

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

Before:

The Hon'ble Justice Ananda Kumar Mukherjee

C.R.R. 1501 of 2014

With

IA No. CRAN 24 of 2022

Suresh Kumar Agarwal

Vs.

State of West Bengal & Anr.

With

C.R.R. 1739 of 2014

Surajit Mukherjee

Vs.

The State of West Bengal & Ors.

For the Petitioner :
(C.R.R.1501 of 2014)

Mr. Sabyasachi Banerjee
Mr. Ayan Bhattacharya
Mr. Aniruddha Agarwalla
Ms. N. Ahmed
Mr. D. Mukherjee

For the O.P. No.2:
(C.R.R. 1501 of 2014)

Mr. Phiroze Edulji
Mr. Koushik Kundu

For the State:
(C.R.R.1501 of 2014)

Mr. Swapan Banerjee
Mr. Suman Dey

For the Petitioner:
(C.R.R. 1739 of 2014)

Mr. Phiroze Edulji
Mr. Koushik Kundu

For the O.P. No.2:
(C.R.R. 1739 of 2014)

Mr. Sabyasachi Banerjee
Mr. Ayan Bhattacharya
Mr. Aniruddha Agarwalla
Ms. N. Ahmed
Mr. D. Mukherjee

For the State:
(C.R.R. 1739 of 2014)

Mr. Binay Panda
Ms. Puspita Saha

Heard on: 09.06.2022.

Judgment on: 29.07.2022.

Ananda Kumar Mukherjee, J. :-

1. This revisional application under Section 397 and 401 read with Section 482 of the Code of Criminal Procedure has been filed by petitioner Suresh Kumar Agarwal, one of the Directors of Piyarelal Imports and Exports Private Limited, impleaded as Opposite Party No.2 petitioner in CRR No. 1739 of 2014, against M/s Piyarelal Imports and Exports, Private Limited represented by Sri Surajit Mukherjee wherein he has prayed for quashing of proceedings of Hare Street Police Station Case No. 326 of 2009 under Sections 403, 406, 409, 418, 420 and 477A read with Section 120B of the Indian Penal Code giving rise to G.R. Case No. 1414 of 2009 pending before the learned Chief Metropolitan Magistrate at Calcutta and for setting aside of order dated 19.3.2013 passed by learned Chief Metropolitan Magistrate, Calcutta whereby after submission of Final Report by the investigating officer on dated 21.10.2012 the learned Chief Metropolitan Magistrate was pleased to allow the prayer of the Opposite Party in the 'Naraji Petition' and order reinvestigation of the case.

2. Brief fact of the case leading to the present application for revision is that, petitioner was one of the Directors of Opposite Party No. 2 Company along with his brother Ramesh Kumar Agarwal and they together looked after the day to day affairs of the company. While petitioner managed the business of the company at Mumbai, Ramesh Kumar Agarwal used to manage the business in Kolkata.

3. M/s. R. Piyarelal Group of Companies was started by the father of petitioner and Ramesh Kumar Agarwal who expired in the year 1994. After the death of their mother in 2007 dispute cropped up between the two brothers giving rise to several litigations between them and their families.

4. According to the petitioner Ramesh Kumar Agarwal surreptitiously filed several Company Petitions in the name of Opposite Party No. 2 before the Company Law Board, Principal Bench, New Delhi in December, 2007. During pendency of the proceedings before the Company Law Board both the brothers realized that it could not be possible for them to continue as a joint family with joint family business and sought for partition and severance of the joint family business and properties by distribution of various companies between two groups and it was agreed that all the disputes and various company between them would be amicably settled.

5. The parties approached the Hon'ble Company Law Board through Joint Compromise Petition for settlement in terms of the prayers made in the petition. After hearing the parties and on the basis of Joint Compromise Petition filed by the parties for settlement, the company Law Board passed a order on 27.2.2008. According to the petitioner Ramesh Kumar Agarwal did not comply with the terms of the Civil degree passed by the Company Law Board and execution petition was filed which went up to the High Court and certain directions were passed in favour of the petitioner by order dated 16.3.2010 in compliance with such direction books and accounts were handed over under cover of a letter dated 31.3.2010. during pendency of the civil proceeding before

the competent court of law, Opposite Party No.2 through its authorized representative, Surajit Mukherjee lodged a complaint against the petitioner under Section 156(3) of the Code of Criminal Procedure before the learned Chief Metropolitan Magistrate, Calcutta giving rise to C. Case No. 25092 of 2009, alleging commission of offence punishable under Section 403, 406, 409, 418, 420 and 477A of IPC read with Section 120B of the IPC.

