

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. - 1297 of 2018

IN THE MATTER OF

**Chandra Shekhar Brahmachari @ Chinmoy Bhowmik @ Paltu Mahara.
Vs.**

State of West Bengal & Ors.

**For the petitioner : Mr. Swarup Banerjee, Adv.,
Mr. Sajal Kumar Ghosh, Adv.,
Mr. A. Chatterjee, Adv.**

**For the State : Md. Anwar Hossain, Adv.,
Ms. Sreyashee Biswas Adv.**

Judgment on : 17.03.2023

Subhendu Samanta, J.

The instant criminal revision has been preferred by the petitioner against an order dated 30th November 2017 passed by the Learned Chief Judicial Magistrate Nabadwip, Nadia in a Misc petition No. 107 of 2017 whereby the Learned Magistrate was pleased to reject the application of the petitioner filed u/s 156 (3) of Cr.P.C.

In a nutshell, the petitioner's case is that the petitioner is a official servant of one religious society namely Gaudiya Vedanta Samiti at Nabadwip under district Nadia. During his entrustment with the society he noticed several illegal activities of the opposite party No. 2 to 11 and lodged several complaints with the police authority as well as several criminal cases were filed with the court of Magistrate. It further appears to the petitioner that the present opposite parties in collusion with each other representing themselves to be the devotee of the said Gaudiya Vedanta Samiti accept huge amount of foreign money as alms. They misused such fund and without giving proper revenue to the Government of India they managed to misappropriates the fund for their own use. The petitioner filed an application in the form of complaint before the Learned Judicial Magistrate Nabadwip, Nadia u/s 156(3) Cr.P.C. praying for direction upon the concerned P.S to investigate the case treating the complaint as FIR. The application of the present petitioner was turned down by the Learned Magistrate by passing the impugned order.

Hence, this revision.

Learned Advocate for the petitioner submits that the petitioner admittedly has initiated several cases against the present opposite parties before the Learned Magistrate. Several criminal cases are pending but the cause of action of the instant case is totally different to that all previous police cases.

Learned Advocate for the petitioner further argued that the impugned order passed by the Learned Magistrate is not at all a speaking order and

Learned Magistrate has made a mistake for not accepting the petition of the petitioner. He again argued that the impugned order does not mentioned the Nos. of police cases thus the impugned order passed by the Learned Magistrate is only upon conjectures and surmises. He again argued that there are separate cause of action to initiate the criminal proceeding thus the impugned order passed by the Learned Magistrate is liable to be set aside.

Learned Advocate on behalf of the state submits the impugned order is not at all liable to the set aside. He produced the report of the police and mentioned that several cases are pending for investigation and in several cases investigation was ended in charge sheet regarding the same allegation of the petitioner. He again argued that on the selfsame cause of action, police case being no. 6 of 2016 dated 08.01.2016 u/s 406/420/468/10(B)/34 IPC was started on the basis of the complaint of the petitioner. After completion of investigation the charge sheet has been submitted against all the accused persons. So, the present complaint appears to be purposive and vexcesious.

Heard, the Learned Advocate perused the petition of complaint and the impugned order passed by the Learned Court below. I have also perused the report of the police. During the course of hearing a report is called for from the Learned Magistrate Nabadwip, Nadia. The Magistrate has submitted a detailed report regarding the cases filed by the present petitioner against the present opposite party. It has been reported by the Learned Magistrate that GR Case No. 10 of 2016 arising out of Nabadwip

P.S Case No. 6 of 2016 dated 08.01.2016 was started and after investigation the charge sheet has been submitted against all the accused persons. The case is pending before the Learned Magistrate for evidences. It is the report of the Learned Magistrate that the cause of action of the present complaint and the complaint of Nabadwip P.S Case No. 6 of 2016 is of same nature.

In considering the impugned order it appears that Learned Magistrate has not mentioned the No. of the case which was pending for disposal before him. However, the report of the Learned Magistrate as well as the report of the police disclosed that on the basis of selfsame complaint by the same complainant Nabadwip P.S case No. 6 of 2016 was started wherein the investigation has been concluded on submission of charge sheet. The fact of completion of investigation as well as the filing of the case is within the knowledge and competence of the Learned Magistrate, such knowledge of the Magistrate reflected in the impugned order. Section 156 Cr.P.C. empowers a police officer to investigate cognizable cases, sub-section 3 is the addition to the power of the Magistrate to direct police to investigate a cognizable offence. The wardings of sub-section 3 of Section 156 makes it clear that it is not mandatory for the Learned Magistrate but it is discretionary.

I have perused the impugned order passed by the Magistrate it appears that in passing the impugned order the Learned Magistrate has exercised is discretionary jurisdiction.

The situation of this particular case has its answer in the provision of Section 210 of the Code of Criminal Procedure.

210. Procedure to be followed when there is a complaint case and police investigation in respect of the same offence.- (1) When is a case

instituted otherwise than on a police report (hereinafter referred to as a complaint case), it is made to appear to the Magistrate, during the course of the inquiry or trial held by him, that an investigation by the police is in progress in relation to the offence which is the subject-matter of the inquiry or trial held by him, the Magistrate shall stay the proceedings of such inquiry or trial and call for a report on the matter from the police officer conducting the investigation.

(2) If a report is made by the investigating police officer under section 173 and on such report cognizance of any offence is taken by the Magistrate against any person who is an accused in the complaint case, the Magistrate shall inquire into or try together the complaint case and the case arising out of the police report as if both the cases were instituted on a police report.

(3) if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report,

he shall proceed with the inquiry or trial, which was stayed by him, in accordance with the provisions of this Code.

Sub- Section 2 of the Section 210 makes it clear that if it appears before the Magistrate that the investigation of a police has concluded in respect of a case against any person who is an accused of another complaint case the Magistrate has the authority to inquire into or try together the complaint case and the case arising out of the police report as if both cases were instituted on the police report.

The purpose of the legislature for enacting Section 210 of the code are (i) it is intended to ensure that private complaints do not interfere with the course of justice. (ii) it prevents harassment to the accused twice; and (iii) it obviates anomalies which might arise from taking cognizance of the same offence more than once. Learned Magistrate has committed error for not following the provision. Thus the impugned order, though not illegal but appears to me irregular. Accordingly the instant CRR has merit to entertain.

The CRR is allowed.

The impugned order passed by the Learned Magistrate is hereby set aside.

The Learned Magistrate is directed to proceed with this matter according to the provision u/s 210 Cr.P.C.

Let a copy of this order be send down to the Learned Magistrate for his information and necessary action.

Any order of stay passed by this court during the continuation of the instant criminal revision is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)