

12.08.2025
SL No.4
Court No.32
S.Gayen

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

CRR 210 of 2023

**Rahul Pal
Versus
The State of West Bengal & Ors.**

Mr. Subhamoy Bhattacharya
Mr. Shankar Mukherjee
Mr. Shibam Banerjee

...for the Petitioner

Mr. Koushik Kundu

...for the State

1. The instant revisional application has been filed assailing the order dated 02.12.2022 passed in Sessions Case No. 172 of 2022 corresponding to GR Case No. 53 of 2020 arising out of Santiniketan Police Station Case No. 07 of 2020 dated 16.01.2020 under Sections 341/323/326/307/120B of the Indian Penal Code, wherein the learned Additional Sessions Judge, Bolpur, Birbhum refused an application submitted under Section 173(8) of the Code of Criminal Procedure filed on behalf of the de facto complainant solely on the ground that further investigation cannot be ordered at the post cognizance stage, relying on some decisions in **AIR 2017 (SC) 774, 2013 CrLJ (SC) 754** and **2019 CrLJ (Hyderabad) 149**.
2. It is needless to mention that the learned Additional Sessions Judge did not enter into the merit of the application.
3. Learned counsel appearing on behalf of the petitioner has relied on a decision of ***Vinubhai Haribhai Malaviya & Ors. Vs. State of***

Gujarat & Anr. reported in **(2019) 17 SCC 1** and submitted that the power under Section 173(8) can be invoked at all stages of progress of criminal case before the trial actually commences and the judgment relied on by the learned Additional Sessions Judge has been dealt with by the Hon'ble Apex Court in the case of **Vinubhai Haribhai Malaviya** (supra) and the ratio delineated in those decisions have been overruled by the Hon'ble Apex Court.

4. Learned counsel appearing on behalf of the State has also submitted that the ratio of the decision relied on behalf of the petitioner actually settled the dispute in question.
5. At this stage, it would be profitable to reproduce the ratio held in **Vinubhai Haribhai Malaviya** (supra), particularly in paragraph 42, which reads as follows:-

“42. There is no good reason given by the Court in these decisions as to why a Magistrate’s powers to order further investigation would suddenly cease upon process being issued, and an accused appearing before the Magistrate, while concomitantly, the power of the police to further investigate the offence continues right till the stage the trial commences. Such a view would not accord with the earlier judgments of this Court, in particular, Sakiri, Samaj Parivartan Samudaya, Vinay Tyagi, and Hardeep Singh; Hardeep Singh having clearly held that a criminal trial does not begin after cognizance is taken, but only after charges are framed. What is not given any importance at all in the recent judgments of this Court is Article 21 of the Constitution and the fact that the Article demands no less than a fair and just investigation. To say that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, to the Magistrate’s nod under Section 173(8) to further investigate an offence till charges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceedings, would amount to a travesty of justice, as certain cases may cry out for further investigation so that an innocent person is not

wrongly arraigned as an accused or that a prima facie guilty person is not so left out. There is no warrant for such a narrow and restrictive view of the powers of the Magistrate, particularly when such powers are traceable to Section 156(3) read with Section 156(1), Section 2(h), and Section 173(8) CrPC, as has been noticed hereinabove, and would be available at all stages of the progress of a criminal case before the trial actually commences. It would also be in the interest of justice that this power be exercised suo motu by the Magistrate himself, depending on the facts of each case. Whether further investigation should or should not be ordered is within the discretion of the learned Magistrate who will exercise such discretion on the facts of each case and in accordance with law. If, for example, fresh facts come to light which would lead to inculcating or exculpating certain persons, arriving at the truth and doing substantial justice in a criminal case are more important than avoiding further delay being caused in concluding the criminal proceedings, as was held in Hasanbhai Valibhai Qureshi. Therefore, to the extent that the judgments in Amrutbhai Shambubhai Patel, Athul Rao and Bikash Ranjan Rout have held to the contrary, they stand overruled. Needless to add, Randhir Singh Rana v. State (Delhi Admn.) and Reeta Nag v. State of West Bengal also stand overruled.”

6. In the aforesaid view of the matter, I find hardly any scope to ignore the ratio of **Vinubhai Haribhai Malaviya** (supra) and accordingly it appears that the learned Judge erred in recording the impugned order thereby refusing the application for further investigation under Section 173 (8) of the Code of Criminal Procedure.
7. In the aforesaid facts and circumstances, the order dated 02.12.2022 passed by the learned Additional Sessions Judge in connection with Sessions Case No. 172 of 2022 stands set aside.
8. The learned Judge is requested to reconsider the application for further investigation on its merit and dispose it of preferably within six months from the date of communication of this order.

9. Parties are at liberty to communicate this order to the learned Trial Judge for necessary information and compliance.
10. With the above observation, the revisional application stands allowed and the connected applications, if any, also stand disposed of accordingly.
11. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.
12. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De, J.)