6. On 21.5.2009 learned Chief Metropolitan Magistrate was pleased to direct Officer-in-Charge, Hare Street Police Station to treat the complaint as First Information Report and investigate the case. The same was registered as Hare Street Police Station Case No. 326 of 2009 dated 3.6.2009 under Sections 403, 406, 409, 418, 420 and 477A read with Section 120B of the IPC. The petitioner has contended that the subject matter in the complaint in the Hare Street Police Station Case No. 326 of 2009 relates to the self same issues raised by Ramesh Kumar Agarwal before the Company Law Board which broadly fall under the categories as follows:

- (i) Materials/Goods of the Stock of Mumbai Branch Office disposed/transferred at low value to another Company of petitioner.
- (ii) Sale of various commodities by showing stock as shortage in books.
- (iii) Diversion of Maize at a lower value to another company controlled by the petitioner himself.

7. The case of the petitioner is that the issues raised in the First Information Report are all civil in nature and the same would appear from the subject matter of C.A. No. 42 of 2010 and order dated 13.7.2010 passed by the Company Law Board.

8. From the Joint Compromise Petition (Annexure P-1) it would appear that the branch accounts of companies transferred by the petitioner to Ramesh Kumar Agarwal were duly handed over after verification by the Auditors of Ramesh Kumar Agarwal and after reconciliation of accounts and all stock, Ramesh Kumar Agarwal received a sum of Rs. 4,05,12,167 as net balance from the petitioner apart from Rs. 3,02,51,350 aggregating to Rs. 7,07,63,517. On the basis of receipt of account duly verified by Opposite Party No. 2 as well as other companies taken over by Ramesh Kumar Agarwal, from the petitioner, the balance sheets and Annual Returns were filed before the Registrar of Companies. It is only to usurp the Gokhale Road property and other claims of the petitioner payable by Ramesh Agarwal under the consent order, the impugned proceeding has been instituted through Opposite Party No.2 and all such claims and counter claims are civil disputes and cannot attract the offence under Criminal Law.

9. After investigation the investigating agency at the first instance submitted a report in the final form, finding that the charges were civil in nature and discharged the petitioner from the case. A notice regarding Final Report of the case was served upon opposite party. The Opposite Party No. 2 filed a formal objection against the final report in the form of 'Naraji Petition'

before the learned Magistrate on 16.01.2013 a copy of which has been annexed as 'P-10', the application was heard and a order dated 19.3.2013 was passed by the Magistrate allowing the prayer of Opposite Party No.2 for reinvestigation.

10. It is urged by the petitioner that the learned Magistrate has passed and the order for reinvestigation in a mechanical way and that the impugned order is incorrect, procedurally untenable and legally unsustainable.

11. The petitioner prayed for quashing the proceeding in Hare Street Police Station Case No. 326 of 2009 dated 3.6.2009 and the impugned order dated 19.3.2013 directing reinvestigation into the case on the grounds inter alia, as follows:

- (i) The impugned order suffers from illegality and any further continuance of the instant proceeding is bad in law.
- (ii) Learned Magistrate by taking judicial notice of the 'Naraji Petition' and allowing reinvestigation into the alleged offence has acted in a mechanical manner.
- (iii) The Final Report dated 21.11.2012 would indicate that statement of persons related to Opposite Party No.2 as well as employees of other firms namely M/s Swapna Agarwal and Company, related to Opposite Party No. 2 were duly recorded by the investigating agency.
- (iv) The Final Report would demonstrate that the complainant/Opposite Party No.2 duly supplied copies of documents to substantiate the case before the investigating agency

and those documents were duly considered by the investigating agency during investigation.

