

Special 03 of 2021

(CNR-WBHG01-000327-2021)

Order no. 33
22.09.2025

Instant case record is placed before me for passing the necessary common order in pursuance of one discharge petition dated 07.12.2024 under Section 250 of the BNSS filed on behalf of the accused persons with one protest petition and another petition for further investigation dated 03.07.2025 under Section 193(9) of the BNSS filed by the defacto complainant.

The learned Advocate for the accused persons submitted that on the basis of a court complaint under Sec. 156(3) Cr.P.C. filed by the complainant M/s Two Way Container Lines Private Ltd. (Regd. Office at Barabazar, P.S. Chandernagore) through its Managing Director Bijoy Gupta, Chandernagore P.S. Case no.90/19 dated 24.01.2019 was started. The I.O. of the case issued notice under Sec. 41A Cr.P.C. upon the accused persons. The I.O. without doing any investigation and by merely stating that the accused persons had failed to appear before him, he submitted chargesheet under Secs. 406/409/423/468/471/477/120B/34 of the IPC against the accused persons on mere presumption that they might have committed the alleged offences. FIR does not disclose commission of any offence by the accused persons. Complainant company has two directors and the accused Surjeet Patnaik is one of them. Therefore, the defacto complainant has no power to lodge any complaint on behalf of the company. The FIR is false and baseless with all distorted facts. The defacto complainant having connived with the police and persuaded them to file chargesheet against the accused persons. The accused persons namely Surjeet Patnaik, Vipin Kumar and Awadh Kumar Pandey when appeared at the P.S. on 12.12.2019 in compliance with the notice under Sec.41(A) Cr.P.C. and joined the investigation. No complaints were made ever before the CLB. The FIR allegations are primarily a civil dispute. The FIR was lodged for only to pressurize the accused persons to withdraw the cases pending in Saket and Rohini courts at Delhi. Chargesheet is submitted without any investigation and which is an abuse of the process of law. For want of any evidence against the accused persons, they are entitled to be discharged from this case.

The case decision of *Amrutbhai Shambhubhai Patel Vs. Sumanbhai Kantibhai Patel, AIR 2017 SC 774* is relied upon.

The learned Advocate for the defacto complainant submitted that the I.O. of the case has not seized any documents including electronic evidence regarding the loans, loan agreements and loan acknowledgements. The I.O. has not searched the properties of the de jure complainant company

being siphoned off by the accused persons. Investigation was done in incomplete and hasty manner. The malafide seeking of loans, agreements for such loans, the receipts of the amounts of loan, the subsequent issuance of cheques, the payments from the accounts of the company, remain uninvestigated. Prior to the inclusion of Section 409 IPC, several notice under Section 41A Cr.P.C. was served upon the accused persons but they did not join the investigation. Accused persons and the parties to the loan agreements are not interrogated by the I.O. Several physical properties of the company have been siphoned off and only part of it was returned to the company. The documents of such transit of properties was operated through M/s Super-Fast Logistics but there is no search and seizure in this regard. Therefore, this is a fit case and situation to direct further investigation of the case by another police officer of similar rank and file and even higher than that.

He relied upon the case decision of *Vinubhai Haribhai Malavia Vs. State of Gujarat, AIR 2019 SC 5233* which has overruled the judgement of *Amrutbhai* (supra). He further relied upon the case decisions of *Satishkumar Nyalchand Shah Vs. State of Gujarat, AIR 2020 SC 1185; State of Gujarat Vs. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294; Er. S. Ravichandran Vs. Tamil Nadu Water Supply & Drainage [W.P.(MD)4173 of 2011 of Madras H.C.]; Sajith Vs. State of Kerala (Crl. Rev. Petn 879 of 2024, Kerala H.C.)* in support of his contention.

The learned District P.P. Hooghly submitted that the case investigation of the I.O. is inadequate though chargesheet has been submitted against the accused persons. Required investigation is found missing as to what he finds in the CD of the case. Chargesheet has been submitted without due and proper investigation of the case from all corners. The prayer of defacto complainant is bonafide and so, the prayer for further investigation should be allowed by the learned Court by a police officer of similar rank other than this I.O.

Now, let us decide the matter under consideration.

I have serenely heard the defacto complainant, the State Prosecution and the accused side. I have gone through the entire CD running from page 1 to 163 so much so the case record.

Pursuant to an application under Section 156(3) Cr.P.C. being allowed by the learned ACJM, Chandernagore, I/C Chandernagore P.S. S.I. of Police Sher Ali Mondal started Chandernagore P.S. Case no.90/19 dated 24.06.2019. The case investigation was taken up by Mr. Mondal himself. He investigated the case till 30.06.2019. He visited the P.O. on 24.06.2019 which according to him is Barabazar, Chandernagore and prepared sketchmap with index. On 30.06.2019, he made over the case and in between, there was no investigation.

Further investigation of the case was taken up by the next I.O. S.I. of Police Monohar Bag and in between 30.06.2009 to 04.07.2019, there was no investigation. He examined the de facto complainant Bijoy Guha Mallick and recorded his statement u/s 161 Cr.P.C. on 05.07.2019.

