

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 909 of 2016
With
IA No. CRAN 1 of 2016 (Old No. CRAN 3273 of 2016)

Syed Rais Hussain
Vs.
The State of West Bengal & Ors.

Mr. Aritra Bhattacharya
Mr. Samarjit Ghosal
... For the petitioner

Mr. Binay Panda
Ms. Pushpita Saha
... For the State

This revisional application assails the order dated 24th June, 2015, passed by the learned Judicial Magistrate, 3rd Court, Sealdah, in connection with G.R. Case No. 1346 of 2011, corresponding to Beniapukur Police Station Case No. 156 dated 26th May, 2011 under Sections 147, 148, 324 of the Indian Penal Code, 1860, whereby the learned Magistrate refused to entertain the application under Section 173(8) of the Code of Criminal Procedure, filed on behalf of the *de facto* complainant with a prayer for further investigation.

Mr. Bhattacharya, learned advocate appearing on behalf of the petitioner has drawn my attention to the order passed by a coordinate Bench of this Court in CRR 182 of 2014 on 26th March, 2014 directing the learned Magistrate to dispose of the application on merit filed by the *de facto* complainant for further investigation before taking up the trial of the criminal case.

On receipt of that order, the learned Magistrate passed the order impugned on the plea of framing of charge, fixing for evidence and on further ground of *locus standi* of the *de facto* complainant to file an application for further investigation.

Therefore, the learned Magistrate did not comply the direction of this Hon'ble Court by disposing the application on merits instead refused the same on the plea of framing of charge in the case.

Learned advocate appearing on behalf of the petitioner had relied on a judgment delivered by the Hon'ble Supreme Court in the case of **Anant Thanur Karmuse vs. State of Maharashtra and Others**, reported in **(2023) 5 SCC 802**, wherein the it was observed as follows:-

“38. In Dharam Pal, after taking into consideration the catena of decisions on the point, it is observed and held that the constitutional courts can direct for further investigation or investigation by some other investigating agency. It is observed that the purpose is, there has to be a fair investigation an a fair trial. It is observed that the fair trial may be quite difficult unless there is a fair investigation. It is further observed ad held that the power to order fresh, de novo or reinvestigation being vested with the constitutional courts, an absolute impediment for exercising the said constitutional power which is meant to ensure a fair an just invetigation”.

Therefore, the pleas taken by the learned Magistrate were not at all justified to refuse the application under Section 173(8) of the Code of Criminal Procedure that too by violating the order passed by this Hon'ble Court in CRR 182 of 2014.

Mr. Panda, learned advocate representing the State also harped the same string of non-compliance of the direction of this Court.

In the aforesaid view of the matter, the order dated 24th June, 2015 passed in connection with G.R. Case No. 1346 of 2011 stands set aside. The learned Judicial Magistrate is further directed to dispose of the application filed on 5th June, 2012 under Section 173(8) of the Code of Criminal Procedure **on merits**, before proceeding further in this case, within a period of four weeks from the date of receipt of this order.

With the aforesaid observations/directions the revisional application and the connected application stand disposed of.

Department is directed to communicate a copy of this order to the learned Magistrate, 3rd Court, Sealdah, for compliance.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Criminal Section is directed to supply urgent photostat certified copy of this order to the parties, if applied for, after compliance with all necessary formalities.

(Bibhas Ranjan De, J.)