

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1414 of 2023

Sekh Jilai

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Sabyasachi Chatterjee,
Mr. Badrul Karim,
Mr. Kiran Sk.,
Ms. Indrani Roy,
Mr. Sayan Banerjee,
Mr. Aritra Ghosh,
Ms. Monalisha Sinha.

For the State : Mr. Madhusudan Sur, ld. APP.

**For the Opposite Party
No. 2** : Mr. Souvik Mittar,
Mr. Avik Ghatak,
Mr. Amit Ranjan Pati.

Hearing concluded on : 25.11.2024

Judgment on : 05.12.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred against the order dated 21.01.2020 passed by the learned Additional Chief Judicial Magistrate, Bolpur, Birbhum in connection with Bolpur P.S. Case No. 405 dated 28.09.2015 under Section 302/34 of the Indian Penal Code read with Section 25/27 of the Arms Act, corresponding to G.R. Case No. 897 of 2015, pending before the learned Additional Chief Judicial Magistrate, Bolpur, Birbhum.
2. Vide the order dated 21.01.2020 **the Court decided the prayer of the accused for further investigation.** The Court relying upon the judgment of the Hon'ble Supreme Court in ***Vinubhai Haribhai Malaviya & Ors. vs. State of Gujarat & Anr.*** reported in **(2019) 17 SCC 1 paragraph 27** and in the case of ***Ms. Maneka Gandhi vs. Union of India*** reported in **(1978) 1 SCC 248** and other judgments, allowed the prayer of the accused person for further investigation.
3. Being aggrieved by the said order directing further investigation, the petitioner who is the father of one of the victims has preferred the present revisional application registering his grievance, as the accused (applicant) filed the said application after he was charge sheeted in this case.
4. **The petitioner states that he is an eye witness to the incident in the present case and the present case was initiated under Section 302/34 of IPC read with Section 25/27 of the Arms Act.**
5. The petitioner's further contention is that the murder of his son is politically motivated and the trial Court was wrong in allowing the prayer

for further investigation when the investigation had already ended in a charge-sheet against the accused person who preferred the prayer for further investigation on being charge sheeted along with other accused persons.

6. It is further submitted that as such the said order which has been passed against the interest of justice should be set aside.
7. **The accused/opposite party herein namely Kajal Sk. is the principal accused person in this case being at number one in the charge-sheet and shown as an absconder.**
8. **By the order under revision, the Court held as follows :-**

“Order dated 21.01.2020

.....The accused petitioner has also stated in the application under scanner that he had informed the I.O. of the case that at the relevant time he i.e. Sk. Kajal was at the State Assembly House and had sent documentary proof of the same to the I.O. and despite that the I.O. paid no heed to such document i.e. the gate pass of Assembly and CCTV footage. He has stated that he has no other option but to knock the doors of justice and has stated “Every citizen has the right to get further investigation, to find out the real truth, so that an innocent cannot be falsely implicated in any case. In his prayer portion he has prayed for further investigation, specially on the point of gate pass and CCTV footage to ascertain whether he (i.e. accused Kajal Sk.) was present at the State Assembly or not as on the date of occurrence. The application of the accused is filed with affidavit.....

Sd/-

**Addl. Chief Judicial Magistrate
Bolpur, Dist-Birbhum”**

9. The Court also noted that warrant of arrest was issued against him and 14 other persons and they were declared as proclaimed offenders. Though, the Court considered the said status of the case, the Court without passing any order as to the WPA, passed the order under revision relying upon several judgments and being of the opinion that he has the power to order further investigation even after filing of charge-sheet. On giving his opinion as to the uniqueness of the petition and one document which was relied upon by the accused, directed further investigation.
10. **The trial Court considered the prayer of the accused Kajal Sk. on the following findings :-**

“Order dated 21.01.2020

.....The uniqueness of the petition filed by the accused dated 27.12.2019 is that he has relied on a document, which if found to be genuine, can have a great effect of the outcome of the investigation and in that way would ensure fair investigation. I am mindful of the observation of Hon’ble Supreme Court in Ritesh Tewari V State of U.P. & Ors. (2010) 10 SCC 677 wherein it was observed that every trial is a voyage for discovery in which truth is the quest and as aforesaid, fair trial must kick off only after an investigation is itself fair and just. In Dilip Singh vs State of U.P. & Ors. (2010) 2 SCC 114 it was observed that truth constitutes an integral part in Justice delivery system.

As mentioned above, the document filed by the accused in my view, is an important document and in view of the above discussion, I am of the view that the prayer of the accused for further investigation should be allowed to unearth the truth.

Hence, it is

ORDERED

That the prayer of the accused Sk. Kajal dated 27.12.19 for further investigation is allowed. I/C Bolpur is directed to cause further investigation in the case on the basis of the document filed by the accused. I may not be understood to have commented upon the authenticity of the document filed by the accused as that is to be ascertained by the investigating agency.....

Sd/-

**Addl. Chief Judicial Magistrate
Bolpur, Dist-Birbhum”**

- 11.** A report has been submitted by the learned Public Prosecutor regarding the further investigation as directed by the learned Magistrate, by the order under revision.
- 12.** From the said **report dated 14.05.2024 submitted by the S.I. of Bolpur P.S., Birbhum**, it appears that on receiving the order for further investigation, the investigating officer visited the P.O. and examined witnesses and states as follows :-

“.....2) On 12.03.2020 he sent a requisition to the concerned authority for collecting CCTV footage and to collect gate pass information/footage on that very day (i.e., 28.09.2015) but the said concerned office was closed, therefore no fruitful result could be achieved. Noted in Page No. 460 of the case diary.

