

**CRR 2457 of 2021**

**Kalipada Pal  
vs.  
The State of West Bengal & Anr.**

**For the Petitioner** : Mr. Akashdeep Mukherjee.

**For the State** : Ms. Sreyashee Biswas,  
Ms. Puja Goswami.

**For the Opposite Party No. 2** : None.

1. A report has been filed by the State wherein it appears that the opposite party no. 2 has been duly served. But in spite of due service there is no representation on behalf of the opposite party no. 2.
2. The present revisional application has been preferred against the order dated 02.11.2021 passed by the learned Additional Chief Judicial Magistrate, Kakdwip, in an application under Section 173(8) Cr.P.C. corresponding to G.R. Case No. 1415 of 2021, arising out of Harwood Point Coastal P.S. Case No. 244 of 2021 dated 21.07.2021 and added Section 302 of the Indian Penal Code, pending before the learned Additional Chief Judicial Magistrate, Kakdwip.
3. It is the case of the petitioner/de facto complainant herein that:-

*On 20.07.2021 around 2.30 p.m., the de facto complainant and his deceased son namely Samaresh Pal were speaking in front of his house standing on cemented road. Suddenly at that time the accused persons namely Animesh Pal, Nilima Pal, Uttam Shaw, Anadi Gayen came*

*to the place of occurrence and started to abuse with filthy language, and also assaulted them with fist, blow, kicks and they tried to strangle. After that (deceased) Samaresh Pal was pushed by the accused persons and he fell down on the cemented road and the accused persons continuously beat him. At that time the de facto complainant shouted for help and some local people came to the spot and the accused persons fled away. Thereafter with the help of local people the complainant took his seriously injured son to the Kakdwip Hospital.*

- 4. From the materials in the case diary, it appears that the de facto complainant has also named the opposite party no. 2 before the Magistrate apart from the FIR. The opposite party no. 2 has also been named before the medical officer. In the Injury report at page 92 too, the opposite party no. 2 has been named by the doctor.**
- 5.** At the time of completion of investigation, the police in spite of the said materials in the case diary did not submit charge-sheet against the opposite party no. 2 and discharged him from the said case.
- 6.** On the prayer of the petitioner for further investigation by way of 'Naraji', the learned Magistrate dismissed the said prayer.
- 7.** The findings of the learned Magistrate in respect of the prayer for further investigation is as follows:-

*"Now coming to the facts and circumstances of the present case, it appears from the materials on record that in the present case charge sheet has already been submitted and cognizance has been taken for commitment on 19-10-2021. Therefore, at this stage no further investigation can be directed by his*

*Court either suo motu or on prayer of the de facto complainant in view of the decision of the Hon'ble Supreme Court as reported in (2017) 4 SCC 177/(2017) 2 SCC (Cri) 331. In view of the decisions of the Hon'ble Court as reported in (1979) 4 SCC 381 and in AIR 1979 SC 339 the Ld. Court of Sessions has the jurisdiction to add the persons not sent up with charge sheet as accused..."*

- 8. From the said order of the learned Magistrate it appears that the learned Magistrate did not apply his mind when the cognizance was being taken on the submission of the charge-sheet.**
- 9. The learned Magistrate did not consider the materials in the case diary at the time of considering the application under Section 178(3) Cr.P.C.**
- 10. From the order it appears that the learned Magistrate was in a hurry to commit the case record to the Court of Sessions.**
- 11. In *Mukhtar Zaidi vs The State of Uttar Pradesh & Anr., in Criminal Appeal No. .... of 2024 (arising out of SLP (CRL.) No. 9122 of 2021, decided on April 18, 2024*, the Supreme Court held:-**

*"8. Once we have held as above without going into many judgments of this Court on the point as to how the Magistrate would proceed under Section 190 Cr.P.C. once the Investigating Officer had submitted a closure report under Section 173(2) Cr.P.C., we may briefly deal with the legal issue and refer to relevant paragraphs of a recent decision. In this connection, Section 190(1) (a) and (b) of Cr.P.C. is extracted hereunder:*

**190. Cognizance of offences by Magistrates.**

*(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this*

behalf under sub-section (2), may take cognizance of any offence –

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;....”

**9. In the case of Vishnu Kumar Tiwari vs. State of Uttar Pradesh, through Secretary Home, Civil Secretariat, Lucknow & Anr., (2019) 8 SCC 27, Justice K.M. Joseph, speaking for the Bench laid down the legal position relying upon previous judgments of this Court. In the said case the facts were quite similar to that of the present case where affidavits were filed along with the Protest Petition. The net result is that the Magistrate in the present case ought to have treated the Protest Petition as a complaint and proceeded according to Chapter XV of the Cr.P.C.. The relevant paragraphs dealing with the above aspect in the case of Vishnu Kumar Tiwari (supra), being paragraphs 42 to 46 are reproduced hereunder:**

**“42.** In the facts of this case, having regard to the nature of the allegations contained in the Protest Petition and the annexures which essentially consisted of affidavits, if the Magistrate was convinced on the basis of the consideration of the final report, the statements under Section 161 of the Code that no prima facie case is made out, certainly the Magistrate could not be compelled to take cognizance by treating the Protest Petition as a complaint. The fact that he may have jurisdiction in a case to treat the Protest Petition as a complaint, is a different matter. Undoubtedly, if he treats the Protest Petition as a complaint, he would have to follow the procedure prescribed under Sections 200 and 202 of the Code if the latter section also commends itself to the Magistrate. In other words, necessarily, the complainant and his witnesses would have to be examined. No doubt, depending upon the material which is made available to a Magistrate by the complainant in the Protest Petition, it may be capable of being relied on in a particular case having regard to its inherent nature and impact on the conclusions in the final report. That is, if the material is such that it persuades the court to disagree with the conclusions arrived at by the investigating officer, cognizance could be taken under Section 190(1)(b) of the Code for which there is no necessity to examine the witnesses under Section 200 of the Code. But as the Magistrate could not be compelled to treat the Protest Petition as a complaint, the remedy of the complainant

would be to file a fresh complaint and invite the Magistrate to follow the procedure under Section 200 of the Code or Section 200 read with Section 202 of the Code. Therefore, we are of the view that in the facts of this case, we cannot support the decision of the High Court.

