

06.04.2026

Sl. No.18.

M/L.

Mithun.

Ct.No.29.

CRR/1873/2024

Malina Bibi

Vs.

State of West Bengal & Anr.

Mr. Mukteswar Maity,
Ms. Manika Sarkar

...for the petitioner

Mr. Avinaba Patra

...for the opposite party no.2

Mr. Bibaswan Bhattacharya,
Ms. Kanchan Roy

...for the State

The instant application has been preferred against the order dated 15th March, 2022 passed by learned Chief Judicial Magistrate, Malda in G.R. Case No.4418 of 2019. By the impugned order learned Court below has rejected the protest petition filed by the petitioner herein and allowed the prayer made by Additional Public Prosecutor in accepting the final report in the form of closure of investigation.

Being aggrieved by the aforesaid order, learned Counsel for the petitioner submits that the Investigating Agency has not conducted proper investigation and learned Court below has failed to appreciate the same. The said petition ought to have been considered favourably in accordance with law. He further submits that from the photographs of the dead body of victim, it is evident that he was murdered with the help of some weapons. The Investigating Agency also failed to file charge-sheet within statutory period. Therefore, the Court below ought to have held that the

investigation was not conducted in right direction and ought not to have dismissed the petitioner's protest petition.

Learned Counsel appearing on behalf of the opposite party no.2 as well as the State submit that the order impugned is justified in view of materials available in the Case Diary, including the Post Mortem report, viscera report and the statements recorded during investigation.

I have considered the submissions made on behalf of both the parties. It appears that the petitioner has made the prayer for further investigation on the following grounds:-

- a) For that the investigation is tainted and conducted in a perfunctory manner.*
- b) For that there is specific allegation in the FIR regarding motive of the case and the I.O. has never directed his investigation towards that.*
- c) For that the near relatives of the deceased have not been examined.*
- d) For that no independent witness from the village of the defacto complainant has been examined.*
- e) For that the preliminary report in the inquest reveals strain relation between the deceased and his wife accused Nur Begum.*
- f) For that one witness Alomody Khatun daughter of Sk. Ainul Hq of Khaskol Pukhuria stated in her 161 statement that the deceased had been murdered by the inmates of the deceased's in-laws.*
- g) For that FSL report has not been collected to rule out possibility of presence poison in the viscera of the deceased.*
- h) For that had the investigation been conducted in a proper manner the involvement of the accused must have unearthed and Charge sheet must have been filed.*
- i) For that for many other reasons also the investigation is tainted and further investigation of the case is essential.*

I have gone through the materials available in the Case Diary wherefrom it appears that during investigation police has collected the Post Mortem report which says that the death was due to

“deceased condition of heart. Further opinion can be given after receipt of chemical examination report from FSL.” Thereafter FSL report was also collected which discloses *“neither any poison nor any corrosive substance could be detected in the viscera, said to be of Merajul Islam”*.

I have also gone through the statement of witnesses recorded under Section 161 of the Cr.P.C. during investigation. Over all upon consideration of the materials collected during investigation, I do not find substance in the petitioner’s prayer.

Section 173(8) of the Cr.P.C. 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 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).”

A mere reading of the above provision makes it clear that police has a right to further investigation even after filing of charge sheet, which would be nothing but continuation of earlier investigation but by no means it authorises fresh investigation or reinvestigation to be started afresh after discarding earlier investigation altogether.

In the instant case after submission of charge sheet, police collected viscera report by way of additional evidence, which is clearly against further investigation.

From Sub-section (2) read with sub-section (8) of Section 173, it is evident that irrespective of the report under sub-section (2) forwarded to Court, if the investigating agency obtains further evidence, in support of further investigation, it is incumbent upon him to forward the same to the Court with a further report with regard to such evidence. In the present case petitioner miserably failed to bring on record any such circumstances and on the contrary, learned Counsel for the State have not supported petitioner's protest prayer in the absence of any justifiable ground. Therefore, I find that the order impugned does not suffer from any perversity or impropriety.

In such view of the matter, CRR 1873 of 2024 is dismissed.

Parties to act on a server copy of this order duly collected from the official website of the Hon'ble High Court, Calcutta.

(Dr. Ajoy Kumar Mukherjee, J.)