

**In the Court of the Additional District & Sessions Judge,
Fast Track Court – I,
Basirhat, Dist.- North 24 Parganas**

Present

Shri Pradip Kumar Adhikary, WBJS,
J O Code (UID No.) - WB916,
Additional District & Sessions Judge,
Fast Track Court – I,
Basirhat, Dist.- North 24 Parganas.

CNR No.- WBNP 1000 0086 2022

SC No.- 14 of 2022

(Registration Number)

ST No.- 04 (07) of 2022

arising out of

Hasnabad PS Case No.- 38 of 2019 dated 19/01/2019

charge framed under section 302 of the Indian Penal Code, 1860.

State

v.

Nanda Das

Order No.- 15

21/12/2023

The sole (01) accused is produced from judicial custody and he is remanded there till next date.

Today is fixed for further evidence on behalf of the prosecution.

The Ld. PP-in-Charge Shri Raja Bhawmick is present by filing hazira but he has not filed hazira of any witness.

The Ld. PP-in-Charge has filed an application under section 311 CrPC stating that in surathal report there are two witnesses namely Raj Kumar Singh, Medical Officer of Taki Rural Hospital and Samaresh Das. It is further stated that Smt. Tanushree Roy, Ld. Judicial Magistrate, 1st Court, Basirhat recorded two statements under section 164 CrPC. But the Investigating Officer has not put their names in the charge-sheet as witnesses.

The Ld. PP-in-Charge has stated that the above named persons are very vital and essential witnesses and it is necessary to examine them. Hence, the Ld. PP-in-Charge has prayed for passing necessary order for summoning those witnesses for their examination.

Heard.

The Ld. Advocate Shri Bapi Gayen appointed by the SDLSC, Basirhat to conduct the defense on behalf of the accused has left the matter to the Court for passing appropriate order.

Considered the case diary produced by the Ld. PP-in-Charge and other materials on record.

It appears that on 19/01/2019 SI Debabrata Das conducted inquest of the deceased and prepared an inquest report (surathal report) citing Raj Kumar Singh, Medical Officer, Taki Rural Hospital and one Samaresh Das witnesses there.

It also transpires that on 24/01/2019 the Ld. Judicial Magistrate, 1st Court, Basirhat recorded statement of two witnesses under section 164 CrPC.

So, there is no iota of doubt that Smt. Tanusree Roy, the Ld. Judicial Magistrate, 1st Court, Basirhat, Raj Kumar Singh, Medical Officer, Taki Rural Hospital and Samaresh Das are vital witnesses and their evidence are essential to the just decision of the case. But surprisingly, the Investigating Officer has not cited them as witnesses in the charge-sheet.

Once a case has been registered, it must be followed by investigation. Investigation must result in filing final report or charge sheet.

In terms of observations of *H. N. Rishbud v the State Of Delhi : 1955 AIR 196 : 1955 SCR (1) 1150* and *M.C. Mehta v Union Of India : (2007) 1 SCC 110* it is crystal clear that after completion of investigation by the Investigating Officer a report has to be submitted to the Magistrate. The Investigating Officer may be an officer subordinate to the Officer-in-Charge of the police station, who has been authorised to hold investigation. But, the final step in the investigation, namely, the formation of the opinion as to whether or not there is a case to place the accused on trial is of the Officer-in-Charge of the police station and this function cannot be delegated.

According to the **Police Regulations of Bengal, 1943** when an officer-in-charge of a police station on completion of an investigation finds the charge proved and proposes to proceed against any person, he shall at one submit charge-sheet in B P Form No.- 39 which is the report prescribed under section 173 of the CrPC.

The **Police Regulations of Bengal, 1943** further mandates that a Circle Inspector shall supervise every case within his circle; and he shall visit the place of occurrence and test the evidence in every such case that is of important.

The **Police Regulations of Bengal, 1943** also provides that a Superintendent shall supervise the investigation of important special report cases and of all cases in which the conduct of subordinate police officers appears unsatisfactory. If, for special reasons, he is unable to supervise the investigation of any such case, he may depute an Assistant or Deputy Superintendent to do so.

It is categorically mandated in the **Police Regulations of Bengal, 1943** that a Superintendent is expected to take a share in the actual investigation of important cases.

The case diary of this case (**page 32**) reflects that the instant case has been treated as S R Case vide S R No.- 04 of 2019. The Superintendent of Police, Basirhat directed the SDPO, Basirhat to supervise the case. The CI, Hasnabad was also directed to submit PR – II through SDPO.

It is quite likely that mistakes or omissions may occur for which the supervising officer should point out to the IO about such omissions or mistakes.

