IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Present: - Hon'ble Mr. Justice Subhendu Samanta.

C.R.R. No. –1580 of 2017

IN THE MATTER OF
Harikishan Shaw
Vs.
The State of W.B. & Ors.

For the Petitioner : **Mr. OM Prakash Dubey Adv.,**
Mr. Sailesh Kr. Gupta Adv.,
Mr. Samrat Shil Adv.,
Mr. Vijay Sanyal Adv.

For the O.P. No. 2 to 7 : **Mr. Milon Mukherjee Adv.,**
Mr. Biswajit Manna Adv.

For the State : **Mr. Saswata Gopal Mukherjee, P.P,**
Mr. Abhra Mukerjee, Adv.,
Mr. Dipankar Mahata Adv.

Argument heard on : **29.03.2023, 05.04.2023, 19.04.2023, 20.04.2023, 21.04.2023, 25.04.2023, 26.04.2023, 11.05.2023**

Judgment on : **24.11.2023**

Subhendu Samanta, J.

This is an application u/s 397 and 401 of the Code of Criminal Procedure against an order dated 20th February 2017 passed by the Learned Judicial Magistrate 4th Court at Sealdah in connection with GR No. 198 (2008) corresponding to Naihati GRPS Case No. 24/2008 dated 23.12.2008 u/s 302/201/34 of IPC.

The brief fact of the case is that Naihati GRPS case No. 24/2008 was initiated on 23rd December 2008 on the basis of a written complaint lodged by one Rajendra Prasad Shaw, relaing to the unnatural death of son of the present petitioner. After completion of investigation the investigating agency submitted the charge sheet being no. 21/2010 dated 18.07.2010 u/s 302/201/34 of the IPC against the present opposite party No. 2 to 7.

Later on a report was submitted by the investigating officers to the SRP Sealdah GRPS after fresh evidence come to light. Thereafter SRP Sealdah GRP vide his order dated 8th of October 2010 directed the investigating officer to examine the witnesses and submit a report to that effect. Accordingly the investigating officer submitted a report to SRP Sealdah GRP after recording the statement. The SRP Sealdah on perusal of such report directed the IO to move the Learned Magistrate

with a prayer for further investigation. On 21st of October 2010 the Learned Judicial Magistrate 4th court-cum-Railway Magistrate, Sealdah upon receipt of the said prayer from the investigating officer was pleased to allow the Inspector in-charge, Naihati GRP to make further investigation into the matter according to the provision u/s 173 (8) of the Cr.P.C. Thereafter on 14th February 2011, the investigating officer after evaluating the statement of witnesses, and the forensic report, submitted their report in final form as FRMF being FRMF No. 3 of 2011 dated 14.02.2011 with a prayer for discharging OP No. 2 to 7. Thereafter on 25.05.2011 the de-facto complainant filed a protest petition/naraji petition challenging the report dated 14.02.2011 before the Learned Magistrate therein praying for rejecting the prayer of investigating officer to discharge the accused person and for committing the case to the Court of Sessions.

The Learned Magistrate after perusal of the materials collected during the investigation and protest petition filed by the de-facto complainant was pleased to direct SRP Seladah and also Inspector-In-Charge Naihati GRPS to conduct reinvestigation to submit thereto by 16.02.2012. Thereafter upon completion of reinvestigation the Inspector- In-Charge of Naihati GRPS personally submitted a report in final form being

FRMF No. 4 of 2012 dated 10.02.2012 and prayed for discharge of the opposite party No. 2to 7. The present petitioner preferred another naraji petition/protest petition against the said report dated 10th February 2012 before the Learned Magistrate. Praying for rejection of the report and also to commit the case to a Court of Sessions. The Learned Magistrate has heard the de-facto-complainant also heard the Learned APP and passed the impugned order on 20.02.2017 thereby rejecting the prayer of the petitioner accepted the FRMF No. 4 of 2012 dated 10.02.2012 and discharge the opposite party No. 2 to 7.

Being aggrieved by the said order dated 20th February 2017 the petitioner preferred the instant revision.

