

IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 3721 OF 2022

WITH

CRAN 2 OF 2023

CRAN 6 OF 2024

MUKHTAR ALAM

Vs.

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Tarique Quasimuddin.
Ms. Zainab Tahur.

For the State : Mr. Debasish Roy, Ld. PP
Mr. Arijit Ganguly,
Ms. Sreemoyi Roy.

For the Opposite Party No. 2 : Mr. Sabyasachi Banerjee,
Mr. Sohail Haque,
Mr. M.I.A. Lodhi.

Hearing concluded on : 19.11.2024

Judgment on : 28.11.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred against order dated 03.08.2022 passed by the learned Chief Judicial Magistrate, Howrah in G.R. No.4678 of 2020 arising out of Domjur PS case no.551 of 2020 dated 22.10.2020 under Sections 420 and 405 of the Indian Penal Code, 1860, Sections 63 and 65 of the Copyright Act, 1957 and Sections 103 and 104 of the Trademark Act, 1999 thereby directing the Officer-in-Charge, Domjur Police Station to cause further investigation by appointing fresh Investigating Officer, competent for investigating, other than the previous Investigating Officer who will investigate the case considering all issues which have been left out in the previous investigation.
2. An extract of the order under revision is reproduced here, being relevant :-

“Order dt.03.08.2022

*Today is fixed for hearing. D. Complt. file hazira. Today is fixed for hearing the Narazi petition filed by Defacto Complainant on 28.12.2021 against **FR civil nature** submitted by IO and praying for directing O/C, Domjur P.S. to re-investigate the case. The Defacto Complainant is present by filing hazira. Ld APP present with CD. Ld APP submitted in writing that considering the attending circumstances, direction may be given to the O/C*

concerned P.S. allowing the prayer of D/C. Perused the CR and CD. Heard both sides. Considered. **The Defacto Complainant has shown his dissatisfaction and reason of re-investigate as well as allegation in para no. – 18,19,20,21,22,23,24 & 25 (sub-paras mention in the petition). So considering all aspect and submission from the end of prosecution and Defacto Complainant, I am convinced to allow the prayer of Defacto Complainant, in view of the decision of the Hon’ble Supreme Court reported in (2019) 17 SCC 01.** The Officer-In-Charge of Domjur P.S., HPC is directed to cause further investigate by appointing fresh I.O., competent for investigation, other than previous I.O., who will investigate the case considering all issues which have been left out in the previous investigation. Order sheet of this order be sent to the O/C, Domjur P.S., HPC for compliance. Return C.D. To 18.11.2022 for compliance report.”

- 3. In Chandra Babu alias Moses Vs. State through Inspector of Police & Ors,** reported in **(2015) 8 SCC 774** dated **7th July, 2015**, the Supreme Court held as follows:-

“19. We have reproduced the conclusion in extenso as we are disposed to think that the High Court has fallen into error in its appreciation of the order passed by the learned Chief Judicial Magistrate. It has to be construed in the light of the eventual direction. The order, in fact, as we perceive, presents that the learned Chief Judicial Magistrate was really inclined to direct

further investigation but because he had chosen another agency, he has used the word “reinvestigation”. Needless to say, the power of the Magistrate to direct for further investigation has to be cautiously used. In Vinay Tyagi (supra) it has been held:

“The power of the Magistrate to direct “further investigation” is a significant power which has to be exercised sparingly, in exceptional cases and to achieve the ends of justice. To provide fair, proper and unquestionable investigation is the obligation of the investigating agency and the court in its supervisory capacity is required to ensure the same. Further investigation conducted under the orders of the court, including that of the Magistrate or by the police of its own accord and, for valid reasons, would lead to the filing of a supplementary report. Such supplementary report shall be dealt with as part of the primary report. This is clear from the fact that the provisions of Sections 173(3) to 173(6) would be applicable to such reports in terms of Section 173(8) of the Code.”

