

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRR 2214 of 2024

Ram Kishore Bansal & Anr.
v/s.

Ashok Kumar Dutta

For the Petitioners:

Mr. Sandipan Ganguly, Adv,
Ms. Manaswita Mukherjee, Adv.
Mr. Pankaj Agarwal, Adv.
Ms. Muskan Agarwal, Adv.

For the Opposite Party:

Mr. S.S. Roy, Adv.,
Mr. Kaushik Choudhury, Adv.

Judgment delivered on:

14-11-2024

SUVRA GHOSH, J. :-

1. The petitioners have assailed the order passed by the Learned Chief Judicial Magistrate, Bankura on 9th January, 2024 in G.R. Case no. 1427 of 2015 allowing the prayer of the opposite party to treat his protest petition as a complaint.
2. Learned counsel for the petitioners submits that the opposite party filed an application under section 156 (3) of the Code of Criminal Procedure on 30th September, 2015 which was registered as FIR and Barjora P.S. Case no. 100 of 2015 dated 2nd November, 2015 under sections 420/403/34 of the Indian Penal Code was initiated against the

petitioners. The Investigating Officer submitted FRMF upon completion of investigation on 30th June, 2016. The opposite party filed a Naraji petition before the learned Magistrate on 1st August, 2016 against the final report submitted by the Investigating Officer and an order or re-investigation was issued by the learned Magistrate on 3rd September, 2016. Upon completion of investigation, a second FRMF was submitted by the Investigating Officer on 31st July, 2019. During pendency of further investigation, the petitioners filed an application before this Court under section 482 of the Code of Criminal Procedure, being C.R.R. no. 1171 of 2018 seeking quashing of proceedings of Barjora P.S. Case no. 100 of 2015. The revisional application was dismissed for default by this Court on 16th March, 2023. The opposite party filed a Naraji petition challenging the second final report on 1st July, 2023 which was kept on record. By an order passed on 2nd November, 2023, the learned Chief Judicial Magistrate, Bankura dropped the proceeding upon accepting the FRMF. On 17th November, 2023 the opposite party filed an application seeking consideration of his Naraji petition and treating the same as a complaint. By an order dated 9th January, 2024, the learned Magistrate allowed the prayer of the opposite party and registered the Naraji petition as a complaint case and issued summons upon the petitioners.

3. Learned counsel for the petitioners has submitted that in view of the provision laid down under section 362 of the Code of Criminal Procedure, the learned Magistrate had no authority to review his own

order disposing of the proceeding and directing registration of a complaint case by allowing the prayer of the opposite party.

4. Learned counsel has placed reliance on the authorities in *Sujoy Kumar Chanda v/s Damayanti Majhi and Another* reported in (2014) 5 Supreme Court Cases 181, *Surendra Singh v/s. State of Bihar* reported in (2005) 12 Supreme Court Cases 361 and *Bindeshwari Prasad Singh v/s. Kali Singh* reported in (1977) 1 Supreme Court Cases 57 in support of his contention.
5. Per contra, learned counsel for the opposite party has placed reliance on the authorities in *Ashabai Machindra Adhagale v/s. State of Maharashtra & Ors.* reported in 2009 (1) Calcutta Criminal Law Reporter (SC) 878 and *Jang Singh v/s. Brijlal and Ors* reported in 1964 (2) SCR 149 and has submitted that the Hon'ble Supreme Court has held that all civil and criminal Courts can exercise such powers as are necessary to do the right and to undo a wrong in course of administration of justice.
6. I have considered the rival contention of the parties and the material on record.
7. It appears from the record that despite accepting the second FRMF being no. 82 of 2016 and dropping the proceedings vide order dated 2nd November, 2023, learned Magistrate chose to re-open the case and allowed the Naraji petition filed by the opposite party and treated the same as a complaint.
8. At this juncture, it shall be useful to reproduce section 362 of the Code of Criminal Procedure.

“Court not to alter judgment. - Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same except to correct a clerical or arithmetical error.”

9. Therefore after a Court has disposed of a case by a final order it can alter or review the same only to correct clerical or arithmetical error. It is needless to state that by the order impugned the learned Magistrate has travelled far beyond correction of a clerical or arithmetical error in its order disposing of the case finally. The learned Magistrate has reopened the case and has dealt with it on merits by treating the Narazi petition as a complaint case. This amounts to recalling or reviewing the final order by the Magistrate.
10. In the authority in Bindeshwari Prasad Singh (supra), the Hon’ble Supreme Court has held that there is absolutely no provision in The Code of Criminal Procedure empowering a Magistrate to review or recall an order passed by him. Unlike Section 151 of The Code of Civil Procedure, the subordinate criminal Courts have no inherent powers. The same principle has been echoed by the Hon’ble Supreme Court in the authorities in Sujoy Kumar Chanda (supra) and Surendra Singh (supra).
11. In the authority in Jang Singh (supra), there was an error committed by the Court in directing the petitioner to find out the correct amount and make the correct deposit. The Hon’ble Supreme Court has held that there was a error committed by the Court which could not be undone

by shifting the blame on Jang Singh. The ratio decidendi of the said judgment has no manner of application in the present case. In the authority in Ashabai Machindra Adhagale (supra) the Hon'ble Supreme Court has dealt with the inherent power of the High Court under Section 482 of The Code of Criminal Procedure. The Hon'ble Court has recorded that all Courts, whether civil or criminal, possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice. In the present case, there being an express provision under section 362 of The Code of Criminal Procedure, the question of exercise of inherent powers does not arise, moreso, since no such inherent power is bestowed upon the learned Magistrate under the law.

12. In the light of the provision laid down under section 362 of the Code and the authorities referred to hereinabove, this Court is inclined to hold that the learned Chief Judicial Magistrate, Bankura has no legal sanction to re-open the proceedings and treat the Naraji petition filed by the opposite party as a complaint case. The grievance of the opposite party in disposing of / dropping the proceedings without considering his Naraji petition could be redressed by a superior forum and not by the learned Magistrate who passed the order since the same amounts to reviewing/recalling the order passed by him earlier which is not enjoined in law.
13. In the result, the revisional application succeeds.

14. The order passed by the learned Chief Judicial Magistrate, Bankura on 9th January, 2024 is set aside/quashed.
15. However, the opposite party is at liberty to assail the order passed by the learned Magistrate on 2nd November, 2023 before the appropriate forum, if so advised.
16. C.R.R. 2214 of 2024 is disposed of.
17. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.
18. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)