

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 3141 of 2017
With
CRAN 2 of 2018 (Old CRAN 335/2018)

Haridas Pramanik @ Haridas Pramanick and Another
Versus
The State of West Bengal & Another

For the Opposite Party No. 2 : Mr. P. C. Maiti, Adv.
Ms. Raj Lakshmi Shaw, Adv.

For the State : Ms. Faria Hossain

Heard on : 23.09.2024

Judgment on : 05.11.2024

Ajay Kumar Gupta, J:

1. This Criminal Revisional application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') by the petitioners/accused persons challenging the impugned Judgment and Order dated 29.08.2016 passed by the Learned Additional Sessions Judge, Baruipur, South 24-Parganas in the Criminal Revision No. 85A/2015, thereby affirmed the orders dated 21.05.2015 and 04.07.2015 passed by the Learned Additional Chief Judicial Magistrate, Baruipur, South 24-Parganas in connection with G.R. Case No. 35 of 2013 under Sections 498A/406/325/452/365/120B/34 of the Indian Penal Code, 1860. By the said orders, the Learned Additional Chief Judicial Magistrate rejected the prayer for stopping investigation and discharged all the accused on the ground that the investigation did not complete within stipulated time under Section 167 (5) of the Cr.PC.

2. The petitioners further prayed for quashing of the Charge Sheet No. 335/15 filed subsequently in connection with Sonarpur Police Station Case No. 1119 of 2012 dated 29.12.2012 under Sections 498A/406/325/452/365/120B/34 of the Indian Penal Code, 1860.

3. The factual matrix of the instant case is that the de-facto complainant/opposite party no. 2 got married with the brother of petitioners/accused, who is another accused. Matrimonial disputes arose between them. A petition for divorce was filed by the opposite party no. 2 against the husband and finally a decree of divorce has been granted in her favour. Husband and wife, thereafter, started living separately. Both the parties have remarried to lead their respective lives separately. They have entered their new matrimonial lives with their respective life partners. But, the complainant/opposite party has lodged a false complaint before Sonarpur Police Station against the petitioner nos. 1 and 2 and other family members of the previous husband. No action has been taken by the police officer on such false or frivolous allegations.

3a. Thereafter, the complainant/opposite party no. 2 filed an application under Section 156(3) of the Code of Criminal Procedure, 1973 against the petitioners herein and their brother seeking direction upon the Officer-in-Charge, Sonarpur Police Station to start investigation against the petitioners/accused on the accusation of committing offences punishable under Sections 498A/406/325/452/365/120B/34 of the Indian Penal Code, 1860. The Learned Magistrate took cognizance over such complaint and further directed to register the FIR. Therefore, FIR was registered

being Sonarpur Police Station Case No. 1119 of 2012 dated 29.12.2012 under Sections 498A/406/325/452/365/120B/34 of the Indian Penal Code, 1860 against the accused persons including the petitioners. Though, the contention of the petitioners is that the allegations are totally false, fabricated and frivolous one. Such complaint has been filed only to harass the petitioners.

3b. During investigation, the present petitioners surrendered before the Learned Trial Court. They have been granted bail by the Learned Additional Chief Judicial Magistrate, Baruipur on the same date considering the nature of allegations and facts and circumstances of the case. No charge sheet has been filed till 2nd March, 2015 by the concerned Investigating Officer. Several dates were fixed by the Learned Court below. Accordingly, the petitioners have filed an application under Section 167 (5) of the Code of Criminal Procedure, 1973 on 29th April, 2015 in a proceeding being G.R. Case No. 35/13 before the Learned Magistrate with a prayer for direction to stop the investigation and discharge all the accused persons on the ground that no Charge Sheet has been submitted even after the expiry of two years from the date on which the accused was arrested or made his appearance. The said application was fixed for hearing on 06.05.2015, 14.05.2015 and, thereafter, on 21.05.2015. After hearing the parties on 21.05.2015, the Learned

Magistrate desired to inspect the Case Diary for passing appropriate order and directed to produce the same on 04.07.2015 as no Charge Sheet has been filed by the Investigating Officer even after expiry of a long period.

3c. However, in the meantime, a Charge Sheet being No. 335 dated 17.02.2015 has filed on 24.06.2015 before the Learned Additional Chief Judicial Magistrate. Accordingly, vide order dated 04.07.2015, the Learned Magistrate has been pleased to reject the petition filed by the petitioners under Section 167(5) of the Code of Criminal Procedure, 1973 and also pleased to take cognizance upon consideration of the materials available in the case record. According to the petitioners, the Learned Magistrate should have been discharged the petitioners for non-filing of the Charge Sheet in time but failed.

