

S/L - 21
4.12.2024
Court No.3
S.Kundu/
S.Gayen

**Calcutta High Court
In the Circuit Bench at Jalpaiguri**

C.R.R. 231 of 2024

Parbati Sahani @ Parbati Devi Sahani
Vs.
State of West Bengal & Ors.

Mr. Somraj Paul,
Ms. Shruti Yadav,
Mr. Sujit Swami

... for the petitioner.

Mr. Aniruddha Biswas,
Ms. Kanak Mishra,
Mr. Monoj Saha

...for the opposite party.

Mr. Aditi Shankar Chakraborty,
Dr. Arjun Chowdhury

...for the State.

1. The instant criminal revisional application has been filed *inter alia*, praying for further investigation.
2. To appreciate the circumstances leading to filing of the instant application, it would be relevant to record the facts briefly. On 3rd June, 2023 a complaint was lodged by the petitioner before the Officer-in-charge, Khalpara – II Police Station, Siliguri, complaining that on 2nd June, 2023 at about 10.30 p.m. two persons who are the sons of Binod Paswan entered into the house of the complainant, at

Maharaja colony and started abusing her son namely, Sanjay Sahani, when the petitioner along with her other son Munna Sahani protested, the aforesaid persons attacked both the petitioner as also Munna Sahani. The petitioner further complains that her son Munna Sahani received severe injury on his person and was taken to Siliguri District Hospital on 3rd June, 2023 and then referred to the North Bengal Medical College and Hospital where he was admitted. Treating the aforesaid complaint as an FIR, a police station case being No. 422 of 2023 dated 3rd June, 2023 under Sections 448/323/325/506 and 34 of the Indian Penal Code was initiated.

3. On 5th September, 2023, the victim Munna Sahani died. The matter was initially enquired into by the ASI namely, Uttam Dhar later the same was transferred to SI namely, Suvendu Das on 8th June, 2023. A final report in the form of charge-sheet was filed before the Additional Chief Judicial Magistrate, Siliguri and the case was thereafter committed to the Court of the learned Additional District and Sessions Judge, Fast Track Court, Siliguri. It is the petitioner's case that the Narazi/ protest petition was filed by the petitioner/*de facto* complainant, *inter alia*, on the ground that one of the FIR named accused was not arraigned as an accused in the charge-sheet.

4. The Court of the learned Additional Sessions Judge, Fast Track Court, Siliguri by Order No. 6 dated 5th March, 2024 upon perusal of the statement recorded under section 164 of the Code of Criminal Procedure, 1973 (in short the code) of the brother of the victim, considering his entire statement made before the Magistrate and having noted that he had not named any other co-accused persons nor mentioning about any other accused when the incident occurred and victim's brother himself being an eye-witness, did not find any merit in the Narazi petition and accordingly rejected the same.
5. The petitioner contends that although, the petitioner was also an eye-witness her statement under section 164 of the code had not been recorded. Mr. Paul, learned advocate appearing for the petitioner would submit that although, the petitioner had named two sons of Binod Paswan in the complaint and though, she was an eye witness to the incident, she was not called for deposing before the Magistrate for recording her statement under Section 164 of the Code. He would submit that although this is a case of murder and considering serious nature of offence committed, it was obligatory on the part of the Investigating Officer to ensure that the petitioner's statement under Section 164 of the Code is recorded, the same was not done. It is submitted that the learned Court overlooked the aforesaid aspect. He still further submits that from the FIR and the charge-sheet, it would transpire that

the same has been filed adding Section 304 of the I.P.C. though in the FIR, section 302 of the I.P.C. had been added.

6. Having regard thereto, it is submitted that this Court in exercise of its inherent power is competent enough, not only to direct the statement of the petitioner to be recorded under Section 164 of the code but also to direct further investigation/re-investigation, considering the fact the investigating officer did not investigate to ascertain the truth. In support of his aforesaid contention as regards the scope and powers of this Hon'ble Court to order re-investigation in appropriate cases, he has placed reliance on the judgment delivered in the case of **Devendra Nath Singh., v., State of Bihar and Ors.**, reported in **2022 Live Law (SC) 835**. He has also placed reliance on the judgment delivered by the Hon'ble Supreme Court in the case of **Anant Thanur Karmuse v. The State of Maharashtra and Ors.** reported in **2023 Live Law (SC) 136**, to drive home the point that if deficiency in investigation or prosecution is visible or can be perceived by lifting the veil, the courts have to deal with the same with an iron hand appropriately, within the framework of law.
7. He would submit that in the case as noted hereinabove, unless a reinvestigation is ordered directing the investigating officer to carry out a proper investigation and file a report,

truth shall not come to light and the petitioner shall suffer irreparable loss and injury.

8. *Par contra*, Dr. Chowdhury, learned advocate appearing on behalf of the State, by drawing attention of this Court to the case diary would submit that initially the aforesaid case was started under bailable sections, as such the investigation was entrusted to an Assistant Sub-Inspector. Following the death of the victim, Section 302 of the I.P.C. was added and the investigation was handed over to a Sub-Inspector who ultimately after concluding the investigation had filed a final report in the form of a chargesheet. On the basis of investigation carried out since, no case had been made out against the opposite party No.3, namely Abinash paswan, he was not arraigned as an accused in the chargesheet. There is no irregularity in the investigating officer in filling the chargesheet by adding Section 304 IPC as in this case, the offence under Section 302 I.P.C. could not be established.
9. On the issue of the complainant not been called upon to give her statement under section 164 of the code before the Magistrate, he would submit that the complainant was giving incoherent answers and it was more likely than not that the prosecution case would fail, if her statement was recorded. It is for such reason, that the prosecution thought it fit not to take her statement under section 164 of the code. Dr. Chowdhury would however, candidly submit that the

aforesaid explanation does not find place in the case diary and the aforesaid instruction has been received over telephone from the investigating officer. The matter does not require reinvestigation. There is no irregularity in the order passed by the learned Trial Court. No interference is called for.

