

15.05.2024
Serial no.3
Piya
Ct. No. 30

**CRR 2305 of 2022
with
IA No. CRAN 5 of 2024**

**Raja Chakraborty & Anr.
Vs.
The State of West Bengal & Anr.**

For the Petitioners:	Mr. Sagar Saha, Ms. Easita Dutta, Mr. Koushik Roy.
For the State:	Ms. Faria Hossain, Mr. Anand Keshari.

1. The present revision has been preferred against orders dated 16.03.2022 and 22.04.2022 passed by the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas, thereby rejecting an application under Section 167(5) of the Code of Criminal Procedure, 1973, filed by the accused petitioners in connection with Khardah Police Station Case No.1047 of 2018 dated 27.12.2018 under Sections 323/325/326/506/120B of the Indian Penal Code, 1860, adding section 307 of the Indian Penal Code, 1860, arising out of G.R.No.7676 of 2018.
2. The order under revision dated 16.03.2022 passed by the Learned Magistrate, is as follows:-

**“Khardah Police Station Case No.1047 of
2018 dated 27.12.2018”**

Order dated 16.03.2022

.....Perused the petition, case record, material on record, heard and considered. It becomes evident from the case record that the accused persons are already on bail and the C.S has not been filed till date. It also becomes evident from the case record that the case was started on 27/12/18 and the accused persons had obtained bail. As per the provision of Section 167(5) (ii) of Cr.P.C as amended by the State Amendment of West Bengal, in any case which is exclusively triable by the Court of Sessions, if the investigation is not completed within three years, from the date on which the accused person had been arrested and/or made his appearance, the Magistrate shall pass an order for stopping of further investigation into the offences and shall discharge the accused unless the officer making investigation satisfied the Magistrate that for special reason and for interest of justice and continuation of investigation beyond the said period mentioned in the Sub-section is necessary. In the instant case, it becomes evident from the case record that the investigation has not been concluded within the period of three years from the date of arrest/appearance of the accused person. No prayer has been made by the I.O seeking continuation of investigation in this case beyond the period of three years as prescribed by the said provision. **In the light of the said provision and the recent direction of the Hon'ble Apex Court, the investigation of the instant case is hereby directed to be stopped in absence of C.S. The I.O is directed to stop the investigation and file his final report by the next date fixed.**

To 23/3/22 for filing of final report by the I.O.....

**Sd/-
A.C.J.M., Barrackpore"**

3. In State of West Bengal vs Falguni Dutta, (1993)

3 SCC 288/ 1993 C Cr LR (SC) 123, decided on 5th

May, 1993 (Para 8), the Supreme Court held:-

"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."

4. 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."

5. The Supreme Court in **Durgesh Chandra Saha vs Bimal Chandra Saha and Ors., AIR 1996 SC 740, on 23 November, 1995**, held:-

"8. After giving our anxious consideration to the respective submission of the learned Counsel appearing for the parties it appears to us that the language of Section 167(5) of Cr.P.C. as amended by the West Bengal Act is quite clear in indicating that the said section is applicable only in a case where the investigation was still pending but not in a case where investigation had been completed and the chargesheet had been filed. It appears to us that 167(5) Cr.P.C. as amended, is intended to ensure speedy completion of investigation within the time frame specified therein otherwise to face an order of discharge of the accused against whom investigation without any just cause to the satisfaction of the Court has been kept pending, where investigation has been completed, a different situation, not contemplated under Section 167(5) Cr.P.C. emerges. We may indicate here that if a criminal case is kept pending for a very long time without any just cause thereby seriously affecting the guarantee under Article 21 against deprivation of personal liberty, the law is well settled that the Court, in an appropriate case

may quash the criminal proceeding as indicated in the Constitution Bench decision of this Court in A.R. Antulay's case. Hence unnecessary liberal construction of Section 167(5) Cr.P.C. with a view to protect the right against deprivation of personal liberty as contended by Mr. Ghosh is not called for."

6. Accordingly, the order under revision being in accordance with law requires no interference by this court and is thus affirmed.
7. The investigating agency is directed to submit a report as directed by the Learned Magistrate within 15 days from the date of communication of this order.
8. **CRR 2305 of 2022 is thus disposed of.**
9. All connected applications, if any, stand disposed of.
10. Interim order, if any, stands vacated.
11. Copy of this order be sent to the learned Trial Court for necessary compliance.
12. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Shampa Dutt (Paul), J.)