- (v) That the investigating agency also served notice upon the Opposite Party No.2 to submit few original documents including sale register, purchase and sale invoice, accounts books, but the Opposite Party No.2 failed to provide such documents to the investigating agency. Therefore, the submission made by the Opposite Party No.2 alleging improper investigation does not stand any ground.
- (vi) It is a settled principle that in case of civil wrong and allegations may or may not amount to criminal offence but continuation of multiple proceedings would amount to abuse of process of court.
- (vii) Learned Magistrate erred by taking judicial notice of the 'Naraji Petition' and directing reinvestigation into the matter, which is beyond the scope and jurisdiction vested upon learned Magistrate.
- (viii) That there is no material to connect the petitioner with the offence under Sections 420, 409 or 406 of the Indian Penal Code and that petitioner was not entrusted with any property by the Opposite Party No.2.

12. Accordingly, the petitioner prayed for quashing of the proceeding of Hare Street Police Station Case No. 326 of 2009 giving rise to G.R. Case No. 1414 of 2009 and setting aside of the impugned order dated 19.3.2013 passed by

learned Chief Metropolitan Magistrate, Calcutta in G.R. Case No. 1414 of 2009 directing reinvestigation.

13. In connection with the same subject matter C.R.R 1739 of 2014 has been filed by Surajit Mukherjee, who happens to be Opposite Party No. 2 in C.R.R 1501 of 2014 against the State of West Bengal and Suresh Kumar Agarwal as Opposite Party No.2, who again was the petitioner in the earlier revisional application.

14. In the other application under Section 482 and 483 of Cr. P.C petitioner seeking a direction upon learned Chief Metropolitan Magistrate restraining him from hearing bail application of accused/opposite party no. 3 till any specific order is passed in C.R.R No. 1501 of 2014. A direction to the effect that order dated 14.5.2014 passed in C.R.R 1501 of 2014 will not impede the investigation officer of Hare Street Police Station Case No. 326 of 2009, to continue with investigation and that further proceeding in G.R Case No. 1414 of 2009 was restricted only to the petitioner of the revisional application and not applicable to the accused who is in custody.

15. Heard learned advocates for the petitioners in both the revisional applications at length and in full.

16. The short question involved in these two revisional applications is whether during pendency of a proceeding regarding severance and partition of joint family business and properties in respect of the business of R.Piyarelal group of business pending before Company Law Board, where Joint Compromise Petition for settlement has been made by the parties and also for

settling the disputes, the criminal case initiated at the instance of M/s R. Piyarelal Imports & Exports Limited, represented by Mr. Surajit Mukherjee, Senior Executive of the company (Opposite Party No2) in C.R.R 1501 of 2014 and petitioner in C.R.R 1739 of 2014, pending before learned Chief Metropolitan Magistrate, Calcutta being G.R. Case No. 1414 of 2009, should continue or is liable to be quashed on the grounds disclosed. It is also to be considered whether after submission of final report by Hare Street Police Station, learned Magistrate was justified in considering the 'Naraji Petition' and directing reinvestigation of the case.

17. Admittedly, Suresh Kumar Agarwal and his brother Ramesh Kumar Agarwal were the Directors of M/s R. Piyarelal Group of companies which stood in the name of their father who expired in 1994. Ramesh Kumar Agarwal managed the business of the company at Calcutta while Suresh Kumar Agarwal looked after and managed the business of the company at Mumbai. Dispute cropped up after the death of their mother. Applications were made before Company Law Board, Principal Bench, New Delhi for partition and severance of Joint family business. Subsequently, Joint Compromise Petition for settlement was filed in terms of the prayers made in such petitions. After hearing the parties over their Joint Compromise Petition for settlement of disputes, an order dated 27.02.2008, was passed which was agreed up by Ramesh Kumar Agarwal and his family on one side and the petitioner and his family members on the other side. While such proceedings and execution of the Company Law Board orders were pending, Surajit Mukherjee representating

M/s Piyarelal Group of Companies filed a complaint under Section 156(3) of Cr. P.C before the Learned Chief Metropolitan Magistrate Calcutta, giving rise to C Case No. 25092 of 2009 alleging commission of offence under Sections 403, 406,409,418,420,477A read with Section 120B of the Indian Penal Code and Hare Street Police Station was directed to treat the complaint as First Information Report and investigate the matter.

