

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1153 of 2020

With

CRAN 1 of 2020

(Old No. CRAN 4822 of 2020)

The State of West Bengal

Vs

Hare Krishna Mondal & Anr.

For the Petitioner/State : Mr. Sudip Ghosh,
Mr. Bitasok Banerjee.

For the De facto Complainant : Mr. Atis Kr. Biswas,
Mr. Amit Singh,
Ms. Piyu Mondal.

For the Accused/Opposite Party : Mr. Sumanta Das.

Hearing concluded on : 15.01.2024

Judgment on : 01.02.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred against an Order dated 07.01.2020 passed by the Learned Sessions Judge, Nadia in connection with Criminal Motion No. 61/2018, affirming the order dated 10.10.2018 passed by the Learned Additional Chief Judicial Magistrate, Tehatta, Nadia in G.R. Case No. 667 of 2012.

2. FACTS:-

The petitioner/State OF West Bengal's case is that one Jhuma Mondal, daughter of Akhil Mondal, of Vill & P.O. - Betai Lalbazar, P.S.-Tehatta, Dist-Nadia, lodged a complaint on 14th May 2012 with the inspector-in-charge, Tehatta Police Station, alleging that on 13th May, 2012 at or about 7 o'clock in evening her grandfather Mono Mohan Mondal was returning from the house of her younger grandfather Subol Mondal. Her mother Saraswati Mondal who heard the shouting of her grandfather from near the house of Adhir Sarkar, ran to the spot and found that accused Hare Krishna Mondal, son of Kanchiram, being the opposite party herein, being aided and abetted by few other persons were forcibly taking away the victim Mono Mohan Mondal after gagging his mouth with cloth. The mother of the de-facto complainant could recognize the accused persons from the light of a torch and so narrated the fact to her. Thereafter the mother of the de-facto complainant tried to look for the victim but was unable to trace the victim. The victim remained untraced

irrespective of the frantic search by the local people and the continuation of the investigation. The complaint/F.I.R. was recorded as Tehatta P.S. Case No. 328/12 dated 14.05.12 under Section 365 IPC, which was subsequently recorded as G.R. Case No. 667 of 2012 before Learned Additional Chief Judicial Magistrate, Tehatta, Nadia.

- 3.** It is submitted by the State that though initially the police authority was conducting the case, subsequently, the case was handed over to the Criminal Investigation Department (CID), West Bengal and since then the investigation was continuing by the C.I.D. West Bengal. Statement of many witnesses have been recorded from which it appears that the opposite party had a grudge against the victim Mono Mohan Mondal, as the victim supported Subol Mondal, with whom the opposite party had a property dispute. Pre-existence of such dispute gives rise to the reasonable apprehension regarding the involvement of the opposite party in kidnapping the victim and causing harm to the victim. Though the investigation was pending since long, and had proceeded to a considerable extent, it could not be completed because of repeated change of the investigating officers due to transfers for administrative and other reasons. On 26th November 2013 a prayer was made by the investigating agency for adding Section 364 of Indian Penal Code with the original Section 365 of IPC.
- 4.** Accordingly from time to time prayer was made before the Learned Magistrate for extension of time for completing the investigation and on

all the occasions such prayer for extension of time was granted for a limited period. Last such extension was granted on 6th January 2018 for a period of two months for submission of final report. Thereafter the last I.O. of the case did not file any prayer for extension due to inadvertence, though the case had progressed considerably, albeit without any success in recovering the victim.

5. A writ-petition being W.P. No. 3250(w) of 2014 has been filed for issuance of direction upon the state authority for recovery and production of the victim. Such writ petition is still pending before the Hon'ble Court for final adjudication. The pendency of such writ petition was the other reason, for which also the extension of time was not prayed for, due to understanding and miscommunication.
6. As the time for submission of final report expired and no extension of such time was prayed for on behalf of the state, a petition u/s 167(5) of Cr.P.C. was filed on behalf of the opposite party/accused. Such petition was taken into consideration by the Learned Additional Chief Judicial Magistrate, Tehatta, Nadia and was disposed of by an order dated 10th October 2018.
7. The Learned Additional Chief Judicial Magistrate, Tehatta, Nadia, after hearing the parties allowed the application u/s 167(5) of Cr.P.C. and discharged the opposite party/accused from the case. The Learned Magistrate passed such order, notwithstanding the prayer made on behalf of the petitioner/State, in total disregard of the facts and situation

involved with the case and the severity thereof, as the victim was yet to be traced out and recovered. The investigation was on the verge of completion when such order was passed.

8. Being aggrieved, a revision was filed against the said order on behalf of the State before the Learned District and Sessions Judge, Nadia at Krishnanagar vide Cr.R No. 61 of 2018. Such revision application has been dismissed by an order dated 7th January 2020 passed in Criminal Motion No. 61 of 2018 by the Learned Session Judge, Nadia thereby upholding the order passed by the Learned Magistrate discharging the opposite party.
9. Hence the revision.

