

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 3201 of 2016

Santosh Gorai

Vs.

State of West Bengal & Anr.

For the Petitioner

: Mr. A. Bhattacharrya,
: Mr. P.K. Gupta.

For the O.P No.2

: Mr. Abhra Mukherjee.

For the State

: Mr. S.G. Mukherjee,
: Mr. I. Ali,
: Ms. D. Sahu.

Heard On : 13/12/2023.

Judgment On : 30/01/2024.

Rai Chattopadhyay, J.

1. An order of the Sessions Judge, Purulia, dated August 8, 2016, in Sessions Case No. 32/2016, is under challenge in this revision. The order *inter alia* has rejected petitioner's prayer for further investigation.
2. Severe burn injuries and consequent hospitalization of his sister prompted the present petitioner, to lodge a FIR, being Balarampur P.S Case No. 60/2015 dated 30.09.2015, under Sections 498A/326/307/34 of the IPC and Sections 3 and 4 of the Dowry Prohibition Act. Subsequent death of her, had led Section 302 of the IPC, to be added in the array of charges, against the accused persons/opposite parties. Charge sheet was submitted by police on December 31, 2015. That was submitted against the husband under Section 302, 304B and 498A of

the IPC and Section 3 and 4 of the Dowry Prohibition Act. Against the rest of the FIR named accused persons, police could find materials of offence under Section 498A of the IPC and Section 3 and 4 of the Dowry Prohibition Act and only those were alleged against all the rest of the FIR named accused persons, excepting the husband.

3. The Court took cognizance of offences on January 3, 2016. The case was thereafter committed to the Sessions Judge, for trial, after completion of the statutory formality of service of copies of documents relied on by the prosecution, to the accused persons.
4. During this stage of Court proceedings, allegedly however, the complaint/petitioner, has not been notified by the Court. The petitioner's grievance is with respect to that. He has said to have made representation before the Superintendent of Police, Purulia dated May 5, 2016, after he could gather knowledge about the fact. He also had filed an application before the Additional Sessions Judge, 1st Court, Purulia, dated June 29, 2016, praying for rejection of charge sheet dated December 31, 2015. This was for the reason that the petitioner was also aggrieved with dropping of charges under Section 302 and 304B of the IPC, against FIR named accused persons, excepting the husband of the deceased lady. The petitioner had not only prayed for rejection of the charge sheet but also for necessary direction for further investigation in the case.
5. The impugned order dated August 8, 2016, was to reject petitioner's such prayer, made before the Court.
6. Mr. Bhattacharaya, representing the petitioner here, says that various gross deviations and flaws would be apparent on the face of the records, as regards the investigations held. He would submit that investigation in

a case is for the purpose of revealing the truth and the police officer is duty bound to take and comply each and every steps as necessary and statutorily provided, to reveal the truth in a case. He would, upon relying on the relevant documents, say that even the very relevant medical documents were still to be collected, when the charge sheet was submitted and necessary witnesses were left to be examined. That, when the investigation in a case of homicidal death of the victim, due to burn injuries, would be said to have been completed at this juncture, that would have to be a perfunctory investigation, he says.

7. Mr. Bhattacharrya has relied on a judgment of ***H.N. Rishbud vs. State of Delhi*** reported in ***AIR 1955 SC 196***, particularly the following portion, to say that the same would be Hon'ble Apex Court's observations, as regards the stages of investigation in a criminal case. He says that the guidelines provided therein have been flouted in this case.

“5.....It is important to notice that where the investigation is conducted not by the officer in charge of the police station but by a subordinate officer (by virtue of one or other of the provisions enabling him to depute such subordinate officer for any of the steps in the investigation) such subordinate officer is to report the result of the investigation to the officer in charge of the police station. If, upon the completion of the investigation it appears to the officer in charge of the police station that there is no sufficient evidence or reasonable ground, he may decide to release the suspected accused, if in custody, on his executing a bond. If, however, it appears to him that there is sufficient evidence or reasonable ground, to place the accused on trial, he is to take the necessary steps therefore under section 170 of the Code. In either case, on the completion of the investigation he has to submit a report to the Magistrate under section 173 of the Code in the prescribed form furnishing various details. Thus, under the Code investigation consists generally of the following steps:(1) Proceeding to the spot, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places of seizure of things considered necessary for the investigation and to be produced at the trial, and (5) Formation of the opinion as to whether on the material collected there is a case to place the

accused before a Magistrate for trial and if so taking the necessary steps for the same by the filing of a charge-sheet under section 173.”