18. It is also undisputed that after holding investigation police submitted a report in Final form against which Opposite Party no.2 submitted a 'Naraji Petition' and after hearing the parties and considering the petition Learned Chief Metropolitan Magistrate passed the impugned order dated 19.03.2013, whereby Learned Magistrate after going through the Case Diary and finding that there was alleged misappropriation of money to the tune of Rs.8,75,38,112/- by the accused, directed O.C, Hare Street Police Station to reinvestigate into the offence properly through any other Investigating Officer beside Mr. Achyananda Ghosh and collect all the documents from the complainant if so required.

19. Bereft of the details, it would appear from relevant documents that accused/petitioner Suresh Kumar Agarwal being one of the Directors of Mumbai Branch of the complainant's company on 20.12.2007 entered into criminal conspiracy with accused P.K. Rungta and Narendra Kumar Rajgoria and pursuant to such conspiracy they dishonestly disposed of various commodities from the stock of the branch office of the company at Mumbai to their newly formed company M/s R Piyarelal Global Impex Ltd. at a very

marginal price and subsequently sold out the same at higher price and thereby syphoned out a sum of Rs. 3,18,00,000/- from the company. They also misappropriated Rs.2,00,00,000/- worth of different types of pulses.

20. In course of investigation relating to the alleged misappropriation it was noted that the complainant company entered into an agreement with S.T.C.L, a Government of India Undertaking concerned with the complainant company on 13.11.2006, represented by accused-petitioner Suresh Kumar Agarwal whereby food grains weighing 17,128.86 M.Tones of Maize was procured from Karnatak and Andhra Pradesh in the name of the complainant company by obtaining financial assistance from S.T.C.L Ltd., a public sector undertaking, in the name of Mumbai Branch of the complainant company and subsequently fraudulently diverted the said stock to M/s R. Piyarelal Global Impex Limited, the newly formed company of the accused person at a lower rate than the price rate of commodities and thereby caused a loss to the complainant company to the tune of Rs. 3,11,21,205/- . Further case of the complainant company is that 2394.924 M.Tones of various commodities worth about Rs.2,83,76,157/- was sold to different parties by the accused persons by fraudulently showing the said materials in the stock of the complainant's company as shortage. Thereby they misappropriated a sum of Rs.8,75,38,112/- of the complainant company and cheated the complainant's company.

21. Alleged acts emerging from the documents placed in the Case Diary, gives an inkling that penal offence are attracted and they are independent of the civil dispute relating to partition of the joint family business of Late

Piyarelal Agarwal. In this context it would be apt to refer to the decision in the case of **P. Swaroopa Rani V. M. Hari Narayana alias Hari Babu; AIR 2008 SCC 1884** wherein it was held,

“17. It is, however, well settled that in a given case, civil proceedings and criminal proceedings can proceed simultaneously. Whether civil proceedings or criminal proceedings shall be stayed depends upon the fact and circumstances of each case.... Filing of an independent criminal proceeding, although initiated in terms of some observations made by the civil court, is not barred under any statute... It goes without saying that the respondent shall be at liberty to take recourse to such a remedy which is available to him in law. We have interfered with the impugned order only because in law simultaneous proceedings of a civil and a criminal case is permissible.”

22. Relying upon the principle laid down in the above case I am inclined to hold that despite pendency of any civil proceeding related to any property, a criminal case arising out the same property may be preceded independently as the nature and scope of the civil and criminal proceeding are different. Therefore, I do not find any reason to quash the criminal proceeding arising out of Hare Street Police Station Case No.326 of 2009 which relates to alleged misappropriation of company funds by the petitioner in C.R.R 1501 of 2014 and others and cheating.

23. As regards the impugned order dated 19.03.2013 passed by Chief Metropolitan Magistrate directing reinvestigation of the case, it appears to me that Learned Magistrate was not vested with the jurisdiction of directing reinvestigation in a case under Section 173(8) of Cr. P.C. It was appropriate on

the part of Learned Magistrate to direct further investigation into the case instead of reinvestigation if he found satisfactory reasons for the same.

