

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 429 of 2023
Bhaskar Biswas and Ors.
Vs.
The State of West Bengal

For the Petitioner: Mr. Apalak Basu, Adv.,
 Mr. Nazir Ahmed, Adv.

For the State: Mr. Sudip Ghosh, Adv.,
 Mr. Sandip Chakrabarty.

Heard on: 14 March, 2023.

Judgment on: 14 March, 2023.

BIBEK CHAUDHURI, J. : –

1. An order dated 3rd February, 2023 passed by the learned Additional Sessions Judge, 3rd Court at Barasat, North 24 Parganas in SC No.427 of 2022 corresponding to GR Case No.2834 of 2022 is assailed by the accused persons/petitioners in the instant revision.

2. For proper adjudication of the revision, the following facts are briefly recorded:-

3. On 11th July, 2022 one Jiarul Islam lodged a written complaint at Rajarhat P.S alleging, inter alia, that on 9th July, 2022 he came to know that his brother was lying dead near water tank of village Garagari. He was taken to local hospital by some police personnel. It is also alleged in the written complaint that the victim was manhandled by some local persons causing fatal injury on his head. The said written complaint gave

rise to Rajarhat Police Station Case No.230 of 2022 dated 10th July, 2022 under Sections 304/34 of the IPC. The Investigating Officer submitted charge-sheet under Sections 302/34 of the IPC against the petitioners on completion of investigation.

4. The defacto complainant subsequently filed a writ petition under Article 226 of the Constitution before this Court which was registered as WPA 23964 of 2022 alleging, inter alia, that he was given initially a sum of Rs.500/- and thereafter Rs.10,000/- by the police attached to Rajarhat Police Station to lodge a false complaint against some innocent persons and the FIR and charge-sheet are deliberate attempts by police to cover up and protect the real culprits. One Ranjit Nath who was signed as an eye witness in the charge-sheet also filed another writ petition bearing No.WPA 558 of 2023 stating, inter alia, that he was forced by the police to depose as a witness and he was not present near the scene of crime at the relevant point of time.

5. The writ court directed the Commissioner of Bidhannagar Police Commissionerate to inquire into the matter as to whether the defacto complainant was given some money by the police attached to Rajarhat Police Station. The Inspector-in-Charge of Rajarhat Police Station and Assistant Commissioner of Police, Rajarhat Zone, Bidhannagar Police Commissionerate submitted separate reports admitting, inter alia, that the defacto complainant received certain sums of money from the police on two occasions as a humanitarian gesture to enable the defacto complainant to cremate the body of his brother.

6. A Coordinate Bench of this Court while disposing of the above mentioned writ petition observed:-

“The entire facts as narrated above throw up some serious questions as regards the charge-sheet filed. It cannot be ruled out that the real culprits involved in the murder may still be at large. There is a likelihood of the persons named in the charge-sheet being acquitted.”

7. On the basis of such observation the writ court directed, CID, West Bengal to take over the investigation and conduct the same afresh. The Investigating Officer was directed to handover the case diary and all evidence and papers in connection with the matter to the CID, West Bengal.

8. At this stage the petitioners have joined the issue. The grievance of the petitioners is that by directing CID, West Bengal to investigate into the case afresh, the writ court practically quashed entire investigation and charge-sheet submitted by the Investigating Officer of Rajarhat Police Station. Therefore, the order of remand of the accused persons to judicial custody cannot be sustained.

9. Mr. Basu, learned Advocate for the petitioners submits relying on **Nettu Kumar Nagaich vs. State of Rajasthan & Ors.** reported in **(2020) 16 SCC 777** that normally when an investigation has been concluded and police report submitted under Section 173(2) of the Code, it is only further investigation that can be ordered under Section 173(8) of the Code. But where the constitutional court is satisfied that the investigation has not been conducted in a proper and objective manner, as observed

in **Kashmeri Devi vs. Delhi Administration** reported in **(1988) SCC (Cri) 864**, fresh investigation with the help of an independent agency can be considered to secure the ends of justice so that the truth is revealed. Thus, a court exercising constitutional writ jurisdiction under Article 226 of the Constitution can very well pass within its jurisdiction an order for *denovo* and/or fresh investigation by an independent agency when the materials on record shows that investigation has not been conducted in a proper and objective manner.

10. In the instant case the *defacto* complainant was admittedly given money by the police attached to Rajarhat Police Station. It was pleaded on behalf of the police authority before the constitutional court that police given money to the *defacto* complainant on humanitarian consideration. The witness who was cited in the charge-sheet as the eye witness informed the constitutional court by filing a writ petition that he was not present near the scene of occurrence on the date and time of institution. Therefore, the constitutional court directed CID, West Bengal to investigate into the matter afresh.

11. It is further submitted by Mr. Basu that direction passed by the constitutional court in the aforesaid writ petition is not a direction under Section 173(8) of the Code of Criminal Procedure. Fresh investigation was directed to be made by the CID in the instant case. Therefore, on the basis of the charge-sheet which was effectively quashed by the constitutional court cannot be the basis of remanding the petitioners in custody. In support of his contention he refers to the **Rama Chaudhary vs. State of**

Bihar reported in **(2009) 6 SCC 346** and **K. Chandrasekhar vs. State of Kerala** reported in **(1998) 5 SCC 223**. It is held in K. Chandrasekhar in clear and specific words that a fresh investigation or reinvestigation is to be started *ab initio* wiping out the earlier investigation altogether.

12. The constitutional court when directed fresh investigation, previous investigation conducted by the police attached to Rajarhat Police Station and consequent charge-sheet are deemed to be quashed. The accused persons also cannot be detained in custody on the basis of the investigation and charge-sheet which have been quashed.

13. Learned P.P-in-Charge, on the other hand submits that as per the direction of the writ court in WPA 23964 of 2022 the CID took up fresh investigation of the case. During investigation, the Investigating Officer of CID examined number of witnesses and recorded their statements under Section 161 of the Cr.P.C. During investigation the Investigating Officer also found one witness who claimed to be the eye witness of the occurrence. The accused persons/petitioners were produced in Test Identification Parade. The witness who claimed that he saw the incident identified accused Bhaskar Biswas and Babusona Biswas as the offender who committed murder of the brother of the defacto complainant.

14. It is needless to say that when a case is made over to another Investigating Agency on the basis of any order passed by a court or on some other reason the subsequent Investigating Officer who is under obligation to conduct fresh investigation or further investigation. Receives the case diary, seized materials as well as custody of the accused who

were arrested during previous investigation under his custody. Thereafter, the new Investigating Officer proceeds with the investigation afresh.

15. In the instant case when CID took up investigation of the case accused Bhaskar Biswas and Babusona Biswas who were identified in TI Parade conducted by the CID were in custody. Therefore, it was not necessary for the subsequent Investigating Officer to formally arrest the accused persons and pray for fresh remand.

16. Since accused Bhaskar Biswas and Babusona Biswas were identified in TI Parade and investigation is still in progress and above all this Court does not have any determination of bail jurisdiction of the High Court at Calcutta, this Court does not find any ground for interference against the impugned order.

17. With regard to accused Hari Das Hati, this Court is of the view that the above named accused may prefer an application for bail in the trial court in view of the changing circumstances and the learned trial court shall decide the prayer for bail in accordance with law.

18. For the reasons stated above I do not find any reason to interfere with the instant revision and accordingly instant revision is dismissed on contest.

19. The case diary be returned to the learned P.P-in-Charge.

(Bibek Chaudhuri, J.)