

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 3753 of 2017

Bandana Mandal
Vs.
The State of West Bengal & Anr.

Mr. Moyukh Mukherjee
Mr. Abhijit Singh
Mr. Sarthak Mondal
... For the petitioner

Mr. Swapan Banerjee
Mr. Suman De
Mr. Narayan Prasad Agarwal
Mr. Pratick Bose
... For the State

This revisional application has been filed assailing the order dated 7th September, 2017 passed in connection with GR Case No.927 of 2013 by the learned Chief Judicial Magistrate, Malda, refusing the prayer for further investigation of the case and accepted the final report submitted in connection with English Bazaar Police Station Case No.264 of 2013 dated 2nd April, 2013 under Sections 302/379/34 of the Indian Penal Code.

Mr. Moyukh Mukherjee, learned advocate, appearing on behalf of the petitioner has relied on a case of **Jakia Nasim Ahesan v. State of Gujarat** reported in **(2012) 1 SCC (Cri) 559** as well as a case of **Indranil Mukherjee** in connection with **CRR No.3862 of 2016** passed by a coordinate Bench of this Court on **31st January, 2017**. Mr. Mukherjee has submitted that it is the duty of the Court to give an opportunity of having all the copies of police report including the

statement of witnesses before accepting the final report. But, before passing the order impugned, the learned Chief Judicial Magistrate, Malda did not provide any opportunity of having the documents of police report in terms of principle laid down in **Jakia Nasim Ahesan** (supra).

In opposition to that, Mr. Swapan Banerjee, learned advocate on behalf of the State has submitted that on behalf of the de facto complainant, no such prayer was ever made before the Court of learned Chief Judicial Magistrate, Malda in terms of the law laid down in **Jakia Nasim Ahesan** (supra). Therefore, according to Mr. Banerjee, this prayer cannot be considered at this stage for the first time.

In **Jakia Nasim Ahesan** (supra), the Hon'ble Apex Court ruled as follows:-

“11. However, at this juncture, we deem it necessary to emphasise that if for any stated reason SIT opines in its report, to be submitted in terms of this order, that there is no sufficient evidence or reasonable grounds for proceeding against any person named in the complaint dated 8-6-2006, before taking a final decision on such “closure” report, the court shall issue notice to the complainant and make available to her copies of the statements of the witnesses, other related documents and the investigation report strictly in accordance with law as enunciated by this Court in *Bhagwant Singh v. Commr. of Police*, (1985) 2 SCC 537. For the sake of ready reference, we may note that in the said decision, it has been held that in a case where the Magistrate to whom a report is forwarded under Section 173(2)(i) of the Code, decides not to take cognizance of the offence and to drop the

proceedings or takes a view that there is no sufficient ground for proceeding against some of the persons mentioned in the FIR, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.”

The aforesaid principle was further followed by the coordinate Bench of this Court in **Indranil Mukherjee** (supra).

From the impugned order, I do not find that the de facto complainant, i.e., the petitioner of this case had any opportunity of going through the reports including the statement of witnesses at the time of hearing of *Narazi* petition.

In the aforesaid view of the matter, in terms of the principle laid down by the Hon’ble Apex Court in **Jakia Nasim Ahesan** (supra), the order dated 7th September, 2017 passed by the learned Chief Judicial Magistrate, Malda, in connection with GR Case No.927 of 2013, is liable to be set aside.

Accordingly, the impugned order dated 7th September, 2017 stands set aside.

The learned Chief Judicial Magistrate, Malda, is requested to ensure supply of all statements of witnesses and relied documents to the de facto complainant within three weeks from date before hearing the *Narazi* petition afresh.

With the aforesaid observation and direction, the revisional application stands disposed of.

Let a copy of this order be communicated to the learned Chief Judicial Magistrate, Malda, for compliance.

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

Criminal Section is directed to supply certified copy of this order, if applied for, upon compliance of necessary formalities.

(Bibhas Ranjan De, J.)