

May 15, 2024
Sl. No. 32
Court No.34
s.biswas

CRR 998 of 2024

In re: An application under Article 227 of the Constitution of India

Gouri Sil Dhar
Vs.
The State of West Bengal & Anr.

Ms. Pampa Dey (Dhabal)	
Ms. Sangita Banerjee	... for the petitioner
Ms. Anusuya Sinha, APP	
Ms. Sana Naaz	... for the State
Mr. Saptarshi Guha	... for the respondent no.2

The petitioner is aggrieved by the order dated 30.01.2024, wherein the learned Magistrate was pleased to dismiss the application for reinvestigation filed in connection with Dakshineshwar Police Station Case No.149 of 2022 dated 08.08.2022 under Sections 363/365/364/306 of the Indian Penal Code.

The police authorities after a thorough investigation filed a report under Section 173 of the Code of Criminal Procedure, thereby concluding that sufficient evidence could not be established to submit a charge-sheet against the accused person/persons named in the FIR.

The de facto complainant has lost her son, but the reasons are unknown to her and she is under the impression that some culpability is involved. The de facto complainant/petitioner preferred an application which was lacking materials to the extent as to why she is dissatisfied.

In view of the judgment passed by the Hon'ble Supreme Court in **Jakia Nasim Ahesan & anr. vs. State of Gujarat & ors.** reported in (2011) 12 SCC 302, the de facto complainant prior to preferring an application under Section 173(8) of the Code of Criminal Procedure, is entitled to have the documents, on which the prosecution has relied upon to arrive at its conclusion to file the report under Section 173 of the Code of Criminal Procedure, thereby discharging the accused persons.

Accordingly, if the de facto complainant/petitioner prefers an application before the learned Magistrate for supply of copies, the learned Magistrate will direct the investigating officer to supply the statements, expert reports and other necessary documents in order to enable her to know as to the reasons for arriving at the conclusion by the investigating agency. If so advised thereafter, the petitioner would be at liberty to prefer an application under Section 173(8) of the Code of Criminal Procedure pointing to the deficiency exactly of the investigating agency and the learned Magistrate is directed that no vague aspersions on the investigating agency should be entertained.

Needless to state that a further opportunity is granted to the de facto complainant/petitioner. But the learned Magistrate would exercise his discretion regarding the necessity of the investigation prior to passing of any order provided an application under Section 173(8) of the Code of Criminal Procedure is further filed before the said court.

With the aforesaid observation, CRR 998 of 2024 is disposed of.

The case diary be returned to the learned advocate appearing on behalf of the State.

All parties are to act on the basis of the server copy of the order.

(Tirthankar Ghosh, J.)