

4.

October 3, 2023.
GSD

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRR 37 of 2021

In the matter of: Biman Das & Ors.

.... Petitioners

Mr. Jagriti Mishra
Mr. Reshab Kumar
Mr. Subham Gupta
Mr. Ananya Bhattacharya
Mr. Raj Kumar Mitra
Ms. Mrinmoyee Das

... for the petitioners

Ms. Rima Sarkar

... for the o.p. no.3

Mr. Aditi Sankar Chakraborty
Mr. Sourav Ganguly

... for the State

The present revisional application has been preferred challenging the Siliguri P.S. Case No. 1157 of 2020 dated 31.08.2020, wherein the investigating agency on conclusion of investigation submitted charge-sheet under the relevant sections of the IPC before the jurisdictional Court against the petitioners.

Ld. Advocate appearing for the petitioner submits that prior to the instant case being registered pursuant to a direction passed under Section 156(3) of the Cr.P.C., the o.p. no.3 namely, Rekha Ran Das, instituted an application under Section 156(3) of the Cr.P.C. before the Ld. ACJM, Siliguri.

By an order dated 15.6.2020, the Ld. ACJM, Siliguri was pleased to hold that the investigation was not required by the police authorities and treated the said application as a

petition of complaint under section 200 of the Cr.P.C. taking cognizance of the offence under Section 190(1)(a) of the Cr.P.C. The said case was numbered as C.R. Case No. 280 of 2020.

Suppressing such factum of the order dated 15.6.2020, another application was filed under Section 156(3) Cr.P.C. by the defacto-complainant, namely, Rekha Rani Das and the said application being Misc. Petition Case No. 11 of 2020 was taken up by the Ld. Magistrate on 26th of August, 2020 and the Ld. Magistrate was pleased to direct for investigation to be conducted by the officer-in-charge of Siliguri P.S. The said case was, as such, sent for investigation and, consequently, FIR was registered being Siliguri P.S. Case No. 1157 of 2020 dated 31.8.2020.

From whole of the application under Section 156(3) of the Cr.P.C., I find that there was no disclosure relating to the CR Case No. 280 of 2020.

Having regard to the fact that the order for investigation was obtained by suppressing the factum and also that a case is pending, I am of the view that the order which was passed by the Id. ACJM, Siliguri, was obtained surreptitiously. The allegations and the nature of the complaint are more or less the same and the investigating agency has arrived at their conclusion after investigation in respect of Siliguri P.S. Case No. 1157 of 2020 dated 31.8.2020.

Having considered the factum that the very purpose of the complainant/defacto-complainant/o.p. no.3, was not for

initiating a criminal proceeding but for the purposes of effecting the rigours of criminal investigation upon the accused/petitioners, I am of the view that there is some malice involved in the manner in which the provisions have been invoked.

However, I find that there are some materials so far as the merits of the case is concerned and the investigating agency arrived at its conclusion by filing a charge-sheet under Section 173 of the Cr.P.C. before the jurisdictional Court.

At present, on the self-same facts, both the CR Case No. 280 of 2020 and the charge-sheet filed in connection with Siliguri P.S. Case No. 1157 of 2020 are pending.

Having regard to the manner in which the order of investigation was obtained from the Ld. ACJM, Siliguri, I am inclined to quash the proceedings so far as the registration of the FIR is concerned and the nomenclature relating to Siliguri P.S. Case No. 1157 of 2020.

Since none of the parties have agitated on the merits of the case, I direct that all the materials which have been collected by the police authorities in course of investigation and the charge-sheet filed being Siliguri P.S. charge-sheet no. 419 of 2021 dated 15.6.2021, be considered to be a complaint along with CR Case No. 280 of 2020.

The Id. Magistrate will treat this charge-sheet as a case which has been instituted otherwise than on police report. So far as the applicability of the sections are concerned, the Ld. Magistrate after recording the evidence before the charge

will arrive at its conclusion as to what are the offence(s) which has been made out or whether any offence, at all, has been made out in this case. The materials which have been collected by the investigating agency may be used in course of evidence being recorded. The Id. Magistrate would take the same into consideration and after the evidence of the prosecution witness are over, decide regarding the plausibility of the charges being framed against the accused persons.

There shall be single case that the Id. Magistrate would decide and preferably the same should be CR 280 of 2020 will continue and the nomenclature in respect of Siliguri P.S. Case No. 1157 of 2020 would be considered to be deleted and the same may be added along with the records of CR 280 of 2020.

With the aforesaid observations, CRR 37 of 2021 is disposed of.

Pending application, if any, is also disposed of.

Parties shall act on the server copy of this order, duly collected from the official website of the Hon'ble High Court, Calcutta.

(Tirthankar Ghosh, J.)