

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2166 of 2022
Soumendra Kumar Biswas
Versus
The State of West Bengal & Anr.
With
CRLCP 5 of 2024
Soumendra Kumar Biswas
Vs.
Sheshadri Goswami
With

C.R.R. 1700 of 2022
Soumendra Kumar Biswas
Versus
The State of West Bengal & Anr.
With
CRLCP 4 of 2024
Soumendra Kumar Biswas
Vs.
Sheshadri Goswami

For the Petitioner : Mr. Ayan Bhattacharya, Ld. Sr. Adv.
Ms. Sanjana Sinha, Adv.

De-facto Complainant/Opposite Party No. 2 (In person)

: Mr. Sheshadri Goswami

Order Delivered on : 07.02.2025

Ajay Kumar Gupta, J:

1. Both the applications have taken up together for passing a common order as the issues, involved in both the Revisional applications, are same and identical.

2. A letter of complaint was filed by the opposite party no. 2 on behalf of himself and other investors before the Special Additional Commissioner of Police, Joint Commissioner of Police (Crime), Detective Department, Lalbazar, Kolkata on 27th July, 2015 with an allegation that he along with 16 other investors have invested their hard earn money to the company, namely, IFB Finance Limited in the year 1996 on fixed deposited scheme. Even after maturity, the said Finance Company neither returned the principal amount nor interest accrued therein. As such, they suffered monetary loss to a great

extent resulted in registration of a First Information Report being Shakespeare Sarani Police Station Case No. 287 dated 14th August, 2015 under Sections 420/406/120B/506 of the Indian Penal Code, 1860 against three accused persons, namely, (i) Bijon Nag, Chairman and Managing Director of IFB Finance Limited, (ii) Soumendra Kumar Biswas, (petitioner herein), Executive Managing Director and (iii) N. Punnyaswami, Managing Director of IFB Finance Limited and initiated investigation.

3. After culmination of investigation, the Investigating Officer filed Closure Report being No. 18/2017 under Sections 420/406/120B/506 of the Indian Penal Code, 1860 before the Learned Chief Metropolitan Magistrate at Calcutta thereby declaring the case to be civil in nature on 30.04.2017.

4. On receipt of the said Closure Report, the Learned Chief Metropolitan Magistrate issued notice upon the opposite party no. 2 on 2nd May, 2017 in view of the judgment passed in the case of ***Bhagwant Singh Vs. Commissioner of Police***¹.

5. On the date of hearing i.e. on 1st June, 2017, the opposite party no. 2 did not appear. Accordingly, the Learned Chief

¹AIR 1985 SC 1285

Metropolitan Magistrate was pleased to accept the Closure Report and dropped the proceedings initiated against the petitioner/accused.

6. Being aggrieved by and dissatisfied with the order dated 1st June, 2017, the opposite party no. 2 filed a Criminal Revisional application under Sections 401/482 of Code of Criminal Procedure, 1973 being CRR 646 of 2018.

7. In course of hearing of the said Criminal Revisional application, the Co-Ordinate Bench of this Court vide order dated 3rd March, 2022 has sought for a report from the Inspector General, Presidency Range and holding Additional Charge of DIG, CID, West Bengal.

8. Upon receiving such report and hearing the parties, the Co-Ordinate Bench of this Court was pleased to dispose of the Criminal Revisional application on 28th April, 2022 and was also pleased to give liberty to the opposite party no. 2/de-facto complainant to file an application under Section 173(8) of Code of Criminal Procedure, 1973 by May 6, 2022.

9. This Hon'ble Court was further pleased to send the original report filed by the I.G., CID, West Bengal in a closed envelope to the

Learned Chief Metropolitan Magistrate for consideration at the time of disposal of an application filed u/s 173(8) of the CrPC.

10. It was further directed that the opposite party no. 2 would file adequate copies of such application under Section 173(8) of the Code of Criminal Procedure, 1973 before the Learned Chief Metropolitan Magistrate, Calcutta, which shall be filed by 6th of May, 2022 and the Learned Magistrate would, thereafter, fix a date for hearing.

11. In pursuant to the said directions passed by co-ordinate Bench vide order dated 28th April, 2022 in CRR No. 646 of 2018, the petitioner herein appeared before the Learned Chief Metropolitan Magistrate on May 13, 2022 and prayed for supply of the copy of the application so filed by the opposite party no. 2 herein. In view of such prayer, the copy of the said application was supplied to the petitioner.

12. The petitioner submits that from the said application, it became evident to the petitioner that the petitioner herein was not made a party thereto, whereas lawyers, representing the petitioner before this Hon'ble Court, were made party respondents. In view thereof, the petitioner herein loses his right of representation in the said application whereby liberty was granted by this Hon'ble Court vide order dated 28th April, 2022 in CRR No. 646 of 2018.

