

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 937 of 2021

Piyali Saha

Versus

The State of West Bengal and Others

For the Petitioner : Mr. Mayukh Mukherjee, Adv.
Mr. Abhijit Singh, Adv.
Mr. Suvasis Saha, Adv.

For the Opposite Party Nos. 2 to 4

: Mr. Dyutiman Banerjee, Adv.

For the State : Mr. Binay Kr. Panda, Adv.
Mr. Subham Bhakat, Adv.

Heard on : 20.02.2024

Judgment on : 18.04.2024

Ajay Kumar Gupta, J:

1. The petitioner has filed this criminal revisional application under Section 483 read with Section 482 of the Code of Criminal Procedure, 1973 in connection with G.R. Case No. 741/2019 and corresponding to Amherst Street Police Station Case No. 233/2019 dated 8th August, 2019 under Sections 325/354/384/328/364/307/506/120B of the Indian Penal Code pending before the Learned Additional Chief Metropolitan Magistrate, 2nd Court, Calcutta, praying for monitoring the investigation by this Hon'ble High Court and further sought for passing direction for time bound investigation and/or pass such orders as may deem fit and proper.

2. The factual matrix of the instant case is that the petitioner/complainant filed a petition of complaint under Section 156 (3) of the Cr.PC before the Court of learned Additional Chief Metropolitan Magistrate, 2nd Court, Calcutta and same was registered as Misc. Case No. 34/2019 against Prasenjit Saha, Aparajita Saha, Paritosh Saha, Pitama Sha Sikdar, Dr. Bijoy Jacob, Dr. Soumya Chatterjee and employees of Antara Psychiatric Hospital with contentions and allegations that the petitioner is the legally married wife of opposite party no. 2 herein and their marriage was solemnized on 29th January, 2007 as per the Hindu Rites and Customs. The

opposite party nos. 3 to 5 are in-laws of the petitioner. After marriage, the opposite party no. 2/husband and in-laws started torture for non-fulfilment of further demand of dowry. On such incident, the petitioner had lodged a written complaint before the Baguiati Police Station on 26.11.2018 and 09.03.2019 but police did not take any steps against them.

2a. Having no alternative, the petitioner had filed a matrimonial suit against the opposite party no. 2 before the learned District Judge's Court at Barasat. Upon such filing of the matrimonial suit, the opposite party nos. 2 to 5 forcibly admitted the petitioner at Antara Hospital for her treatment as mental patient with connivance and conspiracy with each other. Upon such admission in Antara Hospital as mental patient, the friend and well-wisher of the petitioner filed a writ petition before the Hon'ble High Court being WPA 8150 (W) of 2019. After hearing, the Hon'ble High Court passed an order on 18.04.2019 and directed the Inspector-in-Charge of Baguiati Police Station to obtain psychological assessment report of the petitioner and also record the statement under Section 164 of the Code of Criminal Procedure. Authority of Antara Hospital discharged the petitioner from the said hospital after illegal detention of 52 days. As such, the petitioner lost her job as a school teacher. On such accusation, the learned Magistrate directed to lodge an FIR and to

cause investigation into the matter resulting an FIR i.e. Amherst Street Police Station Case No. 233/2019 dated 08.08.2019 under Sections 325/354/384/328/364/307/506/120B of the IPC against the opposite party nos. 2 to 7. However, the investigating officer, with his lackadaisical attitude, did not investigate properly though it is imperative that in such a case, the investigation would be free and fair.

2b. It is further contended by the petitioner that when all the accused persons surrendered before the Court of learned Additional Chief Metropolitan Magistrate on 28.09.2020, the learned Advocate for the State produced the CD and shown a purported letter dated 03.03.2020 of the informant to the Officer-in-Charge of Amherst Street Police Station, purportedly showing amicable settlement between the parties took place. As such, the learned Magistrate, on the self-same date, granted bail to all the accused persons and released them vide order dated 28.09.2020 though the allegations against those accused persons are very serious in nature. The opposite party nos. 2 to 7, with ulterior motive and in connivance with the investigating officer, the investigation has been delayed and no progress has been made for conclusion of the investigation. Accordingly, the petitioner has come up before this Court with aforesaid prayer. Hence, this instant revisional application.

