

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R.75 of 2017

With

IA No. CRAN 1 of 2018 (CRAN 3059 of 2018)

Vs.

The State of West Bengal & Ors.

For the Petitioner

:Mr. Sandip Bhattacharyya, Adv.
Mr. Apalak Basu, Adv.
Mr. Dipta Banerjee, Adv.

For the State

:Mr. Binay Kumar Panda, Adv.
Mr. Subham Bhakat, Adv.

For the opposite party nos. 2 to 7

:Mr. Kallol Mondal, Adv.
Mr. Krishan Ray, Adv.
Mr. Souvik Das, Adv.
Mr. Anamitra Banerjee

Heard on :13.09.2023, 05.10.2023
28.11.2023,

Judgment on :15th December, 2023

Bibhs Ranjan De, J.

1. This revision application assailed the order passed on 29.11.2016 by the Learned Additional Sessions Judge, Fast Track Court II, Bichar Bhawan, Calcutta in connection with Criminal Revision No. 138 of 2016 affirming the order dated 29.07.2016 passed by Learned Additional Chief Metropolitan Magistrate (for short A.C.M.M), 2nd Court, Calcutta in Misc. Case No. 44/2016, rejecting the application filed at the behest of the petitioner before the Ld. A.C.M.M on 08.07.2016.
2. Briefly stated petitioner of this revision application filed a complaint under Section 156 (3) of the CrPC before the Ld. A.C.M.M Calcutta, against her husband and in-laws alleging, *inter alia*, that she was subjected to inhuman torture in her matrimonial house by the accused persons at her matrimonial home on demand of money and she was also raped by her husband in front of her eldest daughter. She lodged a complaint at the Police Station but no result was yielded. That

is why, the petitioner filed the complaint under Section 156(3) of CrPC.

3. On receipt of that application under Section 156(3) Ld. A.C.M.M forwarded the same to Bowbazar PS for investigation. The case was registered as Bowbazar Police Station Case No. 199 dated 18.06.2016 but Investigation Officer (for short IO) started the case under Section 498A /406/34 of the Indian Penal Code (for short IPC) read with section 3 /4 of the DP Act. Thereby, deleting Section 376 /420 of the IPC and reported the same to the Court of Ld. A.C.M.M on 08.07.2016 when petitioner also filed an application raising objection for deletion of Section 376/420 IPC.
4. The said application filed by the petitioner on 08.07.2016 was heard on 29.07.2016 and the Ld. A.C.M.M. passed the impugned order as follows:

“..... Having considered the submission and position of law as enshrined in the I.P.C I find that the present de facto complainant is not minor. Furthermore this Court has every right to monitor the investigation and guide the investigating authority in conducting investigation properly. There is no scope for this Court to enforce the IO to put any specific section. The investigation is the domain of the IO.

Any aggravated section of the Code can be inserted by the IO at any stage of investigation if the IO finds proper reasons behind it. Investigation of this case is at initial stage and at this stage there is no scope for this Court to pass any order which will prejudice the investigation. Otherwise instead of monitoring the investigation, this Court will become a part of the investigating authority. State forbids me to do such an act. Therefore, I do not find any reason to poke my judicial nose into the investigation for the purpose of insertion of section 376 IPC at this stage of investigation. Therefore the prayer of the de facto complainant is hereby rejected. Accordingly the Misc. Case is hereby dropped.”

- 5.** Being aggrieved, petitioner of this revision application preferred criminal revision before the Ld. Sessions Judge, Calcutta which was ultimately heard and disposed of by the Ld. Additional Sessions Judge, Fast Tract Court II, Bichar Bhawan, Calcutta by the following order as follows:-

“... There is provision about the offence of rape by husband with his wife which is described under section 376A of the I.P.C as “sexual intercourse with his own wife who is living separately from his under a decree of separation or any custom or usage without her consent is punishable and the husband

may be punished for two years and with fine. This section provides when the sexual intercourse by husband with his wife is punishable. In this case, this section is not applicable. It is not case of the petitioner that she was living separately on the basis of decree/order of the court or custom. The forceful sexual intercourse by a person with his wife comes into category of domestic cruelty. In view of the above discussion, I find that the Ld. Magistrate committed no mistake in rejecting the prayer of the complainant/petitioner/revisionist. So, this court finds no ground to interfere with the finding of the Ld. Magistrate in passing he order dated 29.07.2016.