13. The petitioner submitted that from the said application, it would be evident that the learned counsels for the respective parties, who participated in the proceeding before this Hon'ble High Court, were made parties, which is absolutely impermissible in law. A lawyer appears in a matter or for his client in a representative capacity, unless the lawyer has a personal interest in the matter, a lawyer cannot be made a party to the litigation.

14. In the said application, Sheshadri Goswami, de-facto complainant has made the lawyers as parties, which may give birth to immense and profound ramifications in future. Hence, the said application was defective by reason of non-joinder of parties. This non-joinder was a motivated move by the opposite party no. 2 in order to disentitle the petitioner to participate in the hearing before the Learned Chief Metropolitan Magistrate.

15. The petitioner submitted that as the petitioner herein has not been made a party respondent, the petitioner could not file an exception to the said application in terms of law. Since the Advocate-on-Record of the petitioner has been made a party to the said application, the petitioner could not enter his appearance before the Learned C.M.M.

16. The petitioner further submitted that from the contour of the said application, it would be evident that the Opposite Party No. 2 has claimed to be the petitioner as well as the de-facto complainant. However, from the First Information Report, it would be evident that the said First Information Report was lodged in a representative capacity by the opposite party no. 2. The FIR was lodged by the opposite party no. 2, Mr. Sheshadri Goswami representing himself as well as other investors claiming that he has authority to represent the forum though there is no existence of any registered society or organisation under the name and style IFB Investors Forum. If he has no authority, he cannot lodge complaint on behalf of the forum, namely, IFB Investors Forum. Therefore, it is a misnomer to consider the Opposite Party No. 2 as the de-facto complainant.

17. The petitioner further states that in the aforesaid premises, on 17.05.2022 the petitioner sought leave of this Hon'ble Court to move a petition under Article 227 of the Constitution of India, therein seeking necessary directions in the instant proceedings before this Hon'ble Court which was registered as CRR. No. 1700 of 2022 and CRR No. 2166 of 2022.

18. The petitioner states that after hearing, vide order dated May 17, 2022, His Lordship, the Hon'ble Justice Jay Sengupta was pleased to observe as follows:-

“Let this matter appear as a “Listed Motion” one week after the ensuing summer vacation.

Prima facie, it appears that the application for further investigation suffers from some defects in form.

The petitioner shall be at liberty to pray for an adjournment before the learned trial court on the next date of hearing and the learned trial court, in such event, shall fix a date after the second week of June, 2022.”

19. The petitioner states that the revision petitions being C.R.R. No. 1700 of 2022 and CRR No. 2166 of 2022 did not appear before this Hon'ble Court as Listed Motion one week after the Summer Vacation, therefore, on the next day i.e. on June 20, 2022, the petitioner prayed for time before the Learned C.M.M. The opposite party no. 2, on such day, filed a fresh purported petition and sought liberty to withdraw the earlier application, which was the subject matter of adjudication in the instant revision petitions being CRR. No. 1700 of 2022 and CRR No. 2166 of 2022. The Learned C.M.M, despite vehement objection of the petitioner, allowed the opposite

party no. 2 to replace the earlier petition by a fresh petition and fixed the matter on July 7, 2022 for hearing of the said application.

20. The petitioner states that the instant applications under Sections 397/401 read with Section 482 of CrPC are being filed against the order dated 13th May, 2022 and June 20, 2022 passed by the Learned CMM in G.R. No. 1881 of 2015, arising out of Shakespeare Sarani P.S. Case No. 287 of 2015 dated August 14, 2015.

21. The petitioner further states that the order dated 13.05.2022 and June 20, 2022 passed by the Learned CMM is procedurally untenable and legally unsustainable for which the immediate interference of this Hon'ble Court is highly solicited.

22. Being aggrieved by and dissatisfied with the Order dated 13.05.2022 and 20th June, 2022 passed by the Learned Chief Metropolitan Magistrate, Calcutta in G.R. No. 1881 of 2015, arising out of Shakespeare Sarani P.S. Case No. 287 of 2015 dated 14th August, 2015, the petitioner preferred these applications before this Hon'ble Court. Hence, the Criminal Revisional applications.

23. It was submitted by the opposite party no. 2, appearing in person, that in pursuant to the direction passed by this Hon'ble Court in CRR No. 646 of 2018, the de-facto complainant filed the protest petition under Section 173(8) of the CrPC dated 10.05.2022. But, the same was inadvertently incorporated the name of learned advocates representing the accused person before the Hon'ble High Court were made party as party respondents instead of accused persons. Subsequently, the de-facto complainant/opposite party no. 2 has not pressed the said earlier petition dated 10.05.2022 and replaced the same with the fresh petition and the same was kept with the record by the Learned Chief Metropolitan Magistrate, Calcutta and fixed a dated on 07.07.2022 for hearing of the petition filed by the de-facto complainant on 20.06.2022.

