

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 473 of 2020

Sukumar Mondal

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Amal Krishna Samanta.

For the State : Mr. S.G. Mukerji, Ld. P.P.,
Ms. Anasuya Sinha,
Mr. Pinak Kumar Mitra.

Hearing concluded on : 03.08.2023

Judgment on : 24.08.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 20.11.2019 passed by the Learned Additional Chief Judicial Magistrate, Chanchal, Malda, rejecting the prayer of the petitioner under Section 167(5) or the Code of Criminal Procedure and as also quashing of the proceeding being G.R. Case No. 2082 of 2014 arising out of Ratua Police Station Case No. 691 of 2014 dated 31.12.2014 under Sections 363/366A/365 of the Indian Penal Code, pending before the Court of Learned Additional Chief Judicial Magistrate, Malda.
2. The petitioner's case is that on 31.12.2014, one Bharat Mondal, son of Dhiren Mondal, residing at Village - Piyari Sarkartola, Police Station – Ratua, District – Malda, lodged one written complaint before the Officer-in-Charge, Ratua Police Station to the effect that on 30.12.2014 at about 8.00 A.M., his minor sister namely Kunti Mondal went for private tuition and on the way the accused person namely Sukumar Mondal restrained and kidnapped her.
3. On the basis of the said complaint the present case being Ratua Police Station Case No. 691/2014 dated 31.12.2014 under Sections 363/366A/365 of the Indian Penal Code was started against the petitioner.

4. Order dated 06.01.2015 reflects that the victim girl was recovered, her statement was recorded under Section 164 Cr.P.C. and thereafter she was handed over to her legal guardian.
5. Order dated 16.04.2015 reflects that the Investigating Officer of the present case prayed before the Learned Trial Court for adding Section 376 of the Indian Penal Code.
6. **Order dated 03.01.2019 reflects that the record was misplaced, and was put up on 03.01.2019 (same day).**
7. On 30.01.2019, the petitioner filed a petition under Section 167(5)(ii) before the Learned Magistrate and prayed for discharge in the present case.
8. On 20.11.2019, the Learned Additional Chief Judicial Magistrate, Chanchal, Malda rejected the prayer of the petitioner and allowed the prayer of Investigating Officer for adding Section 376 of the Indian Penal Code.
9. **Mr. Amal Krishna Samanta, learned counsel for the petitioner** has submitted that the Learned Magistrate did not realise the conduct of the G.R.O. which was not at all acceptable and as such the order dated 20.11.2019 is liable to be set aside.
10. That the Learned Magistrate neither followed the statute nor went through the provision of law and as such the order dated 20.11.2019 is liable to be set aside.

11. That the Case Diary was lying in the custody of Investigating Officer and the said Officer neither developed the investigation nor prayed before the Learned Court for extension of the period of investigation and hence the investigation should be stopped and the order dated 20.11.2019 is liable to be set aside and the proceeding is also liable to be quashed.

12. Mr. Samanta has relied upon the judgment:-

In **B. Premanand & Ors. vs Mohan Koikal & Ors., Civil Appeal No. 2684 of 2007, on 16 March, 2011**, wherein a Co-ordinate Bench of this Court observed:-

"In M/s. Hiralal Ratanlal vs. STO, AIR 1973 SC 1034, this Court observed:

"In construing a statutory provision the first and foremost rule of construction is the literal construction. All that the Court has to see at the very outset is what does the provision say. If the provision is unambiguous and if from the provision the legislative intent is clear, the Court need not call into aid the other rules of construction of statutes. The other rules of construction are called into aid only when the legislative intent is not clear."

(emphasis supplied)

It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation CIVIL APPEAL NO. 2684 OF 2007 other than the literal rule, vide Swedish Match AB vs. Securities and Exchange Board, India, AIR 2004 SC 4219. As held in Prakash Nath Khanna vs. C.I.T. 2004 (9)

SCC 686, the language employed in a statute is the determinative factor of the legislative intent. The legislature is presumed to have made no mistake. The presumption is that it intended to say what it has said. Assuming there is a defect or an omission in the words used by the legislature, the Court cannot correct or make up the deficiency, vide Delhi Financial Corporation vs. Rajiv Anand 2004 (11) SCC.

625. Where the legislative intent is clear from the language, the Court should give effect to it, vide Government of Andhra Pradesh vs. Road Rollers Owners Welfare Association 2004(6) SCC 210, and the Court should not seek to amend the law in the garb of interpretation.”

- 13. Mr. Saswata Gopal Mukerji, learned Public Prosecutor** has placed the case diary and submitted **that the offence in this case is serious and charge sheet has already been submitted.** Unintentional delay if any in completing the investigation was, because the record had been misplaced in the trial court. And now that the investigation is complete, a case of such nature should not be quashed in the interest of Justice.

- 14.** The following judgments have been relied upon by the state:-

- i) *Nirmal Kanti Roy vs State of W.B., (1998) 4 SCC 590.***

“7. The order stopping further investigation into the offence and the consequential order of discharge are not intended to be automatic sequel to the failure to complete investigation within the period fixed in the sub-section. The succeeding words in the sub-section confer power on the court to refrain from stopping such investigation if the Investigating Officer satisfies the Magistrate of the fusion of two premises (1) that in the interest of justice it is necessary to proceed with the investigation beyond the period shown in the sub-section and (2) that there are special reasons to do so.

