

Sessions Case No.85 of 2021
CNR No. WBUD01-003624-2021
J.O Code No. WB00891

Order No.10

Dated 19/05/2022

Today is fixed for production and passing orders in respect of petition filed on behalf of accused on 03.03.2022.

Accused Krishna Kamal Adhikary @ Rana Adhikary is physically produced from J/C.

Ld.PP-in-charge is present and has filed hazira.

The accused is also represented by his Ld. advocate.

De-facto complainant appears through advocate and files Vokatnama.

By the petition dated 03.03.2022, the above named accused had made a prayer for further investigation of this case with a direction to collect the CDR Report of the phone numbers that are morefully described in the petition.

Referring to the same, Ld. Advocate for the above named accused had argued that the I.O of this case had hastily filed charge-sheet without verifying the call reports of various unknown numbers from which several incoming calls had come in the mobile numbers of the deceased on 07.05.2021 just before they left their house. The matter was repeatedly brought to the notice of the I.O and since he did not pay any heed to the same, petition was filed before the Superintendent of Police, Raiganj Police District. Request was also made by the Ld. Advocate of the above named accused for providing him with the CCTV footage of Bangar bus-stand at NH-34 dated 08.05.2021 and also Itahar P.S for the period 11.05.2021 to 14.05.2021 for the purpose of effective investigation of the case but such request was not being acceded to. The matter was also brought to the notice of the Deputy Inspector General of Police, Raiganj Range, with a request to intervene in the matter. Inspite of the same, pending receipt and verification of such CDR's, the I.O submitted charge-sheet with a clause of filing supplementary charge-sheet against the accused as and when such reports shall be available. Furthermore, at the time of submission of the charge sheet, the I.O had failed to comply with the statutory mandate of

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section 173(5) of Cr.PC and had not filed copies of the statements of witnesses recorded u/s 161 of Cr.PC alongwith the charge-sheet. Therefore, in the absence of such vital documents, the charge-sheet so submitted becomes illegal and no cognizance can be taken upon the same. Ld. Advocate further argued that the I.O having conducted investigation perfunctorily without proper verification of the mobile numbers, further investigation is necessary in the interest of justice for the purpose of eliciting the real truth.

Raising strong objection to such prayer, Ld.PP-in-charge submits that the present petition is absolutely baseless and have been taken out with an intention to delay the trial of this heinous offence where both the son and daughter-in-law of the de-facto complainant have been brutally murdered. It had also come out in the investigation that his daughter-in-law was also raped. If there remains any loopholes in the investigation of this case, then it is for the accused who shall be benefited from the same as onus is upon the prosecution to establish the involvement of this accused in commission of the offence beyond all reasonable doubt. The accused cannot dictate the course of investigation and misguide the I.O. He not only has the option to explain every circumstances appearing against him but also would be permitted to adduce evidence in his favour to prove his innocence in course of trial before judgment is passed. Contending that all provisions of section of 173(5) Cr.P.C had been duly complied with by the I.O and copies of all documents including the statements of the witnesses had been duly served upon the accused in compliance to the provisions laid down u/s 207 of Cr.P.C, he prays for rejection of this petition summarily and proceed with the trial of this heinous offence in an expedite manner.

Seen the materials on record including the written complaint, charge sheet and also the CD as produced by the Ld.PP-in-charge.

The matter was heard at length in presence of both sides.

In order to appreciate the real issue, it is necessary to take a brief glance at the background facts. The crux of the allegation is that on 12.05.2021 one *Ram Ranjan Sarkar* aged about 75 years had