3) *Further on 05.05.2020 and 15.12.2020 examined witnesses and recorded their statement u/s 161 Cr.P.C. Noted in Page No. 462 & 466 of the case diary.*

4) *In such way on 29.03.2020, 07.07.2020 took several attempts for submission of the requisition but due to*

COVID-19 that unit remained closed. Noted in Page No. 463 of the case diary.

5) On 11.02.2021 said IO reached at Legislative Assembly Kolkata, West Bengal and also at the office of the Secretort, L.A. WB and submitted a requisition to collect information whether Sk. Kajal S/O Lt. Sk. Samsul of Papuri, PS-Nanoor, Dist-Birbhum was present at the Legislative Assembly, WB on 28.09.2015 or not & also to collect visitors pass information/footage/CCTV footage of L.A. WB on 28.09.2015. Also examine witness and recorded statement of Debabrata Mukhopaddhay, Morsal of W.B. Legislative Assembly, Kolkata u/s 161 Cr.P.C. Noted in Page No. 469 of the case diary.

6) On 25.02.2021 said IO tried to collect the above noted information by personal contact but to no good. On 17.03.2021, IO SI Biplab Pramanik received information from Shri S.Das, Assistant Secretary, West Bengal Legislative Assembly, vide Memo No. 323 dated 12.03.2021. On perusal, it came to learn that, "Citing a reference to your letter dated 11th Feb, 2021 in c/w Bolpur PS Case No. 405/15 dated 28th Sept, 2015, I am directed to inform you that there was no provision of CCTV in Assembly House Premises during that time and the Entry Pass in question was not issued from the end of this Secretariat....."

7) On 25.05.2021 as per kind direction said IO tried to collect the Visitor Pass information of L.A. W.B. bearing Card No. 14883 dated 28.09.2015 in the name of Kajal Sk. sending a reminder. Noted in Page No. 476 & 477 of the case diary.

.....

10) On 15.09.2021, IO SI BIplab Dutta received report vide Letter No. Nil dated 25.02.2021 from the concerned Office of the Chief Government Whip, Assembly House, Kolkata 700001 that Column No. (c) at page NO. 03 “It is not possible for the office of the Chief Govt. Whip to state whether Shri Sk. Kajal to whom Visitors’ Pass No. 14883 was issued, was actually present at the Assembly House premises on that day or not. If he actually entered into the Assembly premises, then his time of entry and departure can only be stated by the staff concerned of W.B.L.A. Sectt.” Noted in Page No. 480 to 490 of the case diary.

.....

20) On 20.08.2023 IO sent a reminder letter to obtain the Visitor Pass information of L.A. W.B. bearing Card No. 14883 dated 28.09.2015 from the Private Secretary, Chief Government Whip, Assembly House, Kolkata-700001. Noted in Page No. 535 of the case dairy.

21) On the basis of reminder letter on 07.01.2024, a response letter was received from Private Secretary to Hon’ble Chief Govt. Whip in which it is written, “Letter No. nil....In this connection, it deserves to be mentioned here that West Bengal Legislative Assembly Secretary is under the exclusive control of the Hon’ble Speaker, West Bengal Legislative Assembly and any information regarding the aforesaid Register can be provided by the West Bengal Legislative Secretariat.

As such, Hon’ble Chief Govt. Whip kindly approving the submission, SI Bolpur PS may be apprised of the same.

A copy of the earlier Note sheet regarding the aforesaid matter is placed below for kind perusal”.

On perusal of the Note sheet it is unearthed that in the Column No. (c) at page No. 03 “It is not possible for the office of the Chief Govt. Whip to state whether Shri Sk. Kajal to whom Visitors’ pass No. 14883 was issued, was actually present at the Assembly House premises on that day or not. If he actually entered into the Assembly premises, then his time of entry and departure can only be stated by the staff concerned of W.B.L.A. Sectt.” Noted in Page No. 543 & 549 of the case diary.....”

13. From the report dated 14.05.2024, it appears that **further investigation in this case is already complete** as noted above and, as such, the scope of interference by this Court at this stage is unwarranted.
14. Accordingly, the report as placed before this Court, be placed within 15 days from the date of this order by way of a supplementary charge-sheet before the trial Court, with the findings as noted in the said report, and also as noted above by this Court.
15. Considering the said report/supplementary charge sheet, the trial Court shall proceed with the trial in the present case expeditiously in accordance with law.
16. In view of the judgment of the Hon’ble Supreme Court in ***Vinubhai Haribhai Malaviya & Ors. vs. The State of Gujarat & Anr., reported in (2019) 17 SCC 1, paragraph 27***, this Court finds that the learned Magistrate on specific findings passed a reasoned order, which was within his powers, that is to direct further investigation and thus the order under revision being in accordance with law requires no interference by this Court.

- 17. The present revisional application being CRR 1414 of 2023 is dismissed.**
- 18.** All connected applications, if any, stand disposed of.
- 19.** Interim order, if any, stands vacated.
- 20.** Let a copy of the Judgment be sent to the learned trial court at once.
- 21.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)