8. *A reading of sub-section (6) further shows that even in a case where the order stopping investigation and the consequent discharge of accused has been made that is not the last word on it because the sub-section opens another avenue for moving the Sessions Judge. If the Sessions Judge is satisfied that "further investigation into the offence ought to be made" he has the power to allow the investigation to proceed. Hence we take the view that the time schedule shown in Section 167(5) of the Code is not to be treated with rigidity and it is not mandatory that on the expiry of the period indicated therein the Magistrate should necessarily pass the order of discharge of the accused. Before ordering stoppage of investigation the Magistrate shall consider whether, on the facts of that case, further investigation would be necessary to foster interest of criminal justice. Magistrate at that stage must look into the record of investigation to ascertain the progress of investigation thus far registered. If substantial part of investigation was by then over, the Magistrate should seriously ponder over the question whether it would be conducive to the interest of justice to stop further investigation and discharge the accused."*

- ii) Sashi Bhusan Mahapatra Versus State of West Bengal, Kanailal Maity & Anr. Versus State of West Bengal & Panchanan Sau Versus State of West Bengal, (2007 SCC OnLine Cal 281).**

"12. *After hearing the learned Advocates of the respective parties and after taking into consideration the judgments of the Hon'ble Apex Court referred to above, we dispose of the present reference keeping in view the judgment of the Hon'ble Apex Court reported in 1998 Calcutta Criminal Law Reporter (SC) 123 (Nirmal Kanti Roy v. State of West Bengal). We are of the view that before passing any order of stoppage of investigation for non-completion of investigation within the statutory period as envisaged in the sub-section (5) of section 167 of the Code of Criminal Procedure as amended by the West Bengal Amendment Act of 1988, it is the duty of the Magistrate to look into the records of investigation done during the statutory period along with*

extended period to ascertain the progress of investigation and thereafter he will pass appropriate order. If after examining the records of investigation, the Magistrate is satisfied that there are sufficient materials for taking cognizance of the offence, he will pass appropriate order to that effect. Order for stoppage of investigation and discharge of accused by the Magistrate without applying his mind, would be improper.”

15. From the materials on record, it is evident that:-

- i.** The Trial court case record shows that, 16.04.2015, when the investigating officer prayed for adding Section 376 IPC, was the date after which the record went missing.
- ii. The record was traced out on 03.01.2019.**
- iii. Charge Sheet has been filed on 06.12.2019.**
- iv.** The petition under Section 167(5)(ii) Cr.P.C. was filed before that trial court on **18.01.2019** and disposed of on 20.11.2019 by rejecting the same. **The Magistrate by the said order also permitted to add Section 376 IPC against the Accused/Petitioner.**
- v.** The present revision has been filed on 03.01.2020, after filing of charge sheet.

16. Charge Sheet has been filed on 06.12.2019 under Sections 363/365/366A IPC but Section 376 IPC has not been added.

17. The Supreme Court in ***Durgesh Chandra Saha vs Bimal Chandra Saha and Ors., AIR 1996 SC 740, on 23 November, 1995***, held:-

“8. After giving our anxious consideration to the respective submission of the learned Counsel appearing for the parties

it appears to us that the language of Section 167(5) of Cr.P.C. as amended by the West Bengal Act is quite clear in indicating that the said section is applicable only in a case where the investigation was still pending but not in a case where investigation had been completed and the chargesheet had been filed. It appears to us that 167(5) Cr.P.C. as amended, is intended to ensure speedy completion of investigation within the time frame specified therein otherwise to face an order of discharge of the accused against whom investigation without any just cause to the satisfaction of the Court has been kept pending, where investigation has been completed, a different situation, not contemplated under Section 167(5) Cr.P.C. emerges. We may indicate here that if a criminal case is kept pending for a very long time without any just cause thereby seriously affecting the guarantee under Article 21 against deprivation of personal liberty, the law is well settled that the Court, in an appropriate case may quash the criminal proceeding as indicated in the Constitution Bench decision of this Court in A.R. Antulay's case. Hence unnecessary liberal construction of Section 167(5) Cr.P.C. with a view to protect the right against deprivation of personal liberty as contended by Mr. Ghosh is not called for."

- 18. In the present case,** charge sheet has already been filed and there being a prima facie case against the petitioner, the case should be permitted to proceed towards trial to prevent abuse of process of law.
- 19.** On perusal of the order dated 20.11.2019, it appears that the Learned Magistrate has passed the order in respect of the petitioner under Section 167(5) Cr.P.C., on applying the relevant provision of law and considering the total materials on records.
- 20.** The said order thus being in accordance with law requires no interference.
- 21. CRR 473 of 2020 is dismissed.**

22. The Trial Court is directed to proceed with the case expeditiously, on considering the materials on record and its order dated 20.11.2019 permitting adding of Section 376 of IPC.

23. All connected applications, if any, stands disposed of.

24. Interim order, if any, stands vacated.

25. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

26. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)