10. FINDINGS:-

The de facto complainant added as a party as per direction of this Court, has been represented. Though the accused was represented on 30.11.2023, there was no representation on the date of final hearing.

11. Learned Counsel for the State has relied upon the following two rulings:-

i) *State of West Bengal vs Falguni Dutta, 1993 C Cr LR (SC) 123, (Para 8).*

“8. That takes us to the next question whether the Special Court can, besides directing stoppage of investigation, entertain and act on a charge-sheet or a police report submitted under section 173 (2) of the Code in such cases. The expression ‘police report’ has been defined under the Code to mean a report forwarded by a police officer to a Magistrate under sub-section (2) of section 173 [section 2(r)]. Section 173 lays down that every investigation under Chapter XII shall be completed without unnecessary delay

and as soon as it is completed, the officer in charge of the police station shall forward to a Magistrate empowered to take cognizance of the offence on a police report, a report in the form prescribed by the State Government. It will thus be seen that the police report under section 173(2) has to be submitted as soon as the investigation is completed. Now, if the investigation has been stopped on the expiry of six months or the extended period, if any by the Magistrate in exercise of power conferred by sub-section (5) of section 167 of the Code, the investigation comes to an end and, therefore, on the completion of the investigation section 173(2) enjoins upon the officer-in-charge of the police station to forward a report in the prescribed form. **There is nothing in sub-section (5) of section 167 to suggest that if the investigation has not been completed within the period allowed by that sub-section, the officer-in-charge of the police station will be absolved from the responsibility of filing the police report under section 173(2) of the Code on the stoppage of the investigation, The High Court of Andhra Pradesh rightly observed in paragraph 13 of the Judgment as under:**

"..... Under the new Code in addition to definition for 'investigation' in section 2(h), a separate definition for 'police report' is given by section 2(r). This coupled with the newly introduced sub-section (5) of section 167 brings out the distinction between investigation by the police and the police report on which a court is to take cognizance. The report cannot now be said to be an integral part of investigation. The introduction of section 167 (5) in the Code, cannot have the effect of invalidating the investigation done within the period of six months or enabling the court to stopping the filing of police report under section 173(2). **If the investigation done during the period of six months discloses an offence, a police report may be founded on it and the court can take cognizance of the same.**"

In Hussainara Khatoon v. Home Secretary, State of Bihar, (1980) 1 SCC 108, this Court held that the investigation done within the period of six months is not rendered invalid merely because the investigation is not completed and further investigation is stopped. The exact words used are:

"..... in such a case the Magistrate is bound to make an order stopping further investigation and in that event, only two courses would be open: either the police must immediately proceed to file a chargesheet, if the investigation conducted till then warrants such a course, or if no case for proceeding against the undertrial prisoner is disclosed by the investigation, the undertrial must be released forthwith from detention."

We, therefore, concur with the view taken by the Andhra Pradesh High Court in this regard."

ii) Sashi Bhusan Mahapatra vs The State of West Bengal, (2007)

2 C Cr LR (Cal) 67, (Para 10, 11, 12).

"10. In our considered view the law on this point is now settled by the Hon'ble Supreme Court in the case of Nirmal Kanti Roy v. State of West Bengal, reported in 1998 Calcutta Criminal Law Reporter (SC) 216. In paragraph 7 of the said judgment it was held by the Hon'ble Apex Court as follows:

"The order stopping further investigation into the offence and the consequential order of discharge are not intended to be automatic sequel to the failure to complete investigation within the period fixed in the subsection. The succeeding words in the Sub-section confer power of the Court to refrain from stopping such investigation if the Investigating Officer satisfies the Magistrate of the fusion of two premises (1) that in the interest of justice it is necessary to proceed with the investigation beyond the period shown in the Sub-section and (2) that there are special reasons to do so."

11. *It was further held by the Hon'ble Apex Court in paragraph 8 of the said judgment as follows:*

*"Hence we take the view that the time schedule shown in Section 167(5) of the Code is not to be treated with rigidity and it is not mandatory that on the expiry of the period indicated therein the Magistrate should necessarily pass the order of discharge of the accused. **Before ordering stoppage or investigation the Magistrate shall consider whether, on the facts of that case, further***

investigation would be necessary to foster interest of criminal justice. Magistrate at that stage must look into the record of investigation to ascertain the progress of investigation thus far registered. If substantial part of investigation was by then over, the Magistrate should seriously ponder over the question whether it would be conducive to the interest of justice to stop further investigation and discharge the accused.”

