

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 198 of 2022

PALATAK GHOSH

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner	: Mr. Sourav Chatterjee, Adv. Dr. Navin Barik, Adv. Mr. Sayan De, Adv. Ms. Esha Acharya, Adv.
For the State	: Mr. Aditi Sankar Chakraborty, ld. A.P.P. Mr. Nilay Chakraborty, Adv.
For Opposite Nos. 4 to 7	: Mr. Sabyasachi Banerjee, Adv. Mr. Pratim Roy, Adv. Mr. Bapi Sarkar, Adv.
Hearing concluded on	: 10 th January, 2023
Judgement on	: 13 th January, 2023

Siddhartha Roy Chowdhury, J.:

1. The petition under consideration takes exception to the order no. 56 dated 1st August, 2022 passed by learned Judicial Magistrate, 4th Court, Siliguri in G.R. Case No. 2911 of 2015 arising out of Siliguri P.S. Case No. 759 of 2015 dated 20th August, 2015.
2. Briefly stated, on 20th August, 2015, Sri Palatak Ghosh informed the Inspector-in-charge of Siliguri Police Station in writing that his mother Bimala Bala Ghosh is the owner of the property in question. On

15th August, 2015 the informant went to the said property when some local people informed that way back in the year 2000 the property was sold to some persons of Siliguri. It was quite surprising an information, and after searching the office of the concerned authorities he came to know that one deed of sale was executed in the name of his mother Bimala Bala Ghosh in favour of Debdas Mukherjee and five other persons on 12th November, 2000. Though the registration was completed in the year 2003 and duly transcribed in the Book No. I Volume No. 35 being no. 1517 for the year, 2003. Smt. Bimala Bala Ghosh did not execute the document no. 1517 of 2003. The document was forged and fabricated by the seven accused persons in collusion and connivance with each other.

3. As the information disclosed offence, cognizable in nature, Siliguri P.S. Case No. 759 of 2015 was registered on 20th August, 2015 under Section 420/465/467/468/474/120B of the I.P.C. Police took up investigation which culminated into submission of charge sheet on 24th June, 2016 against the five accused persons. In course of investigation the Investigating Officer seized the Title Deed in question and also obtained the specimen signature of the accused persons as well as informant and his family members and forwarded the same for comparison with the signatures on the Title Deed in question to the Director D.I.B., C.I.D., West Bengal, Bhabani Bhaban. However, Examiner of questioned document could not come to a definite opinion, because of wide time gap of fifteen years. The Investigating Officer, however, filed charge sheet. The de-facto complainant moved an application before a Co-ordinate Bench seeking further investigation to

the matter which was registered as CRR 140 of 2019 and the Co-ordinate Bench after considering the submission of learned Counsel representing the parties refused to interfere holding inter alia such interference would amount to usurpation of power of the Magistrate. It was held further that the petitioner should have approached the Court below if the petitioners were aggrieved by order of the Court below passed in an application filed by the Investigating Officer, the petitioners have not done so. The petitioners have also not challenged the report of the expert by taking exception thereto.

4. The informant thereafter filed an application under Section 173 (8) of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate, Siliguri with a prayer for direction upon the I.O. for holding further investigation. Learned Trial Court considering the application under Section 173(8) of the Cr.P.C. was pleased to pass the order impugned, holding inter alia that de-facto complainant lacks the locus standi to pray for further investigation under Section 173 (8) of the Code of Criminal Procedure.
5. Assailing the impugned order Mr. Sourav Chatterjee, learned Counsel for the petitioner submits that the order impugned was passed by learned Judicial Magistrate, 4th Court, Siliguri relying upon the judgements pronounced in the case of **Reeta Nag vs. State of West Bengal** reported in **(2009) 9 SCC 129** and **Amrut Bhai Shambhubhai Patel vs. Suman Bhai Kanti Bhai Patel** reported in **(2017) 4 SCC 177** but subsequently overruled by Hon'ble Supreme Court. It is further contended that the petitioner being the de-facto complainant and victim has the right to have his say at every stage of

proceeding and such right has been recognized by way of amendment with effect from 31st December, 2009. The term 'victim' has been defined under Section 2 (wa) as one who has suffered any loss and injury caused by reason of the act or omission for which the accused person has been charged at the expression victim includes his or her guardian or legal heir. Therefore, learned Court, according to Mr. Chatterjee committed error in exercising the jurisdiction by refusing to grant the prayer of the de-facto complainant, virtually on the ground of locus- standi, which is alien to the criminal jurisprudence. To buttress his argument Mr. Chatterjee relies upon the decision of Hon'ble Supreme Court **A.R. ANTULAY VS. RAMDAS SRINIWAS NAYAK & ANR.** reported in **(1984) 2 SCC 540** wherein Hon'ble Supreme Court held:-

