

29.01.2024

Sl. No.16

Ct. 32

P.A.

CRR 1862 of 2021

Partha Pratim Kundu

Vs.

The State of West Bengal and Anr.

Mr. Sekhar Kumar Basu,
Mr. Ranadeb Sengupta,
Mr. Diptangshu Basu,
Mr. Sachit Talukdar,
.....for the petitioner

Mr. Saibal Bapuli,
Mr. Bibaswan Bhattacharya
.....for the State

By this revisional application, the Petitioner has challenged the order dated 16.07.2021 passed by the learned Additional Chief Judicial Magistrate, Bidhannagar in G.R. Case No. 26 of 2019 arising out of Bidhannagar (Women) Police Station Case No. 01 of 2019 dated 10.01.2019 under Sections 406/506 of the IPC, thereby the learned Magistrate fixed a date on 10.09.2021 as the next date for opening of the locker held by the petitioner herein and to prepare inventory list.

The brief facts of the case are relevant for the purpose of disposal of this case is as follows:

Defacto-complainant being the mother of opposite party no. 2, Sandipa Palit lodged a written complaint on 10.01.2019 to the Bidhannagar (Women) Police Station to the

effect that her daughter, Sandipa Palit (O.P. no 2 herein) got married with petitioner on 05.09.1996. At the time of marriage, a huge dowry was demanded by the petitioner and his family members. She was compelled to fulfill their demand as per her capacity. She gave huge ornaments and diamonds to her daughter and son-in-law. Later, further demand of dowry was made by the petitioner and when she failed to fulfill the demand, her daughter was brutally tortured by her husband/petitioner herein and in-laws also used to harass her.

The petitioner frequently insisted the opposite party no. 2 to keep all her jewellery and other articles in his bank locker under his custody. Thereafter, jewellery was handed over to the petitioner herein who thereafter stored it in his locker situated at State Bank of India, NRI Branch, DA Block, Kolkata. Despite of repeated requests, her daughter was not allowed to operate the said locker. At the same time, petitioner handed over a fake key to the aforesaid locker to her daughter/Opposite Party No. 2. Subsequently, her daughter returned the key to the petitioner. The petitioner failed to return the jewellery, which were kept in his locker in spite of several request. Accordingly, she apprehends that her jewellery may be misappropriated by the petitioner. The ornaments which were given by the complainant to her daughter were kept in the locker without authority to access

the same and whenever her daughter asked to open the locker, the petitioner refused to do so.

On the basis of such complaint, a case was registered being BDN (Women) P.S. Case No. 01/2019 under Sections 406/506, IPC and the same was finally culminated into a final report being Final Report No. 21/2019 dated 30th April, 2019 as no sufficient materials collected against the petitioner and no prima facie case established u/s 406/506 IPC.

The learned Additional Chief Judicial Magistrate, by an order dated 19.07.2019 issued a notice upon the defacto complainant and fixed a date for hearing on 20.08.2019 in view of the decision of the Hon'ble Supreme Court made in **Bhagwant Singh Vs. Commissioner or Police, reported in (1985) 2 SCC 537**. However, in the meantime, the IO submitted a prayer before the learned Magistrate to reopen the case as new evidence had crept up in connection with the said proceeding. The learned Magistrate did not satisfy with the version of the investigating officer regarding nature of new evidence that had crept up. As such, the learned Magistrate directed the investigating officer to be present personally on the next date of hearing i.e. on 20.08.2019. On that day, the investigating officer submitted prayer for reopening of the case for recovery of stridhan articles, which were allegedly stored in a locker belongs to the petitioner at State Bank of India, NRI Branch, DA Block, Kolkata. Such prayer was

allowed on 20.08.2019 directing the I.O. to reopen the case and report. Notice was communicated to the petitioner by the IO with regard to the opening of the locker held by the petitioner in the State Bank of India.

Upon receipt of such intimation, the petitioner communicated to the bank about his inability to present personally for opening of the locker. He engaged his learned advocate to be a representative during search and seizure from the locker. The petitioner was ready and willing to assist the investigating officer for the progress of the investigation. Thereafter, the petitioner, receipt a notice from the bank via E-mail to execute a power of attorney in favour of his authorized representative. But, investigating officer further came with a fresh prayer before the learned Magistrate to break open the locker since there had been no reply from the holder of the locker and the said prayer was allowed vide order dated 01.11.2019 and permitted the investigating officer to access the locker of the petitioner by breaking open the same though the Petitioner was ready and willing to co-operate with the investigation.

Being aggrieved and dissatisfied with the said impugned order dated 01.11.2019 passed by the Learned Magistrate, the petitioner had filed a revisional application being CRR 3734 of 2019 before this Court and after hearing on 24.12.2019, the co-ordinate Bench of this Court was pleased to stay the operation of the impugned order dated

01.11.2019 for a period of three weeks after ensuing Christmas vacation.

