013 this Court had disposed of C.R.R. 86 of 2011 directing that the Court below shall take a final decision on the report submitted by the Investigating Agency and the protest petition filed by the opposite party/wife taking into account the provisions of Section 475 of the Code of Criminal Procedure as the petitioner in that Criminal Revision is stated to be an Army Personnel. It is the case of the petitioner that on 21.12.2013, Learned Court below recalled order dated 20.01.2012 regarding re-investigation of the case on the basis of the order of the High Court dated 30.04.2012 communicated to the Learned Court below.

Learned advocate for the petitioner has prayed for setting aside the impugned order and for directing Learned Court below for further

investigation on the plea that opposite party no.2 had mischievously suppressed the Court's order in respect of withholding Court's order dated 20.03.2013.

Learned advocates for the State has produced the Case Diary. The same is perused and returned. Learned advocates for the State as well as learned advocate for the opposite party nos.2 to 5 argued that had the petitioner produced copy of this court's order on 20.03.2013 before the Learned Additional Chief Judicial Magistrate at the appropriate time, the impugned order for recall of order dated 20.01.2012 could not have been passed.

Considered the submissions made by learned advocates for the parties.

Perused the revisional application as well as impugned order passed by the another Bench of this Court in C.R.R. No.3620 of 2012 alongwith C.R.R. 86 of 2011 dated 20.03.2013. The Learned Magistrate while passing the order dated 21.12.2013, recalling his earlier order, referred to order dated 07.06.2011 passed by this Court where further proceeding of the case had been stayed. Learned advocates for the petitioner as well as opposite party nos.2 to 5 who were present before the Court on 21.12.2013 did not mention or produce the copy of order dated 20.03.2013 due to which Learned Additional Chief Judicial Magistrate had been misled and erroneously passed the impugned order.

I find from the supplementary affidavit filed on behalf of the petitioner that CRR 3620 of 2012 alongwith CRR 86 of 2011 filed by the petitioner were disposed of on 20.03.2013 by another Bench of this Court,

observing that the counsel for the petitioner is entitled to seek the result of re-investigation and further directed that the Court below will take a final decision on the report submitted by the Investigating Agency and the protest petition filed by the opposite party/wife taking into account the provision of Section 475 of the Code of Criminal Procedure, as petitioner in one of the revisional application was an Army Personnel.

Under such circumstances, there should be any confusion of the fact that even after final disposal of the two revisional applications the said order was not placed before the Learned Magistrate for passing necessary order. On a conspectus of such circumstances, the impugned order dated 30.12.2013 recalling the order regarding re-investigation is not tenable under the law.

The impugned order is, therefore, set aside. The revisional application is disposed of with a direction upon the Learned Additional Chief Judicial Magistrate, Kakdwip, South 24 Parganas to comply with order dated 20.03.2013 passed in CRR 3620 of 2012 and CRR 86 of 2011 and take appropriate steps according to the provisions of Section 475 of the Code of Criminal Procedure, in the event further investigation is allowed and the same results in submission of charge-sheet.

Let a copy of this order be sent to the Learned Additional Chief Judicial Magistrate, Kakdwip for information and necessary action.

The parties shall act on the basis of server copy of this order.

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

(Ananda Kumar Mukherjee, J.)