

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

Present:

The Hon'ble Justice Ajoy Kumar Mukherjee

C.R.R. 3066 of 2019

Smt. Jayashree Devi

-vs-

The State of West Bengal & anr.

For the Petitioner : Mr. Saptarshi Roy
Mr. Debrup Bhattacharya
Ms. Kakali Das Chakraborty

For the State : Mr. Arijit Ganguly
Mr. Bibaswan Bhattacharya

For the Opposite Party No.2 : Mr. Sabir Ahmed
Mr. Mujibar Ali Naskar

Heard on : 13.6.2022

Judgment on : 27.06.2022

Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the order dated July 25, 2019 passed by the learned Judicial Magistrate, 7th Court at Alipore in B.G.R. Case No.6089/2019 arising out of Maheshtala P.S. Case No. 775 of 2015 dated December 09, 2015 under Sections 447/325/354/506/34 of the Indian Penal Code directing to treat the protest petition as a complaint to deal with the same as required under Section 200 read with 202 of the Code of Criminal Procedure, the present revisional application has been preferred.

2. It has been contended that on December 09, 2015, around 11:30 a.m. while the present petitioner engaged some persons to fill up her own possessed

land, suddenly opposite party No. 2 Baikuntha Nath Ojha who is a police personnel along with his men and agents, namely, K.D. Singh, Rajesh Singh, Sailendra Singh and Gopal Singh illegally entered into the said plot of land of the petitioner and forcefully stopped the undergoing work therein and demanded Rs.1,00,000/- from the petitioner so that she can continue with her work peacefully without any disturbance. As the petitioner raised her objection to such illegal demand, they started threatening the petitioner and told her that she will have to face dire consequences. When the petitioner still did not bend down to their demand, the said accused persons including said Opposite Party No. 2 became furious and started to assault the petitioner physically with hockey stick, iron rod, bricks and also outraged her modesty and for which the petitioner sustained several injuries.

3. Thereafter, the petitioner went to police station to lodge complaint by way of First Information Report against the accused persons, namely, Baikuntha Nath Ojha, K.D. Singh, Rajesh Singh, Sailendra Singh and Gopal Singh which has been registered as Maheshtala P.S. Case No.775 of 2015 dated December 09, 2015 under Sections 447/325/354/506/34 of the Indian Penal Code.

4. It is alleged that the investigating officer after completion of investigation submitted charge-sheet under Sections 341/325/354/506/34 of the Indian Penal Code without going into the appropriate test of investigation and prayed for discharge of the FIR named Opposite Party No.2 Baikuntha Nath Ojha. It is further stated that the charge-sheet clearly spelt out that investigation was not done properly and due to connivance of the said accused namely Baikuntha Nath Ojha with the concerned investigating officer of the case, the

Investigating Officer submitted the perfunctory charge-sheet for which the petitioner submitted protest petition against the said final report on the ground of irresponsible and negligent investigation and also for the failure to collect the seized weapon from the accused persons.

5. Mr. Saptarshi Roy, learned counsel for the petitioner submits that aforesaid Opposite Party No. 2 is an influential person having entangled with the police department and for which investigating officer is very much negligent in making proper investigation into the matter.

6. Learned Judicial Magistrate by his order dated July 25, 2019 was pleased to allow the protest petition/naraji petition filed by the petitioner and refused to accept the final report filed by the police but directed to treat the instant protest petition as a complaint to deal with the same as required under Section 200 read with 202 of the Code of Criminal Procedure.

7. It is submitted by Mr. Roy on behalf of the petitioner that if the order impugned sustains that will cause multiplicity of proceedings and learned Magistrate failed to consider that if the investigation is not conducted in proper compliance with the established legal procedure, then such can be done in the existing B.G.R. proceeding by way of directing further investigation and by filing supplementary final report and for that purpose no fresh complaint case is required to be initiated. Accordingly, Mr. Roy submits that the learned Magistrate ought to have ordered for further investigation in the instant case as it is apparent that the investigating agency acted in an absolutely biased manner solely due to the reason that the primary accused person i.e. Opposite Party No. 2 is a police personnel.