SUBMISSION ON BEHALF OF THE PETITIONER:

3. Learned counsel appearing on behalf of the Petitioner submitted that the petitioner was in good health. She never suffered any mental illness. Rather she raised all illegal activities of her husband and in-laws but the husband and in-laws in connivance with doctors, admitted her in the Antara Hospital for treatment though she was quite well. Despite of the said fact, the opposite parties forcibly admitted the petitioner in Antara Hospital for treatment as a mental patient. As such, a writ petition was filed before the Hon'ble High Court highlighting the entire facts. In pursuant to the direction of the Hon'ble High Court in habeas corpus application, the petitioner was rescued upon making her psychological assessment. She filed an application under Section 156(3) of the Cr.PC before the Learned Additional Chief Metropolitan Magistrate, 2nd Court, Calcutta for cruelty and torture by the husband, in-laws and doctors. But after lapse of several years, the investigating officer kept the petitioner in dark without progress of any investigation. Recently, IO has filed the charge sheet and the said charge sheet is not properly done by the Investigating Officer. Investigating Officer converted the lesser offences against the accused persons. The IO also not charge sheeted many accused persons. Kidnapping charge was also not included in the said charge sheet.

Accordingly, prayer may be allowed and necessary direction may be passed for further investigation and proper investigation of the case under the supervision of this Court or monitoring the investigation by this Court. Learned counsel places reliance of judgement passed in **State of Punjab Versus Central Bureau of Investigation and Others**¹ to bolster his submission that under Section 482 of the Cr.P.C the High Court has inherent powers to make such orders as may be necessary to give effect to any order of the Court for fresh investigation or re-investigation upon satisfaction that such fresh investigation or re-investigation is necessary to secure the ends of justice.

4. The Hon'ble Supreme Court in paragraphs 22 to 28, 32, 33 and 34 discussed and observed in the referred judgment as follows:

“22. Section 482 Cr.P.C., however, states that nothing in Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under Cr.P.C. or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Thus, the provisions of Cr.P.C. do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order of the Court or

¹ (2011) 9 Supreme Court Cases 182

to prevent the abuse of any process of the Court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 of the Cr.P.C., therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of the Cr.P.C. for fresh investigation or re-investigation if the High Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice.

23. We find support for this conclusion in the following observations of this Court in *Mithabhai Pashabhai Patel v. State of Gujarat* (supra) cited by Mr. Dhavan: (SCC p. 337, paras 13 & 15)

"13. It is, however, beyond any cavil that "further investigation" and "reinvestigation" stand on different footing. It may be that in a given situation a superior court in exercise of its constitutional power, namely, under Articles 226 and 32 of the Constitution of India could direct a "State" to get an offence investigated and/or further investigated by a different agency. Direction of a reinvestigation, however, being forbidden in law, no superior court would ordinarily issue such a direction. Pasayat, J. in *Ramachandran v. R. Udhayakumar* [(2008) 5 SCC 413] opined as under: (SCC p. 415, para 7)

"7. At this juncture it would be necessary to take note of Section 173 of the Code. From a

plain reading of the above section, it is evident that even after completion of investigation under sub-section (2) of Section 173 of the Code, the police has right to further investigate under sub-section (8), but not fresh investigation or reinvestigation."

A distinction, therefore, exists between a reinvestigation and further investigation.

x x x

15. The investigating agency and/or a court exercise their jurisdiction conferred on them only in terms of the provisions of the Code. The Courts subordinate to the High Court even do not have any inherent power under Section 482 of the Code of Criminal Procedure or otherwise. The pre-cognizance jurisdiction to remand vested in the subordinate courts, therefore, must be exercised within the four corners of the Code."