The said revisional application, thereafter, came up for hearing before the co-ordinate Bench of this Court and vide order dated 05.02.2020 Co-ordinate Bench was pleased to allow the revisional application filed by the petitioner and further modified the order passed by the Ld. Magistrate after observing therein that the petitioner is willing to comply to have the locker in question open, there would be no need to break open the locker and directed the learned Magistrate to fix a date for opening of the locker in presence of the parties. In pursuant to such order, the investigating officer would have been opened the locker in presence of the representative of the petitioner as well as the de facto complainant and for this purpose, a prior notice should have been given by the investigating officer upon both the parties.

In pursuant to the direction of this Hon'ble High Court, the Ld. Magistrate was pleased to fix dates on 13.02.2020, 20.04.2020, 25.11.2020, 16.12.2020, 05.01.2021, 08.02.2021, 08.03.2021 and 19.04.2021. In the meantime, it was informed that the de facto complainant died on 09.10.2020. However, no any other legal heirs or representative turned up for opening of locker and even opposite party no. 2, also failed to turn up on the plea of her health issues and as such, locker could not be open till date. The opposite party no. 2, now, residing in Chennai. As per

report submitted by the IO of this case, locker could not be open due to absent of the representative of the de facto complainant for a long period. Accordingly, I.O. consulted with the superior officer along with case diary with regard to merit and development of the case and finally submitted another final report vide Bidhannagar (Women) P.S. FRT No. 11/2022 dated 19.04.2022 in this case 25.04.2022 with a view to reopen the case if any clue obtains in near future. The victim lady was also informed about the result of the case. She neither takes any steps nor appeared before the Ld. Magistrate for her grievances, if any.

Supplementary affidavit filed by the petitioner appending subsequent orders passed by the Learned Magistrate, reflects several dates have been fixed but no any legal representative or the victim lady turned up before the court of learned Magistrate but the said case remains pending without final result or decision and for that reason the present petitioner greatly prejudice and suffering due to ordinate delay in proceeding without his fault. The case has not proceeded an inch since long though I.O filed final report on 25.04.2022.

The learned advocate appearing on behalf of the petitioner submits that in spite of filing the second FRT, the said case was not even closed or discharged the petitioner from the proceeding. Several dates have been fixed by the Ld. Magistrate. But no final decision has been taken by the Ld.

Magistrate and the case is pending since 2022. He prays the impugned order is liable to be set aside and FRT may be accepted and petitioner may be discharged from the frivolous and concocted case.

Ld. counsel appearing on behalf of the state place the details report of the case and further submitted that the defecto complainant died during pendency of the case but neither any legal heirs nor the victim herself turned up before the I.O or Ld. Court below. Several notices issued from the side of Investigation officer as well as from the Ld. Court. No co-operation found from the side of victim. Furthermore, no prima facie case found against the petitioner as such I.O submitted FRT on 25.04.2022, since than case is pending without any outcome. He left the matter to the discretion of this court.

Having heard the submissions of both sides and on perusal of the report, it appears the IO after investigation submitted earlier FRT but subsequently, I.O. made a prayer before the Learned Magistrate for re-opening the case as new evidence had crept up regarding recovery of stridhan articles in connection with the said proceeding and said prayer was allowed by the Learned Magistrate for re-opening the case. During investigation, IO also prayed for opening of the locker to recover the items and jewellery of the Opposite party no.2 from the said locker after breaking open the same.

The said order was challenged before the Hon'ble High Court and the Hon'ble High Court after hearing the parties, was pleased to direct the learned Magistrate to fix a date for opening of the locker in presence of the parties. For the purpose of opening locker prior notice shall have been given by the investigating officer upon both the parties.

In the meantime, it was informed that the de-facto complainant died on 09.10.2020. In spite of several notice was issued upon the OP No. 2, she did not cooperate with the investigation and did not turn up to open the locker.

Failing which the IO of this case finally, upon suggestions by her higher authority, submitted second time final report being FRT No. 11/2022 dated 19.04.2022 on 25.04.2022 before the learned Magistrate, when I.O of this case found no materials or prima facie case during investigation against the Petitioner. In spite of filing such FRT the Ld. Magistrate is keeping the matter pending since 2022 without any final decision.

Under such circumstances, this Court finds the Learned Magistrate is only fixing the dates one after another. Such delay is unwarranted to decide the matter. Such inordinate delay would definitely cause prejudice and harassment to the petitioner. It ought not to be allowed to keep such types of matter pending for a long period without any sufficient or justified reason.

Justice would be sub-served if the learned Magistrate is directed to decide and come to a final conclusion at earliest preferably within two months from the next date fixed for hearing.

With above observations, the instant revisional application being **CRR 1862 of 2021** is, thus, disposed of without order as to costs.

Let a copy of this order be sent to the Learned Magistrate for information and compliance.

All parties are to act in terms of the copy of this order duly downloaded from the official website of this Court.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties as expeditiously as possible taking all legal formalities.

(Ajay Kumar Gupta, J.)