24. In the case of **Vinay Tyagi Vs. Irshad Ali & Ors. reported in (2013) 5 SCC 762**, it was held by the Hon'ble Supreme Court as follows:

“45. The power to order/direct ‘reinvestigation’ or ‘de novo’ investigation falls in the domain of higher courts, that too in exceptional cases. If one examines the provisions of the Code, there is no specific provision for cancellation of the reports, except that the investigating agency can file a closure report (where according to the investigating agency, no offence is made out). Even such a report is subject to acceptance by the learned Magistrate who, in his wisdom, may or may not accept such a report. For valid reasons, the Court may, by declining to accept such a report, direct “further investigation”, or even on the basis of the record of the case and the documents annexed thereto, summon the accused.

46. The Code does not contain any provision which deals with the court competent to direct “fresh investigation”, the situation in which such investigation can be conducted, if at all, and finally the manner in which the report so obtained shall be dealt with. The superior courts can direct conduct of a ‘fresh’/‘de novo’ investigation, but unless it specifically directs that the report already prepared or the investigation so far conducted will not form part of the record of the case, such report would be deemed to be part of the record. Once it is part of the record, the learned Magistrate has no jurisdiction to exclude the same from the record of the case. In other words, but for a specific order by the superior court, the reports, whether a primary report or a report upon “further investigation” or a report upon ‘fresh investigation’, shall have to be construed and read conjointly. Where there is a specific order made by the court for reasons like the investigation being entirely unfair, tainted, undesirable or being based upon no truth, the court would have to specifically direct that the investigation or proceedings so conducted shall stand cancelled and will not form part of the record for consideration by the Court of competent jurisdiction.”

25. In another case relied on behalf of the petitioner in C.R.R 1501 of 2014, **Bhagwant Singh Vs. Commissioner of Police & Anr. reported in (1985) 2 SCC 537 @ page 541**, wherein it was held that,

“4. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156.....”

26. Learned advocate for the accused/petitioner argued that Learned Magistrate had the option to adopt any of the three courses of action on receipt of the police final report.

- i) He could have accept the report and dropped the proceeding.
- ii) He may have disagree with the report and taking the view that there is sufficient ground for proceeding further, taking cognizance of the offence, issued process and
- iii) He may direct further investigation to be made by the police under sub-section (3) of Section 156.

27. It is argued that Learned Magistrate did not comply these procedure, the impugned order passed by Learned Magistrate cannot be sustained.

28. I have perused the impugned order, ‘Naraji Petition’ and the materials in the Case Diary. Mr. Swapan Banerjee, learned advocate for the State submitted

that there are sufficient material to proceed with further investigation of the case.

29. Having considered the facts and circumstances and the nature of allegations made against the accused/petitioner, I am of the view that the Investigating Agency should be directed to continue with further investigation of the case after taking into consideration all material particulars and tangible material. A Final Report in such a case is unacceptable.

30. The impugned order passed by Learned Magistrate dated 19.03.2013 is not tenable to the extent that he had directed reinvestigation of the case. It would be appropriate to direct the Investigating Agency to continue with further investigation of the case. Accordingly the impugned order dated 19.03.2013 is modified in the light of my above discussion. O.C Hare Street Police Station is directed to cause further investigation into Hare Street Police Station Case No. 326 of 2009 dated 03.06.2009, deputing a competent police officer other than the earlier investigating officer.

31. The revisional application bearing no. C.R.R 1501 of 2014 is accordingly allowed in part on contest.

32. In the light of my above discussion C.R.R No.1739 of 2014 is disposed of.

33. Interim order if any stands vacated. Let a copy of this order be communicated to Learned Chief Metropolitan Magistrate, Calcutta, for information and taking appropriate action for further investigation. In the light of my above discussion.

34. All parties to act on the basis of a server copy of the Judgment and Order placed on the official website of the Court.

35. Urgent Photostat certified copies of this order may be supplied to the parties expeditiously if applied for, maintaining all formalities.

(Ananda Kumar Mukherjee, J.)