

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1514 of 2020

Sri Tikendrajit Manna

Vs

State of West Bengal & Anr.

For the Petitioner : Mr. Souvick Mitra,
Mr. Narayan Roy,
Ms. Subhasri Chatterjee.

For the State : Ms. Puspita Saha

Heard on : 18.01.2023

Judgment on : 02.02.2023

Shampa Dutt (Paul), J.:

The revisional application has been filed against an impugned Judgment dated January 20, 2020 passed by Learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas in Criminal Motion No. 184 of 2019 arising out of the impugned order dated March 6, 2019 passed by Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas in BGR case No. 2605/2015 with regard to an application dated March 7, 2018 filed under Section 173(8) Code of Criminal Procedure, 1973 for further investigation in BGR 2605/2015 (TR 511/18) originating from Bishnupur P.S. Case No. 585(5) 15.

The petitioner's case is that on May 27, 2015, his mother, his eighteen months old son and his wife namely Arati Manna, Barnamay Manna and Sampa Manna respectively, were travelling being the passengers of one Auto Rickshaw vide No. WB-19F-6557 along with other co-passengers, towards its destination at Amtala, and suddenly one Tata Ace being the offending vehicle having no. WB-19E-5214 (Tata Ace), which was coming from the opposite direction in an unusual aggravated speed and rash and negligent manner endangering human life and safety, while near German Factory, dashed another Auto Rickshaw being vehicle no. WB-19E-7039 followed by the said Auto Rickshaw being vehicle no. WB-19F-6557. In the said Auto Rickshaw WB-19F-6557 the said mother, son and wife of the Petitioner namely

Arati Manna, Barnamay Manna and Sampa Manna respectively were travelling, and as a result of the accident, said Arati Manna and Barnamay Manna suffered from terminal injuries on their person and died within a short time after the said accident and the said Sampa Manna also suffered from severe multiple injuries on her person.

That with regard to the abovementioned fatal incident, one case was registered under the Bishnupur Police Station vide Bishnupur P.S. Case No. 585 dated 27.05.2015, and initially being the Investigating Officer of the said Case, **Sub Inspector Anup Majumder** had taken the charge of the said investigation and subsequently, the case was re-endorsed to **Sub Inspector Sandip Kumar Pal, who finally submitted the Charge Sheet in the instant case.**

That immediately after the said incident, said Arati Manna and said Sampa Manna were admitted in the ESI Hospital, Joka and subsequently they were shifted to the Fortis Hospital, Anandapur, wherein said Arati Manna died on the same day i.e. on 27.05.2015. The eighteen months old son of the Petitioner namely Barnamay Manna was admitted in the Occupational Disease Centre, Diamond Harbour Road, P.O. Joka and there, he was declared as brought dead on the same date i.e. on 27.05.2015. Therefore, due to the loss of his mother and said eighteen months old son as a result of the said incident, the Petitioner became mentally shattered and broken, which mental turmoil and

unstableness continued with the Petitioner in dealing with the treatment of his wife, who suffered severe injuries in the said accident.

After passing of few days since the said unfortunate incident, the Petitioner was asked by the Bishnupur P.S. to visit the said Police Station to meet the concerned Investigating Officer, and, accordingly, in compliance of the same, the Petitioner went to the concerned Police Station. The Petitioner, as per requirements of the said Investigating Officer, duly provided him copies of relevant documents of Identity proofs and medical papers of the said Arati Manna, Barnamay Manna and Sampa Manna respectively.

That the petitioner came to know that he can file Motor Accident Compensation Cases for the death and injury of one's family members involved in the said accident, and for initiation of the said Motor Accident Compensation Cases, relevant documents, including FIR, Post Mortem Reports and vehicle are essentially required. It is pertinent to mention here that during frequent visitation to the said Bishnupur Police Station, the Petitioner requested **the concerned Investigating Officer** to arrange and/or supply the said documents including FIR, Post Mortem Reports and other relevant papers in connection with the said accident. But in spite of repeated requests made by the Petitioner, the concerned Investigating Officer did not arrange for the said Post Mortem Reports of the said victims of the abovementioned accident. In

fact, said Investigating Officer was absolutely reluctant and declined to respond to the request of the Petitioner to provide the aforesaid documents.