12. After hearing the learned Advocates of the respective parties and after taking into consideration the judgments of the Hon'ble Apex Court referred to above, we dispose of the present reference keeping in view the judgment of the Hon'ble Apex Court reported in 1998 Calcutta Criminal Law Reporter (SC) 123 (Nirmal Kanti Roy v. State of West Bengal). **We are of the view that before passing any order of stoppage of investigation for non-completion of investigation within the statutory period as envisaged in the Sub-section (5) of Section 167 of the Code of Criminal Procedure as amended by the West Bengal Amendment Act of 1988, it is the duty of the Magistrate to look into the records of investigation done during the statutory period along with extended period to ascertain the progress of investigation and thereafter he will pass appropriate order. If after examining the records of investigation, the Magistrate is satisfied that there are sufficient materials for taking cognizance of the offence, he will pass appropriate order to that effect. Order for stoppage of investigation and discharge of accused by a Magistrate without applying his mind, would be improper.”**

12. Section 167(5) of the Cr.P.C. lays down:-

“167. Procedure when investigation cannot be completed in twenty-four hours.-(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 57, and there are grounds for believing that the accusation or information is well-founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary

hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2)

(3).....

(4).....

(5) *WEST BENGAL (Amendment)*

(1) For sub-sec. (5), substitute as follows:

"(5) If, in respect of-

(i) any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months, or

(ii) any case exclusively triable by a Court of Session or a case under Chapter XVIII of the Indian Penal Code (45 of 1860), the investigation is not concluded within a period of three years, or

(iii) any case other than those mentioned in clauses (i) and (ii), the investigation is not concluded within a period of two years, from the date on which the accused was arrested or made his appearance, the Magistrate shall make an order stopping further investigation into the offence and shall discharge the accused unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the periods mentioned in this sub-section is necessary"; and

(2) in sub-sec. (6), after the words "any order stopping further investigation into an offence has been made", the words "and the accused has been discharged" shall be inserted-W.B. Act 24 of 1988, sec. 4."

13. The present case was initiated for offence punishable under Section 365

I.P.C. on 14.05.2012.

14. By an order dated 10.10.2018, the learned Additional Chief Judicial Magistrate, Tehatta, Nadia in G.R. Case No. 667 of 2012, passed the following order:-

“G.R. 667/2012
Ref: Tehatta PS Case No. 328/12, dated 14.05.12

Order dated:- 10.10.18

.....Perused the case record.

It is revealed that on 06/01/18 a period of 2 months was extended to the IO for submission final report.

It is also revealed that the said period was again extended till next date but the IO of this case had not submitted any more prayer for time or not submitted any report in final form till date.

Since the investigation has not been completed within a period of 3 years, since 24/09/13 i.e. the date of surrender of the accused before this Court, the instant proceeding is required to be stopped.

Hence, it is

Ordered

That the further investigation in this case is stopped with the effect from this date.

The accused is discharged in terms of Sec. 167(5) of Cr.P.C.....

Sd/-
Additional Chief Judicial Magistrate,
Tehatta, Nadia”

15. On revision, the learned Sessions Judge vide order dated 07.01.2020 affirmed the said order, which is under challenge here.
16. The materials on record show that **the victim has not been recovered till date.** The learned counsel for the petitioner/State submits that the State may be permitted to file a report as to the progress in investigation till 10.10.18, when the investigation was stopped by the Magistrate. It

appears that the Magistrate then discharged the accused in terms of Section 167(5) Cr.P.C., which this Court finds, is clearly not in accordance with law, **as the Magistrate on stopping the investigation, discharged the accused without considering or examining the progress of investigation done within the said period. The Magistrate also did not apply his mind to the materials on record (case diary) and as to whether it was sufficient for taking cognizance or not.**

17. Thus the findings of the learned Magistrate is clearly not in accordance with law in view of the judgments relied upon by the petitioner/State and is thus liable to be set aside. As a result the judgment and order of the learned Session Judge under revision is also liable to be set aside.
18. **CRR 1153 of 2020 is thus allowed.**
19. The Order dated 07.01.2020 passed by the Learned Sessions Judge, Nadia in connection with Criminal Motion No. 61/2018, and the order dated 10.10.2018 passed by the Learned Additional Chief Judicial Magistrate, Tehatta, Nadia in G.R. Case No. 667 of 2012, **are hereby set aside.**
20. **The case being G.R. Case No. 667 of 2012 is restored to its file.**
21. **The accused Hare Krishna Mondal is directed to surrender before the Trial Court within a month from the date of this order, in default, the Court shall proceed in accordance with law.**

- 22. The investigating agency is directed to submit its report as to the investigation done in this case till 10.10.18 before the Trial Court within a month from the date of this order and the Magistrate shall proceed in accordance with law as per the observation and guidelines in the judgments referred to.**
- 23.** All connected applications, if any, stand disposed of.
- 24.** Interim order, if any, stands vacated.
- 25.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 26.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)