8. Mr. Bhattacharrya, would further say, that the mandatory provision under Section 173 of the Cr.P.C is also violated in this case. He would refer to the copy of charge sheet and submit that, it was incumbent that the present petitioner be notified by the Court, inviting him to submit, protest petition, in view of dropping of the charges under grievous sections of law, against the accused persons, excepting the husband of the victim. He says that the alleged finding of no material against them, would statutorily render the present petitioner/complainant entitled to get notified by the Court regarding the same. It has been mentioned that the petitioner has not received any notice either from the Court or from any other authority, after submission of charge sheet. According to Mr. Bhattacharrya, even if so, the requirement under the statute, would have only been satisfied, upon the Court having sent notice to the petitioner/complainant, after submission of charge sheet, to it.
9. Mr. Mukherjee, is representing the opposite parties no. 2 to 5. He has ventilated his client's objections as to the contentions and prayer of the petitioner. He has also relied on the charge sheet submitted in this case. From the averments made therein, he shows that the complainant has been made aware of the result of investigation. In view of such fact, according to Mr. Mukherjee, there would not be any cogent ground, for the grievance raised by the present petitioner. He has emphasised that the Court has taken cognizance of offence on the basis of the conclusion drawn by the investigating officer, in the charge sheet. He suggests that, in this case, there may not be any sufficient reason for interference into the same, by espousing this Court's extra ordinary jurisdiction under Section 482 of the Cr.P.C. He has urged that the revision may be dismissed.

10. In the impugned order dated August 8, 2016, the trial Court has proceeded on the premise by holding that a Court would be sufficiently empowered under Section 311 of the Cr.P.C, to call for and examine any material witness or document, as it would think fit and proper. Therefore, it has concluded that non-examination of any witness in investigation would not be prejudicial, either to the complaint or for the sake of fair trial. The Court has held that, since the complainant was not present there in investigation, at the time of examination of witness by police, his allegations that relevant witnesses have not been examined in investigation, is only based on surmises and thus it has discarded such contention of the petitioner. The Court has reposed confidence upon the averments made in charge sheet regarding information of the same having been sent to the petitioner. It has ultimately found that there would be no reason to entertain petitioner's grounds and prayers made in his petition dated June 29, 2016, and has thus rejected the same.
11. Let at the very outset the judgment of the Hon'ble Supreme Court in ***Bhagwant Singh vs. Commissioner of Police & Anr.*** reported in ***(1985) 2 SCC 537*** be discussed. In the same the Court was considering a question as to whether the person lodging the first informant report is entitled to be afforded an opportunity of hearing, when on the basis of police report the Court prefers to drop the proceedings instead of taking cognizance of the offence. The Court expressed its thought that a question whether the first informant or any relatives of the deceased or any other aggrieved person is entitled to be heard at the time of consideration of the report by the Court and whether the Court is bound to issue notice to any such person is a question of general importance and arise frequently in criminal proceedings. The Court formulated the question for itself to be determined that whether in a case where first information report is lodged and after completion of investigation initiated on the basis of the

first information report, the police submits a report that no offence have been committed, the Court can accept the report and drop the proceeding without issuing notice to the first informant or to the injured or in case the incident has resulted in death, to the relatives of the deceased.

- 12.** Large number of relevant statutory provisions were discussed by the Court after which it has come to a finding that the statute has designed in a way to keep the interest and concern of an informant at a pivotal place. The Court says that the informant does not fade away with lodging of the first information report, it has observed that Section 154 (2) of the Cr.P.C has provided for supply of a copy of first information report to him free of cost. Also that Section 157 (2) has provided for notifying the informant about in case the officer-in-charge of the police station decides not to investigate in the case which the informant has reported to him. It has also been noted that Section 173 (2) (ii) has mandated the officer-in-charge of police station to communicate whatever action has been taken by him, to the informant and also to supply a report to him as has been forwarded by him to the Court under Section 173 (2) (i). The Court's observation may be quoted as below:-

“3. Obviously, the reason is that the informant who sets the machinery of investigation into motion by filing the first information report must know what is the result of the investigation initiated on the basis of the first information report. The informant having taken the initiative in lodging the first information report with a view to initiating investigation by the police for the purpose of ascertaining whether any offence has been committed and, if so, by whom, is vitally interested in the result of the investigation and hence the law requires that the action taken by the officer-in-charge of a police station on the first information report should be communicated to him and the report forwarded by such officer to the Magistrate under sub-section (2)(i) of Section 173 should also be supplied to him.”

- 13.** The Court has also held:

“ But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the first information report, the informant would certainly be prejudiced because the first information report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the first information report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the first information report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.”

The Court has held that even a non-informant who may be interested in the fate of the first information report and comes to know about the proceeding, has to be provided an opportunity of hearing by the Court while considering the report of police.