After repeated and prolonged visitations, requests, made by the Petitioner to the said concerned Investigating Officer, the said Investigating Officer provided him copies of the following documents :-

- a) Registration Certificate of Vehicle No. WB-19E-5214 (Tata Ace).
- b) Insurance Policy of Vehicle No. WB-19E-5214 (Tata Ace).
- c) Premium Receipt of Vehicle No. WB-19E-5214 (Tata Ace).
- d) Certificate of Fitness of Vehicle No. WB-19E-5214 (Tata Ace).
- e) Tax Token of Vehicle No. WB-19E-5214 (Tata Ace).
- f) Driving License of Sankar Mondol.
- g) Registration Certificate of Vehicle No. WB-19F-6557.
- h) Route Permit of Vehicle No. WB-19F-6557.
- i) Pollution Certificate of Vehicle No. WB-19F-6557.
- j) Tax Token of Vehicle No. WB-19F-6557.
- k) Insurance Policy of Vehicle No. WB-19F-6557.
- l) Driving License of Dipak Pahari.

The Petitioner went to Bishnupur Police Station at different times to procure copies of FIR, seizure list and the Post Mortem Reports

so that he would be able to file Motor Accident Claim Case, but every time the Petitioner was refused by the said Police Station.

The petitioner also visited said Anandpur Police Station and Thakurpukur Police Station under whose jurisdiction the inquests were conducted for procurement of the said Post Mortem Reports, but all his efforts went in vain as the said two Police Stations practically wiped out his request to provide the same. He even showed to the said two Police Stations the said documents, which were supplied to him, as mentioned herein before, by the said Investigating Officer of the Bishnupur Police Station, and finally he came to know that the said Post Mortem Reports may be obtained from the **Lalbazar Police Headquarter**.

The Petitioner states that after rigorous approaches made by him to the Police Headquarter at Lalbazar, in response to the Petitioner's application, the office of the Commissioner of Police Kolkata, Report Section, duly handed over the Post Mortem Report of said Arati Manna, since deceased to the Petitioner. The Petitioner has also received the Post Mortem Report of his eighteen months old Barnamay Manna, since deceased, from the Office of ACMOH, 24 Parganas (South).

That being doubtful and with an apprehension of misconduct on the part of the Investigating Officer, the Petitioner obtained certified copies of FIR, Charge Sheet and seizure list of the instant case being Bishnupur Case No. 585/2015 dated May 27, 2015, and after receiving

the said documents, the Petitioner was shocked to discover that being the victims of the aforesaid fatal incident, there is neither any mention of the names of said Arati Manna, Barnamay Manna and Sampa Manna in the charge Sheet and nor any documents relating to them has been cited in the seizure list. **Therefore, the said lacuna in the said investigation of the instant case, not only deprives the Petitioner from getting relief in any Motor Accident Claim Case, but it also decreases the quantum of offence committed by the Accused Person namely Shankar Mondal in the said case.**

Being aggrieved and prejudiced with the said investigation conducted by the concerned Investigating Authority, the Petitioner filed an application under Section 173(8) of Criminal Procedure Code, 1973 before the Learned Trial Court, Praying for further investigation of this instant Case, which was filed before appearance of the Accused Person and even before framing of charges in the said BGR 2605/2015 (TR 511/18) originating from Bishnupur P.S. Case no. 585 (5) 15.

The said application under Section 173(8) of Criminal Procedure Code, 1973 filed by the Petitioner was rejected by virtue of the impugned order dated March 6, 2019 passed by the Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas, and challenging the said order the Petitioner filed Criminal Motion being no. 184 of 2019 under Sections 397 read with 399 of Criminal Procedure Code, 1973

before the Learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas with a prayer for, inter alia, setting aside of the said impugned order dated March 6, 2019 on the grounds stated therein.

Pursuant to the completion of the hearing of the said application being Criminal Motion No. 184 of 2019 under Sections 397 read with 399 of Criminal Procedure Code, 1973, the Learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas, vide the impugned Judgment dated January 20, 2020, was pleased to dismiss the said Criminal Motion and therefore, was further pleased to affirm the said impugned order dated March 6, 2019 passed by the Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas.

Mr. Souvick Mitra, the Learned Counsel for the Petitioner

has submitted that the Learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas, as well as the Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas have failed to exercise their jurisdictions vested on them judiciously.

The Learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas, as well as the Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas acted with material irregularity, mechanically without application of judicial mind and arbitrarily in considering the said application being Criminal Motion no. 184 of 2019 under Sections 397 read with 399 of Criminal Procedure Code, 1973

and also the application under Section 173(8) of Criminal Procedure Code, 1973 filed by the Petitioner respectively.

The Learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas, as well as the Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas failed to appreciate the pleadings and prayers made in the said application being Criminal Motion no. 184 of 2019 under Sections 397 read with 399 of Criminal Procedure Code, 1973 and the application under Section 173(8) of Criminal Procedure Code, 1973 filed by the Petitioner respectively while considering the same.

The learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas, as well as the learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas failed to adjudicate the perfunctory investigation carried on by the Bishnupur Police Station and the fact that before commencing trial it is important to identify the victim(s) and without identification of victim(s) proper justice cannot be rendered.

The Learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas, as well as the Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas failed to appreciate the provisions of the Criminal Procedure Code, 1973 and the citations referred by the Petitioner at the time of hearing of the said application being Criminal Motion No. 184 of 2019 under Sections 397 read with 399 of Criminal

Procedure Code, 1973 and the application under Section 173(8) of Criminal Procedure Code, 1973 filed by the Petitioner respectively.

That the Learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas, as well as the Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas failed to appreciate that there is willful omission on the part of the said investigating officer/s for the best reason known to them about the actual facts of the incident, the victims involved in the said accident and moreover FIR itself speaks of the incident which involves multiple victims.

The Learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas, as well as the Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas failed to appreciate that it is a totally concocted story framed by the investigating Officer/s who measurably failed to conduct proper and fair investigation and the charge sheet itself is exposing his failure in the said investigation.

The Learned Additional Session Judge, 10th Court at Alipore, South 24 Parganas, as well as the Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas failed to appreciate that the conduct of the first investigating office Anup Majumder as well as Second investigating officer Sandip Kumar Pal is not at all satisfactory and they without proper investigation submitted a perfunctory charge sheet.

The Learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas, as well as the Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas failed to consider that without disposing of the said application under Section 173(8) of Criminal Procedure Code, 1973 filed by the Petitioner, the said BGR 2605/2015 (TR 511/18) originating from Bishnupur P.S. Case No. 585(5) 15 cannot be proceeded with any further.

The Learned Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas, as well as the Learned Judicial Magistrate, 8th Court at Alipore, South 24 Parganas failed to consider that the said impugned Judgment dated January 20, 2020 as well as impugned order dated March 6, 2019 are causing irreparable loss and injury to the Petitioner.

The impugned Judgment dated January 20, 2020 passed by the Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas in Criminal Motion No. 184 of 2019 as well as impugned order dated March 6, 2019 passed by the Judicial Magistrate, 8th Court at Alipore, South 24 Parganas in BGR Case No. 2605/2015 are illegal, lack of judicial prudence and therefore, bad in law and liable to be set aside.

In spite of due service there is no representation on behalf of Opposite Party no. 2/accused.

Ms. Puspita Saha Learned Counsel for the state is present and has produced the case diary along with **a report submitted by Inspector-In-Charge Bhishnupur Police Station, District - 24 Parganas, South, who appeared in court as directed. In the said report it has been submitted that though the papers relating to the accidental death of the mother and child of the petitioner were collected by the Investigating Officer, but due to inadvertence, the details of the said victims were not reflected in the charge sheet. The Office has prayed for permission to submit supplementary Charge Sheet on the basis of materials already in the case diary in respect of the said victims.**

Though a petition under section 173(8) Cr.P.C. was filed before the Magistrate, there is no necessity for further investigation in the present case as the materials required to submit supplementary affidavit are already on record in the case diary.

It is extremely unfortunate and insensitive, as to how the judicial Magistrate and the Additional Sessions Judge both, either overlooked the said facts already on record or did not consider the materials on record in accordance with law and as such sadly failed to provide justice to a person who had lost his mother and his 18 month old son in a tragic accident in the year 2015.

The Supreme Court in **Luckose Zachariah @ Zak Appellants Nedumchira Luke and Ors. Vs Joseph Joseph and Ors., Criminal Appeal No. 256 of 2022, 2022 LiveLaw (SC) 230, on February 18, 2022**, held:-

*“10. In the judgment of this Court in **Vinay Tyagi** (supra) it has been held that a further investigation conducted under the orders of the court or by the police on its own accord would lead to the filing of a supplementary report. The supplementary report, the Court noted, would have to be dealt with “as part of the primary report” in view of the provisions of sub-Sections 3 to 6 of Section 173.*

11. Section 173(8) specifically provides as follows:

“(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub- section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub- sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub- section (2).”

*12. In terms of sub-Section 8 of Section 173, in the event of a further investigation, the report has to be forwarded to the Magistrate upon which, the provisions of subSections (2) to (6) shall (as far as may be) apply in relation to such report or reports as they apply in relation to a report forwarded in sub-section (2). In this backdrop, while interpreting the above provisions, in **Vinay Tyagi** (supra) this Court held thus:*

“42. Both these reports have to be read conjointly and it is the cumulative effect of the reports and the documents annexed thereto to which the court would be expected to apply its mind to determine whether there exist grounds to presume that the accused has committed the offence. If the answer is in the negative, on the basis of these reports, the court shall discharge an accused in

compliance with the provisions of Section 227 of the Code.”

