

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 784 of 2023

Somesh Dasgupta

-vs.-

The State of West Bengal & Anr.

Mr. Kaushik Chowdhry,
Mr. Ayan Bhattacharya,
Mr. Bratin Kumar Dey,
Mr. Anand Keshari.

...For the Petitioner.

Mr. Debasish Roy, Ld. P.P.
Mr. Saryati Datta.

...For the State

Mr. Sabir Ahmed,
Md. Abdur Rakib,
Mr. Suman Biswas,
Ms. Tasmin Ahmed,
Md. Mujahid Mehedi.

...For the Opposite Party No.2.

Reserved on : 26.04.2024.

Judgment on : 13.05.2024.

Tirthankar Ghosh, J:-

The present revisional application was preferred challenging the judgment and order dated February 16, 2023 passed by the learned Additional District & Sessions Judge, 2nd Court, Asansol in Criminal Motion no. 15 of 2022, wherein the learned revisional Court was pleased to affirm the order

dated April 27, 2022 passed by the learned Chief Judicial Magistrate, Asansol, Paschim Bardhaman in connection with Kulti Police Station case no. 76/2019 dated March 15, 2019 (G.R. Case no. 558/2019).

Kulti Police station case no. 76/2019 dated March 15, 2019 was registered for investigation under Sections 354/354A/354B/354D/323/341/506/509 of the Indian Penal Code which after conclusion of investigation, the investigating agency submitted a report under Section 173 of the Code of Criminal Procedure, thereby discharging the accused from the case. The learned CJM, Paschim Bardhaman on receipt of the report issued notice to the de facto complainant fixing date on 20.04.2022 for appearance.

Records reflect that on 02.03.2022 by way of put-up petition the opposite-party no.2/ de facto complainant filed an application accompanied by affidavit praying for supplying of all the documents to her which has been relied upon by the Investigating Officer of Kulti Police Station case no. 76/2019 to arrive at its conclusion. Learned Magistrate by its order dated 02.03.2022 allowed the prayer directing the investigating officer to supply the documents relied upon by him. The order dated 21.03.2022 passed by the learned CJM, Paschim Bardhaman reflects that the de facto complainant again filed a petition on affidavit praying for supplying copy of statement under Section 164 of the Code of Criminal Procedure and accordingly a direction was passed to supply copy of the same to the de facto complainant. On 27.04.2022 the de

facto complainant filed another petition on affidavit praying for further investigation of the case by engaging a superior officer attached to the Police Commissionerate except the previous investigating officer. The said order also reflects that two petitions were filed by the present petitioner/accused along with the prayer for supplying copy of the closure report together with the statement of the witnesses, report of Sexual Harassment Committee, statement under Section 164 Cr.P.C. with CCTV footage and other documents and to give him an opportunity of hearing in the present case. The learned Magistrate in respect of the public documents opined that those which are public documents and if the accused/petitioner is entitled to get the same he may be supplied the same. However, the Court refused to consider the prayer for supplying of the copies so demanded and fixed the next date on 07.06.2022. The accused/petitioner being aggrieved by the said order dated 27.04.2022 passed by the learned CJM, Paschim Bardhaman was pleased to prefer a revisional application being Criminal Motion No. 15/2022, the said revisional application after being admitted was decided on 16.02.2023 by the learned Additional District & Sessions Judge, 2nd Court, Asansol. The learned revisional Court after hearing the arguments advanced on behalf of the Petitioner, State and the Opposite Party arrived at its finding that the learned Chief Judicial Magistrate, Paschim Bardhaman was correct in not allowing the prayer to supply of copy of the closure report, statement of the witnesses, report of the Sexual Harassment Committee, statement under Section 164 of Cr.P.C. with CCTV Footages and

other documents to the petitioner and consequently dismissed the Criminal Motion no. 15/2022.

Challenging the aforesaid order dated 16.02.2023 petitioner again preferred an application under Section 482 of the Code of Criminal Procedure before this Court. The main thrust of contention of Mr. Bhattacharya, learned advocate appearing for the petitioner is that if the de facto complainant is entitled to the copies of the documents relied upon by the investigating officer in that case a person who face the rigours of investigation and finally was relieved of the charges after investigation, is entitled to have equal right at the time of hearing of the 'protest petition', so that the principles of natural justice are adhered to and the petitioner can effectively participate in the hearing.