"6. It is a well recognised principle of criminal jurisprudence that anyone can set or put the criminal law into motion except where the statute enacting or creating an offence indicates to the contrary. The scheme of the Code of Criminal Procedure envisages two parallel and independent agencies for taking criminal offences to court. Even for the most serious offence of murder, it was not disputed that a private complaint can, not only be filed but can be entertained and proceeded with according to law. Locus standi of the complainant is a concept foreign to criminal jurisprudence save and except that where the statute creating an offence provides for the eligibility of the complainant, by necessary implication the general principle gets excluded by such statutory provision."

6. It is contended by Mr. Chatterjee that fair investigation is now considered to be constitutional right. The Investigating Officer while submitting charge sheet categorically stated that the Examiner, questioned document could not come to definite opinion because of wide time gap of fifteen years due to want of contemporaneous documents or signature. No attempt howsoever, was made by the Investigating Officer to collect contemporaneous signatures, though the same is available with the petitioner. No attempt was made to collect thumb impression of the petitioner and his family members in order to make the investigation effective and proper. This inaction on the part of the I.O. is detrimental to the interest of fair investigation and fair trial which the victim is entitled to.
7. Refuting such contention, Mr. Sabyasachi Banerjee, learned Counsel representing the private opposite parties submits that the petitioner never prayed before the learned Judicial Magistrate for any order directing the Investigating Officer to undertake further investigation. The intention of the petitioner was to steer the course of investigation which is why prayer was made before the learned Judicial Magistrate for necessary order to collect the thumb impression of the complainant and his family members to compare the same with the thumb impression available on the questioned document.
8. Drawing my attention to the provision of Section 173 (8) of the Code of Criminal Procedure Mr. Banerjee, learned Counsel for the respondent, submits that learned Judicial Magistrate was absolutely justified in rejecting the petition, as the prayers made before the learned Judicial Magistrate for all practical purposes were targeted and

if allowed, it would amount to interfere with the jurisdiction of the investigating officer. Learned Judicial Magistrate did not commit any error while exercising jurisdiction conferred upon the Court in dismissing the petition under consideration.

9. Drawing my attention to the provision of Section 102 of the Criminal Procedure Code, Mr. Banerjee further submits that power has been conferred upon the police to seize certain property with only obligation to inform the Magistrate.
10. There was no room for learned Judicial Magistrate to direct the police officer to seize the admitted thumb impression for the purpose of verification and examination by the experts.
11. Learned Judicial Magistrate was absolutely correct in dismissing the petition otherwise it would have been an act of interfering with the investigation which is impermissible in law. Investigation is the domain of police and does not warrant interference unless there is reason to hold that the Investigating Officer is not acting bonafide. To buttress his point Mr. Banerjee relied upon judgement of Hon'ble Supreme Court pronounced in the case of **ISHSWAR PRATAP SINGH & ORS. VS. STATE OF UTTAR PRADESH & ANR.** reported in **(2018) 13 SCC 612** wherein Hon'ble Supreme Court held:-

“We do not think that any detailed discussion is warranted on the well-settled proposition that no external agency can dictate the course of investigation in a criminal case. It is within the exclusive jurisdiction of the police [see [R. Sarala v. T.S. Velu & Others](#) (2000) 4 SCC 459]]. The Court also cannot supervise the investigation. However, in exceptional

situations, Superior Courts may monitor an investigation. But that is not the same as supervision.”

