

16.12.2022

CRR/4038/2022

Bipasha Sen Roy

-Vs-

The State of West Bengal & Anr.

For the petitioner: Mr. Ayan Bhattacharjee, Adv.,
 Mr. Suman Majumder, Adv.,
 Mr. Subhajit Manna, Adv.

This application under Section 482 of the Code of Criminal Procedure filed by the petitioner praying for quashing of the proceeding of C.G.R Case No.4811 of 2018 arising out of Lake Police Station Case No.196 of 2018 under Section 408/411 of the Indian Penal Code pending before the learned Judicial Magistrate, 7th Court at Alipore. The petitioner has also assailed the order dated 11th May, 2022 passed by the ld. Judicial Magistrate, 7th Court at Alipore in connection with the abovementioned Police Case directing the Officer-in-Charge Lake Police Station to conduct further investigation against the petitioner on the basis of a Naraji petition filed by the opposite party No.2.

Learned Advocate for the petitioner submits as follows: The opposite party No.2 is a Film Actress also having a production house under the name and style of Bhavna Aaj O Kal. She employed one Bodhi Sattwa Bhattacharya to look after marketing of her production house purely on contractual basis. The said person was subsequently found to be a drug addict and habitual drunkard. He also used to make lewd comments towards female friends and staff of the opposite party No.2/defacto complainant. So she terminated his service with effect from October, 2018. It is alleged by the defacto complainant that during his employment, the above named accused committed theft in respect of valuable

documents, personal laptop, photographs of the defacto complainant etc. and had been threatening her and her husband in order to extort money from the defacto complainant. It is further submitted by the petitioner that the petitioner was the wife of the above named accused. Their marriage was dissolved by a decree of divorce on 15th November, 2021. During investigation of the aforementioned case the investigating officer seized the laptop of defacto complainant and some other documents under a seizure list dated 3rd December, 2018 and police submitted charge-sheet on 30th December, 2018 against the abovementioned accused. Subsequently the petitioner filed an application under Section 173(8) of the Cr.P.C praying for a direction upon the investigating officer of the jurisdictional police station for carrying on further investigation.

It is submitted by the learned Advocate for the petitioner that Section 27 of the IPC clearly lays down:-

“When the property is in the possession of a person’s wife, clerk or servant, on account of that person, it is in that person’s possession within the meaning of this Code.”

The petitioner cannot be held liable on the ground that the laptop of the defacto complaint was seized from her possession because under Section 27 of the IPC the possession by the wife is to be treated on account of her husband’s possession.

It is further submitted by the learned Advocate for the petitioner referring to paragraph 25 of the **Vinubhai Haribhai Malaviya vs. State of Gujarat & Anr.** reported in **(2019) 17 SCC 1** that a Naraji petition pertains to be in the nature of an application under Section 156(3) of the Cr.P.C. Such petition is therefore required to be supported by an affidavit. Verified petition praying for further investigation cannot be entertained by the learned

Magistrate therefore the impugned order dated 11th May, 2022 is bad in law.

Having heard learned Advocate for the petitioner and on careful perusal of the entire materials on record, it is stated that whether a person being the wife of the principal accused is retaining possession of the stolen property on behalf of her husband or such possession is to be treated as joint possession is a disputed question of fact to be determined only at the time of trial on the basis of evidence on record. At this stage the petitioner cannot get the benefit of Section 27 of the IPC specially when it was within her knowledge that the said laptop does not belong to her ex-husband.

Paragraph 25 of the **Vinubhai Haribhai Malaviya & Ors. vs. State of Gujrat & Anr.** states as follows:-

“25. It is thus clear that the Magistrate's power under Section 156(3) Cr.P.C is very wide, for it is this judicial authority that must be satisfied that a proper investigation by the police takes place. To ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police—which such Magistrate is to supervise—Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to enure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the “investigation” referred to in Section 156(1) Cr.P.C would, as per the definition of “investigation” under Section 2(h), include all

proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) Cr.P.C.”

The above observation made by the Hon’ble Supreme Court speaks about the extent of power of a Magistrate while dealing with an application under Section 173(8) of the Cr.P.C. Hon’ble Supreme Court was pleased to lay down that the Magistrate’s power directing further investigation under Section 173(8) of the Cr.P.C is similar to his power under Section 156(3) of the Cr.P.C because it is the duty of the Magistrate to see that a proper investigation by the police takes place.

The Hon’ble Supreme Court did not lay down any guideline that a protest petition is required to be supported by an affidavit in terms of the decision of the Apex Court in **Priyanka Srivastava’s** case.

The Hon’ble Supreme Court’s guideline in **Priyanka Srivastava** case operates on different facts and circumstances and were issued to check unscrupulous unprincipled and deviant litigants from taking recourse of law only to harass the statutory authorities.

Therefore, I am of the considered view that a Naraji petition is not required to be compulsorily supported by an affidavit.

For the reason stated above, I do not find any merit in the instant revision and accordingly the instant revision is dismissed.

(Bibek Chaudhuri, J.)