The impugned charge-sheet highlights that on 29/03/2019 the concerned IO submitted charge-sheet which was forwarded by the Office-in-Charge, Hasnabad PS on 29/03/2019 and lastly, the same was forwarded by the Circle Inspector, Hasnabad PS on 09/04/2019 and ultimately, on 16/04/2019 the same was placed before the Ld. ACJM, Basirhat for taking cognizance.

From the case diary (**page 68**) it appears that the opinion of the Circle Inspector did not find place in the case diary. The opinion of the SDPO, Basirhat was also not taken there. However, under order of Superintendent of Police, Basirhat (**page 72**) charge-sheet was

submitted.

There is no doubt that non-citing of the above mentioned witnesses in the charge-sheet is a gross negligence on the part of the concerned investigating agency. Not only the Investigating Officer but also the concerned Officer-in-Charge, Hasnabad PS and Circle Inspector of Hasnabad as well the SDPO, Basirhat are responsible for the highlighted mistake or omission or negligence. The Superintendent of Police, Basirhat who finally approved the charge-sheet also closed his eyes over the issue.

The Court would like to place the matter to the Superintendent of Police, Basirhat with a direction to call for an explanation from the erring police officer(s) and take necessary action and the Court shall be informed of the action so taken by him by the next date positively.

The Court would also like to remind the Superintendent of Police, Basirhat that in CNR No.- WBNP 1000 0309 2018 / SC No.- 58 of 2018 / ST No.- 29 (01) of 2023 arising out of Basirhat PS Case No.- 1140 of 2017 dated 06/12/2017 the Investigating Officer of that case has not cited the victim girl, who is a disabled girl, as a witness in column no.- 14 of the charge-sheet.

In another case vide CNR No.- WBNP 1000 1945 2021 / SC No.- 204 of 2021 / ST No.- 12 (02) of 2023 arising out of Basirhat PS Case No.- 1138 of 2020 dated 17/10/2020 the concerned Investigating Officer has not cited victim woman of as a witness in column no.- 14 of the charge-sheet.

The Court is constrained to point out that not only this charge-sheet but many other charge-sheets were filed without complying the provisions of law which is required to be looked into by the Superintendent of Police of this Police District for the ends of justice.

So, far as the application under section 311 CrPC is concerned since the evidence of witnesses named in the petition are essential to the just decision of the case, the petition is allowed.

The prosecution is permitted to summons those witnesses and examine them in this case.

The prosecution is directed to expedite the trial.

To 01/02/2024 for submission of report by the Superintendent of Police, Basirhat PD and evidence of Raj Kumar Singh, Medical Officer, Taki Rural Hospital and Samarash Das;

To 02/02/2024 for evidence of CSW Nos.- 06 and Smt. Tanusree Roy, the Ld. Judicial Magistrate, 1st Court, Basirhat;

To 05/02/2024 for evidence of CSW Nos.- 02, 04 & 05;

To 06/02/2024 for evidence of CSW Nos.- 07, 08 & 09; and

To 07/02/2024 for evidence of rest CSWs in terms of section 231, Cr.P.C.

The Superintendent of the concerned Correctional Home is directed to produce the accused on the next date.

In compliance with the mandates of the Hon'ble Apex Court as well as our Hon'ble Court the Investigating Officer is directed to remain present during trial.

The Investigating Officer is also directed to keep the witnesses present in Court.

The Officer-in-Charge of the concerned Police Station is directed to ensure the presence of the Investigating Officer on the date(s) fixed along with witness(es).

If due to some unavoidable circumstances it is not possible for the Investigating Officer to remain present before the Court, the Officer-in-Charge shall depute any other

competent police officer who shall ensure the presence of witnesses before the Court on the date of recording of evidence.

It is the duty of the Investigating Officer to protect the witnesses and ensure their presence before the Trial Court, for taking to its logical conclusion. It will help both the victim and the accused person, to have speedy justice which pertains to their right to life as well.

The prosecution is directed to issue process for compelling the attendance of the witnesses and / or the production of the document or thing, if any and to inform the Investigating Officer.

Let a copy of this order be sent to the Officer-in-Charge of the concerned Police Station for compliance.

The Bench Clerk is directed to do the needful at once.

The case diary is returned to the Ld. PP-in-Charge.

Typed by me

Additional District & Sessions Judge,
Fast Track Court – I,
Basirhat, Dist.- North 24 Parganas.

Additional District & Sessions Judge,
Fast Track Court – I,
Basirhat, Dist.- North 24 Parganas.