24. It is clear from the aforesaid observations of this Court that the investigating agency or the Court subordinate to the High Court exercising powers under Cr.P.C. have to exercise the powers within the four corners of the Cr.P.C. and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct

further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 of the Cr.P.C. and such further investigation will not mean fresh investigation or re-investigation. But these limitations in sub-section (8) of Section 173 of the Cr.P.C. in a case where charge sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 of the Cr.P.C. for securing the ends of justice.

25. This position of law will also be clear from the decision of this Court in *Nirmal Singh Kahlon v. State of Punjab & Ors.* (supra) cited by Mr. Raval. The facts of that case are that the State police had investigated into the allegations of irregularities in selection of a large number of candidates for the post of Panchayat Secretaries and had filed a charge sheet against Nirmal Singh Kahlon. Yet the High Court in a PIL under Article 226 of the Constitution passed orders on 07.05.2003 directing investigation by the CBI into the case as it thought that such investigation by the CBI was "not only just and proper but a necessity". Nirmal Singh Kahlon challenged the decision of the High Court before this Court contending inter alia that sub section (8) of Section 173 of the Cr.P.C. did not envisage an investigation by the CBI after filing of a charge sheet and the Court of Magistrate alone has the jurisdiction to issue any further direction for investigation before this Court.

26. Amongst the authorities cited on behalf of Nirmal Singh Kahlon was the decision of this Court in Vineet Narain case that once the investigation is over and charge sheet is filed the task of the monitoring Court comes to an end. Yet this Court sustained the order of the High Court with inter alia the following reasons: (Nirmal Singh Kahlon Case (supra), SCC pp. 465-66), para 63)

"63. The High Court in this case was not monitoring any investigation. It only desired that the investigation should be carried out by an independent agency. Its anxiety, as is evident from the order dated 3-4-2002, was to see that the officers of the State do not get away. If that be so, the submission of Mr. Rao that the monitoring of an investigation comes to an end after the charge-sheet is filed, as has been held by this Court in Vineet Narain and M.C. Mehta (Taj Corridor Scam) v. Union of India [(2007) 1 SCC 110], loses all significance".

27. Though the decision of this Court in Nirmal Singh Kahlon v. State of Punjab & Ors. (supra) is in the context of the power of the High Court under Article 226 of the Constitution, the above observations will equally apply to a case where the power of the High Court under Section 482 of the Cr.P.C. is exercised to

direct investigation of a case by an independent agency to secure the ends of justice.

28. This leads us to the next question whether the High Court in the facts of the present case passed the order for investigation by the CBI to secure the ends of justice. The reasons given by the High Court in the impugned order dated 11.12.2007 for directing investigation by the CBI are extracted hereinbelow:

"The Investigating Officer, who is a D.S.P. in rank, will not be in a position to investigate the case fairly and truthfully, as senior functionaries of the State in the Police Department and political leaders are being named. By this we are not casting any doubts on the investigating team, but it seems that political and administrative compulsions are making it difficult for the investigating team to go any further to bring home the truth. Apart from revolving around a few persons who have been named in the status report, nothing worthwhile is coming out regarding the interrogation of the police officers, political leaders and others. The investigation seems to have slowed down because of political considerations.

Not less than eight police officials, political leaders, Advocates, Municipal Councilors and number of persons from the general public have

been named in the status report. We feel that justice would not be done to the case, if it stays in the hands of the Punjab Police. Having said this, we want to make one thing very clear that the team comprising of Shri Ishwar Chander, D.I.G, Shri L.K. Yadav, S.S.P. Moga and Shri Bhupinder Singh, D.S.P. have done a commendable job in unearthing the scam.

We feel it a fit case to be handed over to the C.B.I."