Hence it is,

Ordered,

that the Criminal Revision Application No. 138 of 2016 be and same is rejected and the order dated 29.07.2016 passed by Ld. Addl. Chief Metropolitan Magistrate, 2nd Court, Calcutta in Misc. Case no 44/2016 is hereby affirmed. Copy of the order along with LCR be sent back to the Ld. Metropolitan Magistrate, 2nd Court, Kolkata at once."

Argument:-

6. Learned Advocate, Mr. Sandip Bhattacharyya, appearing on behalf of the petitioner has contended that IO has no authority

to delete any penal provision from the formal First Information Report (FIR). In support of his contention, he has referred to the application under Section 156(3) CrPC containing the allegation of the offence under Section 376/420 IPC but I.O. deleted those Sections from the formal FIR at the time of registration. In support of his contention, he referred to the following cases:-

- ***Ramesh Kumari Vs. State (NCT of Delhi) and other*** reported in ***(2006) 1 Supreme Court Cases (Cri) 678***
- ***Parkash Singh Badal and another Vs. State of Punjab and others*** reported in ***(2007) 1 Supreme Court Cases (Cri) 193***
- ***Lalita Kumari Vs. Government of Uttar Pradesh and others*** reported in ***(2014) 1 Supreme Court Cases (Cri) 524***

7. Per contra, Mr. Kallol Mondal, appearing on behalf of the opposite parties has submitted that charge has already been framed in the case and ready for trial. Therefore, the instant revision application has become infructuous. Mr. Mondal has further submitted that even on behalf of the petitioner a letter was addressed and sent to the Officer in-charge, Bowbazar

Police Station asking to direct his I.O. of the case to abstain from filing the final report despite rejection of such prayer by the Ld. A.C.M.M, 2nd Court, Calcutta vide order dated 29.07.2016.

8. Mr. Mondal has further contended that the constant prayer of the petitioner for incorporation of Section 376/420 of IPC was validly refused by the Ld. Courts as the complaint did not give any scope for incorporation of such Sections by the investigating agency as they are non-existent proposition of law.

9. Ld. Advocate, Mr. Binoy Kumar Panda, appearing on behalf of the State, supported the argument advanced on behalf of the opposite parties.

Decision:-

10. Only issue in this case is whether IO can add or delete any section at the time of registering FIR within the meaning of Section 154 CrPC which is as follows:-

“154. Information in cognizable cases.

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as

aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.”

11. Provision of Section 154 CrPC deals with the duty of officer in-charge of the police Station after receiving an information, either oral or in writing, in respect of any cognizable offence. The Provision casts a mandatory duty upon the officer in-charge of the Police Station to register the same and investigate.

12. The cases relied on behalf of the petitioner also dealt with the mandatory duty of officer in-charge of the Police Station regarding information relating to cognizable offence and

consequence of non-compliance thereof. It was further held that at the time of registration of the case police office has no authority to verify the veracity of the complaint.

13. Mr. Bhattacharyya has tried to make this Court understand that investigation of a case depends on the Sections put in the formal FIR at the time of registration of the case.

14. I am sorry to subscribe to this view that investigation of a case depends on the Sections inscribed on the formal FIR. I.O. having exclusive domain over the investigation has ample power to add any Sections during investigation subject to permission of the Jurisdictional Court. Even after submission of report in final form by the I.O., defacto complainant/victim has also been empowered to submit application before the Jurisdictional Court for further investigation. After submission of report in final form under Section 173 of CrPC Trial Court also has been empowered under Section 216 of the CrPC to alter or add to any charge in terms of evidence recorded at any stage of trial.

15. That apart, in absence of any law declared under Article 141 of the Constitution of India as well as codified law, I am

unable to interfere with the reasons assigned in the order dated 29.11.2016 whereby Ld. Additional Sessions Judge, Fast Track Court II, Bichar Bhawan affirmed the order dated 29.07.2016 passed by Ld. A.C.M.M., 2nd Court, Calcutta in Misc. Case No. 44 /2016.

- 16.** As a sequel, revision application being no. CRR 75 of 2017 stands dismissed.
- 17.** Interim order, if there be any, stands vacated.
- 18.** Pending application also stands disposed of.
- 19.** All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.
- 20.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]