

29.01.2024
Sl. No. 15
Ct. 32
P.A.

CRR 875 of 2017

Fatima Johara Bibi

Vs.

State of West Bengal & Ors.

Ms. Faria Hossain,
Ms. Mamata Jana,
.....for the State

The instant application has been filed by the petitioner being de-facto complainant under Section 401 read with Section 482 of the Code of Criminal procedure, 1973 challenging the correctness, legality and propriety of impugned order dated 28.12.2016 passed by the Learned Additional Chief Judicial Magistrate, Diamond Harbour, South 24 Parganas in G.R. Case No. 1991 of 2014 arising out of Mathurapur Police Station Case No. 193/2014 dated 09.05.2014 under Sections 498A/380/384/313/406/323 of the Indian Penal Code, thereby rejecting the petitioner's prayer for further investigation.

Nobody appears on behalf of the petitioner on call.

It is the contention of the petitioner that the learned Tribunal has illegally and perversely rejected the prayer for further investigation under Section 173(8) of the Code of Criminal Procedure though the charge sheet has been filed against only one accused leaving other four accused persons

without proper investigation and charge sheet has been filed by the Investigating Officer in a perfunctory manner against only one accused and other four accused persons have not been charge sheeted. Accordingly, the impugned order is liable to be set aside.

On the other hand, the Learned advocate appearing on behalf of the State submits that the impugned order under challenge passed by the Learned ACJM, Diamond Harbour correctly and legally upon hearing the parties and found investigating officer after properly investigation found prima facie materials against only one accused person i.e. husband of the de-facto complainant and no sufficient materials found against other FIR named accused persons. Accordingly, they are not charge-sheeted. Furthermore, any grievances regarding the materials against other four accused persons can be considered during trial by the learned Magistrate and if during trial any fresh or relevant materials found against the accused persons, who are not charge sheeted the Learned Magistrate can its own discretion to take recourse of the provisions envisaged in Section 319 of the Cr.PC. Accordingly, the revisional application is liable to be dismissed.

Having heard the submission of the learned advocate appearing on behalf of the State and on perusal of the report filed by the State, It appears charge has been framed by the learned Trial Court on 14.01.2021 under Section 498A/313

IPC and several dates were fixed for examination of the witnesses. The next date is fixed on 23rd February, 2024 for examination of the witnesses.

It further appears from the order sheet that after filing of the charge, the learned Trial Court was taken cognizance against one accused person who is the husband of the de-facto complainant. Furthermore, no any material transpires against other accused persons. Accordingly, prayer for further investigation filed by the de-facto complainant under Section 173(8) of the Cr.PC found devoid of merit as such finally rejected the petitioner's prayer and non-charge sheeted accused persons were discharged on the prayer of the investigating officer.

It is true that if any materials available during trial against other accused persons that can be agitated before the Learned Magistrate and the Learned Magistrate has power to take recourse the provisions envisaged in Section 319 of the Cr.PC. In view of judgment pronounced by the Hon'ble Apex Court in **Reeta Nag vs. State of West Bengal, dated 13th August, 2009** if during trial any fresh materials surfaces against discharged accused persons, the Learned Magistrate can take recourse of the provisions envisaged in Section 319 of the Cr.PC.

Accordingly, This Court does not find any perversity, illegality or jurisdictional error in passing such impugned order under challenge.

Consequently, the Criminal Revisional Application being **CRR 875 of 2017** is dismissed without order as to costs.

Let a copy of this order be communicated to the Learned Court below for information and taking necessary action.

All parties are to act in terms of the copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties as expeditiously as possible taking all legal formalities.

(Ajay Kumar Gupta, J.)