CD was opened again on 15.07.2019 and there is no any investigation since after 05.07.2019. Notice under Section 41A Cr.P.C. was issued upon the accused persons on 28.08.2019 and since 15.07.2019 there is no investigation. This is all upto page 29 of the CD. Page 30 to page 33 are the copy of the notice so issued.

CD was opened again on 21.09.2019 and in between there is no any investigation. He collected 01 blank cheque Dhanalaxmi Bank Ltd. New Delhi, 63 account payee cheques, 01 terms of settlement, 03 replies to legal notice, 02 legal demand notice, 01 letter to Manager, Dhanalaxmi Bank Ltd., 01 letter to Two Way Container Lines Pvt. Ltd. and 08 vouchers and seized the same (**total 80 items**) as produced by the defacto complainant and by preparing a seizure list. Subsequently, those were returned on zimmanama to the defacto complainant on the same dated 21.09.2019 itself. Copies of the seized documents are tagged with the CD. The entire seizure and zimmanama matter runs from page 34 to 150 of the CD.

On 22.09.2019 notice under Sec.41A Cr.P.C. was issued upon the accused persons. Again reminder notice was issued on 10.10.2019. All this runs from page 151 to 158 of the CD. Page 159 to 160 is for dated 23.10.2019 of the CD about sending the notice to the accused persons through speed post. On 26.02.2020 CD is opened and on that date, the investigation is closed with the specific mention that the accused persons are long absconders with the prayer to issue warrant of arrest against them.

On 31.03.2020 chargesheet is submitted by the I.O. against the accused persons being C/S no. 33/20 U/S 468/406/423/471/477A/409/120B/344 IPC.

From the arguments put forward by the accused persons and from the defacto complainant so much so the prosecution, no investigation has been done except the seizure of the documents vide seizure list dated 21.09.2019. Accused side prayed for discharge of the accused persons because no any investigation has been done by the I.O. and at the same time, the defacto complainant and the prosecution side prayed for further investigation of the case as no investigation was done by the I.O. except the above seizure.

Only because the accused persons did not join the investigation though notice under Section 41A Cr.P.C. was issued several times to the accused persons, they should not have been chargesheeted and at the same time, the accused persons should not be discharged from the case on the same ground.

On the basis of the rival submissions and contentions of the parties as above so much so the contents of the petition for discharge, protest (narazi) petition and the petition for causing further investigation, the only point for consideration before me is whether the accused persons are to be discharged from this case or whether this learned Sessions Court should direct further investigation of the case.

It leaves no quandary that the I.O. had seized several documents from the defacto complainant (**total 80 items**), but did not investigate on those documents to verify and substantiate the allegations brought against the accused persons by the defacto complainant. So, it is without dispute that the I.O. submitted chargesheet without examining those by ascertaining its veracity and without examining the accused persons. It is fairly surprising to note that there is no single line statement being recorded of the defacto complainant and any witnesses whatsoever and even the accused persons by the I.O. of the case. Practically, there was no probe at all as to the allegations levelled against the accused persons. Mere seizure without evaluating those is no investigation at all, in my understanding of the alleged facts.

I am constrained to hold that there was incomplete investigation of the case and such being the position, just trial of the case is as if repudiated. It would not be correct to hold that courts should not intervene to protect and uphold due process and order further investigation.

In the case of *Amrutbhai* (supra), the Hon'ble Court has held that once chargesheet is submitted and cognizance is taken, the magistrate has no power to order further investigation.

The Hon'ble Supreme Court case decisions of *Vinubhai* (supra) and *Satishkumar* (supra) clearly override the restrictive reading in *Amrutbhai* (supra), restoring thereby the authority of the court to ensure fair and complete investigation by directing further investigation, even after filing chargesheet.

This is not a fit case for discharging the accused persons under Section 227 Cr.P.C. because discharge can be sought for only when no prima facie case is made out. But here, we have the issue is incomplete investigation, not complete absence of the alleged offence. Discharging the accused persons in such a situation, is as if giving license to the I.O. to accept such kind of flawed and incomplete investigation. The accused persons are hence, not entitled to get an order of discharge from this case. Instead, this is certainly a fit case to direct further investigation under Section 173(8) Cr.P.C.

The accused persons are not entitled to discharge as prayed for in light of the case decision of *Amrutbhai* (supra), as this decision has been clarified by later authoritative decisions in *Vinubhai* (supra) and *Satishkumar* (supra).

The competent police authority should therefore, be appropriately asked to depute a competent police person to cause further investigation.

In light of the above detailed discussions and observations, I do hereby conclude the matter with the ensuing order.

Hence it is,

Ordered

that the petition for discharge filed by the accused persons on dated 07.12.2024 stands *rejected on contest*.

The petition for causing further investigation filed on dated 03.07.2025 is hereby *allowed on contest*.

The Chandernagore Police Commissioner is hereby asked to forthwith depute a competent police person other than the previous I.O. S.I. of Police Monohar Bag to proceed for further investigation of the case. The next I.O. as to be nominated by him shall complete the case investigation as quickly as possible, preferably within next three months from the date of communication of this order and shall submit his final investigation report.

Let a copy of this order be sent to the CPC, Chandernagore for his information and taking suitable urgent action.

To **06.12.2025** for further investigation report.

Typed by me.

Additional Sessions Judge
1st Court, Hooghly Sadar
At Chinsurah.
JO Code: WB00753