- 4. In State Project Director U.P. Education for All Project Board & Ors. Vs. Saroj Maurya & Ors., in Civil Appeal No. 3465 of 2023, decided on 21st August, 2024, the Supreme Court held:-**

“3. We are of the opinion that in the absence of any reasoning in the impugned judgment, the same cannot be sustained. In this regard, we are benefitted by the following observations made by this Court in CCT v. Shukla & Bros., (2010) 4 SCC 785. The relevant paragraphs of the judgment are extracted hereinbelow: -

“23. We are not venturing to comment upon the correctness or otherwise of the contentions of law raised before the High Court in the present petition, but it was

certainly expected of the High Court to record some kind of reasons for rejecting the revision petition filed by the Department at the very threshold. A litigant has a legitimate expectation of knowing reasons for rejection of his claim/prayer. It is then alone, that a party would be in a position to challenge the order on appropriate grounds. Besides, this would be for the benefit of the higher or the appellate court. As arguments bring things hidden and obscure to the light of reasons, reasoned judgment where the law and factual matrix of the case is discussed, provides lucidity and foundation for conclusions or exercise of judicial discretion by the courts.

24. *Reason is the very life of law. When the reason of a law once ceases, the law itself generally ceases (Wharton's Law Lexicon). Such is the significance of reasoning in any rule of law. Giving reasons furthers the cause of justice as well as avoids uncertainty. As a matter of fact it helps in the observance of law of precedent. Absence of reasons on the contrary essentially introduces an element of uncertainty, dissatisfaction and give entirely different dimensions to the questions of law raised before the higher/appellate courts. In our view, the court should provide its own grounds and reasons for rejecting claim/prayer of a party whether at the very threshold i.e. at admission stage or after regular hearing, howsoever concise they may be.*

25. *We would reiterate the principle that when reasons are announced and can be weighed, the public can have assurance that process of correction is in place and working. It is the requirement of law that correction process of judgments should not only appear to be implemented but also seem to have been properly implemented. Reasons for an order would ensure and enhance public confidence and would provide due satisfaction to the consumer of*

justice under our justice dispensation system. It may not be very correct in law to say, that there is a qualified duty imposed upon the courts to record reasons.

26. *Our procedural law and the established practice, in fact, imposes unqualified obligation upon the courts to record reasons. There is hardly any statutory provision under the Income Tax Act or under the Constitution itself requiring recording of reasons in the judgments but it is no more res integra and stands unequivocally settled by different judgments of this Court holding that the courts and tribunals are required to pass reasoned judgments/orders. In fact, Order 14 Rule 2 read with Order 20 Rule 1 of the Code of Civil Procedure requires that, the court should record findings on each issue and such findings which obviously should be reasoned would form part of the judgment, which in turn would be the basis for writing a decree of the court.*

27. *By practice adopted in all courts and by virtue of judge-made law, the concept of reasoned judgment has become an indispensable part of basic rule of law and, in fact, is a mandatory requirement of the procedural law. Clarity of thoughts leads to clarity of vision and proper reasoning is the foundation of a just and fair decision. In Alexander Machinery (Dudley) Ltd. [1974 ICR 120 (NIRC)] there are apt observations in this regard to say “failure to give reasons amounts to denial of justice”. Reasons are the real live links to the administration of justice. With respect we will contribute to this view. There is a rationale, logic and purpose behind a reasoned judgment. A reasoned judgment is primarily written to clarify own thoughts; communicate the reasons for the decision to the concerned and to provide and ensure that such reasons can be appropriately considered by the appellate/higher court. Absence of*

reasons thus would lead to frustrate the very object stated hereinabove.”

5. It is, thus, apparent from the order of the learned Magistrate **that no reason has been provided** and the learned Magistrate **has relied upon the entire submissions made by the de facto complainant without even discussing the same. The learned Magistrate has only referred to the paragraphs in the Narazi application. Therefore, it appears that there has been no application of mind** by the learned Magistrate and there has been clearly an abuse of the power of law/ court.
6. The principles of natural justice demand that a Magistrate while deciding a case has to apply his mind as the same involves a person's (accused) right which on investigation has already been decided in his favour by the submission of a FRT.
7. **CRR 3721 of 2022 is allowed.**
8. The order dated 03.08.2022 passed by the learned Chief Judicial Magistrate, Howrah in G.R. No.4678 of 2020 arising out of Domjur PS case no.551 of 2020 dated 22.10.2020 under Sections 420 and 405 of the Indian Penal Code, 1860, Sections 63 and 65 of the Copyright Act, 1957 and Sections 103 and 104 of the Trademark Act, 1999, **is thus set aside.**
9. **The trial Court shall hear the ‘narazi petition’ afresh** by giving an opportunity of hearing to the parties concerned and

dispose of the petition in accordance with law by passing a reasoned order, within a period of two months from the date of this order.

- 10.** All connected application, if any, stands disposed of.
- 11.** Interim order, if any, stands vacated.
- 12.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 13.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]