

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 2199 of 2014

Sanjib Ghosh & Ors.

-Vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Debabrata Acharya
Mr. Sital Samanta

For the State : Mr. Bidyut Kr. Roy
Mr. Mirza Firoj Ahmed Begg

Heard on : 22.02.2023, 08.09.2023

Judgment on : 22.09.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application is directed against the judgment and order dated 15.05.2014 passed by the Learned Sessions Judge, Balurghat, Dakshin Dinajpur in Crl. Misc. Case No. 1306 of 2014 arising out of Hili Police Station Case No. 14 of 2013 dated 17.01.2013 (G. R. Case No. 69 of 2013).
2. Petitioners stated that the opposite party no. 2 of the instant revisional application lodged a complaint before the Officer-in-Charge, Hili Police Station on January 17, 2013 alleging commission of offences punishable under Section 498A/326/307/34 of the Indian Penal Code read with Section 3 and 4 of the Dowry Prohibition Act, which gave rise to Hili Police Station

Case No. 14 of 2013 dated 17.01.2013 (G. R. Case No. 69 of 2013).
Subsequently Section 302 of the Indian Penal Code is added.

3. Petitioners stated to have been arrested in connection with Hili Police Station Case No. 14 of 2013.
4. Subsequently a CrI. Misc. Case No. 740 of 2013 was filed under Section 439 of the Code of Criminal Procedure before the Learned Sessions Judge Dakshin Dinajpur at Balurghat with a prayer for bail. The Learned Sessions Judge on 05.07.2013 passed an order directing the petitioners to be released on bail with two sureties of Rs. 3,000/- each subject to the satisfaction of Learned Chief Judicial Magistrate, Dakshin Dinajpur at Balurghat. The Learned Sessions Judge was further pleased to direct the petitioners to meet the investigating officer twice a week and not to leave the jurisdiction of the Court.
5. The petitioners complied the order passed by the Learned Sessions Judge, Dakshin Dinajpur on 05.07.2013 and regularly met the investigating officer, residing within the jurisdiction of the court.
6. Thereafter the petitioners filed an application for relaxation of the condition imposed by the Learned Sessions Judge, Dakshin Dinajpur at Balurghat at the time of granting bail of the petitioners. The said application was registered as CrI. Misc. Case No. 1306 of 2014.
7. Learned Sessions Judge passed an order directing the Superintendent of Police, Dakshin Dinajpur to withdraw the case from the conducting investigating officer and assign the same to any other investigating officer not below the rank of Inspector of Police.

8. Petitioners contended there was no allegation with regard to the continuation of the investigation conducted by the Investigating Officer of Hili Police Station. Therefore the Learned Judge passed an order of withdrawal of Hili Police Station Case No. 14 of 2013 from the present Investigating Officer exceeding the jurisdiction of the Learned Court.

9. Learned Advocate for the petitioners submitted that –

- i. There was no allegation with regard to the continuation of the investigation conducted by the Investigating Officer of Hili Police Station. Therefore the Learned Sessions Judge had passed an order of withdrawal of Hili Police Station Case no. 14 of 2013 from the present Investigating Officer, going beyond the jurisdiction of the Ld. Court.
- ii. At the time of consideration of an application for relaxation of condition of bail, the Ld. Court should have confined to the extent of the prayer in the application for modification of the bail order of relaxation of the condition imposed upon them.
- iii. The Ld. Sessions Judge should have satisfied the circumstances before passing any order which interfered with the domain of the Investigating Officer.
- iv. A Court cannot pass any order directing upon the I.O to file a final report within a stipulated period curtailing the time limit as prescribed in the statute.
- v. The Code of Criminal Procedure cast a duty upon the Ld. Magistrate to conduct and supervise the investigation. Herein the Ld. Sessions Judge passed the order usurping the jurisdiction of the Ld. Magistrate in a biased way.
- vi. The application was filed for the relaxation of condition of bail which had been prescribed in Chapter-XXXIII of the Code of Criminal Procedure, “Provision as to bail and bail bonds.” There was nothing stated about interference with the functions of the I.O. The Ld. Judge exceeded his jurisdiction and passed the order

interfering with the rights of the petitioners. Hence interference of this Hon'ble Court was necessitated.