The Learned Advocate for the petitioner submits that the impugned order passed by the Learned Magistrate is illegal in the eye of law. The Learned Magistrate has taken cognizance of the offence on the basis of a charge sheet vide charge sheet No. 21 of 2010 dated 18.07.2010 u/s 302/201/ 34 of IPC. The offences are exclusively triabled by the Court of Sessions. The Learned Magistrate after taking cognizance on the basis of the earlier report had no option but to commit the case to the Court of Sessions for trial. In this particular case the Learned Magistrate has committed grave error by allowing investigating

agency to further investigation. He submits that once cognizance has taken by the Learned Magistrate, thereafter ordering further investigation is bad in law. he further submits that the charge sheet was submitted in the month of July 2010; after a long three months the investigating authority was kept themselves mum suddenly influenced of some extraneous involvement again reopened the same case for investigation on the behest of the I.O. of this case. The Learned Magistrate should not have considered the prayer of the IO for allowing him to further investigating the case when the charge sheet has already been submitted. He argued that the Learned Magistrate has erroneously excepted the final report and discharged the present opposite parties from heinous offence punishable u/s 302 IPC. The conduct of the investigating agency is not beyond doubt; at this juncture the impugned order passed by the Learned magistrate is liable to be set aside and the case need be committed to the Court of Sessions for trial.

In support of his contention he cited the decision of Hon'ble Supreme Court passed in **Chandrababu alias Moses Vs. State (2015) 8 SCC 774.** Paragraph 15 of the said judgment be set as follows:

> ***15.In Dharam Pal v. State of Haryana, the Constitution Bench, while accepting the view in Kishun Singh v. State of Bihar, has held thus :***
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> ***"35. In our view, the Magistrate has a role to play while committing the case to the Court of Sessions upon taking cognizance on the police report submitted before him under Section 173(2) Cr.P.C. In the event the Magistrate disagrees with the police report, he has two choices. He may act on the basis of a protest petition that may be filed, or he may, while disagreeing with the police report, issue process and summon the accused. Thereafter, if on being satisfied that a case had been made out to proceed against the person named in Column 2 of the report, proceed to try the said persons or if he was satisfied that a case had been made out which was triable by the Court of Session, he may commit the case to the Court of Session to proceed further in the matter.***
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> ***36. This brings us to the third question as to the procedure to be followed by the Magistrate if he was satisfied that a prima facie case had been made out to go to trial despite the final report submitted by the police. In such an event, if the Magistrate decided to proceed against the persons accused, he would have to proceed on the basis of the police report itself and either inquire into the matter or commit it to the Court of Session if the same was found to be triable by the Sessions Court"***

In this case Hon'ble Supreme Court has discussed about the powers of Magistrate when he is in disagreement with the final report of IO.

Learned Advocate for the petitioner also cited a decision reported in **Motilal Songara Vs. Preme Prakash Alias Pappu and Another (2013) 9 SCC 199.** In **Motilal Songara** (supra)

The Hon'ble Supreme Court has held that upon receipt of police report .....

> ***Upon receipt of a police report under Section 173 (2) a Magistrate is entitled to take cognizance of an offence under Section 190(1) (b) even if the police report is to the effect that no case is made out against the accused. In view of this enunciation of law by the three Judge Bench in India Carat (P) Ltd., (1989) 2 SCC 132, it must be held that in this case, the order taking cognizance cannot be found fault with. The Magistrate has taken cognizance on the basis of facts brought to his notice by the informant and, therefore, he has, in fact, exercised the power under Section 190(1) (b) Cr.P.C.***

He also cited a decision of Hon'ble Supreme Court passed in **Nahar Sing Vs. State of U.P. (2022) 5 SCC** wherein the power of Magistrate was discussed by the Hon'ble Supreme Court specifically when Magistrate is disagree with the police report. The law has been specifically laid down by the Hon'ble Supreme Court in **Dharam Pal Vs. State of Haryana (2014) 3 SCC 306.**

Learned Advocate for the petitioner also cited a decision of Hon'ble Supreme Court passed in **Sanjay Gandhi Vs. Union of India** reported in **AIR (1978) Supreme Court 514** wherein the Supreme Court has held that :

> ***24. From a plain reading of the above section it is evident that even after submission of police report under sub-section (2) on completion of investigation, the police has a right of "further" investigation under sub-section (8) but not "fresh investigation" or***

