

05.01.2023

Court No.35
Item No. 2

D.Hira

CRR 679 of 2015

**Smt. Shova Rani Nandi (Das)
Vs.
The State of West Bengal & Ors.**

Ms. Shova Rani Nandi (Das),
... petitioner-in-person

Mr. Sujoy Sarkar.
... for the OP

Mr. Narayan Prasad Agarwala,
Mr. Pratick Bose.
... for the State

The petitioner who is appearing in this case in person has challenged the impugned order of the Trial Court dated 25th September, 2014 in G.R. Case No. 555 of 2014, now pending before the Trial Court i.e., Additional Chief Judicial Magistrate at Bolpur, Birbhum.

From the certified copy of the impugned order as annexed with the present petition, it transpires that by dint of the same, the Court has dealt with petitioner's prayer for further reinvestigation in this case upon submission of charge-sheet by police in connection with the Bolpur Police Station Case No. 311 of 2014 dated 5th July, 2014. The petitioner submitted her protest petition as against the charge-sheet and prayed for a direction of reinvestigation.

The Trial Court has rejected petitioner's prayer for re-investigation and dismissed her petition.

Being aggrieved the petitioner has come up in this revision, challenging the impugned order on the grounds, *inter alia*, that while passing the same the Trial Court has misdirected itself in considering the materials on record in its proper perspective.

It is also stated that the Trial Court has not considered the strong

prima facie case brought out in the complaint as well as from the materials collected by police during investigation, against the accused persons. The petitioner is aggrieved as regards exoneration of the two accused persons while submission of charge-sheet and states that the *prima facie* case made out against them was not considered.

The petitioner is also aggrieved that the materials though suggested and made out a cognizable case under Section 354 of the Indian Penal Code against one of the accused persons, the opposite party no. 2 in this revision, the purported charge-sheet has been filed bypassing the same and the Trial Court has passed the impugned order without application of mind to the said fact. The petitioner has urged that the Trial Court has not exercised power vested in law by issuing the order as impugned in this case. The same is liable to be set aside.

Mr. Sarkar, learned Advocate appearing for the opposite parties raises objections as to the contentions and prayer made by the petitioner in this revision. His first contention is that by the order impugned the petitioner may not be considered to have suffered any prejudice in so far as there are other legal provisions which the Trial Court can espouse in case, if it finds fit and proper to call for and examine the required witnesses.

It is further submitted that there is no illegality as such in the impugned order in so far as after taking cognizance of the case and issuance of process the Trial Court could not within the purview of law pass a direction to reinvestigate in a case.

It is submitted that the present revision is a misconceived one filed by the petitioner in the same is liable to be rejected.

Mr. Agarwala, learned Advocate appearing for the State submits on the basis of the materials available in case diary that the witnesses have stated about involvement of the opposite party no. 2 in commission of assault and applying criminal force to the petitioner during scuffling. He has also submitted that in so far as the opposite

party nos. 5 and 6 are concerned their involvement in commission of the alleged crime are not forthcoming of the materials available in case diary.

For the rest he has left the matter at the discretion of the Court.

Considered the submissions and perused the record. It can be gathered from the record that the complaint of the petitioner was lodged before the police on 5th July, 2014 wherein she has alleged of an offence dated 4th December, 2013. Allegedly the present opposite parties collectively broke into her house committed assault and theft. Specifically against the opposite party no. 2, his involvement in outraging modesty of the petitioner, has been pleaded and alleged.

According to the petitioner, the police has conducted a perfunctory investigation and ultimately submitted a charge-sheet which should not be maintainable in so far as the investigation has not revealed but only suppressed the actual facts of the case and truth has not been unearthed during such investigation. She filed a protest petition and prayer for reinvestigation in the Trial Court. The Trial Court considered that the same may not be maintainable in view of the fact that cognizance of the case has already taken and rejected her application.

During argument the learned Advocate for the opposite parties have relied on a judgment reported in ***AIR 2019 Supreme Court 5233 (Vinubhai Haribhal Malaviya & Ors. vs. The State of West Bengal & Ors.)*** and a judgment of the Coordinate Bench of this Court in ***CRR No. 47 of 2017 dated 23rd November, 2022 (Tapan Kumar Roy vs. The State of West Bengal & Ors.)***.

The provision for further investigation has been laid down under Section 173 (8) Cr.P.C, 1973 which may be quoted as herein below:-

“173(8). Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under

sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2)."

The Cr.P.C, 1973 has not provided for "reinvestigation".

The petitioner's grievance, as it has been discussed earlier is of performatory investigation and illegality of the impugned order dated 25th September, 2014. The petitioner had preferred to file before the trial court her protest petition as well as her prayer for "reinvestigation". Obviously the Trial Court had no scope to direct "reinvestigation" in the matter, being not within the four corners of the statute.

In case of the question as to whether "further investigation" was to be directed by the Magistrate, the two Hon'ble Apex Court's judgments may be referred to, i.e, (i) reported in **(1997) 1 SCC 361 (Randhir Singh Rana vs. State (Delhi Administration))**, and (ii) reported in **(2004) 7 SCC 338 (Adalat Prasad vs. Rooplal Jindal & Ors.)**, which still hold the field. The law was interpreted to say that after taking cognizance of offence by the Magistrate, he would have no scope to order a further investigation into the case, though such power would have been available to the police authorities, even after filing of charge-sheet.

Undoubtedly, in this case after filing of charge-sheet Magistrate had already taken cognizance to the offence and issued process. Therefore following the ratio of the judgments of the Hon'ble Apex Court as mentioned above, there would be no scope for the Trial Court to direct any further investigation into the case and thus the impugned order suffers from no infirmity as such.

This court in exercise of its extra ordinary, plenary power under

Section 482 Cr.P.C, 1973, cannot but notice the following factors in this case :

The complaint and also the materials available in case diary are enough categorical, eloquent and specific, so far as the strong *prima facie* case having been made out against the opposite party no. 2 under Section 354 IPC. Under such circumstances it is inconceivable as to why and on what basis the said provision of law has been omitted in the charge sheet. Definitely, the cause of fair trial cannot be jeopardised due to the unfilling and lackadaisical attitude of the investigating agency. The Trial Court must take this factor into consideration at the time of framing of charge, if not already done. If the charges have already been framed in this case, the Trial Court shall resort to alteration of charge to incorporate charge under Section 354 IPC against the present opposite party no.2, namely, Prasanta Thapa.

On the premises as above this revision case does not merit success though triggers requirement for alteration of charge and in doing so the Trial Court shall follow the directions made herein before.

With the above observation the present revision case being CRR 679 of 2015 is disposed of

The petitioner who is appearing in person has submitted about being continuously intimidated and resisted for her regular day to day work and also attending her work place, at the instance of the accused persons. It is made clear that she is at liberty either to approach the police authorities or even the District Legal Service Authorities for redressal of her grievances in these matters.

Urgent certified website copies of this order, if applied for, be supplied to the parties subject to compliance with all the requisite formalities.

(Rai Chattopadhyay, J.)