In order to fortify his argument Mr. Bhattacharya tried to impress upon this Court that in the present case the petitioner has not only been exonerated by the investigating officer but also has been relieved of the charges by the Internal Complaint Committee. As such a right has accrued to the petitioner pursuant to both the authorities relieving him from the accusations made by the de facto complainant. According to him at the stage of Section 173(8) of the Code Criminal Procedure when the de facto complainant is granted an opportunity to file a protest petition on the basis of the documents or materials collected by the investigating officer for effectively conducting the hearing of the case, there is no prudence involved in not extending the same opportunity to

the present petitioner who has already been harassed because of the rigours which he had to face both in his professional life as also in his social life.

In order to substantiate his arguments learned advocate relied upon the following judgments:

- Bhagwant Singh –Vs. – Commissioner of Police, (1985) 2 SCC 537;
- Jakia Nasim Ahesan –Vs. – State of Gujarat, (2011) 12 SCC 302;
- Bimal Gurung –Vs. – Union of India & Ors., (2018) 15 SCC 480;
- Vinay Tyagi –Vs. – Irshad Ali @ Deepak & Ors., (2013) 5 SCC 762;
- Institute of Chartered Accounts of India –Vs. – K.L. Ratna & Ors., (1986) 4 SCC 537;
- Swadeshi Cotton Mills –Vs. – UOI, (1981) 1 SCC 664;
- Mangilal –Vs. – State of M.P., (2004) 2 SCC 447;
- State Bank of India & Ors. –Vs. – Rajesh Agarwal & Anr., (2023) 6 SCC 1;
- Madhyaman Broadcasting Limited –Vs. – UOI & Ors., 2023(5) SCALE 239;
- Vinubhai Haribhai Malavaya –Vs. – State of Gujarat & Ors., (2019) 17 SCC 1;
- Indru Ramchand Bhavni & Ors. –Vs. – Union of India & Ors., (1988) 4 SCC 1;
- Gagendra Kumar Agarwal –Vs. – State of U.P. & Anr., III (1994) CCR 2004 (ALL).

Mr. Sabir Ahmed, learned advocate appearing for the private/opposite party submitted that it is a settled principle of law that the de facto complainant who set the criminal law into motion and who has suffered the

consequences of a dissatisfactory investigation cannot be equated with an accused who has been discharged from the case, after the investigation.

Learned advocate emphasised that it is a settled proposition of law that even the accused is not required to be heard at the time of hearing under Section 173(8) of the Code of Criminal Procedure, far less the documents which has been prayed for by the accused/petitioner in this case for conducting an effective hearing. An accused at this stage is not entitled to be heard has been reiterated by the Courts and the petitioner has filed the present application in a designed manner to protract the hearing and frustrate any further investigation which the petitioner has been doing since the inception of the case in the year 2019. Learned advocate relied upon the following judgments:

In order to fortify his arguments, petitioner relied upon Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj –Vs. – State of A.P. & Ors., (1999) 5 SCC 740, attention was drawn to paragraph 11 which is set out as follows:

“11. In such a situation the power of the court to direct the police to conduct further investigation cannot have any inhibition. There is nothing in Section 173(8) to suggest that the court is obliged to hear the accused before any such direction is made. Casting of any such obligation on the court would only result in encumbering the court with the burden of searching for all the potential accused to be afforded with the opportunity of being heard. As the law does not require it, we would not burden the Magistrate with such an obligation.”

Reference was also made to Satishkumar Nyalchand Shah –Vs. – State of Gujarat & Ors., (2020) 4 SCC 22 and emphasis was laid on paragraph 9 and 10, which held as follows:

9. *Therefore, the short question which is posed for consideration of this Court is whether in the facts and circumstances of the case, the appellant, one of the co-accused against whom the charge-sheet is already filed and against whom the trial is in progress, is required to be heard and/or has any locus in the proceedings under Section 173(8) CrPC — further investigation qua another one accused, namely, Shri Bhaumik against whom no charge-sheet has been filed till date?*