13. The decision in **Vinay Tyagi** (*supra*) was noticed together with other decisions of this Court in the judgment of a three-Judge Bench in **Vinubhai Haribhai Malaviya v. State of Gujarat**, (2019) 17 SCC 1. This Court held:

“42. There is no good reason given by the Court in these decisions as to why a Magistrate's powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, *Sakiri [Sakiri Vasu v. State of U.P. , (2008) 2 SCC 409 : (2008) 1 SCC (Cri) 440]*, *Samaj Parivartan Samudaya [Samaj Parivartan Samudaya v. State of Karnataka, (2012) 7 SCC 407 : (2012) 3 SCC (Cri) 365]*, *Vinay Tyagi [Vinay Tyagi v. Irshad Ali, (2013) 5 SCC 762 : (2013) 4 SCC (Cri) 557]*, and *Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86]*; *Hardeep Singh [Hardeep Singh v. State of Punjab, (2014) 3 SCC 92 : (2014) 2 SCC (Cri) 86]* having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate's nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not wrongly arraigned as an accused or that a *prima facie* guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h) and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the

progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceeding, as was held in Hasanbhai Valibhai Qureshi [Hasanbhai Valibhai Qureshi v. State of Gujarat, (2004) 5 SCC 347 : 2004 SCC (Cri) 1603]. Therefore, to the extent that the judgments in Amrutbhai Shambhubhai Patel [Amrutbhai Shambhubhai Patel v. Sumanbhai Kantibhai Patel, (2017) 4 SCC 177 : (2017) 2 SCC (Cri) 331], Athul Rao [Athul Rao v. State of Karnataka, (2018) 14 SCC 298 : (2019) 1 SCC (Cri) 594] and Bikash Ranjan Rout [Bikash Ranjan Rout v. State (NCT of Delhi) , (2019) 5 SCC 542 : (2019) 2 SCC (Cri) 613] have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Admn.) [Randhir Singh Rana v. State (Delhi Admn.), (1997) 1 SCC 361] and Reeta Nag v. State of W.B. [Reeta Nag v. State of W.B., (2009) 9 SCC 129 : (2009) 3 SCC (Cri) 1051] also stand overruled.”

From the **death enquiry report dated 27.05.2015** submitted by the Sub Inspector of Police, Manoj Kumar Mandal to the Officer-In-Charge of the respective Police Station where the said victims died as a result of the accident in this case, it is seen that **the details/documents regarding the death of Aarti Manna mother of the petitioner and Barnamoy Manna, the 18 months old son of the petitioner was already on record in the present case being Bishnupur P.S. Case no. 585/15.**

Inspite of the relevant documents being in the case diary, the investigating officer at the time of filing the Charge Sheet left out the names of the mother and child who had also died in the said accident. The present petitioner in spite of such tragedy has been running from pillar to post since 2015.

The Police Officer attached to Bishnupur Police Station, Anandpur Police Station and the office of the Commissioner of Police, Kolkata have all added to the trauma of the petitioner.

It is now year 2023. More than seven long years have passed. The petitioner has still not lost hope in such adversity and has continued to repose faith in the system. Such conduct of the officers concerned cannot be ignored by the court as it is clearly an abuse of the process of law.

Accordingly, the Commissioner of Police, Kolkata and the Superintendent of Police, 24 Parganas South will order an inquiry and draw up necessary proceedings against the said errant officers who were connected with the case at the relevant time as discussed.

The respective inquiry shall be completed and disciplinary proceedings initiated within a month from the date of this Judgment.

The Police Force has to be more sensitive in such cases. Looking the other way, will only make the citizens lose whatever little faith they have in the system.

Thus considering all these facts, the judgment dated January 20, 2020 in Criminal Motion No. 184 of 2019 passed by the Additional Sessions Judge, 10th Court at Alipore, South 24 Parganas, and the order March 6, 2019 passed by the Judicial Magistrate, 8th Court at Alipore, South 24 Parganas in BGR Case no. 2605/2015 being not in accordance with law are set aside in the interest of Justice.

The prayer of the Inspector-In Charge of Bishnupur Police Station for submitting supplementary Charge Sheet on the basis of documents and materials already on record is allowed (left out due to inadvertence, as submitted). The supplementary Charge Sheet shall be filed within a period of 15 days from the date of this order before the Learned Magistrate who shall then proceed with the case in accordance with law considering that the incident in this case is of the year 2015 and make all endeavour to dispose of the case expeditiously.

CRR 1514 of 2020 is thus allowed.

Let a copy of this judgment be sent to the Commissioner of Police, Kolkata and the Superintendent of Police 24 Parganas (South),

the Additional Sessions Judge, 10th Court, Alipore, and the Judicial Magistrate, 8th Court, Alipore for necessary compliance.

There will be no order as to costs.

All connected Application stand disposed of.

Interim order if any stands vacated.

Copy of this judgment be sent to the learned Trial Court forthwith for necessary compliance.

Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)