

29 07.08.23
SSS

CRR 1963 of 2015

With

IA No: CRAN 3 of 2015 (Old No: CRAN 3984 of
2015)

CRAN 9 of 2017 (Old No: CRAN 865 of 2019)

Md. Anwarul Haque

-vs-

State of West Bengal & Anr.

Mr. Milan Mukherjee

Ms. Shabana Hasin

Mr. Mobaidur Hossain

... for the Petitioner.

Mr. Narayan Prasad Agarwala

Mr. Pratick Bose

... for the State.

Affidavit of service is taken on record.

From the service return, it is found that the
notice was refused by the Opposite Party No.2.

This revisional application has been filed
challenging the proceeding under Charge Sheet
No. 104 of 2015 dated 25.03.2015 arising out
of Beldanga P.S. Case No. 622 of 2014 dated
08.11.2014 under Section 3(1)(x) of the SC &
ST Prevention of Atrocities Act (hereinafter

referred to as the SC & ST Act) read with Section 506 of the Indian Penal Code.

Learned Senior Counsel Mr. Milan Mukherjee, at the outset, has drawn my attention to the written complaint which put the law in motion in this case initially and submitted that all the offences alleged in this case took place not within the public view under Section 3(1)(x) of the SC & ST Act. It has been further submitted by Mr. Mukherjee that investigation was done by Deputy Superintendent of Police but no order of State Government was notified empowering the Investigating Officer to investigate the case. In support of his contention he relied on a case of **State of Madhya Pradesh Vs. Chunnilal** reported in **(2009) 12 SCC 649**.

Learned Counsel appearing on behalf of the State has relied on the materials in C.D.

On careful perusal of the written complaint, I find that it was lodged before the Officer-in-

Charge, Beldanga Police Station on 08.11.2014 while the entire incident alleged to have happened on 02.06.2014 and surprisingly, there is no explanation of delay found from the written complaint itself.

To constitute an offence under Section 3(1)(x) offence is required to be taken place within the public view. In this case, on careful perusal of the written complaint, I find that entire offence alleged in this case took place in the room of the Headmaster which is not the public place within the public view.

That apart, the offence alleged has to be investigated by a police officer not below the rank of Deputy Superintendent of Police under Rule 7 of the SC & ST Act and that appointment shall have to be notified by the State Government.

In this regard, the Hon'ble Apex Court in **Chunnilal** (supra) ruled as follows:-

*"9. Conferment of powers.—
(1)Notwithstanding anything contained in the*

Code or in any other provision of this Act, the State Government may, if it considers it necessary or expedient so to do,—

(a) for the prevention of and for coping with any offence under this Act, or

(b) for any case or class of group of cases under this Act,

in any district or part thereof, confer, by notification in the Official Gazette, on any officer of the State Government the powers exercisable by a police officer under the Code in such district or part thereof or, as the case may be, for such case or class or group of cases, and in particular, the powers of arrest, investigation and prosecution of persons before any Special Court.

(2) All officers of police and all other officers of Government shall assist the officer referred to in sub-section (1) in the execution of the provisions of this Act or any rule, scheme or order made thereunder.

(3) The provisions of the Code shall, so far as may be, apply to the exercise of the powers by an officer under sub-section (1)."

"7. Investigating officer.—(1) An offence committed under the Act shall be investigated by a police officer not below the rank of a Deputy Superintendent of Police. The investigating officer shall be appointed by the

State Government/Director General of Police/Superintendent of Police after taking into account his past experience, sense of ability and justice to perceive the implications of the case and investigate it along with right lines within the shortest possible time.

(2) The investigating officer so appointed under sub-rule (1) shall complete the investigation on top priority within thirty days and submit the report to the Superintendent of Police who in turn will immediately forward the report to the Director General of Police of the State Government.

(3) The Home Secretary and the Social Welfare Secretary to the State Government, Director of Prosecution, the officer in charge of prosecution and the Director General of Police shall review by the end of every quarter the position of all investigations done by the investigating officer."

From that point of view, the investigation of this case cannot be said to be legal within the provisions of Rule 7 of the SC & ST Act.

In the aforesaid view of the matter, I find that the written complaint was filed after five months of alleged incident and that too,

investigation was not conducted according to the provision of Rule 7 of the SC & ST Act and to add to that, the offence alleged in the written complaint does not constitute any offence under Section 3(1)(x) of the SC & ST Act.

Learned Counsel appearing on behalf of the State specifically submitted that no order of the government was notified appointing the I.O of this case to investigate the offence.

In the premises set forth above, the proceeding of this case stands quashed.

The revisional application stands disposed of. Any other pending applications are also disposed of. Let the CD be returned.

Urgent photostat certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Bibhas Ranjan De, J.)