10. *Having heard the learned counsel appearing on behalf of the respective parties and the private respondent herein, we are of the opinion that as such no error has been committed by the High Court dismissing the application submitted by the appellant herein to implead him in the special criminal application filed by the private respondent herein challenging the order passed by the learned Chief Judicial Magistrate rejecting his application for further investigation under Section 173(8) CrPC with respect to one other accused, namely, Shri Bhaumik against whom no charge-sheet has been filed till date. Therefore, it is not at all appreciable how the appellant against whom no relief is sought for further investigation has any locus and/or any say in the application for further investigation under Section 173(8) CrPC. How he can be said to be a necessary and a proper party. It is required to be noted that, as such, even the proposed accused Shri Bhaumik shall not have any say at this stage in an application under Section 173(8) CrPC for further investigation, as observed by this Court in W.N. Chadha [Union of India v. W.N. Chadha, 1993 Supp (4) SCC 260 : 1993 SCC (Cri) 1171] ; Narender G. Goel [Narender G. Goel v. State of Maharashtra, (2009) 6 SCC 65 : (2009) 2 SCC (Cri)*

933] and *Dinubhai Baghabhai Solanki* [*Dinubhai Boghabhai Solanki v. State of Gujarat*, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] . In *Dinubhai Baghabhai Solanki* [*Dinubhai Boghabhai Solanki v. State of Gujarat*, (2014) 4 SCC 626 : (2014) 2 SCC (Cri) 384] after considering another decision of this Court in *Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.* [*Sri Bhagwan Samardha Sreepada Vallabha Venkata Vishwanandha Maharaj v. State of A.P.*, (1999) 5 SCC 740 : 1999 SCC (Cri) 1047] , it is observed and held that there is nothing in Section 173(8) CrPC to suggest that the court is obliged to hear the accused before any direction for further investigation is made.....”

The same issue was reiterated by the Hon’ble Supreme Court in *Narender G. Goel –Vs. – State of Maharashtra & Anr.* reported in (2009) 6 SCC 65.

Mr. Roy, learned Public Prosecutor supported the contention of Mr. Ahmed, learned advocate appearing for the private/opposite party and submitted that the right of the de facto complainant under Section 173(8) of the Code of Criminal Procedure has been recognized in law pursuant to the directions passed by the Hon’ble Supreme Court thereby extending the meaning of the provisions as is incorporated in the statute. However, at no point of time a discharged accused has been afforded a similar platform at this stage of the case with that of the de facto complainant. In fact, it has been settled that the accused has no right of audience at the stage when the protest petition or the Narazi Petition is heard by a Court of law. Learned Public Prosecutor relied upon a Division Bench judgment of this Hon’ble Court in

Kushal Agarwal –Vs. – Mahendra Kumar Jain & Ors. (MAT 922 of 2022) reference is made to paragraph 10 wherein the Hon’ble Division Bench observed as follows:

“10. *Hon’ble Supreme Court in the matter of W.N. Chadha (supra) in paragraph 92 has held that the accused has no right to have any say as regards the manner and method of investigation and also has no participation as a matter of right during the course of investigation of a case instituted on a police report till the investigation culminates in filing final report under Section 173(2) of the Code.”*

I have considered the submissions of the learned advocate appearing for the petitioner, State and the private/opposite party. The provisions of Code of Criminal Procedure recognizes an accused only after a cognizance is taken by a Court of law, and that is why even at the investigation stage after the accused is arrested and released on bail till submission of the charge-sheet the accused is not directed to appear before the Court. The same would be also transparent from the other provisions of the Code that no notice is required to be given to the accused or no information is required to be given to the accused prior to registration of the FIR or initiation of a case under Section 156(3) of the Code of Criminal Procedure or Section 200 of the Code of Criminal Procedure.

Having considered the present stage of the case, I am of the view that the prayer for supply of documents which has been advanced on behalf of the petitioner is not approved by law as the settled proposition is that accused do not have a right of representation at the stage of hearing under Section 173(8)

of the Code of Criminal Procedure and the learned Magistrate is not obliged to hear the accused at this stage. Consequently, the submission so advanced by the petitioner is not accepted and as such no interference is called for in respect of the order dated 16.02.2023 passed by the learned Additional District & Sessions Judge, 2nd Court, Asansol in Criminal Motion No. 15/2022 or the order dated 27.04.2022 passed by the learned Chief Judicial Magistrate, Asansol, Paschim Bardhaman in connection with Kulti Police Station case no. 76/2019 (G.R. Case no No. 558/2019).

Thus, the revisional application being CRR 784 of 2023 is dismissed.

Pending connected applications, if any, are consequently disposed of.

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

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities. .

(Tirthankar Ghosh, J.)