3d. Feeling aggrieved and dissatisfied with the said impugned orders dated 21.05.2016 and 04.07.2015, the petitioners moved a Revisional Application under Sections 397/399 of the Code of Criminal Procedure, 1973 before the Learned Additional District and Sessions Judge, Baruipur being Criminal Motion No. 85A of 2015 but the same was dismissed after hearing the parties on 29.08.2016.

3e. By the said judgment and order dated 29.08.2016, the Learned Additional District and Sessions Judge passed judgment, *inter alia*, as follows: -

“Nirmal Kanti Roy v. State Of West Bengal and Ganesh Lal Mundra v. S. Dasgupta and Ors., reported in 1998 C Cr Lr (SC) 216, Hon'ble Supreme Court had occasion to consider interpretation of Section 167(5) of the Code of Criminal Procedure as amended by the State of West Bengal and it was held as follows: -

“The order stopping further investigation into the offence and the consequential order of discharge are not intended to be automatic sequel to the failure to complete investigation within the period fixed in the sub-section. The succeeding words in the sub-section confer power on the Court to refrain from stopping such investigation if the Investigating Officer satisfies the Magistrate of the fusion of two premises (1) that in the interest of justice it is necessary to proceed with the investigation beyond the period shown in the sub-section and (2) that there are special reasons to do so. A reading of sub-section (6) further shows that even in a case where the order stopping investigation and the consequent discharge of accused has been made that is not the last word on it because the sub-section opens another avenue for moving the Sessions Judge. If the Session Judge is satisfied that "further investigation into the offence ought to be made" he has the power to allow the investigation to proceed. Hence, we take the view that the time schedule shown in Section 167(5) of the Code is not to be treated with rigidity and it is not

mandatory that on the expiry of the period indicated therein the magistrate should necessarily pass the order of discharge of the accused. Before ordering stoppage of investigation the magistrate shall consider whether, on the facts of that case, further investigation would be necessary to foster interest of criminal justice. Magistrate at that stage must look into the record of investigation to ascertain the progress of investigation thus far registered. If substantial part of investigation was by then over, the magistrate should seriously ponder over the question whether it would be conducive to the interest of justice to stop further investigation and discharge the accused.”

After going through the above noted decision of the Hon'ble Supreme Court, it is clear that the provision of section 167(5) Cr. P.C. is not to be treated as mandatory provision but it is directory in nature and the Magistrate has to decide whether it would be conducive to the interest of justice to stop further investigation and discharge the accused. That apart, stopping of investigation does not absolve the investigating officer from submitting Police report. Section 173(2) of the Code casts an obligation upon investigating officer to submit Police report in terms of Section 173(2) Cr.P.C. even in cases where investigation has been stopped by the Magistrate in terms of section 167(5) of Code at the expiry of two years. The material gathered during the investigation, at least within the stipulated period of two years, shall be relevant to decide whether there is any basis or evidence connecting the accused with the

commission of the crime and whether cognizance can be taken based upon such material against the accused by the court. [Relied on **Kalyan Kumar Das vs The State of West Bengal 1998 (2) CHN 136**]. So, the learned Magistrate was competent to entertain the police report restricted to two year's investigation and take cognizance on the basis thereof. Such view finds support from the **State of West Bengal vs. Falguni Dutta and another [1993(3) SCC 288]**.

In **Mujida Mondal V. State of West Bengal** reported in **(2006) 2 C Cr Lr 458**, Hon'ble Court observed as follows:

“That apart it is now well settled that discharge of an accused in such a case on the ground that investigation could not be completed with the prescribed time limit cannot be automatic. Law has been well settled in various decisions of the Apex Court as this court that to the effect that there is no bar for the court to proceed with the trial even if the investigation could not be completed with the prescribed time limit. In that event it is always open for the court to take into consideration, the materials that were collected during the prescribed time limit to proceed with the trial. As such it is very clear that under no circumstances there should be an order of discharge of an accused solely on the ground that the investigation could not be completed within the prescribed time limit.”

In **Kalyan Kumar Das vs The State of West Bengal 1998 (2) CHN 136**, Hon'ble Court in para -19 observed as follows:

“19. The role to be played by the Magistrate in alt such situation will be of an adjudicatory authority, in the sense that the Magistrate would be required to adjudicate upon the issue judicially, objectively and fairly to decide whether in the situation as it might obtain, the investigation beyond six months should be stopped or allowed to continue and/or whether to discharge the accused, upon consideration of the material so far available or not to discharge the accused. The intention of the legislature, as is gatherable from a reading of the State amendment and other related provisions of the Code cannot be construed so as to obliterate the result or the conclusion of the investigation carried on for six months. We answer the reference according.”