Mr. Banerjee also relies upon the judgement of Hon’ble Apex Court in **MANOHAR LAL SHARMA VS THE PRINCIPLE SECRETARY & ORS.** reported in **(2014) 2 SCC 532** wherein Hon’ble Apex Court held:-

"24. In the criminal justice system the investigation of an offence is the domain of the police. The power to investigate into the cognizable offences by the police officer is ordinarily not impinged by any fetters. However, such power has to be exercised consistent with the statutory provisions and for legitimate purpose. The courts ordinarily do not interfere in the matters of investigation by police, particularly, when the facts and circumstances do not indicate that the investigating officer is not functioning bona fide. In very exceptional cases, however, where the court finds that the police officer has exercised his investigatory powers in breach of the statutory provision putting the personal liberty and/or the property of the citizen in jeopardy by illegal and improper use of the power or there is abuse of the investigatory power and process by the police officer or the investigation by the police is found to be not bona fide or the investigation is tainted with animosity, the court may intervene to protect the personal and/or property rights of the victims."

12. Drawing my attention to the order passed by learned Co-ordinate Bench on 11th March, 2020, Mr. Banerjee submits fairly that when the Co-ordinate Bench refused to usurpt the jurisdiction of Magistrate to direct further investigation, any order directing further investigation by this Court would amount to an act of revisiting the order of the Co-

ordinate Bench which, for the interest of judicial discipline should consciously be averted.

13. According to Mr. Banerjee, the observation of the Co-ordinate Bench that any order for further investigation would amount to usurpation of the power of the Judicial Magistrate has set the issue at rest to once for all and any attempt to reopen and reconsider such prayer would be a bar under the principle of *res judicata*.
14. Mr. Nilay Chakraborty, learned Counsel for the State submits that under Code of Criminal Procedure, 1973 ample provisions are there to deal with the situation as canvassed by the petitioner. In course of trial Section 311 of the Cr.P.C. can be invoked by the learned Trial Court if necessary to obtain the specimen signature or thumb impression of the petitioner or his family members, even by invoking the provision of Section 319, learned Trial Court could ensure the fair trial.
15. Scheme of the Criminal Procedure Code, 1973 is to ensure a fair trial and that would commence only after a fair investigation. It goes without saying that fair investigation is also part of constitutional right guaranteed under Article 20 and 21 of the Constitution. Therefore, the investigation must be fair, transparent, judicious which is minimum requirement of the law. In the case of **BABUBHAI VS. STATE OF GUJARAT** reported in (2010) 12 SCC 254 Hon'ble Apex Court held:-

“A fair investigation is as much a part of constitutional right guaranteed under Article 21 of the Constitution as a fair trial, without which the trial will naturally not be fair.

45. Not only fair trial but fair investigation is also part of constitutional rights guaranteed under Articles 20 and 21 of the Constitution of India. Therefore, investigation must be fair, transparent and judicious as it is the minimum requirement of rule of law. The investigating agency cannot be permitted to conduct an investigation in a tainted and biased manner. Where non-interference of the court would ultimately result in failure of justice, the court must interfere. In such a situation, it may be in the interest of justice that independent agency chosen by the High Court makes a fresh investigation."

16. In **MANOHAR LAL SHARMA (supra)** it is held:-

"26. One of the responsibilities of the police is protection of life, liberty and property of citizens. The investigation of offences is one of the important duties the police has to perform. The aim of investigation is ultimately to search for truth and bring the offender to book."

17. In **DEBENDRA NATH SINGH VS. STATE OF BIHAR** in **Criminal Appeal No. 1768 of 2022** Hon'ble Supreme Court held:-

"To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police—which such Magistrate is to supervise—[Article 21](#) of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under [Section 173\(2\)](#); and which power would continue to ensure in such Magistrate at all stages of the criminal proceedings until the trial itself

commences. Indeed, even textually, the “investigation” referred to in [Section 156\(1\)](#) CrPC would, as per the definition of “investigation” under [Section 2\(h\)](#), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under [Section 173\(8\)](#) CrPC.”

“13. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:

(a) The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.

(b) The powers of the Magistrate to ensure proper investigation in terms of [Section 156](#) CrPC have been recognised, which, in turn, include the power to order further investigation in terms of [Section 173\(8\)](#) CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

(c) Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of [Section 173\(8\)](#) CrPC, in an appropriate case, where the High Court feels that the

investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under [Section 482](#) CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of [Section 173\(8\)](#) CrPC do not limit or affect such powers of the High Court to pass an order under [Section 482](#) CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

(d) Even when the wide powers of the High Court in terms of [Section 482](#) CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

(e) The powers under [Section 482](#) CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.”