24. But, prior to hearing of the said application, the present petitioner further came before this Court by way of filing Criminal Revisional applications which are not at all maintainable because no final hearing has been concluded by the Learned Chief Metropolitan Magistrate at Calcutta on the said petition filed under Section 173(8) of the Code of Criminal Procedure, 1973 in pursuant to the Hon'ble High Court's Order dated 28th April, 2022 passed in CRR No. 646 of 2018.

25. Considering the aforesaid facts and circumstances and upon hearing the parties, this Court finds it is admitted fact that the Co-ordinate Bench of this Court has given a liberty to the de-facto complainant/opposite party no. 2 to file an application under Section 173(8) of the Code of Criminal Procedure, 1973 before the Learned Chief Metropolitan Magistrate at Calcutta and after filing the said application, the Learned Magistrate, thereafter, fixed a date of hearing after serving the application filed by the de-facto complainant.

26. It was further directed by the Co-ordinate Bench of this Court that the Learned Chief Metropolitan Magistrate at Calcutta will peruse and consider the report of the Inspector General of Police, CID, West Bengal and, thereafter, form his opinion regarding the issue of further investigation of the case. Needless to state that the Learned CMM, Calcutta would form his independent opinion regarding the issues in the application under Section 173(8) of the Code of Criminal Procedure, 1973 and would be at liberty to exercise his jurisdiction in respect of any Special Investigating Agency of the State of West Bengal, if so required.

27. Due to some inadvertent mistakes, the names of the learned advocates were incorporated in place of accused persons. Subsequently, the said application was replaced by the de-facto complainant before the Learned CMM at Calcutta after replacing the earlier application after due correction and same was kept in the record. The said application is still pending for final adjudication. However, petitioner comes before this Court at a premature stage. Therefore, there is no need to keep these Criminal Revisional applications pending because it would not sub-serve the purpose because when there is a provision to give an opportunity of hearing to the de-facto complainant, if culmination of investigation, the Investigating Officer filed Closure Report in view of the judgment passed in the case of ***Bhagwant Singh Vs. Commissioner of Police***.

28. For better assessment, Section 173(8) of the Code of Criminal Procedure, 1973 is hereby quoted as under:

“173. Report of police officer on completion of investigation.—

(8) Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to the Magistrate and, where upon such investigation, the officer in charge of the police station obtains

further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed; and the provisions of sub-sections (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section (2)."

29. The judgment passed in ***Bhagwant Singh Vs. Commissioner of Police*** indicates the legal proposition that where the Magistrate to whom a report is forwarded under sub-section (2) (i) of Section 173 of CrPC decides not to take cognizance of the offence and to drop the proceedings 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 of being heard at the time of consideration of the report and the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

30. Upon careful perusal of the aforesaid section as well as judgment passed in ***Bhagwant Singh Vs. Commissioner of Police***,

this Court finds even filing Closure Report under sub-section (2) of Section 173 of the CrPC, it would not preclude for further investigation in respect of an offence after a report filed under sub-section (2) has been forwarded to the Learned Magistrate is not satisfactory. But, whenever the police officer submits closure report after culmination of investigation, Magistrate decides not to take cognizance of the offence and to drop the proceedings 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 of being heard at the time of consideration of the report and the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.

31. In such a situation, an opportunity should be given to the de-facto complainant prior to taking any decision of dropping the proceedings.

32. In view of the aforesaid facts, the Learned Metropolitan Magistrate at Calcutta is directed to dispose of the application filed

u/s 173(8) of the CrPC in view of the direction passed earlier by the Co-ordinate Bench of this Court on 28th April, 2022 in CRR No. 646 of 2018 strictly in letter and spirit. Prior to that, the Learned Metropolitan Magistrate, Calcutta shall give an opportunity of hearing to all the parties over the protest petition filed under Section 173(8) of the Code of Criminal Procedure, 1973 by the informant/opposite party no. 2, Sheshadri Goswami and disposed of the same independently and in accordance with law. It is pertinent to note that all issues raised by the petitioner herein are left open for consideration while disposing of the application filed by the de-facto complainant.

33. In view of the aforesaid observations, the instant Criminal Revisional applications being **CRR No. 2166 of 2022** and **CRR No. 1700 of 2022** are, thus, disposed of. Consequently, **CRLCP No. 5 of 2024** and **CRLCP No. 4 of 2024** are also, thus, disposed of.

34. Interim order, if any, stands vacated.

35. Parties shall act on the server copies of this order uploaded on the website of this Court.

36. Urgent photostat certified copy of this order, 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.)