**43.** It is true that law mandates notice to the informant/complainant where the Magistrate contemplates accepting the final report. On receipt of notice, the informant may address the court ventilating his objections to the final report. This he usually does in the form of the Protest Petition. In *Mahabir Agarwala v. State* [*Mahabir Prasad Prasad Agarwala v. State*, 1957 SCC OnLine Ori 5 : AIR 1958 Ori 11] , a learned Judge of the High Court of Orissa, took the view that a Protest Petition is in the nature of a complaint and should be examined in accordance with the provisions of Chapter XVI of the Criminal Procedure Code. We, however, also noticed that in *Qasim v. State* [*Qasim v. State*, 1984 SCC OnLine All 260 : 1984 Cri LJ 1677] , a learned Single Judge of the High Court of Judicature at Allahabad, inter alia, held as follows: (*Qasim case* [*Qasim v. State*, 1984 SCC OnLine All 260 : 1984 Cri LJ 1677] , SCC OnLine All para 6)

“6. ... In *Abhinandan Jha* [*Abhinandan Jha v. Dinesh Mishra*, AIR 1968 SC 117 : 1968 Cri LJ 97 : (1967) 3 SCR 668] also what was observed was “it is not very clear as to whether the Magistrate has chosen to treat the Protest Petition as complaint”. This observation would not mean that every Protest Petition must necessarily be treated as a complaint whether it satisfies the conditions of the complaint or not. A private complaint is to contain a complete list of witnesses to be examined. A further examination of complainant is made under Section 200 CrPC. If the Magistrate did not treat the Protest Petition as a complaint, the Protest Petition not satisfying all the conditions of the complaint to his mind, it would not mean that the case has become a complaint case. In fact, in majority of cases when a final report is submitted, the Magistrate has to simply consider whether on the materials in the case diary no case is made out as to accept the final report or whether case diary discloses a prima facie case as to take cognizance. The Protest Petition in such situation simply serves the purpose of drawing Magistrate's attention to the materials in the case diary and invite a careful scrutiny and exercise of the mind by the Magistrate so it cannot be held that simply because there is a Protest Petition the case is to become a complaint case.”

(emphasis supplied)

**44.** We may also notice that in *Veerappa v. Bhimareddappa* [*Veerappa v. Bhimareddappa*, 2001 SCC OnLine Kar 447 : 2002 Cri LJ 2150], the High Court of Karnataka observed as follows: (SCC OnLine Kar para 9)

“9. From the above, the position that emerges is this: Where initially the complainant has not filed any complaint before the Magistrate under Section 200 CrPC, but, has approached the police only and where the police after investigation have filed the ‘B’ report, if the complainant wants to protest, he is thereby inviting the Magistrate to take cognizance under Section 190(1)(a) CrPC on a complaint. If it were to be so, the Protest Petition that he files shall have to satisfy the requirements of a complaint as defined in Section 2(d) CrPC, and that should contain facts that constitute offence, for which, the learned Magistrate is taking cognizance under Section 190(1)(a) CrPC. Instead, if it is to be simply styled as a Protest Petition without containing all those necessary particulars that a normal complaint has to contain, then, it cannot be construed as a complaint for the purpose of proceeding under Section 200 CrPC.”

**45.** “Complaint” is defined in Section 2(d) of the Code as follows:

**“2. (d) “complaint”** means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

*Explanation.*—A report made by a police officer in a case which discloses, after investigation, the commission of a noncognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant;”

**46.** If a Protest Petition fulfils the requirements of a complaint, the Magistrate may treat the Protest Petition as a complaint and deal with the same as required under Section 200 read with Section 202 of the Code. In this case, in fact, there is no list of witnesses as such in the Protest Petition. The prayer in the Protest Petition is to set aside the final report and to allow the application against the final report. While we are not suggesting that the form must entirely be decisive of the question whether it amounts to a complaint or is liable to be treated as a complaint, we would think that essentially, the Protest Petition in this case, is summing up of the objections of the second respondent against the final report.”

- 12.** Accordingly, considering the said materials on record, it appears that the investigating officer has erroneously discharged the person as opposite party no. 2 from the case by not submitting the charge-sheet against him in spite of there being sufficient materials on record proceed to against him and the learned Magistrate also did not consider the materials on record.
- 13.** Thus, considering the materials in the case diary as it appears that there is a clear prima facie case against the opposite party no. 2, the learned Magistrate shall take cognizance in respect of the offences under which the charge-sheet has been filed, against the opposite party no. 2 herein and on doing so, shall commit the case for trial to the Court of learned Sessions Judge. The trial in the interest of justice shall be conducted in respect of the accused persons charge-sheeted and also the opposite party no. 2 Anadi Ranjan Gayan.
- 14.** The revisional application is accordingly disposed of with the direction that the learned Magistrate on regularizing the record as directed by this Court, shall commit the case of trial to the Court of Sessions within one month from the date of communication of this order.
- 15.** All connected Applications, if any, stand disposed of.
- 16.** Interim order, if any, stands vacated.
- 17.** Copy of this order be sent to the learned Trial Court for necessary compliance.

- 18.** Urgent certified website copy of this order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

**(Shampa Dutt (Paul), J.)**