18. Hon'ble Apex Court in **VINUBHAI HARIBHAI MALAVIYA & ORS. VS. STATE OF GUJARAT & ANR.** reported in **(2019) 17 SCC 1** reiterated that Article 21 demands no less than a fair investigation. It is further held:-

“25. It is thus clear that the Magistrate’s power under Section 156 (3) CrPC is very wide, for it is this judicial authority that must be satisfied that proper investigation by the police takes place. To ensure that a “proper investigation” takes place in the sense of a fair and just investigation by the police - which such Magistrate is to supervise - Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173 (2); and which power would continue to ensure in such Magistrate at all stages of the criminal proceedings until the trial itself commences. Indeed, even textually, the “investigation” referred to in Section 156 (1) CrPC would, as per the definition of “investigation” under Section 2 (h), include all proceedings for collection of evidence conducted by a police officer; which would undoubtedly include proceedings by way of further investigation under Section 173(8) CrPC.”

19. From the attending facts of the case it is admitted that the de-facto complainant informed the police that the registered document was forged and fabricated and it was never executed by the mother of the petitioner or any of her family members. Therefore, the signature of the

executants on the document in question as well as their thumb impressions ought to have been collected by the Investigating Officer and when the expert expressed his inability to arrive at a definite conclusion because of non-availability of contemporaneous documents containing the signature or thumb impression of the complainant it was the duty of the Investigating Officer to make an attempt to collect those documents in the interest fair investigation. Instead of making such attempt to collect such documents the Investigating Officer submitted charge sheet disclosing that the Examiner of questioned document could not give any opinion. This act of the Investigating Officer undoubtedly indicates his apathy to unearth truth. There is every reason to presume that act of Investigating Officer is far beyond satisfactory. There is deficiency in the investigation, though it is too early to say that the Investigating Officer intends to ensure an escape route for the accused persons.

20. The principle of res judicata is alien to the criminal administration of justice, therefore I do not find any reason to imbibe myself with the view propagated by Mr. Banerjee that in view of the observation of the Co-ordinate Bench this Court is estopped either by the principle of res judicata to pass appropriate order as prayed for, taking lumen from the decision of Hon'ble Apex Court in **DEVENDRA & ORS. VS. STATE UTTAR PRADESH & ANR.** reported in **(2009) 7 SCC 495:-**

“25. The principle of res judicata has no application in a criminal proceeding. The principle of res judicata as adumbrated in Section 11 of the Code of Civil Procedure or the general principles thereof will have no application in a case of this nature.”

The present application under consideration was filed seeking remedy based on facts crept in subsequent to disposal of C.R.R. 140 of 2019.

21. The Co-ordinate Bench refused to pass any order for re-investigation, taking into consideration the fact that the de-facto complainant could have approached the jurisdictional Magistrate for exercising power conferred under Section 173 (8) of the Cr.P.C. Following the observation of Co-ordinate Bench the petitioner tried his hand by filing an application under Section 173 (8) of the Cr.P.C. before the learned Judicial Magistrate and it was rejected on the ground of locus standi of the de-facto complainant. Such order of rejection prompted the petitioner to file the petition under consideration. So in my humble opinion adjudication of the petition under consideration can never be considered to be an act of judicial indiscipline.

22. True it is the petition under consideration is filed under Article 227 of the Constitution but it has become a settled principle of law that in appropriate cases Court can invoke the jurisdiction under Article 482 of the Criminal Procedure Code to secure ends of justice even suo-motu. In this regard, I rely upon the judgement of Hon'ble Apex Court pronounced in the case of **POPULAR MUTHIAH VS. STATE REPRESENTED BY INSPECTOR OF POLICE** reported in **(2006) 7 SCC 296** wherein Hon'ble Supreme Court held:-

“30. In respect of the incidental or supplemental power, evidently, the High Court can exercise its inherent

jurisdiction irrespective of the nature of the proceedings. It is not trammled by procedural restrictions in that

(i) power can be exercised suo motu in the interest of justice. If such a power is not conceded, it may even lead to injustice to an accused.