Therefore, a wider discretion has been given to the Magistrate to decide whether continuance of investigation beyond the stipulated period is necessary for the interest of justice or take cognizance upon consideration of the materials collected within the stipulated period or to stop investigation and discharge the accused. In the instant case, the learned Magistrate correctly called for case diary to ascertain the investigation so far done and in the meantime charge sheet was submitted and the learned Magistrate took cognizance entire investigation was complete within the prescribed time limit. In my opinion, learned Additional Chief Judicial Magistrate, Baruipur, did not commit any error and rightly exercised the jurisdiction vested by law. So, the impugned orders do not call for any interference by this Court in revisional jurisdiction.

In the result, criminal revision fails.”

Hence, the petitioners, being dissatisfied with the aforesaid judgment, filed this application before the Hon'ble High Court and same has come up before this Bench for its disposal.

4. None appeared on behalf of the Petitioners on call. No accommodation has been sought for.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:

5. The learned Advocate appearing on behalf of the opposite party no. 2 submitted that the Revisional Application has no merits. Charge sheet has been submitted against them and the Learned Magistrate took cognizance upon consideration of materials collected during investigation as such question of discharge from the case does not arise at all. During investigation, sufficient materials were collected by the Investigation Officer against the petitioners. Therefore, the instant application is liable to be dismissed.

SUBMISSION ON BEHALF OF THE STATE:

6. The learned counsel appearing on behalf of the State submitted that charge sheet has been submitted by the Investigation Officer. The Learned Trial Court has taken cognizance, when prima facie sufficient materials were found against the petitioners. Learned

counsel further submitted that there are sufficient materials available in the Case Diary against the present petitioners as such application deserves to be dismissed.

DISCUSSIONS AND FINDINGS BY THIS COURT:

7. Heard the submissions made by the learned counsels for the parties and upon perusal of the Case Diary, this Court finds on the basis of complaint filed under Section 156(3) of the CrPC, the Learned Magistrate directed the Officer-in-Charge, Sonarpur P.S. to initiate the investigation after treating the same as an FIR. A case has been registered being Sonarpur P.S. Case No. 1119/2012 dated 29.12.2012 under Sections 498A/406/325/452/365/120B/34 of the Indian Penal Code against the present petitioners and their brother Mr. Biswanath Pramanick.

8. Due to non-filing of the charge sheet within a period of 2 years from the date of appearance, the present petitioners had filed an application praying for discharge after discontinuing the investigation as per Section 167(5) of the Code of Criminal Procedure, 1973 on 29.04.2015. Learned Magistrate had directed to produce the Case Diary on 04.07.2015 for consideration and disposal of the application filed by the petitioners. However, the Investigation Officer has filed a charge sheet being Charge Sheet No. 335 dated 17.02.2015 under

Sections 498A/406/325/452/365/120B/34 of the Indian Penal Code, 1860 on 24.06.2015 against three accused persons including the present petitioners. The said petition was heard and finally disposed of on 04.07.2015 and whereby rejected the prayer of the petitioners for discontinuing the investigation and discharging them from the case.

9. Being aggrieved by and dissatisfied with the said impugned orders, the petitioners preferred a Revisional Application before the Learned Sessions Judge on the grounds amongst others that the Learned Court below acted illegally and capriciously by exceeding jurisdiction in calling for the Case Diary and accepted the ante-dated charge sheet and took cognizance thereof. The Learned Magistrate indirectly invited the Investigating Officer on the guise of 'calling for CD' to frustrate the spirit of legislation from getting benefits of the provision laid down in Section 167(5) of the CrPC and also overlooking the proposition declared by the Hon'ble Supreme Court.

10. The said revisional application came up before the Learned Sessions Judge for its disposal. After considering the submission made by the parties and legal provisions, the Learned Sessions Judge dismissed the same after placed reliance of the legal provision as

stipulated in Section 167 (5) of the CrPC and decisions of the Hon'ble Supreme Court.

11. Now, the question emerges before this Court whether the Learned Sessions Judge rightly dismissed the revisional application filed by the petitioners or not?

12. Before entering into the merits of the case, it would be relevant to understand the legal provision as enshrined in Section 167 (5) of the CrPC (West Bengal Amended Provision).