10. Mr. Biswas, learned advocate appearing on behalf of the opposite party no.3 would raise serious objections as regards this Court entertaining the very application itself. He would submit by placing reliance on the judgment delivered in the case of ***Reeta Nag vs. State of West Bengal & Ors.*** reported in ***2009 (9) SCC 129*** that the Hon'ble Supreme Court has deprecated the practice of directing reinvestigation at the instance of the defacto-complainant. By drawing attention of this Court to the provisions of section 173(8) of the code, he would submit that the circumstances under which a further investigation can be ordered are enumerated in the aforesaid section. Since no fresh evidence had come forward the learned Court has rightly rejected the petition of the defacto-complainant. He would submit that the defacto complainant cannot have his say in manner and mode in which the investigation shall be conducted.
11. Having heard the learned advocates appearing for the respective parties and considering the materials on record, it would appear admittedly in this case a complaint had been

lodged by the petitioner and on the basis thereof, an FIR was noted. The victim had died within two days of the incident. From a perusal of the complaint, it would be apparent that the complainant is a witness to the assault of his son and had attempted to protest. It would also bear out from case dairy the complainant was attacked when she protested to her son being assaulted. From a perusal of the chargesheet, it is clear that only the statement of one eyewitness, under section 164 of the code was recorded. The chargesheet does not spell out any reasons for not taking the statement of any other eye witness under section 164 of the code. Notwithstanding, Dr. Chowdhury submitting from the Bar and conveying the views of the investigating officer as regards justification in not recording the statement of the petitioner under section 164 of the code, in my opinion the above views of the investigating officer raise more than an element of doubt especially, when the same do not find place in the case dairy or the chargesheet. It is not in dispute that the complaint highlighted that the two sons of Binod Paswan were involved in the incident. As to whether they are actually involved is however, subject matter to be investigated into by the police authorities at the first instance. It is true that the Court cannot decide on the outcome of the investigation but it is equally true that the Court is competent to ascertain whether appropriate investigation had been conducted in the

case to ascertain the truth. The learned Court by the order impugned come to a finding by relying on the statement of the brother of the victim that since the co-accused has not been named that there is no merit in the protest/narazi petition.

12. I have scanned the case diary, from a perusal of the statement of Ajay Sahani made under section 164 of the code it would appear that although, he has named Abhishek Paswan to have assaulted his brother, he had also identified that his mother Parbati was also an eyewitnesses and when she had attempted to stop the accused from assaulting his brother she sustained injury on her face and chest.

13. Unfortunately, in this case, the statement of Parbati Sahani the petitioner, was not recorded under section 164 of the code. No reasons would transpire from the case diary and the chargesheet why she was not called upon to give her statement before the magistrate. As noted above, the explanation provided by the learned advocate from the Bar, as regards not taking down the statement of the petitioner under section 164 of the code, creates more than an element of doubt as regards the intention of the investigating officer in attempting to find out the truth, to say the least. It is true that the chargesheet has been filed by reserving liberty to file a supplementary chargesheet but such liberty is only limited

to collection of chemical examination report from the regional forensic laboratory.

14. It is apparent from the above that there has been no proper investigation, and the learned Court in the fact of the case ought not to have rejected the narazi petition. Be that as it may before proceeding further, I may record that although, Mr. Biswas by placing reliance on the judgment delivered in the case of **Reeta Nag** (supra) has attempted to impress upon this Court that no further investigation at the instance of a defacto-complainant is permissible, I, however, find that the aforesaid judgment is not an absolute proposition restraining the Court from passing appropriate orders for reinvestigation. Incidentally, it may be noted that in the above case the Hon'ble Supreme Court was considering a case where a charge had already been framed, such is not the case here. The above judgment in my view is factually distinguishable. In any event the opposite party no.3 cannot have a say in this court considering whether reinvestigation is necessitated in the facts of the case.
15. The impugned order dated 5th March, 2024 to the extent, the same rejects the petition filed by the defacto-complainant is set aside.
16. It is apparent and clear from the above, that the investigating officer failed to collect evidence, and to conduct the investigation for ascertaining the truth. Although, the power

of the court under section 482 of the code is to be sparingly exercised, since in this case, there has been no proper investigation carried out by the investigation officer, and since it appears from the submissions made in Court today, by the learned advocate for the state, regarding the purported explanation, for not taking the statement of the petitioner under section 164 of the code by alleging the petitioner had been giving incoherent testimony, though there is no such reflection in the case diary, I am of the view that the investigation in this case is tainted, biased and illegally influenced to shield the real culprits. Therefore, this court is of the view that this is a fit case where *denovo* investigation by a competent police officer is necessary to find out the truth and implicate the real culprit/s. This court cannot rely on the investigating officer who has forwarded a baseless chargesheet.

17. Taking into consideration the peculiar facts of this case, the complaint, the FIR and the sequence of events noted hereinabove, it is necessary that the Commissioner of Police, Siliguri be directed to take steps for entrusting the investigation to any other investigating officer not below the rank of Inspector. Let the above direction be carried out within a week from date.
18. With above observations and directions, the revisional application is accordingly disposed of.

19. All parties, including the commissioner of police, Siliguri shall act on the basis of the server copy of this order duly downloaded from the official website of this court.

(Raja Basu Chowdhury, J.)