

16.02.2023

Court No.04  
Item No.06

**CRR 1026 of 2015**

**Sunil Manna and another  
Vs.**

**The State of West Bengal and another.**

Ab

No one is present on behalf of either of the parties.

The instant matter relates to administration of criminal justice. As held by the Hon'ble Supreme Court in case of **Madan Lal Kapoor vs. Rajiv Thapar and others**, reported in **(2007) 7 SCC 623** that a criminal matter cannot be dismissed for default and it must be decided on merits. The same reasoning applies to a criminal revision also and, hence, the criminal revision cannot also be dismissed for default.

So, I proceed to dispose of the instant criminal revision on merit.

The instant criminal revision is directed against an order passed by the learned Trial Court in G.R. Case No. 1001 of 2014 in connection with Bagnan Police Station Case No. 206/14 dated 26<sup>th</sup> April 2014, whereby and whereunder the learned Trial Court directed to cause the case further investigated by any competent police officer of the concerned Police Station other than the previous Investigating Officer.

It appears from the impugned order that the petitioner no. 1 and the opposite party no. 2 are husband and wife in relation and after their marriage disputes have been cropped up in between them, which traveled to the Court of Law. On the basis of a written complaint filed by the opposite party no. 2/wife, a case was registered in the Bagnan Police Station under Sections 498A/406/307 of the Indian Penal Code and under Sections 3/4 of the Dowry Prohibition Act. After completion of investigation, the police submitted the charge-sheet only under Section 498A of the

Indian Penal Code.

Being aggrieved and dissatisfied with the submission of the charge-sheet, the opposite party no. 2/wife filed a 'Naraji' application before the learned Trial Court. It is stated by the opposite party no. 2/wife that the petitioner no. 1/husband has unlawfully kept her all Stridhan articles in his possession and in spite of having sufficient ingredients of Section 406 of the Indian Penal Code in the written complaint, the concerned Investigating Officer of the case did not make any attempt to recover her Stridhan articles from the possession of the accused person. So, the opposite party no. 2/wife filed an application before the trial court with a prayer for further investigation in respect of that portion of her allegation, which comes under the purview of Section 406 of the Indian Penal Code. At the time of hearing before the learned trial Court, the learned Advocate for the State did not raise any objection in respect of the petition filed by the defacto complainant/wife. After hearing both the sides, the learned Trial Court passed the impugned order directing further investigation to be made by any competent police officer.

Being aggrieved with the said impugned order, the petitioners/revisionists preferred this application by stating that the learned Trial Court did not apply its judicial mind and passed the impugned order mechanically by which they are seriously prejudiced and for that reason, the impugned order passed by the learned Trial Court is liable to be set aside.

I am not unmindful about the proposition of law as spelt out by the Hon'ble Apex Court in case of **Kamlesh Kumar and Ors. vs. State of Jharkhand and Ors.**, reported in **2013 (15) SCC 460**, wherein the Hon'ble Apex Court observed that revision is only a procedural facility available to the parties and right to revise vests in superior Court, which enables it to correct the grave errors. The superior Court can also decline to exercise its power of revision, if facts and circumstances do not warrant such exercise of power.

So, it is clear to me that when the Magistrate may take the view on a consideration of a final report that the opinion formed by

the police is not based on full and complete investigation, in which case the Magistrate will have ample jurisdiction to give direction to the police under Section 156(3) of the Criminal Procedure Code to make a further investigation. So, under Section 156(3) of the Criminal Procedure Code the learned Magistrate can only direct the registration and investigation of the offence by the police. The accused nowhere comes into the picture at that stage. The aggrieved accused has been conferred the right to be heard at the appropriate stage by the Criminal Procedure Code and that certainly does not include the stage of Section 156(3) of the Cr.P.C.

Thus, there was no opinion formed by the Magistrate against anybody at the time of passing the impugned order passed under Section 156(3) of the Criminal Procedure Code and, hence, nobody was an accused and the question of dissatisfaction does not arise at all.

So, I find there is no illegality and/or infirmity in the impugned order passed by the learned Trial Court and there is nothing to interfere with it.

Thus, the criminal revision is dismissed.

Interim order, if any, stands vacated.

Let a copy of this order be sent to the learned Trial Court for information and necessary compliance.

**(Prasenjit Biswas, J.)**