

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. - 1769 of 2018****IN THE MATTER OF****Sunil Kumar Jain****Vs.****The State of West Bengal & Ors.**

**For the petitioner : Mr. Anirban Mitra, Adv.,
Mr. Amit Halder, Adv.,
Mr. Akash Ghosh, Adv.**

**For the State : Faria Hossain, Adv.,
Mamata Jana, Adv.**

Judgment on : 11.11.2022

Subhendu Samanta, J.

Burtolla Police Station Registered Case vide Burtolla P.S Case No. 14 of 2015 dated 07.11.2015 U/s 324/114 of IPC on the basis of a written complaint filed by one Sunil Kumar Jain contending inter alia that the accused persons assaulted his elder brother namely, Surendra Kumar Jain by Iron Rod and due to which he had received serious injury and admitted to the hospital.

Police conducted investigation and after completion of investigation police submitted charge sheet in the form of FRT with the prayer of discharge of accused persons from this case. The complainant filed an

application U/s 173(8) of Code of Criminal Procedure before the Learned Court below with a prayer for further investigation of this case.

Learned Magistrate heard the Learned Advocate for the petitioner and turn down his prayer by accepting the FRT submitted by the Investigation Officer (I.O).

Being aggrieved by the impugned order dated 05.04.2018 the instant Criminal Revision has been preferred.

Learned Advocate for the petitioner submitted before this court that the I.O has conducted investigation in a perfunctory manner. During the course of his investigation he never collected the medical report or enquired the relatives of the victim. He also argued that due to latches on the part of the investigation the petitioner preferred one writ application before the Hon'ble High Court and after filing of the writ the instant final report has been filed by the investigating officers. The FRT submitted by the I.O. is baseless and I.O. has never conducted the proper investigation of this case. Thus, the instant report cannot be accepted. He again argued the finding of the learned Court below regarding the believability of the witnesses is also impermissible in the eye of law.

In support of his contention learned Advocate appearing on behalf of the petitioner cited some decisions along with the short written notes of arguments. He cited a decision reported in (2004)5SCC347. In this case the Hon'ble Supreme Court has held that further investigation by the police is permissible if it is found that the investigation is not conducted in a proper manner.

Learned Advocate appearing on behalf of the state submitted before this court that the I.O. had conducted the investigation of this case properly. During the course of investigation the I.O. has collected sufficient materials which resulted to the final report. He further pointed out that during the course of investigation the statement of victim as well as the de facto complainant was recorded. Some available witnesses of the locality has also

stated to the I.O. regarding the fact that they never see the accused person to assault the victim. Thus, the final report of the I.O. is justifiable. The Impugned order passed by the Learned Magistrate is also suffers no illegality or impropriety.

Heard the Learned Advocate, peruse the C.D; also perused the evidence collected by I.O. during the course of investigation of this particular case.

Initially the victim was admitted to the Medical College and Hospital with lacerated wound at the left scull having seize 4 cm. x 2 cm.. During the admission the patient party stated before the Dr. that the patient was physically assaulted by some persons over his head. No name of the accused persons was mentioned. Therefrom he was shifted to the Apollo Gleneagles Hospital Kolkata on the same day at about 8 a.m.. during the time of admission, one of the son of the patient stated before the Dr. that the victim found lying in front of the residence. The name of the accused persons was also not stated at the Dr.; of Apollo Gleneagles Hospital Kolkata. During the course of investigation the I.O. enquired the victim at hospital in presence of the attending the Dr.; wherein the victim stated in consciousness that it is not possible for him to stay how he received the injury.

The de facto complainant also stated before the I.O. that he did not see any person to assault his elder brother but he lodged the written complain against the accused person with a false suspicion.

The statement of other local witnesses recorded U/s 161 C.r.P.C. by the I.O; they also did not say the name of any assailant. After going through the entire C.D. and the investigation conducted by the I.O. it appears to me that the final report submitted by the I.O. is not beyond any basis. The I. O. had nothing the materials against the accused persons to entangle them in that criminal case. Consequently the I.O. has submitted the FRT.

On perusing the impugned order passed by the Learned Magistrate, I also not found any illegality or impropriety in the impugned order to believe

the investigation of the I.O. Learned Magistrate has correctly passed the impugned order.

However, during the proceeding of this the instant criminal revision it appears that; in compliance of the order of this Court; three more witnesses including the victim were examined and their statements were recorded. Thus, practically after completion of the investigation of this case, the investigation of this case was the initiated by virtue of the order of this Court. Some statements were recorded.

I have perused these statements. It appears that these are the statements of the relatives of the de facto complainant, victim and the de facto complainant himself. The victim as well as the de facto complainant are deviated from their earlier statements.

It is not a fit place to make a comment regarding the truthfulness and reliability of the statements collected by the I.O. in compliance to the order of this Court; but, the statements no doubt these statements are a part of investigation. These statements need be incorporated in the case dairy and they may be considered by the investigating agency again for submitted a report to that effect.

I make it clear that, this Court is not in a jurisdiction to believe or disbelieve any statement collected by the I.O. during the course of this Criminal Revision; it is the sole domain of the Investigating Agency. It is the prerogative of the I.O., either to submit C.S. or FRT, considering all materials available with him.

In these circumstances it appears to me that though the impugned order passed by the Learned Court below suffers no illegality; and though there were no impropriety in the face of the final report of the I.O. but necessarily, the further investigate the case has already been done on the basis of the statement recorded by the I.O. in compliance to the order of this Court in this later stage. Thus, in the prevailing situation the impugned order passed by the Learned Court below can not be stand.

In result thereof the instant Criminal Revision along with connected CRAN application if any, is disposed of.

The Impugned order passed by the Learned Court below is hereby set aside.

The I.O. of this case is directed the conduct further investigation of this case or to submit C.S/FRT as mentioned above in the body of the judgment, before the Learned Court below within two months from the date of passing of this order.

Let a copy of this order be served upon the Learned Court below and to the I.O. through Learned Advocate for the State for proper compliance.

CRR is disposed of.

(Subhendu Samanta, J.)