- 14.** The decision of the Hon'ble Supreme Court in the judgment as above regarding compulsory nature of the informant's rights to ventilate his version/grievance before the Court, when the Court is to accept the police report which has been submitted not implicating the accused person mentioned in the first information report, is principally based on consideration of the prejudice and injury to be likely to be suffered by the person who has set the criminal justice system in motion by reporting an alleged offence. The Court's decision is based on the ratio that the

statute has provided for the informant to be taken into the loop in every stage of proceeding post lodging of first information report. Therefore, according to the Court, in the event the informant if not has been granted an opportunity of hearing before the Magistrate, before the time the Magistrate ultimately considers and accepts the report of the police, in which implication of the alleged accused persons have been negated, would not be favoring informant's interests but jeopardizing it. The Court opines that informant's version has to have been there before the Magistrate, before it accepts such a report from police or else the same would be a moment of prejudice for the informant. Thus, upon receipt of the final report submitted by police, when the Court is to take any other step than to proceed with the trial of the case or commitment thereof before the Sessions Judge for trial, it is incumbent for him to issue notice to the informant and invite him to record his objections as regards the contemplated procedures to be adopted pursuant to the final report submitted by police. This is the law well settled and holding the field at present.

15. Reverting back to the facts of the present case, one may see that the police has submitted charge sheet on December 31, 2015 in this case. The charge under Sections 302, 304B, 498A of the Indian Penal Code was attributed to the husband of the victim where as that under Section 498A of the Indian Penal Code was attributed to the other accused persons, that is, the relatives of the victim. In both the cases, charges under provisions of the Dowry Prohibition Act, were applied. It is further seen from the charge sheet itself that the investigating officer has mentioned about sending necessary information to the informant regarding the "*result of investigation*". This must be in terms of Section 173 (2) (ii).

16. Two specific aspects may be noted :-

Firstly, that inspite of mentioning in the charge sheet in the following manner, that is, "*The result of investigation is being informed to the complainant*", no other cogent or sufficient material has been produced there before the Court so as to confirm the mode, manner and actual service of such information to the petitioner/informant. Hence, sufficient materials as to the due compliance in terms of Section 173 (2) (ii) of Cr.P.C, is lacking.

Secondly that there is no material before this Court to find that after obtaining the charge sheet as above dated December 31, 2015, the Court has ever issued any notice to the present petitioner who is the de facto complainant/informant. To further ascertain this fact, this Court has called for and obtained certified order sheets in case no. 60/2015 from the trial Court. However, the same is of no help in this regard, in so far as the entire order sheets have never indicated any such step having been taken by the Court.

17. The opposite party is however not hesitant to controvert the petitioner's plea as above. Mr. Mukherjee has stated on behalf of the opposite party that the ratio of the judgment of **Bhagwant Singh (supra)** would not be applicable in petitioner's case in so far as the same would be factually distinguishable. He has indicated that in **Bhagwant Singh (supra)** judgment the police had submitted charge sheet proposing to discharge all accused person in absence of any offence against them, which he says is not a fact in the present case.
18. Nonetheless, the reason behind the finding of the Hon'ble Supreme Court, i.e, the probable prejudice to be caused to the informant who has set the criminal justice system in motion by reporting an alleged offence to the police, has already been taken note of. It is now a well settled principle that such an informant has right to know the progress in each stage of the proceeding subsequent to filing of a first information report

by him. Thus being the principle settled, the submissions made on behalf of the opposite party, do not raise confidence in the mind of this Court. The element of prejudice of the informant, even in case of the chargesheet being filed under sections imposing lesser punishment than the offences alleged in the FIR, would always be there, if not he is afforded an opportunity to lodge his protest before the Court, before taking cognizance of offence, as per the charge sheet. The revisionist is the complainant, who has made allegations against all the accused persons, to have been involved in an offence. It happens after investigation that according to the opinion of the investigating authority, one of the accused person had more implicating materials against him, than the others. Hence, charging provisions against them differ, implicating other accused persons but the one, with offence bearing lesser punishment. This has reflected in the charge sheet. Upon filing of the charge sheet, cognizance of the offence would be taken, as per law.

- 19.** To take cognizance of an offence by the Court, is to take notice of an allegation of commission of offence. The purpose of taking cognizance or such notice of an offence is to take some kind of action as regards the accused, as provided in the Code, to bring the offender to justice. In other words, taking cognizance of an offence alleged against one person would culminate into him facing trial before the Court, for the alleged offence, for which cognizance has been taken. The procedure as provided under Section 207 of the Cr.P.C, 1973, would be followed by the Court, immediately after taking cognizance of offence by the Court under Section 190 of the Cr.P.C, 1973. Even before that, in terms of Section 173 (2) (ii) of the Cr.P.C, 1973, the informant has to be communicated, as regards the action taken by it, on such information. In other words, the informant is statutorily empowered to be communicated with and have knowledge about the action taken,

pursuant to his complaint, to be specific about the charges leveled against the accused persons.