8. In reply, Mr. Arijit Ganguly, learned counsel appearing on behalf of the State submits that during investigation, police had seized the attendance register of said Baikuntha Nath Ojha who is an ASI 8431 posted at Lalbazar and it appears that on the concerned date he attended office of Kolkata Police, Lalbazar at 10:30 hours and in reply to a query the Public Relation Officer, Kolkata Police, Lalbazar has informed that as per attendance register of Office of the Kolkata Police, Lalbazar, Baikuntha Nath Ojha, ASI was present in the said office from 10:30 hours to 18:00 hours on and from December 8, 2015 to December 10, 2015.

9. On perusal of the charge-sheet dated February 2, 2018 which was placed before the learned Magistrate on December 21, 2018, it appears that the said Baikuntha Nath Ojha has been discharged from the case as *“during investigation no evidence could be collected against accused Baikuntha Nath Ojha as noted in column no.13, so he may kindly be discharged from this case”*.

10. It is curious enough that in spite of incriminating materials in the case diary said Baikuntha Nath Ojha was discharged from this case without assigning reason as to what prompted them to write no evidence could be collected against him.

11. It appears from the statement as recorded under Section 161 of the Code of Criminal Procedure, one Punam Jha who is the next door neighbour of the victim has attributed specific allegation against said Baikuntha Nath Ojha by stating that Baikuntha Nath Ojha along with others had mercilessly beaten Jayashree Devi and also outraged her modesty and by which Jayashree Devi sustained cut injury on her forehead. On the basis of the prayer for recording statement of Jayashree Devi under Section 164 of the Code of Criminal

Procedure, learned Magistrate allowed the same vide order dated June 9, 2017 and said victim Jayashree Devi has categorically stated on oath that police intentionally has discharged Baikuntha Nath Ojha from charge-sheet and she specifically stated in her statement that on the date of occurrence Baikuntha Nath Ojha actually had beaten her a lot. The said Punam Jha who is a next door neighbour has also made statement before the learned Magistrate on oath under Section 164 of the Code of Criminal Procedure and she has stated that she had seen that Baikuntha Nath Ojha had assaulted the victim Jayashree Devi mercilessly.

12. It is curious enough that in spite of these statements in the case diary made on oath along with the injury report of Jayashree Devi which apparently constitutes cognizable offence against the Opposite Party No. 2, how the investigating agency discharged said accused Baikuntha Nath Ojha without making any investigation inspite of incriminating materials in the case diary and submitted charge-sheet stating that during investigation, no evidence could be collected against the accused Baikuntha Nath Ojha.

13. It is true that during investigation police has collected the attendance register wherefrom they wanted to establish that on the date of occurrence Opposite Party No. 2 attended office at 10:30 a.m. and he was remained present at the office till 6:00 p.m. but it remains unexplained in the charge sheet as to why that copy of the attendance register has been taken as sacrosanct and why they have disbelieved the statement made by eye witnesses on oath against accused Baikuntha Nath Ojha. Even if they are to rely upon the attendance register in the charge-sheet, they were duty bound to explain why they had not placed reliance upon the materials in the case diary

including statements under Sections 161 and 164 of the Code of Criminal Procedure and the injury report.

14. In view of the aforesaid discussion, there is sufficient material to believe the statements of the victim recorded under Section 164 of the Code of Criminal Procedure wherein she has categorically stated that as accused Baikuntha Nath Ojha is a police personnel, so police has intentionally discharged him from the charge-sheet.

15. In view of the above, CRR 3066 of 2019 is hereby disposed of with a direction upon the Magistrate to ask the investigating agency to make further investigation by a different investigation officer in respect of the intimidating materials available against the Opposite Party No. 2 Baikuntha Nath Ojha and to submit a supplementary report in final form either by way of charge-sheet or otherwise, assigning reason in support of said supplementary report filed in connection with further investigation in respect of Baikuntha Nath Ojha.

16. The order dated July 25, 2019 passed by the learned Judicial Magistrate, 7th Court, Alipore is accordingly set aside.

However, there shall be no order as to costs.

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

(AJAY KUMAR MUKHERJEE, J.)