(ii) Such a power can be exercised concurrently with the appellate or revisional jurisdiction and no formal application is required to be filed therefor.

(iii) It is, however, beyond any doubt that the power under [Section 482](#) of the Code of Criminal Procedure is not unlimited. It can inter alia be exercised where [the Code](#) is silent where the power of the court is not treated as exhaustive, or there is a specific provision in [the Code](#); or the statute does not fall within the purview [of the Code](#) because it involves application of a special law. It acts ex debito justitiae. It can, thus, do real and substantial justice for which alone it exists.”

23. Learned Trial Court failed to appreciate the right of the victim recognized at every stage of criminal proceeding. It is held by Hon’ble Apex Court in the case of **JAGJEET SINGH & ORS. VS. ASHISH MISHRA ALIAS MONU** reported in **(2022) 9 SCC 321:-**

“A. Victim’s right to be heard

15. Until recently, criminal law had been viewed on a dimensional place wherein the courts were required to adjudicate between the accused and the State. The “victim” – the de facto sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator. However, with the recognition that the ethos of criminal justice dispensation to prevent and punish “crime” had surreptitiously turned its back on the “victim”, the

jurisprudence with respect to the rights of victims to be heard and to participate in criminal proceedings began to positively evolve.”

20. *It is pertinent to mention that the legislature has thoughtfully given a wide and expansive meaning to the expression ‘victim’ which “means a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression “victim” includes his or her guardian or legal heir”*

22. *It cannot be gainsaid that the right of a victim under the amended Cr.P.C. are substantive, enforceable, and are another facet of human rights. The victim’s right, therefore, cannot be termed or construed restrictively like a brutum fulmen. We reiterate that these rights are totally independent, incomparable, and are not accessory or auxiliary to those of the State under the Cr.P.C. The presence of ‘State’ in the proceedings, therefore, does not tantamount to according a hearing to a ‘victim’ of the crime.*

23. *A ‘victim’ within the meaning of Cr.P.C. cannot be asked to await the commencement of trial for asserting his/her right to participate in the proceedings. He/She has a legally vested right to be heard at every step post the occurrence of an offence. Such a ‘victim’ has unbridled participatory rights from the stage of investigation till the culmination of the proceedings in an appeal or revision. We may hasten to clarify that ‘victim’ and ‘complainant/informant’ are two distinct connotations in criminal jurisprudence. It is not always necessary that the complainant/informant is also a ‘victim’, for even a stranger to the act of crime can be an ‘informant’, and similarly, a ‘victim’ need not be the complainant or informant of a felony.”*

24. Therefore, in my view learned Trial Court failed to exercise jurisdiction vested upon it while rejecting the petition under Section 173 (8) of the Cr.P.C. on the ground of the locus standi which warrants interference.

25. As I have pointed out right to fair trial is considered as constitutional right which cannot be secured without fair investigation. Though Mr. Chakraborty, learned Counsel for the State submits that in course of trial invoking the provision of Section 311 or Section 319 of the Code of Criminal Procedure the issue raised by the petitioner may be taken care of, but I do not find any reason to endorse such view. The final report submitted by the I.O is sufficient to hold that the investigation has not been conducted properly. Deficiency in investigation would certainly have a negative impact on the trial. In order to protect the constitutional right of the victims and the accused persons as well I consider it apt to invoke the jurisdiction vested under Section 482 of the Cr.P.C. to order further investigation of the case, to secure ends of justice, otherwise unsuccessful trial would be fait accompli.

26. To secure fair investigation, it is absolutely necessary to give direction for further investigation to the I.O. so that he can take all necessary measures to collect evidence to justify that the document in question was forged, when he is of the view that the private respondents should be sent for trial for committing the offence under Section 420/465/467/468/474/120B of the I.P.C.

27. The order impugned is set aside. Further investigation will be conducted by officer, other than the I.O. submitted final report under

Section 173 (2) of Cr.P.C. Investigating Officer is directed to undertake further investigation of the matter and to submit report as early as possible. The parties to the criminal proceeding should join the further investigation.

28. Copy of the judgement be sent to learned Chief Judicial Magistrate, Jalpaiguri for information and necessary action.
29. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)