

23. 09. 2024

BP.
Sl. 34
Court No. 237

CRR 746 of 2022

Debdutta Misra
Vs.
The State of West Bengal and Anr.

Mr. Sabir Ahmed
Mr. Sobhan Majumder
..for the petitioner

Mr. Madhusudan Sur
Mr. Mainak Gupta
..for the State

Mr. Subrata Ghosh
..for the opposite party no.2

This is an application preferred against the order dated 21st December, 2021 passed by Learned Judicial Magistrate, 1st Court, Chanchal, Malda in G.R. Case No. 2087 of 2016 under Sections 465/468/470/471 of the Indian Penal Code. A prayer was made before the learned Magistrate for further investigation of the matter, which has been turned down by the court below on the ground that the trial has already been commenced and as such court cannot pass any order for further investigation.

It is submitted on behalf of the petitioner that he is a non-teaching staff of a High School namely Kanua Bhawanipur High School, where inspection was carried out by the District Level Inspection Team on March, 18, 2005 for considering whether the said school can be upgraded from Class VIII to Class IX and upon the

inspection being conducted, the District Level Inspection team submitted its report before the authority concerned. The petitioner thereafter applied for the copy of inspection report of the District Level Inspection Team from the District Inspector of Schools by way of an application under the Right to Information Act, on July 26, 2016 and the District Inspector of Schools supplied the copy of said report of the District Level Inspection Team dated 18th March, 2005 to the petitioner. In the meantime the Headmaster of the said school being the opposite party no.2 herein filed a mandamus appeal before this Court which was registered as MAT 250 of 2015 and subsequently renumbered as FMA 2277 of 2016, wherein the Headmaster of the said school annexed one inspection report of the District Level Inspection Team dated March 18, 2005.

The petitioner submits that after comparing the inspection report of the District Level Inspection Team dated March, 18, 2005 supplied by D.I. of Schools on the basis of his application under R.T.I. Act with that of the inspection report annexed by the Headmaster of the said school in MAT 250 of 2015, the petitioner discovered that the Headmaster of the said school manipulated and fabricated the said report in certain way and for which the purport of the report has been changed.

Thereafter, on the basis of petitioner's application vide under Section 156(3) of the Code of Criminal Procedure, the jurisdictional court directed the police authority to register FIR and accordingly the aforesaid criminal proceeding being Harishchandra pur P.S. Case No. 773 of 2016 dated 10th December, 2016 under Sections 465/468/470/471 of the Indian Penal Code was started.

Petitioner's further contention is that after conducting the investigation police submitted a charge sheet on 31st October, 2017 against opposite party no.2 herein under the above mentioned provisions of the Indian Penal Code. The main grievance ventilated by the petitioner in the present application is that the investigating authority did not make fair investigation before filing the charge sheet and they tried to save the opposite party no.2 /Headmaster. The petitioner's main allegation in the FIR is that the Headmaster has forged the aforesaid report of the D.I. of Schools and for which he has committed an act of forgery but unless the original reports be not seized from the office and be not sent for comparison with the report that has been annexed by the Headmaster in the aforesaid MAT 250 of 2015, the allegation of forgery could not be proved before the trial court.

The petitioner accordingly filed an application under Section 173(8) of the Code of Criminal Procedure before the court below on 20th February, 2018 thereby praying for an order directing the police authority concerned to conduct further investigation in the above mentioned case. He further contended that in the said application the petitioner has also mentioned about the callousness of the investigating officer, who not even recorded the statement of the then District Inspector of Schools (SE), Malda nor have mentioned his name in the list of witnesses as appearing in the charge sheet. The petitioner further stated that investigating officer has also not recorded the statement of the members of the District Level Inspection Team, nor have mentioned their name in the list of witnesses appearing in the charge sheet. Not only that the investigating officer of the case has not seized the report of the District Level Inspection Team which was manipulated and fabricated by the opposite party no.2.

