

01.12.2022

Item No.19
Ct.No.34
dc.

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

C.R.R. 2169 of 2021

**Padma Agarwal
versus
State of West Bengal & Ors.**

In Re: An Application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. Satadru Lahiri,
Mr. Naresh Balodia,
Mr. Pallav Choudhury ... For the Petitioner.

Mr. Swapan Banerjee,
Mrs. Sujata Das ... For the State.

Mr. Apurba Kumar Datta
 ... For the Opposite Party Nos. 2, 5, 11 & 12.

Mr. Sajal Kumar Ghosh ... For the Opposite Party Nos. 8 & 9.

The petitioner approached this Court challenging the order dated 19.10.2020 passed by learned Chief Judicial Magistrate, Paschim Bardhaman in connection with Complaint Case No. 1054 of 2020 wherein the prayer advanced by the petitioner under Section 156(3) of the Code of Criminal Procedure was dismissed.

The learned Chief Judicial Magistrate, Paschim Bardhaman rejected the prayer under Section 156(3) of the Code of Criminal Procedure after receiving the report. The report, in fact, on certain issues supports the claim of the present petitioner. This Court in course of hearing of this revisional application also called for a report. The Inspector-in-Charge, Asansol (South) P.S., ADPC submitted a report before this Court. The report is self-contradictory in view of

the fact that there is admission regarding illegal construction/encroachment, but the police authorities have said that such activity is being carried on for a considerable period of time and people are carrying on their business in such manner in the public place. It is also stated in the report that trade licence has been issued by the Municipal authorities.

I have considered the report submitted by the Inspector-in-Charge, Asansol (South) P.S., ADPC. I have also heard the submissions of the learned advocates appearing for the parties. On assessment of the report as well as the allegations made in the complaint under Section 156(3) of the Code of Criminal Procedure, I am of the view that the petitioner should be allowed to prove his case on his own.

Accordingly, the application under Section 156(3) of the Code of Criminal Procedure filed before the learned Chief Judicial Magistrate, Paschim Bardhaman be treated as an application under Section 200 of the Code of Criminal Procedure. The petitioner will examine himself as also other witnesses in his support.

The learned Chief Judicial Magistrate, Paschim Bardhaman would allow an investigation to be carried out under Section 202 of the Code of Criminal Procedure by a police officer of his choice. The limited purpose for such investigation would be allowing the complainant to place the documents which are there in the custody of the government department or the statutory authorities and an assessment

regarding the alleged offences as narrated in the complaint. After such process is over, the learned Magistrate, in seisin of the matter, would assess regarding the allegations made in the petition of complaint, the initial deposition of the complainant and its witnesses and the materials collected in course of the investigation and the report so submitted in connection with the investigation under Section 202 of the Code of Criminal Procedure. The learned Magistrate would thereafter exercise his discretion under Section 203 of the Code of Criminal Procedure or Section 204 of the Code of Criminal Procedure and proceed in accordance with law.

With the aforesaid observations, the revisional application being CRR 2169 of 2021 is disposed of.

All pending connected applications, if any, are consequently disposed of.

All parties shall act on the server copy of this order duly downloaded from the official *website* of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)