10. The Learned Advocate for the State submitted that the Learned Trial Judge did commit an error in passing the impugned order.
11. The impugned order no. 2 dated. 15.05.2014 stated as follows :-

“Crl.Misc.Case No. 1306 of 2014

An application for relaxation of condition of bail u/s. 439(1)(b) of Cr.P.C. filed on behalf of the accused-petitioners Sanjib Ghosh, Sukumar Ghosh and Prasanta Ghosh for the offence complained u/s. 498A/302/34 of I.P.C is taken up for order.

Perused the petition, L.C.R. & C.D.

It has been submitted by the Ld. Counsel for the Defence that said three accused persons have been enlarged on bail in connection with Criminal Misc. Case No. 740/2013 u/s 439, Cr.P.C. by this Court. But there was a condition that they shall meet I.O. twice in a week and shall not leave the jurisdiction of the Court.

Ld. P.P. for the State has submitted that on 17.1.2013 at about 11.30 a.m. it was reported to the de-facto complainant Sasti Charan Ghosh that his daughter Chaina Ghosh suffered serious burn injury and she was admitted at Balurghat Hospital. They rushed to Burn Ward of Balurghat District Hospital. It was learned that on 17.1.2013 in the morning she was forcibly beaten up and fire was putting on her person. She was married on 20.1.2002. As per their demand cash dower of Rs.50,000/-, 5 Vories gold ornaments and other house-hold articles were given. She was being pressurized to bring further dower of Rs. 20,000/- and putting pressure upon her she was being physically and mentally tortured. Accused Sukanta Ghosh had relation with other to which she protested. Accused Sukanta Ghosh in connivance with others put fire on her wife. So, the case has been initiated on 17.1.2013.

It has been found from the order No.2 dated 5.7.2013 in Crl.Misc. Case No. 740/2013 that this Court has been pleased to grant bail to accused Sanjit Ghosh, Sukumar Ghosh and Prasanta Ghosh on condition that they shall meet I.O. twice a week and shall not leave the jurisdiction of the Court.

Ld. P.P. For the State has opposed the prayer for relaxation of condition of bail on the ground that the accused persons shall co-operate with the concerned I.O. for submitting report in final form.

Having regard to the submissions of Ld. P.P. for the State and Ld. Counsel for the Defence this Court finds that the Hon'ble Supreme Court in Shakila Abdul Gafar Khan V. Vasant Raghunath Dhoble, (2003) 7 SCC 749 para 34-35, has been pleased to hold " That courts exist for doing justice to the persons who are affected.... The court is not merely to act as a tape recorder recording evidence, overlooking the object of trial i.e. to get at the truth, and oblivious to the active role to be played for which there is not only ample scope but sufficient powers conferred under the Code. It has a greater duty and responsibility i.e. to render justice in a case where the role of the prosecuting agency itself is put in issue.... It is as much the duty of the prosecutor as of the court to ensure that full and material facts are brought on record so that there might not be miscarriage of justice."

In another justice reported in AIR 1993 Supreme Court 2493 it has been held that "The Judicial Service is not service in the sense of 'employment'. The judges are not the employees. As members of judiciary; they exercise the sovereign judicial power of the State. They are the holders of the public office in the same way as the members of the council of ministers and the members of the legislative. When it is said in a democracy such as ours the executives, the legislature and the judiciary constitute the three pillars of the State, what is intended to be conveyed is that three essential functions of the State are entrusted to the three organs of the State and each one of them in turn represents the authority of the State. However, those who exercise the State – power are the ministers, the legislators and the judges, and not the members of their staff who implement or assist in implementing their decisions. The council of ministers or the political executive is different from the secretarial staff or the administrative executive which carries out the decisions of the political executive. Similarly the legislators are different from the legislative staff. So also the judges from judicial staff. The parity is between the political executive, the legislators and the judges and not between the judges and the administrative executive."

On perusal of the two reported judges and on going through the above judgments (Supra), this Court finds that the Court has ample power and sufficient power for rendering substantial justice to the parties. Moreover, it is settled law that no one can not be stand in the way rendering substantial justice to the parties. It is the duty of the judge that full materials facts are brought on record for investigation by a police officer. It is the duty of the police officer that the death case is being

reported as special case and there under obligation to report time to time to the concerned to the Superintendent of Police, Dakshin Dinajpur lies.

In my view, such investigation shall be done within the reasonable period from the date of initiation of the case, otherwise prosecution will be at stake.