Learned counsel appearing on behalf of the opposite party no.2 submits that the court has rightly pointed out that the evidence of P.W.-1 has already been started which is reflected from the order dated 14th January, 2020 and it is settled law that the order of further investigation cannot be passed where trial has

already been commenced. Accordingly the court below has not committed any mistake in passing the order impugned and as such the order impugned does not call for interference.

Learned counsel appearing on behalf of the State Mr. Sur pointed out certain pages of the case diary and he also submits that there are certain instances which reflects that the investigating authority had not taken proper recourse to seize the original documents nor they had made attempt to record the statement of the concerned persons of the inspection team who could have only said whether any forgery was committed or not. He thereby pointed out the defects in investigation.

I have considered the submissions made on behalf of the parties. On perusal of the order impugned it appears that the learned court below had rejected the petitioner's application only on the ground that such order for further investigation cannot be passed when trial has already been commenced. The relevant portion of the order may be extracted below.

"The whole discussion drives this Court to hold that the order of re-investigation can not be passed by the Ld Magistrate but the order of further investigation can be passed by the Magistrate before taking of cognizance but it cannot be ordered once the trial of the case has been commenced.

Here in the instant case the evidence of PW-1 (examination-in-chief) namely Debdutta Mishra has been started on 14.01.2020 and it has been deferred by virtue of the prayer of the Ld. App, thus it can be stated that the trial of the instant case has been commenced, this being so this Court is not inclined to pass an order of further investigation in spite of the

fact that it is apparent from case record that there is gross negligence on the part of the I/O in conducting the investigation.

This being so the prayer of the application dated 26.07.2021 of the dee-facto complainant stands rejected on contest and the application is disposed of.”

The aforesaid observation of the court below is an outcome of narrow interpretation of law, in view of the fact that the main consideration in such cases by the trial court would be as to whether the further investigation is required to adjudicate the case finally or not and whether the trial has commenced or not cannot be the sole criteria for rejecting a prayer for further investigation, specifically when it is apparent that unless further investigation is allowed, it would amount to a travesty of justice. Here the court is of clear view that it is apparent from the case record that there is gross negligence on the part of the I.O. in conducting the investigation. Even learned counsel appearing for the state admits that there are lapses and negligence on the part of investigating authority in conducting the investigation.

The word “further investigation” literally means “Additional” or “supplemental” investigation. Therefore, further investigation is continuance of earlier investigation and not a fresh investigation.

When defective investigation is brought to the notice of the court during trial, it may be cured by further investigation, if circumstances permit it. In **Om Prakash**

Narang Vs. State of (Delhi Administration) , AIR 1979

SC 1791, Apex Court held:-

“21. As observed by us earlier, there was no provision in the Cr.P.C., 1898 which, expressly or by necessary implication, barred the right of the police to further investigate after cognizance of the case had been taken by the Magistrate. Neither Section 173 nor Section 190 lead us to hold that the power of the police to further investigate was exhausted by the Magistrate taking cognizance of the offence. Practice, convenience and preponderance of authority, permitted repeated investigations on discovery of fresh facts. In our view, notwithstanding that a Magistrate had taken cognizance of the offence upon a police report submitted under Section 173 of the 1898 Code, the right of the police to further investigate was not exhausted and the police could exercise such right as often as necessary when fresh information came to light. Where the police desired to make a further investigation, the police could express their regard and respect for the court by seeking its formal permission to make further investigation”.

Having considered the aforesaid facts and circumstances of the case, I find that the order impugned dated 21st December, 2021 passed in G.R. Case No. 2087 of 2016 suffers from impropriety and is liable to be set aside.

In such view of the matter, CRR 746 of 2022 is hereby allowed. The order impugned dated 21st December, 2021 is hereby set aside. The court below is directed to hear the petitioner’s application under Section 173(8) of the Code of Criminal Procedure afresh and to pass an order considering the issue as to whether further investigation for the present case is required in terms of his own observation that investigating officer has made a perfunctory investigation, irrespective of the fact as to

whether the trial has already been commenced or not, preferably within a period of eight weeks from the date of communication of the order.

Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Ajoy Kumar Mukherjee, J.)