"reinvestigation". That the Government of Kerala was also conscious of this position is evident from the fact that though initially it stated in the Explanatory Note of their notification dated 27.6.1996 (quoted earlier) that the consent was being withdrawn in public interest to order a "reinvestigation "of the case by a special team of State Police officers, in the amendatory notification(quoted earlier) it made it clear that they wanted a "further investigation of the case "instead of "reinvestigation of the case". The dictionary meaning of "further (when used as an adjective) is "additional; more; supplemental". "Further" investigation therefore is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. In drawing this conclusion we have also drawn inspiration from the fact that sub-section (8) clearly envisages that on completion of further investigation the investigating agency has to forward to the Magistrate a "further" report or reports—and not fresh report or reports-- regarding the "further" evidence obtained during such investigation. Once it is accepted—and it has got to be accepted in view of the judgment in Kazi Lhendup Dorji – that an investigation undertaken by CBI pursuant to a consent granted under section 6 of the Act is to be completed, notwithstanding withdrawal of the consent, and that "further investigation" is a continuation of such investigation which culminates in a further police report under sub- section (8) of Section 173, it necessarily means that withdrawal of consent in the instant case would not entitle the State Police, to further investigation into the case. To put it differently, if any further investigation is to be made it is the CBI alone which can do so, for it was entrusted to investigate into the case by the State Government. Resultantly, the notification issued withdrawing the consent to enable the State Police to further investigate into the case

> ***is patently invalid and unsustainable in law. in view of this finding of ours we need not go into the questions, whether Section 21 of the General Clauses Act applies to the consent given under Section 6 of the Act and whether consent given for investigating into Crime No. 246 of 1994 was redundant in view of the general consent earlier given by the State of Kerala.***

In this case the Hon'ble Supreme Court has clarified the power of the investigating agency in "further investigation".

Learned Advocate for the respondent submits that the Learned Magistrate has committed no error. The prayer for further investigation was made on behalf of the investigating agency after fresh evidence regarding to the instant case came to light. Subsequent to completion of such further investigation the investigating agency submitted their report on mistake of fact after evaluating the same with expert opinion, FSL report and other evidences. Furthermore the charge sheet submitted by the IO was in the initial stage shown the report of autopsy surgeon which noted that "injuries into in the PM report may be caused if the running the train dashed the said person". From the inception it would be revealed that it was a case of accidental death.

Learned Advocate for the OP further submits that after filing of the first FRMF by the investigating agency, the Learned Magistrate issued notice upon the de-facto complainant who

filed the naraji petition. On the basis of such naraji petition the Learned Magistrate again directed the investigating agency specifically the higher authority of the IO i.e; inspector in charge of Naihati GRPS to conduct the investigation personally. After completion of the third investigation the said designated officers submitted second FRMF being 4 of 2012. On the basis of such report the present petitioner again file one naraji petition. It was turned down by the Learned Magistrate.

Learned Advocate/OP submits that the Magistrate has committed no error in passing the impugned order Learned Magistrate has perused the entire case diary as well as the evidence collected by the investigating agency and accepted the final report by discharging the opposite party No. 2 to 7.

In support of his contention he cited the decision of Hon'ble Supreme Court passed in the case of **K. Chandrasekhar Vs. State of Kerala and Ors. (1998) 5 SCC 223**

> ***In Manu Sharma V. State (NCT of Delhi) (SCC p. 80, para 199), the Court stated that it is not only the responsibility of the investigating agency, but also that of the courts to ensure that investigation is fair and does not in any way hamper the freedom of an individual except in accordance with Law. An equally enforceable canon of the criminal law is that high responsibility lies upon the investigating agency not to conduct an investigation in a tainted or unfair manner. The investigation should not prima facie be indicative of a***

> ***biased mind and every effort should be made to bring guilty to law as nobody stands above law dehors his position and influence in the society. The maxim contra veritatem lex nunquam aliquid permittit applies to exercise of powers by the courts while granting approval or declining to accept the report.***

Learned Advocate for the OP also cited another decision of Hon'ble Supreme Court passed in **Hasan Bhai Bhali Bhai qureshi Vs State of Gujrat AIR (2004) Supreme Court 2078** wherein the Hon'ble Supreme Court has held that the power of Magistrate of further investigation u/s 173(8) of Cr.P.C. cannot be ruled out merely on grounds that it may delay trial, so even after the court take cognizance of offence on police report submitted by police. It is upon to police to conduct further investigation in a proper manner on fresh effects coming to light, police should seek permission of court for further investigation.

