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In the Court the Judge Special (POCSO) Court at Barasat, North 24 Parganas

Special Case No. 02 of 2022
CIS Registration No.02/22

Present: Sri Mukul Kumar Kundu,(J.O Code No.WB00654)
Judge, Special (POCSO)Court,
Barasat, North 24 Parganas.

(Madhyamgram P.S. Case No. 791/21 dated 27-12-2021 u/s 341/506/323/34 IPC
read with section 12 of POCSO Act, 2012)

Order dated
23-03-2023

Today is fixed for order in respect of petition dated 29-06-2022 filed on behalf of defacto complainant for further investigation of the case.

Defacto complainant files hazira.

Ld. Special P.P.-in-Charge and Ld. Lawyer for the defacto complaint are present.

Perused the petition and materials on record as well as submission.

It is submitted by Ld. Lawyer for the defacto complainant that immediate after incident the victim girl was taken to Madhyamgram Rural Hospital and thereafter went to Madhyamgram P.S. with medical prescription on 15-12-2021 but duty officer did not accept their complaint. Subsequently on 16-12-2021 the defacto complainant again went to Madhyamgram P.S. but she was harassed and one S.I. Bikash Dakua of Madhyamgram P.S. threatened her. Finding no other alternative she went to the Superintendent of Police, Barasat Police District on 17-12-2021 to lodge the complaint against accused. Thereafter as per instruction of Superintendent of Police the case was registered vide Maghysmgram P.S. Case No. 791 dated 27-12-2021 and said S.I. Bikash Dakua never investigated the case as no such prayer was made for recording the statement of victim girl under section 164 Cr.P.C. or no such statement of victim girl or complainant was recorded. Forming unholy nexus with the accused persons Investigating Officer S.I. Bikash Dakua of Madhyamgram P.S. after performing perfunctory investigation submitted FRMF vide No. 18/2022 dated 23-01-2022. He has prayed that despite there being sufficient prima facie materials to draw the ingredient of alleged sections FRMF was submitted and prayed for further investigation of the case.

Ld. Special P.P.-in-Charge submitted that investigation was not properly conducted by the I.O. so necessary direction may be given to the police department.

In Vinubhai Haribhai Malaviya Vs. The State of Gujrat, the Hon'ble Apex Court has observed that a fair and just investigation would lead to the conclusion that the police retain the power, subject, of course, the Magistrate nod under section 173 (8) Cr.P.C. to further investigation an offence till chatges are framed, but that the supervisory jurisdiction of the Magistrate suddenly ceases midway through the pre-trial proceeding,

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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 a prima facie guilty person is not left out. It has also been observed that 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 power remains within the discretion of a Magistrate.

All the citations so referred to by the Ld. Defence Counsel were decided prior to the decision so given by the Hon'ble Apex Court in Vinubhai Haribhai Malaviya (Supra). That being so, even after submission of charge sheet and taking cognizance, there is no impediment on the part of the court to allow further investigation on the prayer of the defacto complainant, so long trial is not commenced. Here in this case trial has not been commenced.

In Sri Indranil Mukherjj vs. State of West Bengal and anr., The Hon'ble High Court at Calcutta observed that submission of a report under section 173 (2) of Cr.P.C. does not preclude the power of Magistrate to direct further investigation by the investigating agency and submission of supplementary charge sheet thereon. The Hon'ble High Court had also observed that for the larger interest of justice and for fair trial it is imperative for the Magistrate to grant further investigation if it is seen that non-allowing of the same would amount to arming the police with unbridled power to exonerate any person from the periphery of investigation, as the same would be playing in to the hands of the I.O. who submitted charge sheet exonerating another person by not sending up him in the charge sheet with an ulterior design.

On careful perusal of the case docket, I find that alleged incident happened with the victim girl on 14-12-2021 and thereafter medical treatment of victim girl was done on 15-12-2021 at the hospital. After that police case was registered by Madhyamgram P.S. on the basis of FIR by the father of the victim girl vide Madhyamgram P.S. Case No. 791/21 dated 27-12-2021 under section 341/506/323/34 IPC read with section 12 of POCSO Act, 2012. During investigation medical examination of victim girl was done and some articles were seized but the statement of victim girl under section 164 Cr.P.C. was not done at the instance I.O. Actually there has not proper investigation and the investigation so transpiring from case diary is not at all satisfactory on that count. There are various other terrains apropos that investigation of this case, which have not been traversed by the investigating agency. Apart from that even after submission of charge sheet and taking cognizance, there is no impediment on the part of the court to allow further investigation on the prayer of the defacto complainant, so long trial is not commenced and in the present case trial has not been commenced.

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Keeping the said citations in mind, I have no hesitation to opine that there is no legal embargo in allowing further investigation on the score of proper investigation with regard to role and involvement of accused namely Sofi Uddin Mondal and Sajim Uddin Mondal in the alleged offence, in this regard it is also pertinent to be mentioned here that in 2015 (4) AICLT – 369 (SC) the Hon'ble Supreme Court has categorically opined that a Magistrate has got jurisdiction to ignore the opinion expressed by the investigating agency and must have emerged from the investigation. The observations made by this Court here to above, regarding the investigation so done by the I.O. of this case being not satisfactory, are quite sufficient to invite an order of further investigation on the score of proper investigation with regard to role and involvement of accused in the alleged offence.

In the spirit of the above discussion and juxtaposing the decisions so referred to above, I am of the opinion that the petition so filed by the defacto complainant for further investigation has got merit to be allowed.

Before parting, it requires mentioning here that by the amendment of Cr.P.C. that has been done in the year 2009, the legislatures have brought in some vital changes in the Criminal Procedure Code so far as regard to the status and the right of a victim and or a defacto complainant. Section 2 (wa), section 24 (8) proviso, 372 proviso of Cr.P.C. are a few such examples. In view of the amendments so done by the Amendment Act 05/19 a defacto complainant and or a victim has been bestowed with powers to move before the court, if situation so demands and if the situation is such that it infringes with the substantive right of a victim and or a defacto complainant. While passing this order, regard also have had to the legislative intent, with which the Code has been amended by the Amendment Act 05/19.

Hence, it is

O R D E R

that the petition dated 29-06-2022 filed by the defacto complainant for further investigation is allowed without costs, on the score or proper investigation apropos the deliberation so made in the body of this order. The further investigation is done by an officer, other than previous I.O.

Accordingly, I.C. Madhyamgram Police Station is hereby directed to depute a competent police officer not below the rank of S.I. of police other than previous I.O for further investigation of the case as mentioned above.

To 02.06.2023 for submission of I.O's report after making detailed investigation on the points as stated above.

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Let a copy of this order be sent to the I.C. Madhyamgram Police Station for information and taking necessary action.

Dictated & Corrected

Judge, Special (POCSO) Court

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Barasat, North 24 Parganas