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32. In the recent case of State of West Bengal and Others v. Committee for Protection of Democratic Rights, West Bengal and Others [(2010) 3 SCC 571] a Constitution Bench of this Court, while holding that no Act of Parliament can exclude or curtail the powers of the High Court under Article 226 of the Constitution, has cautioned that the extra-ordinary powers of the High Court under Article 226 of the Constitution must be exercised sparingly, cautiously and in exceptional situations where it becomes necessary to provide credibility and confidence in investigation or where the incident may have national or international ramifications or where such an order may be necessary for doing complete justice and enforcing fundamental rights. This caution equally applies to the cases where the High Court exercises inherent powers under

Section 482 of the Cr.P.C. to direct investigation by the CBI for securing the ends of justice.

33. In the facts and circumstances of this case, however, the High Court has held that the state local police was unable to carry out investigation into the cases and for securing the ends of justice the investigation has to be handed over to the CBI. In other words, this was one of those extra-ordinary cases where the direction of the High Court for investigation by the CBI was justified.

34. This is, therefore, not a fit case in which we should exercise our powers under Article 136 of the Constitution and grant leave to appeal. The Special Leave Petition is dismissed.”

SUBMISSION ON BEHALF OF THE STATE:

5. Learned counsel appearing on behalf of the State, on the other hand, submitted that the charge sheet has already been submitted, as such the instant application became infructuous. If there is any prayer for the investigation or further investigation under Section 173(8), that may be considered by the learned Court below if the de-facto complainant is not satisfied with the charge sheet, there is no any impediment to file protest application before

the learned Court below as per Criminal Procedure Code. Therefore, this case has no merit and required to be dismissed.

6. It is further submitted that the obligation of filing charge sheet always lies upon the investigating officer, Court cannot direct a time bound investigation. However, in the instant case, a charge sheet has already been filed under Sections 341/323/354/384/506/120B of the IPC against the accused persons, namely, Prasenjit Saha, Aparajita Saha, Paritosh Saha, Pitama Sha Sikdar. After investigation, no sufficient materials were collected against the doctors and the employees of Antara Hospital vide Charge Sheet No. 48/2024 of Amherst Street Police Station Case No. 233/2019 dated 8th August, 2019 under Sections 325/354/384/328/364/307/506/120B of the Indian Penal Code. IO further makes a prayer for necessary permission to continue investigation under Section 173(8) of the Cr.PC against the accused persons, namely, Dr. Bijoy Jacob and Dr. Soumya Chatterjee and to file supplementary charge sheet, if requires. As such, the criminal revisional application is liable to be dismissed.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NOS. 2 to 4:

7. Per contra, learned counsel appearing on behalf of the opposite party nos. 2 to 4 submitted that the instant revisional

application filed by the petitioner praying for monitoring the investigation by this Court and further sought direction for passing for time bound investigation is not applicable since charge sheet has already been submitted in the instant case. Accordingly, the case became infructuous. If any grievance accrues after filing charge sheet, then petitioner has option to file appropriate application before the learned Court below. Accordingly, the instant criminal revisional application is required to be dismissed.

8. Learned counsel places reliance of a judgment passed in ***Sakiri Vasu Vs. State of Uttar Pradesh and Others***², where the Hon'ble Supreme Court in paragraphs 11, 13, 15, 17, 24, 25 and 27 to 30 discussed and observed as follows:

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156 (3) Cr.P.C. before the learned Magistrate concerned. If such an application under

² (2008) 2 Supreme Court Cases 409

Section 156 (3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

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13. The same view was taken by this Court in Dilawar Singh vs. State of Delhi JT 2007 (10) SC 585 (vide para 17). We would further clarify that even if an FIR has been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied, he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.