He also cited a decision of Hon'ble Supreme court passed in **Vinay Tyagi Vs. Irshad Ali (2013) 5 SCC 762**

> ***27. Here, we will also have to examine the kind of reports that can be filed by an investigating agency under the scheme of the Code.***
> ***27.1 Firstly, the FIR which the investigating agency is required to file before the Magistrate right at the threshold and within the time specified.***
> ***27.2 Secondly, it may file a report in furtherance of a direction issued under Section 156(3) of the Code.***

> ***27.3 Thirdly, it can also filed a "further report", as contemplated under Section 173 (8).***
> ***27.4 Finally, the investigating agency is required to file a "final report" on the basis of which the court shall proceed further to frame the charge and put the accused to trial or discharge him as envisaged by Section 227 of the Code.***
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> ***28. The next question that comes up for consideration of this Court is whether the empowered Magistrate has the jurisdiction to direct "further investigation" or "fresh investigation". As far as the latter is concerned, the law declared by this Court consistently is that the learned Magistrate has no jurisdiction to direct "fresh" or "de novo" investigation. However, once the reports is filed, the Magistrate has jurisdiction to accept the report or reject the same right at the threshold. Even after accepting the report, it has the jurisdiction to discharge the accused or frame the charge and put him to trial. But there are no provisions in the Code which empower the Magistrate to disturb the status of an accused pending investigation or when report is filed to wipe out the report and its effects in law. Reference in this regard can be made to K. Chandrasekhar v. State of Kerala, Ramachandran v. R. Udhayakumar, Nirmal Singh Kahlon v. State of Punjab, Mithabhai Pashabhai Patel v. State of Gujrat and Babubhai v. State of Gujrat.***

Heard the Learned Advocates.

Perused the materials on record also perused the impugned order passed by the Learned Magistrate, it appears that the Learned Magistrate has accepted the final report of the police on mistake of fact and discharge the accused persons.

The Learned Advocate for the State submits that the investigation was conducted in proper manner and the investigating agency after collecting further evidences think it necessary to file the final report which is based on the proper evidences. State is of opinion that the impugned order passed by the Learned Magistrate is not improper.

It further appears to me when the First Final Report was filed by the investigating agency vide FRMF 3 of 2011 dated 14.02.2011 the petitioner being the de-facto complainant filed a protest/naraji petition on 25.05.2011. On the said petition the de-facto complainant prayed for rejection of prayer of IO of discharges the accused persons and prayed for commit of the case to the Learned Court of Sessions. The same was turned down by the Learned Magistrate and he directed reinvestigation to the inspector in charge of Naihati GRPS personally. The said order of the Magistrate was not challenged before any of the forum. Thereafter the investigating agency again filed one final report vide FRMF 4 of 2014 dated 10.02.2012.

The petitioner herein has filed another naraji petition on 24.04.2012 on the basis of the same prayer which was actually early turned down by the Learned Magistrate. So it is clear that the petitioner has renewed his same prayer before the Magistrate again and again.

I have gone through the material along with the CD. I have also perused the impugned order passed by the Learned Magistrate Section 173 (8) empowers the Magistrate to conduct further investigation. The Supreme Court in **Hanshbhai Bhalibhai qureshi** (supra) has specifically held that the power of further investigation of the Magistrate cannot be ruled out even if Magistrate has taken cognizance of the offence.

Basically the criminal case and criminal trial usually conducted on the basis of the police report which collects the evidence. The Magistrate is empowered u/s 190 (b) Cr.P.C to take cognizance of an offence on the basis of a police report. If the police report is disclosed about the commission of an offence which is exclusively triable by a Court of Sessions, the Magistrate has the power to commit the case to the court of sessions. At the same time before committal of the case if the police authority intend to introduce some more evidences which is actually contrary to the charge sheet, the Magistrate has ample power to look into the new materials. It is true that the Magistrate has no power to evaluate the evidences of a case solely triable by the court of sessions but at the same time Magistrate is the only authority who has to determine whether this offence is actually triable by the Magistrate or by the Court of Sessions. In straightway the power of examination by the

Magistrate cannot be ruled out and it shall not be fettered by any provision of the Code of Criminal Procedure.

In this particular case the charge sheet has been submitted before the Learned Magistrate form which he has taken cognizance; after sometime some further evidences came on light to the investigating agency who prayed for further investigation. The power of further investigation of the investigating agency is always open till the conclusion of the trial of a criminal case. Thus I find no error of the Learned Magistrate to allow investigating agency to conduct the further investigation. Moreover, the material which was perused by the Learned Magistrate and his observations therein appears to me justified. Impugned order on the basis of the two final reports is not at all illegal or improper.

Considering the entire aspect I find no illegality in the impugned order passed by the Learned Magistrate. Accordingly the instant criminal revision got no merit and it is hereby dismissed.

CRR is dismissed.

Connected CRAN applications if pending, are also disposed of.

Any order of stay passed by this court during the pendency of the instant criminal revision is hereby vacated.

CD be returned.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)