

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. – 675 of 2018****IA No. CRAN 1 of 2018 (Old No. CRAN 3343 of 2018)****IN THE MATTER OF****Latifur Rahaman****Vs.****State of West Bengal & Anr.****For the Petitioner : Mr. Prosenjit Mukherjee, Adv.,
Mr. Aslam Parvez Adv.****For the OP 2 : Mr. Uday Sankar Chattopadhyay, Adv.,
Mr. Rajen Banerjee, Adv.,
Ms. Trisha Rakshit, Adv.,
Ms. R.Ta., Adv.,
Mr. Ashadeep Karmakar Adv.****For the State : Mr. Narayan Prasad Agarwala, Adv.,
Mr. Pratick Bose, Adv.****Judgment on : 18.01.2024****Subhendu Samanta, J.**

This is an application u/s 482 of the Code of Criminal Procedure 1973 against the impugned order of cognizance taken on 28.12.2017 in connection with charge sheet being Nalhati Police Station charge sheet no. 204 of 2017 dated 30.09.2017 u/s 143/341/323/325/326/506 of IPC on the basis of an order dated 23.02.2016 directing for reinvestigation of the criminal case being Nalhati PS case No. 250 of 2012 dated 31.10.2012 u/s 147/148/149/341//325/326/307 of

IPC and against the entire criminal proceedings being Nalhati Police Station PS case No. 250 of 2012 dated 31.10.2012 pending before the Learned Additional Chief Judicial Magistrate Rampurhat, Birbhum.

The brief fact of the case is that the present opposite party has filed a written complaint through the ACJM Rampurhat u/s 156 Sub-clause 3 Cr.P.C. against the petitioners and 07 others alleging thereby an offence punishable u/s 147/148/149/341/325/326/307 IPC. The said application was forwarded to the OC Nalhati PS for conducting investigation treating the same as FIR. On receiving such application the Nalhati PS case No. 250/12 dated 31.10.2012 was started.

After investigation police has submitted a charge sheet bearing CS No. 286/2012 dated 29.12.2012 against 04 accused persons and the Investigating Officer as short (IO) submitted a prayer for discharge of rest 04 accused persons including the present petitioner. The notice upon the de-facto complainant was served. The de-facto complainant has submitted an objection before the Learned ACJM. The Learned ACJM has heard the objection and vide order dated 23.02.2016. he passed the order for not accepting CS/FRT of the police earlier and directed the police to further investigate the case by another IO.

The police conducted further investigation as per direction of the Magistrate and submitted a charge-sheet vide

charge sheet No. 204/2017 dated 30.09.2017 u/s 143/341/323/325/326/506 IPC against all 08 accused persons including the present petitioner. On the basis of such charge sheet the Learned Magistrate has also taken cognizance.

Being aggrieved and dissatisfied with the said charge sheet and also the order of further investigation dated 23.02.2016 the present writ petition has been preferred.

The Learned Advocate for the petitioner submits that the impugned order passed by the Learned Magistrate as well as the entire proceeding pending before the Learned Magistrate is itself barred in the eye of law. He further argued that the de-facto complainant has no right for praying reinvestigation as such the impugned order dated 23.02.2016 is illegal and in bad in law. The Learned Magistrate had no jurisdiction to pass the order of further investigation. The Learned Magistrate failed to consider the charge sheet No. 286 dated 29.12.2012 comprising the medical report and statements recorded u/s 161 Cr.P.C. He further argued that the injury report collected by the IO during the course of investigation does not constitute any offence punishable u/s 326 of IPC. He submits that the entire proceeding is liable to be quashed including the impugned orders. In support of his citation the Learned Advocate for petitioner cited several Judgments of Hon'ble High court as well as the Apex Court as follows:-

1. *Rangania Bewya Vs. State of West Bengal* (2012)

SCC Online Cal 4255.

2. *Adalat Prasad Vs. Ruplal Jindal* (2004) SCC 338

3. *Vinay Tyagi Vs. Idrish Ali* (2013) 5 SCC 762

4. *Vasanti Dubay Vs. State of Madhyapradesh* (2012) 2 SCC 731.

Learned Advocate appearing on behalf of the opposite party submits that the impugned order passed by the Learned Magistrate suffers no illegality the power of further investigation is always with the Learned Magistrate. The Learned Magistrate after considering the materials on record has passed the order of further investigation there is no error apparent in the impugned orders passed by the Learned Magistrate. This court under the inherent jurisdiction u/s 482 Cr.P.C. cannot enter into the findings of the Magistrate when it is not perverse. In support of his contention he cited two decisions reported in

(i) *Bhagwant Singh Vs. Commissioner of Police* AIR 1985 SC 1285 and (ii) *Binubhai Harivai Malviya Vs. State of Gujrat* AIR 2019 Supreme Court 5233.

Learned Advocate appearing on behalf of the State submits that the Learned Magistrate after finding the materials on record and after finding the charge-sheet has taken cognizance. There is no error in the impugned orders of taking cognizance, more over the CD contains sufficient materials to

substantiate the prima facie offence against the present petitioner.

Heard the Learned Advocates.

Perused the materials on record it appears that the Learned Magistrate has taken cognizance of an offence by the strength of a charge sheet. Initially the charge sheet was submitted against 04 accused persons and IO has made prayer for discharge of other 04 accused persons; objection was called for from the de-facto complainant and on the basis of such objection the I.O has issued the order of further investigation.

In a case of **Reeta Nag** Hon'ble Supreme court has held that the Learned Magistrate may direct the order of reinvestigation only on the basis of the prayer of the de-facto complainant. The facts and circumstances of **Reeta Nag** is not at per with the facts and circumstances of the present case.

In a case of **Adalat Prasad** (supra) the Hon'ble Supreme Court has held that the magistrate has no power to recall the process issued against an accused. So the ratio is not applicable in this case.

In the case of **Vinay Tyagi** (supra) the Hon'ble Supreme Court has considered the power of Magistrate must be in the case of fresh/de novo investigation and reinvestigation. The Hon'ble Supreme court has also decided the power of Magistrate u/s 227 and 228 Cr.P.C. The Hon'ble Supreme Court has also discussed the decision of **Balwant Singh(1985) 2 SCC 537**, passed in three Judges bench of the Hon'ble

Supreme Court and as connected that magistrate has suo motu jurisdiction to direct further investigation after filing of police report.

In case of **Basanti Dubey** the Hon'ble Supreme has discussed the power of Magistrate to ignore the police report when no case is made out and can take cognizance on applying his mind independently. The facts and circumstances of **Basanti Dubey** in different to this case. Accordingly I am of a view that the observation of the Hon'ble Supreme Court in the cited decisions are not applicable in this case.

According to the provisions of Section 173(8) of Cr.P.C., the Magistrate has power to order of further investigation of given facts and circumstances of this case. The power of further investigation of the Magistrate is based upon the materials collected by the police and also on the basis of the objection raised by the de-facto complainant.

Considering the entire materials on record and considering the CD it appears to me that the order of further investigation by the Magistrate as well as the order of taking cognizance on the basis of the final report submitted by the police vide charge sheet No. 204 of 2017 dated 30.09.2017 is not at all perverse.

After considering the materials, I find no justification to entertain the instant criminal revision. Hence it is dismissed.

CRR is dismissed and disposed.

Connected CRAN applications if, pending are also disposed of.

Any order of stay passed by this court during the pendency of the instant criminal revision is also vacated.

CD be returned at once.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)