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15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds

that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

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17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

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24. In view of the abovementioned legal position, we are of the view that although Section 156(3) is very briefly worded, there is an implied power in the Magistrate under Section 156(3) Cr.P.C. to order registration of a criminal offence and /or to direct the officer in charge of the concerned police station to hold a proper investigation and take all such necessary steps that may be necessary for ensuring a proper

investigation including monitoring the same. Even though these powers have not been expressly mentioned in Section 156(3) Cr.P.C., we are of the opinion that they are implied in the above provision.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

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27. As we have already observed above, the Magistrate has very wide powers to direct registration of an FIR and to ensure a proper investigation, and for this purpose he can monitor the investigation to ensure that the investigation is done properly (though he cannot investigate himself). The High Court should discourage the practice of filing a writ petition or petition under Section 482 Cr.P.C. simply because a person has a grievance that his FIR has not been

registered by the police, or after being registered, proper investigation has not been done by the police. For this grievance, the remedy lies under Sections 36 and 154(3) before the concerned police officers, and if that is of no avail, under Section 156(3) Cr.P.C. before the Magistrate or by filing a criminal complaint under Section 200 Cr.P.C. and not by filing a writ petition or a petition under Section 482 Cr.P.C.

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.

29. In *Union of India vs. Prakash P. Hinduja and another* 2003 (6) SCC 195 (vide para 13), it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate).

30. It may be further mentioned that in view of Section 36 Cr.P.C. if a person is aggrieved that a proper investigation has not been made by the officer-in-charge of the concerned police station, such aggrieved person can approach the Superintendent of Police or other police officer superior in rank to the officer-in-charge of the police station and such superior officer can, if he so wishes, do the investigation vide CBI vs. State of Rajasthan and another 2001 (3) SCC 333 (vide para 11), R.P. Kapur vs. S.P. Singh AIR 1961 SC 1117 etc. Also, the State Government is competent to direct the Inspector General, Vigilance to take over the investigation of a cognizable offence registered at a police station vide State of Bihar vs. A.C. Saldanna (supra).

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

9. Heard the rival submissions of all the parties and on perusal of the application and reports submitted by the State, this Court finds the instant revisional application has been filed by the petitioner seeking monitoring by this Court during investigation. Furthermore, petitioner prays for time bound investigation. Be that as it may, a charge sheet has already been submitted under Sections 341/323/354/384/506/120B of the IPC against four accused persons, namely, Prasenjit Saha, Aparajita Saha, Paritosh Saha, Pitama Sha Sikdar except other two doctors and the employees of

Antara Hospital since no sufficient materials were collected against them during investigation. However, the investigating officer has further made a prayer before the learned Court below for further investigation and to file supplementary charge sheet.

10. Under such circumstances, this Court does not find any sufficient reasons to interfere with the investigation or require monitoring by this Court as the charge sheet has already been submitted after investigation. If the petitioner is not satisfied with the charge sheet or investigation then she has to file appropriate application or approach before the learned Magistrate where charge sheet has been submitted for appropriate order.

11. Upon perusal of judgments relied by the parties, this Court is of the opinion that the monitoring of an investigation comes to end, when the charge sheet has been submitted before the learned Magistrate. Furthermore, direction for time bound investigation also does not arise in this instant case by this Court because Learned ACMM, 2nd Court, Calcutta allowed the prayer of the investigating officer to continue the investigation of the case under Section 173(8) of the Cr.PC against other two accused persons, namely, Dr. Bijoy Jacob and Dr. Soumya Chatterjee, both attached to Antara Psychiatric Centre, Baruipur and submit supplementary charge sheet

after obtaining valued expert opinion from Swasthya Bhawan (The Director of Medical Education & Ex Officio Secretary, West Bengal & Chairman of Authorization Committee, Government of West Bengal, Swasthya Bhawan, Block-GN-29, Sector – V, Salt Lake City, Kolkata-700091) if required.

12. Accordingly, this Court does not find any merit in this case.

13. Accordingly, **CRR 937 of 2021** is, thus, dismissed without order as to costs. Connected applications, if any, are also thus, disposed of.

14. Case Diary, if any, is to be returned to the learned Advocate for the State.

15. Let a copy of this judgment and order be sent to the learned Court below for information.

16. Interim order, if any, stands vacated.

17. Parties shall act on the server copies of this order uploaded from the website of this Court.

18. Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)