- 20.** The informant is not desired to be left with no retrieve, if the alleged offence is said to be not found to have been committed by the accused or after investigation the alleged offender is charged with any less grievous provision of law, than it has been alleged in the FIR. The Court must take into consideration his protest, if any, to the same, before taking cognizance of offence as per the charge sheet.
- 21.** The informant speaks twice in a criminal proceeding. First, when he files the complaint and thereafter, through his evidence. Even when he deposes before the Court he would not have any scope to state about the outcome of investigation. This is for the reason that by that time charge has already been framed against the accused for an offence as per the charge sheet and trial has already started. Therefore, the informant's right, which must have accrued after due compliance of Section 173 (2) (ii) of the Cr.P.C, 1973, would be prejudiced, if not he be granted an opportunity to be heard, before initiation of these stages of a proceeding.
- 22.** In this case, though the petitioner has alleged about involvement of all the accused persons in the crime as mentioned in the FIR, only one of them has been booked for the said offence, amongst all. Other alleged offenders are charged with offence entailing lesser punishment. As such the petitioner pleads prejudice and justifiably so.
- 23.** Therefore, this Court is of the considered opinion that in the present case, before the Court could take cognizance of the offence as mentioned in the charge sheet dated December 31, 2015, it should have afforded opportunity of hearing to the informant/petitioner here.

24. In the charge sheet dated December 31, 2015, the police have mentioned that *"The result of investigation is being informed to the complainant"* as discussed earlier. It is a statutory duty of the police authorities to inform the complainant as regards the finding in investigation which the police would be reporting to the Sessions Judge in the form of final report. On behalf of the opposite party in this case the said comment in the charge sheet has been strongly relied on. However, neither the opposite party no. 2 nor the State has been able to substantiate that the same has actually been served upon the present petitioner as claimed in the said charge sheet. Therefore, in absence of any conclusive material to show due execution of what has been contemplated in the charge sheet, the mandatory provision under Section 173 (2) (ii) of the Cr.P.C, 1973, cannot be considered to have been complied with.
25. On careful perusal of the Sessions Judge's order under challenge, i.e, dated August 8, 2016, it is seen too, that while taking cognizance of offence the Sessions Judge has not found it necessary to issue notice to the present petitioner/complainant as regards the charge sheet, as it is. The Sessions Judge has proceeded on the ground that the trial Court would be empowered under the law to call for and examine any person or document or material for the sake of proper and fair trial, as it would find necessary. These reasons, however, run in contravention of the principles and ratio laid down in the case of **Bhagwant Singh (supra)**, as discussed above.

From the copy of order sheet as called for, from the Court concerned and particular perusing the Court's order dated January 3, 2016, it transpires that the Court has never afforded an opportunity to the present petitioner as regards the charge sheet submitted before it by the police, before taking cognizance of offence in this case, vide the said order.

- 26.** On the discussions made as above, this Court finds the impugned order of the Sessions Judge dated August 8, 2016, to be in derogation of the existent laws and to be not maintainable, being illegal.
- 27.** The other point argued on behalf of the petitioner is with regard to the alleged deficiency in conducting the investigation of the case. This Court is of the opinion that in the event when the impugned order of the Sessions Judge is not found maintainable, the obvious result would be setting aside of the said order. The obvious consequential effect would be remitting back the case to the Sessions Judge for granting opportunity of hearing to the petitioner. Hence, the petitioner shall have ample opportunity to agitate those points before the Sessions Judge. Hence at the present moment this Court is not specifically inclined to go into the said limb of argument as advanced on behalf of the petitioner.
- 28.** On the premises as above this revision merits success. CRR 3201 of 2016, is allowed. The impugned order of the Additional Sessions Judge, 1st Court, Purulia dated August 8, 2016 is set aside. Let the trial Court adjudicate afresh petitioner's prayer vide an application dated June 29, 2016, as was filed by the present petitioner before the trial Court, after affording opportunity of hearing to the parties concerned and in the light of the settled law in this regard. CRR 3201 of 2016 is disposed of.
- 29.** Case diary be returned.
- 30.** Urgent certified copy of this judgment, if applied for, be given to its parties on usual undertaking.

RAI
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(Rai Chattopadhyay, J.)