

29.03. 2023
item No.17
n.b.
ct. no. 551

CRR 1456 of 2018

with
IA No. CRAN 1 of 2018(Old No. CRAN 1535 of 2018)
With

CRAN 4 of 2021

Partha Pratim Basu
Vs.
State of West Bengal & Ors.

Mr. Shibaji Kumar Das,
Ms. Rupsa Sreemani,
Ms. Riya Sarkar
... for the petitioner.
Mr. Bivash Banerjee,
Mr. Rohit Prasad,
....for the o.p. No. 2 & 3.

Mr. S. G. Mukherjee, Ld. P.P.,
Mr. Imran Ali,
Ms. Debjani Sahu,
.... For the State.

CRAN 1 of 2018(Old No. CRAN 1534 of 2018) is allowed
and the delay in preferring the instant criminal revisional
application is hereby condoned.

The instant criminal revisional application has been
preferred against the order dated August 5, 2016 passed by the
learned Metropolitan Magistrate, 19th Court, Calcutta in connection
with Muchipara P.S. Case No.437 of 2014 dated November 7, 2014
initially registered under Section
380/406/465/467/468/471/120(B) of the IPC in which charge-
sheet has been submitted under Section 406 of IPC.

The prayer for the present petitioner for further investigation was turned down. Thus, he preferred the instant criminal revisional application for further investigation.

The brief fact of the case is that the present petitioner is the de facto complainant and one of the son of Debendra Nath Basu. Accused no.1 is the another son of Debendra Nath Basu and accused no.2 is the wife of accused no.1. The petition of complaint was filed by the present petitioner being the authorized representative of Debendar Nath Basu. It is alleged in the petition of complaint that the accused no.1 in collusion with accused no.2 has misappropriated the huge fund lying with the joint account of Debendra Nath Basu and Indranil Basu(accused No.1) without any information and consent of Debendra Nath Basu. The petition of complaint also mentioned the name of the banks and account numbers. It has also been alleged that huge amount of gold ornaments lying in the locker of bank was also mis-appropriated by the accused no.1 in collusion with accused no.2. On the basis of the said complaint the police case was registered and investigation of the police is ended in charge sheet. In the charge sheet the only accused no.1 was charge-sheeted under Section 406 of the IPC. The charge sheet does not disclose the reason why the accused no.2 was not charge-sheeted.

Learned advocate for the petitioner submitted before this Court that the impugned order passed by learned Magistrate is a cryptic order. He filed one Narazi application after submission of charge-sheet and his prayer was not considered. The order passed

by the learned Magistrate has not assigned any reason, thus, the order is liable to be set aside.

He further argued that the allegation of forgery was not enquired by the learned Magistrate by tallying the admitted signatures of Debandra Nath Basu with the signatures in the alleged cheques. He again pointed out that the allegation of theft was not also considered and enquired by the I.O. He again argued that the bank officials were not cited C.S. witnesses. There are major discrepancies in the investigation, so he prayed for further investigation. During his argument he cited decisions of Hon'ble Supreme Court reported in **(2016) 4 SCC 160** is as follows:

“24. Be it noted here that the constitutional courts can direct for further investigation or investigation by some other investigating agency. The purpose is, there has to be a fair investigation and a fair trial. The fair trial may be quote difficult unless there is a fair investigation. We are absolutely conscious that direction for further investigation by another agency has to be very sparingly issued but the facts depicted in this case compel us to exercise the said power. We are disposed to think that purpose of justice commands that the cause of the victim, the husband of the deceased, deserves to be answered so that miscarriage of justice is avoided. Therefore, in this case the stage of the case cannot be the governing factor.”

25. We may further elucidate. The power to order fresh, de novo or reinvestigation being vested with the constitutional courts, the commencement of a trial and examination of some witnesses cannot be an absolute impediment for exercising the said

Will it have the sancity or the purity of a genuine investigation? If a grave suspicion arises with regard to the investigation, should a constitutional court close its hands and accept the proposition that as the trial has commenced, the matter is beyond it? That is the “tour de force” of the prosecution and if we allow ourselves to say so it has become “idee fixe” but in our view the imperium of the constitutional courts cannot be stifled or smothered by bon mot or polemic. Of course, the suspicion must have some sort of base and foundation and not a figment of one’s wild imagination. One may think an impartial investigation would be a nostrum but not doing so would

be like playing possum. As has been stated earlier, facts are self-evident and the griever protagonist, a person belonging to the lower strata. He should not harbour the feeling that he is an “orphan under law”.

He also cited a decision of Hon’ble Supreme Court reported in **(2004) 5 SCC 347** is as follows:

12. Sub-section (8) of Section 173 of the Code permits further investigation, and even de hors any direction from the court as such, it is open to the police to conduct proper investigation, even after the court took cognizance of any offence on the strength of a police report earlier submitted. All the more so, if as in this case, the Head of the Police Department also was not satisfied of the propriety or the manner and nature of investigation already conducted.”

He further submitted that at any time for the purpose of fair trial, fair investigation is very much essential in this case. Though the date was fixed for evidence but the purpose of this criminal trial would be frustrated without proper investigation. So, he prayed for further investigation.

Learned advocate appearing on behalf of the State Mr. Ali submits that the investigation of the police is ended in charge-sheet. He handed over the Case Diary. He submitted that the I.O. has categorically investigated the entire facts and circumstances of this case and during his course of investigation, he has recorded the statement of available witnesses including the statement of Debendra Nath Basu. He further argued that the I.O. has collected the materials and the reports of the banks. The statement of bank officials were also collected. But surprisingly, the I.O. has not

mentioned the entire facts in the charge-sheet. He also admitted the fact and assisted the Court to the effect that the Case Diary contained separate pages wherein the statement of different bank officials and statement of Debendra Nath Basu and other available witnesses were recorded. He frankly submitted that the order passed by the learned Magistrate is a cryptic order. So, he prayed for necessary order.

Heard the learned advocate perused the materials on record and also perused the principles laid down by the Hon'ble Supreme Court. It appears that Hon'ble Supreme Court in ***Dharam Pal*** Case particularly specified that for the purpose of fair trial, there must be a fair investigation. Without any fair investigation a trial of criminal case cannot be concluded properly.

It appears in this case that the petition of complaint has alleged several allegations against the present accused persons but the charge sheet did not disclose the entire facts and materials collected during the investigation by the I.O. Though the Case Diary contained several materials but it was not reflected in the charge-sheet. All the witnesses whose statement were recorded by the I.O. were not incorporated in the list of witnesses in the charge-sheet. Furthermore, the admitted signature of the Debendra Nath Basu in the cheques and the bank documents were not tallied by separate authority(Expart).

Considering the same, I find there is lacuna in investigation of the Investigating Authority. Considering the same, the impugned order passed by the learned Magistrate is appears to be not justified as it is not a speaking order and passed without

perusing the materials in the Case Diary; thus liable to be set aside in the attending facts and circumstances of the case.

The CRR 1456 of 2018 is allowed.

The impugned order passed by the learned Magistrate is set aside.

The learned Magistrate is directed to pass appropriate order directing the Investigating Agency to conduct further investigation of this case and submit report within three months from the date of passing of that order. Thereafter, the Magistrate shall proceed with the case in according with law.

Let copy of this order be sent back to the learned Court below for proper compliance.

Accordingly, all pending connected applications are also disposed of.

Any order of stay passed by this Court during the continuation of the instant criminal revisional application is also vacated.

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

(Subhendu Samanta, J.)