13. Section 167 (5) of the CrPC (West Bengal Amended Provision) reads 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 Court of Session or a case under Chapter XVIII of the Indian Penal Code (45 of 1860), the investigation is not concluded within 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 interest of justice the continuation of the investigation beyond the periods mentioned in this sub-section is necessary."

14. Upon careful perusal of the aforesaid provision, this Court finds that the investigation is not concluded within a period of two years of the instant case from the date on which the accused were made their appearance by voluntarily surrendered, the Learned Magistrate shall make an order for stopping further investigation into the offence and shall discharge the accused unless the officer, making the investigation, satisfies the Learned Magistrate that for special reasons and in the interest of justice the continuation of the investigation beyond the periods mentioned in this sub-section is necessary. Thus, the Learned Magistrate, after applying his mind to the special reasons so given, can permit continuation of the investigation beyond the period of limitation in the interest of justice without stopping the investigation. Magistrate satisfaction is paramount consideration before stopping investigation and for discharge of an accused. In the present case in hand, the Learned

Magistrate had called for the Case diary for his satisfaction and fixed a date for production of the same on 04.07.2015. Prior to that date, the Investigation Officer has already completed investigation and submitted the Charge Sheet being Charge Sheet No. 335 dated 17.02.2015 under Section 498A/406/325/452/365/120B/34 of the Indian Penal Code, 1860 against three accused persons including the present petitioners on 24.06.2015 i.e. prior to disposal of the application filed by the petitioners. The Learned Magistrate satisfied himself with materials available in the Case Diary and took cognizance against the petitioners and finally rejected their prayer as sought for.

15. It is true that the investigation has not been completed within a period of two years from the date of appearance of the accused persons before the Learned Trial Court. They appeared before the Learned Trial Court on 08.01.2013 and investigation completed on 17.02.2015 beyond the stipulated period of two years. No prayer was made by the Investigating Officer earlier for extension of time for completion of investigation.

16. On this issue, the Learned Sessions Judge placed a reliance of judgments passed in ***Nirmal Kanti Roy v. State of West Bengal*** and ***Ganesh Lal Mundra v. S. Dasgupta and Ors.***, reported in 1998

C Cr Lr (SC) 216 while deciding the case on merits. The Hon'ble Supreme Court held that *"the time schedule shown in Section 167 (5) of the Code is not to be treated with rigidity and it is not mandatory that on the expiry of the period indicated therein the magistrate should necessarily pass the order of discharge of the accuse. Before ordering stoppage of investigation the magistrate shall consider whether, on the facts of that case, further investigation would be necessary to foster interest of criminal justice. Magistrate at that stage must look into the record of investigation to ascertain the progress of investigation thus far registered. If substantial part of investigation was by then over, the magistrate should seriously ponder over the question whether it would be conducive to the interest of justice to stop further investigation and discharge the accused."*

17. The Learned Sessions Judge further placed reliance another judgment in case of ***Kalyan Kumar Das vs. The State of West Bengal***¹. In the said judgment, the Hon'ble Court highlighted the role to be played by the Magistrate while passing order for stopping further investigation and discharging of accused persons.

18. Therefore, it is clear that the provision of Section 167(5) of the CrPC is not mandatory provision but it is directory in nature and

¹ **1998 (2) CHN 136**

the Learned Magistrate has to decide whether it would be conducive to the interest of justice to stop further investigation and discharge the accused. In the instant case, investigation has already completed. So, question of stopping further investigation and discharge of accused does not arise. Learned Magistrate rightly took cognizance against the petitioners after considering the prima facie materials available in the Case Diary. Therefore, the Learned Sessions Judge rightly dismissed the Criminal Revisional application filed by the petitioners. So, the impugned order does not call for interference by this Court under Section 482 of the CrPC.

19. In the light of above discussion, this Court does not find any sufficient reasons or cogent grounds to quash the proceeding initiated against the present petitioners, wherein a Charge Sheet has already been submitted upon conclusion of investigation and cognizance has been taken against the petitioners as such petitioners herein failed to establish the proceeding is an abuse of process of law. Thus, application has devoid of merits.

20. Accordingly, **CRR No. 3141 of 2017 is dismissed. CRAN 2 of 2018 (Old CRAN 335/2018)** and all connected applications, if any, are also, thus, disposed of.

- 21.** Let a copy of this Judgment be sent to the Learned Trial Court for information by the Registry of this Court.
- 22.** Case Diary is to be returned to the learned counsel for the State.
- 23.** Interim order, if any, stands vacated.
- 24.** Parties will act on the server copies of this Judgment uploaded from the official website of this Court.
- 25.** Urgent photostat certified copy of this judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)