

C.R.R. 2853 of 2017

In the matter of: **Gouranga Guray**

.....Petitioner.

Nobody appears on behalf of either of the parties on call.

The case pertains to year 2017. Accordingly, the record is taken up for disposal on merit considering the nature of prayer and to avoid further delay.

The petitioner/ defacto complainant filed this application under Section 401 read with Section 482 of the Criminal Procedure challenging the correctness, illegality and propriety of the impugned order dated 13.07.2017 passed by the learned Additional Chief Judicial Magistrate, Diamond Harbour, District – 24 Parganas(South) in connection with Mathurapur Police Station Case No. 09 of 2017 dated 09.01.2017 under Sections 447/323/354B/504/506/304/34 of the IPC corresponding to GR Case No. 95 of 2017, thereby the learned court below rejected the prayer for further investigation.

The brief fact of the instant case is relevant for disposal of this case. On 09.01.2017 at about 14:45 hour a written complaint was lodged by the de-facto complainant before the Officer-in-Charge, Mathurapur Police Station alleging, *inter alia*, that on 07.01.2017 at about 12.00 noon,

the complainant went to one of his relative's house and at that time three local youth, namely, Koushik Halder @ Gopal Halder, Riju Mondal and Rajesh Gayen all are resident of Village – Boro Sudi, Post Office – Tajpur, Police Station – Mathurapur, District – 24 Parganas (South) assaulted him with filthy languages. They also teased the complainant. When he raised objection, the accused persons came to the house of complainant and abused him with filthy languages and further mercilessly beaten him as a result he fell down in the road in front of his house. At the same time they also outraged modesty of Arati Guray, wife of the complainant. On the basis of said written complaint a case was registered being Mathurapur Police Station Case No. 09 of 2017 dated 09.01.2017 under Sections 447/323/354B/504/506/304/34 of the IPC because Raju Mondal kicked her in abdomen and also mercilessly beaten her. She became senseless and removed to Mathurapur Primary Health Centre for her treatment. But her condition was deteriorated. Subsequently, she was referred to Diamond Harbour hospital for better treatment. But she succumbed due to injury on 08.01.2017 at about 2.00 a.m. After her death, the Investigating Officer of the case added Section 302 of the IPC.

It is the case of the petitioner that Investigation Officer in a perverse and casual manner without proper

investigation submitted a charge-sheet being Charge-sheet No. 46 of 2017 dated 26.03.2017 under Sections 302/506/34 of the Indian Penal Code only against two accused persons. After investigation, the Investigation Officer has not charge-sheeted Koushik Halder and filed the charge against the accused Riju Mondal showing him as absconder. When the defacto complainant filed a protest petition, the learned Chief Judicial Magistrate, Diamond Harbour without considering the seriousness of the offence passed an order dated 13.07.2017, thereby rejected the prayer for reinvestigation of the case. Accordingly, the petitioner filed this revisional application.

Considering the case of the petitioner and on perusal the application and annexures thereto, it appears a charge-sheet has been submitted against 2 accused persons, namely, Rajesh Gayen and Riju Mondal and no charge-sheet submitted against one accused person, that is, Koushik Halder. It further appears from the order dated 13.07.2017 passed by the ACJM that the record was taken up for commitment after supply of copies of police report to the accused person under Section 207 of the Cr.P.C. as the case is exclusively triable by Court of Sessions and also allowed the accused person to remain in the same bail bond subject to the confirmation of the learned Additional Sessions Judge, Diamond Harbour and sureties are directed to

produce their respective accused person before the Court of learned Sessions Judge, Diamond Harbor on the date fixed, i.e. 04.09.2017.

This Court does not find any illegality in the commitment of this case. It further appears on the same date the prayer for further investigation was rejected after observing therein that if any fresh material surfaces against the discharged accused, the Trial Court can take recourse to the provision envisaged under Section 319 of the Cr.P.C. During investigation no such materials found against the non-charge-sheeted accused person. The aforesaid order passed by the learned Magistrate after considering the view taken by the Hon'ble Apex Court in ***Rita Nag vs. State of West Bengal.***

Under such circumstances, this Court does not find any illegality or perversity in passing such order by the learned Additional Chief Judicial Magistrate, Diamond Harbour, 24 Parganas. The provision of section 319 of the Code of Criminal Procedure is very clear that:-

"319. Power to proceed against other persons appearing to be guilty of offence. –

1. Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.

2. Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.

3. Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.

4. Where the Court proceeds against any person under sub-section (1) then –

a. the proceedings in respect of such person shall be commenced afresh and the witnesses re-heard;

b. subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.”

Accordingly, the instant application is devoid of merit.

Consequently, CRR 2853 of 2017 is thus dismissed without any order as to cost.

Interim order, if any be vacated.

Let this order be communicated to the learned court below for information and taking necessary action in accordance with law.

Urgent Photostat certified copy of this order, if applied for, be supplied to the parties after observing all legal formalities.

(Ajay Kumar Gupta, J.)