Accordingly, it is,

Ordered

That Superintendent of Police, Dakshin Dinajpur is hereby directed to assign the case to any competent, police officer not below the rank of Inspector of Police for completion of effective efficacious and scientific investigation after withdrawal the same from the O.C., Hili P.S. Such investigation shall be done within the reasonable and preferable time i.e. within six months from the date of this order, otherwise the progress of investigation shall be reported is the Inspector of Police to whom the case assigned the S.P., Dakshin Dinajpur on each and every fortnight so that prosecution can be inspired from investigation that substantial justice will be rendered to the parties. In the name of investigation the case is being pending since 19.01.2013.

Let a copy of this order be sent to the Superintendent of Police, Kakshin Dinajpur for withdrawal of the case from the file of the O.C., Hili P.S. and to assign the same to any officer not below the rank of Inspector of Police for early and complete investigation.

Prayer for relaxation of condition of bail is rejected.

The Crl.Misc. Case is thus disposed of.

Return the L.C.R. 7 C.D.”

12. In the case of **Sakiri Vasu vs. State of Uttar Pradesh**¹ the Hon'ble Supreme Court observed as follows :-

“11. In this connection we would like to state that if a person has a grievance that the police station is not registering his FIR under Section 154 Cr.P.C., then he can approach the Superintendent of Police under Section 154(3) Cr.P.C. by an application in writing. Even

¹ (2008) 2 SCC 409

if that does not yield any satisfactory result in the sense that either the FIR is still not registered, or that even after registering it no proper investigation is held, it is open to the aggrieved person to file an application under Section 156(3) Cr.P.C. before the learned Magistrate concerned. If such an application under Section 156(3) is filed before the Magistrate, the Magistrate can direct the FIR to be registered and also can direct a proper investigation to be made, in a case where, according to the aggrieved person, no proper investigation was made. The Magistrate can also under the same provision monitor the investigation to ensure a proper investigation.

12. Thus in **Mohd. Yousuf v. Smt. Afaq Jahan and Anr**². this Court observed as follows :-

11. The clear position therefore is that any judicial Magistrate, before taking cognizance of the offence, can order investigation under Section 156(3) of the Code. If he does so, he is not to examine the complainant on oath because he was not taking cognizance of any offence therein. For the purpose of enabling the police to start investigation it is open to the Magistrate to direct the police to register an FIR. There is nothing illegal in doing so. After all registration of an FIR involves only the process of entering the substance of the information relating to the commission of the cognizable offence in a book kept by the officer in charge of the police station as indicated in Section 154 of the Code. Even if a Magistrate does not say in so many words while directing investigating under Section 156(3) of the Code that an FIR should be registered, it is the duty of the officer in charge of the police station to register the FIR regarding the cognizable offence disclosed by the complaint because that police officer could take further steps contemplated in Chapter XII of the Code only thereafter.

13. The same view was taken by this Court in **Dilawar Singh v. State of Delhi**³(vide para 17). We would further clarify that even if an FIR has

² MANU/SC/8888/2006 : 2006CriLJ788

³ MANU/SC/3678/2007 : 2007CriLJ4709

been registered and even if the police has made the investigation, or is actually making the investigation, which the aggrieved person feels is not proper, such a person can approach the Magistrate under Section 156(3) Cr.P.C., and if the Magistrate is satisfied he can order a proper investigation and take other suitable steps and pass such order orders as he thinks necessary for ensuring a proper investigation. All these powers a Magistrate enjoys under Section 156(3) Cr.P.C.

14. Section 156(3) states:

Any Magistrate empowered under Section 190 may order such an investigation as abovementioned.”

The words `as abovementioned' obviously refer to Section 156(1), which contemplates investigation by the officer in charge of the Police Station.

15. Section 156(3) provides for a check by the Magistrate on the police performing its duties under Chapter XII Cr.P.C. In cases where the Magistrate finds that the police has not done its duty of investigating the case at all, or has not done it satisfactorily, he can issue a direction to the police to do the investigation properly, and can monitor the same.

16. The power in the Magistrate to order further investigation under Section 156(3) is an independent power, and does not affect the power of the investigating officer to further investigate the case even after submission of his report vide Section 173(8). Hence the Magistrate can order re-opening of the investigation even after the police submits the final report, vide **State of Bihar v. A.C. Saldanna**⁴.

17. In our opinion Section 156(3) Cr.P.C. is wide enough to include all such powers in a Magistrate which are necessary for ensuring a proper investigation, and it includes the power to order registration of an F.I.R. and of ordering a proper investigation if the Magistrate is

⁴ MANU/SC/0253/1979 : 1980CriLJ98 .

satisfied that a proper investigation has not been done, or is not being done by the police. Section 156(3) Cr.P.C., though briefly worded, in our opinion, is very wide and it will include all such incidental powers as are necessary for ensuring a proper investigation.

