

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3765 OF 2025

ARKA MUKHERJEE

VS

THE STATE OF WEST BENGAL & ORS.

For the Petitioner : Mr. Billwadal Bhattacharya, Ld. Sr. Adv.

Ms. Madhusree Chatterjee, Adv.

For the State : Mr. Ranabir Roychowdhury, Adv.

Ms. Md. Kutubuddin, Adv.

Last heard on : 16.09.2025

Judgement on : 23.09.2025

CHAITALI CHATTERJEE DAS, J. :-

1. The case originated on the basis of the written complaint lodged by the petitioner against the Opposite Party No.1., proprietor of Kingston Travels and Resorts Pvt. Ltd. company alleging large scale of cheating and fraud committed by the present petitioner who along with their Associates, have duped as many as 29 persons involving about 10 lakhs each under false pretext of providing overseas employment. The petitioner has come up by filing this application under Section 438/442 BNSS 2023 against the order dated 30 July 2025 passed by the Learned Chief Judicial Magistrate, Alipore in connection with Tollygunge PS/DD case number 454 of 2016 under Section 420/120 B of Indian Penal Code on the ground that the learned Court did not apply the

judicial mind at the time of passing the order impugned and the order is illegal and is liable to be set aside.

2. Furthermore the Learned Court did not consider the lacuna of the investigation which is beyond law and contrary to the settled provision of law and is illegal. It is submitted by the Learned Senior Advocate representing the petitioner that the petitioner also applied for service with the Opposite Party No. 3 and to that effect paid a sum of ₹50,000 to the Opposite Party No.3, the company and ultimately Opposite Party No.3 could not arrange the service, nor refunded the amount paid as advance. The conduct of the investigation was not up to the mark and thus required for the investigation by impartial investigating agency .That apart, the investigating agency has submitted a final report in the form of F.R.T and on the strength of the same the petitioner filed an application for further investigation which was rejected without considering the merits of the case. Accordingly prayed for setting aside such order.

3. The submission advanced on behalf of the Learned Advocate representing the Opposite Parties is a complete denial of the averment made in the revisional application, and it is argued that the above qamentioned case was recorded on the basis of an enquiry report of SI Mahadev Kundu RP section, Special Branch, Kolkata Police based on a petition filed by the Joint Secretary and protector general of immigrants, MEA, GOI against the Opposite Party No.3 who run an agency, namely Kingston Travels and Human Resources Private Limited from office situated at Tollygunge, Kolkata -26 and during investigation after examining the separate witnesses and their statements, identifying the several bank accounts of the company in HDFC bank, Gol Park

Branch, and in some other bank and scanned the documents and after a number of raid and search and despite utmost attempts made filed the F.R.T. Therefore, at this stage, there is no future scope to continue the investigation of this case.

4. The Learned Advocate representing the opposite parties submits that the police authorities qua the investigating authorities had to file the final report in the form of F.R.T, as there was no further scope to continue the investigation of the case however, dispute the correctness of the opinion made there in regarding the entity of the opposite party as stated there in. The Learned Court refused the prayer of the victim dated 2.7.24, which was filed for further investigation. The Learned Court discussed the decision of ***Binu Bhai Haribhai Malaviya versus the State of Gujarat***, where it was observed that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course but the supervisory jurisdiction of the Magistrate suddenly sees 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 the prima-facie guilty person is not left out. Further observed by the Hon'ble Supreme Court that the power to order further investigation would be available at all stages of the progress of a criminal case before the trial, actually commences and that the power remains within the discretion of a Magistrate. The Learned Court also discussed the decision of ***Indranil Mukherjee versus State of West Bengal*** and another where a co-ordinate bench of this High Court observed that the submission of a report under Section 173 (2) of CRPC does not preclude the power of Magistrate to direct further investigation by the

investigating agency and submission of supplementary charge-sheet thereon. The court on careful perusal of the case docket and the charge-sheet found that there has been no proper investigation apropos Section 420/120-B of I.P.C and also that investigation under Section 420 of I.P.C is also not satisfactory. And thereafter passed the order with the observation that no prima-facie material to form an opinion that there was really material against the accused and sufficient materials to levy charges in respect of offences under Section 420/120 B of IPC. Section 173(8) of CRPC reads as follows; 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 pre; and the provision of sub-section Section(2) to (6) shall, as far as maybe, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-Section(2).

5. A decision has been relied upon by the learned Senior advocate representing the petitioner in ***Rampal Gautam and others versus the State*** by Mahadevpura Police Station, Mahadevpura, Bengaluru, and another arising out of SLP.(criminal.) number.(s) 7968 of 2016. In the same decision, the Hon'ble Supreme Court took note of ***Hasanbhai Valibhai Qureshi versus State of Gujarat and others***¹, where it was observed that the prime consideration for directing further investigation is to arrive at the truth and to do real substantial justice. It was further observed that further investigation

¹ (2004) 5 SCC 347

and re-investigation stand all together on a different footing. Even de hors any direction from the court, it is open to the police to conduct a proper investigation, notwithstanding the fact that the court has already taken cognizance on the strength of a police report submitted earlier. In the above decision of **Hasan Bhai Val Vai Bhai Qureshi.(supra)** the grievance of the appellant was that the investigation was not carried out fairly and the police had succumbed to the pressure exercised by the local MLA. Accordingly, the applicant filed a writ petition for issuance of appropriate order for re-investigation by an independent agency, which was not entertained by the High Court against which the matter went before the Hon'ble Supreme Court. In paragraph 12, it was held:-

12; subsection (8) of Section 173 of the Code permits for investigation, and even de hors any direction from the court as such.....,

6. The Hon'ble Apex Court further observed that when defective investigation comes to light during Court of trial, it may be cured by further investigation if circumstances so permitted. In the instant case, as it can be gathered that the learned court took note of the fact that the investigation was not proper and it would appear that no cogent material in the case diary would reflect that regardless search for the principal accused namely, Suman Karmakar has been made Delhi observed that the court defined no lacuna or negligence on the part of the I.O regarding the search of the FIR named accused person and there was no haste or no act of the I.O can be considered to be done in a hurried manner, which, according to this court is absolutely contrary to the observation made by the Learned Court considering the materials before him,

and therefore, it is necessary that the learned court must hear the petition afresh after giving opportunity of hearing to both the parties and to pass a reasoned order without being influenced with any of the observation made herein above.

7. Accordingly this revisional application stands allowed .The order passed by the Learned Court setting aside the application filed by the petitioner herein for further investigation be heard afresh.

8. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)



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Calcutta