18. It is well-settled that when a power is given to an authority to do something it includes such incidental or implied powers which would ensure the proper doing of that thing. In other words, when any power is expressly granted by the statute, there is impliedly included in the grant, even without special mention, every power and every control the denial of which would render the grant itself ineffective. Thus where an Act confers jurisdiction it impliedly also grants the power of doing all such acts or employ such means as are essentially necessary to its execution.

19. The reason for the rule (doctrine of implied power) is quite apparent. Many matters of minor details are omitted from legislation. As Crawford observes in his 'Statutory Construction' (3rd edn. page 267):

If these details could not be inserted by implication, the drafting of legislation would be an indeterminable process and the legislative intent would likely be defeated by a most insignificant omission.

20. In ascertaining a necessary implication, the Court simply determines the legislative will and makes it effective. What is necessarily implied is as much part of the statute as if it were specifically written therein.....

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr.P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and

Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

29. In the **Union of India v. Prakash P. Hinduja and Anr**⁵ it has been observed by this Court that a Magistrate cannot interfere with the investigation by the police. However, in our opinion, the ratio of this decision would only apply when a proper investigation is being done by the police. If the Magistrate on an application under Section 156(3) Cr.P.C. is satisfied that proper investigation has not been done, or is not being done by the officer-in-charge of the concerned police station, he can certainly direct the officer in charge of the police station to make a proper investigation and can further monitor the same (though he should not himself investigate).

30. It may be further mentioned that in view of Section 36 Cr.P.C. if a person is aggrieved that a proper investigation has not been made by the officer-in-charge of the concerned police station, such aggrieved person can approach the Superintendent of Police or other police officer superior in rank to the officer-in-charge of the police station and such superior officer can, if he so wishes, do the investigation vide **CBI v. State of Rajasthan and Anr**.⁶, **R.P. Kapur v. S.P. Singh**⁷ etc. Also, the State Government is competent to direct the Inspector General, Vigilance to take over the investigation of a cognizable offence registered at a police station vide *State of Bihar v. A.C. Saldanna (supra)*.”

13. In deciding an application for relaxation of conditions of bail granted on the earlier occasion, neither the Learned Public Prosecutor, nor the complainant expressed dissatisfaction with the investigation conducted by the investigating agency. The Learned Public Prosecutor for the State seems to

⁵ MANU/SC/0446/2003 : 2003CriLJ3117

⁶ MANU/SC/0042/2001 : 2001CriLJ968

⁷ MANU/SC/0070/1960 : [1961]2SCR143

have opposed the prayer for relaxation of condition of bail on the ground that the accused persons shall cooperate with the concerned Investigating Officer for submitting report in final form. The Learned Public Prosecutor for the State therein did not specifically mention the role of the individual accused to have influenced and motivated the investigating agency to submit a report in its final form. An order of bail was granted in a favour of the accused persons on condition to meet the Investigating Officer twice in a week and not to leave the jurisdiction of the Trial Court. The Learned Public Prosecutor for the State did not state that the accused persons threatened anybody or caused hindrance in the process of investigation. Mere suspicion on the part of the Learned Public Prosecutor for the State foist his distrust upon the investigating agency, which without proof is unacceptable. The Trial Court on its own accord without any application or prayer on the part of the defence or the Learned Public Prosecutor for the State interfered with the process of the investigation and the same is legally unsustainable. The Court has no jurisdiction to interfere with the process of investigation unless there is sufficient reason to believe that the investigating agency is discharging its duties perfunctorily, biasedly, motivatedly against the interest of the complainant and the State.

14. In view of the facts of the case and the observation of the Hon'ble Supreme Court in absence of any specific allegation against the investigating agency acting illegally and contrary to the detriment of the defence and the State, the Sessions Judge had no authority or reason to have directed the Superintendent of Police to transfer the investigation of the case from one Investigating Officer to the other. However, in the instant case, during the

pendency, this revisional application the investigation has attended its finality and the charge-sheet has been submitted.

15. Accordingly the instant criminal revisional application being CRR 2199 of 2014 has become infructuous and disposed of.
16. Connected application if any is also disposed of accordingly.
17. There is no order as to cost.
18. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
19. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)