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lodged a written complaint before the Itahar P.S alleging *inter alia* that the present accused being the resident of his village had taken a sum of Rs.4lakhs from him about a year ago with an assurance to secure a job for his daughter-in-law in the nursing branch of the health department of the Government. Thereafter, on 08.05.2021 at about 07:00 p.m in the evening, the accused arrived at his house and convinced his son and daughter-in-law to go to Siliguri with him for the purpose of interview for the said job. Subsequently, on 09.05.2021 though the accused returned back to his house, his son and daughter-in-law did not return and were missing. On the basis of such complaint, Itahar PS case no:224/21 dated 13.05.21 u/sec 363/365/420 of IPC was initiated. Then, during investigation, on the leading statement of the accused, their dead bodies were recovered from the house of one Pinaki Bose of Vidyasagar Pally. It was detected that the daughter-in-law of the defacto-complainant was also physically ravished. Several articles including the wearing apparels of the deceased persons, offending weapon, mobile phones and sum of Rs.10,000/- was recovered, some of which had been sent for forensic examination and DNA profiling. Thereafter, finding *prima-facie* involvement of the accused, charge-sheet was submitted within the statutory period for the offences u/s 363/365/420 IPC with adding section 302/201/376 of IPC. Since, forensic report from RFSL Jalpaiguri, CFSL Bhopal, and CDR report of Reliance Jio and Vodaphone Idea Ltd. could not be collected within that time, a prayer for filing supplementary charge-sheet was also made. Upon perusal of the materials on record, cognizance was taken by the Ld.CJM, Raiganj, Uttar Dinajpur, and after due compliance of the provisions of section 207 of Cr.P.C, the case was committed to the Ld. Sessions Judge, Uttar Dinajpur. It appears from the endorsement/signature of the present accused beside the order dated 15.09.21 that copies of all relevant documents had been duly served upon him. It also appears from order dated 26.11.2021 passed by the Ld. CJM, Uttar Dinajpur that on the prayer of the Ld. Advocate for the accused, relevant documents including CDR

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authentication report was also duly supplied to him. Copies of all the evidence collected during investigation including the statements of the witnesses recorded under section 161 as well as section 164 of Cr.P.C are duly paginated and kept in the CD which has been produced by the Ld.PP-in-charge at the time of hearing. The same had been duly forwarded in A-form addressed to the Ld. Chief Judicial Magistrate, Raiganj and signed by the IO. Such forwarding letter dated 08.08.21, clearly states that the case docket containing page nos.01 to 330 alongwith the charge-sheet of the case under reference is being submitted. Index of all such documents had also been prepared in that forwarding letter.

Just because the voluminous case diary is not attached with the charge-sheet and also the record but the same had been handed over to the Ld.PP-in-charge for conducting the prosecution case, it cannot be under any circumstances be claimed on behalf of the accused that the statutory provisions of Section 173 (2) as well as Section 173 (5) of Cr.P.C. had not been duly complied by the I.O. while submitting charge-sheet and for that reason the same is liable to be rejected. Such a proposition in my view is wholly misconceived and is liable to be rejected *in limini*.

Now, coming to the other aspect of the matter where prayer for further investigation had been made on behalf of this accused on the grounds already mentioned herein above. In this regard, I find substance in the submissions advanced by Ld.PP-in-charge. Prosecution has the burden to establish the involvement of the accused beyond all reasonable doubts and upon failure to discharge such burden in trial, the accused has the right to be acquitted. As rightly argued by the Ld.PP-in-charge, the accused will mandatorily get the opportunity to explain every circumstances appearing in evidence against him at the time of his examination under section 313 of Cr.P.C. He will also get the scope to adduce evidence in his favour, if he so desires. So, in my humble opinion, the grounds made out for further investigation of this matter also appears to be baseless. The accused has not been vested with the right to show

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the path of investigation or throw light on the same. In other words, his interference in investigation is uncalled for. On the other side, the septuagenarian *de-facto* complainant who had been deceived and whose son and daughter-in-law had been brutally eliminated did not express dissatisfaction over the investigation or had filed a *naraji*/protest petition till date.

A plain reading of sec 173(8) of Cr.P.C will reflect that on obtaining further evidence oral or documentary, subsequent to filing of charge-sheet under section 173(2) of Cr.P.C and even after cognizance has been taken, the officer-in-charge is empowered to forward further report or reports to the Ld. Magistrate in the prescribed format. Such power of the police officer is unrestricted where the Magistrate also has no power to interfere but it would be appropriate on the part of the investigation officer to inform the Court. In this particular instance, the IO has taken leave of the Court to file supplementary charge-sheet as and when forensic reports are made available. Such supplementary charge-sheet, if so filed, along with the earlier one shall have to be read conjointly and the cumulative effect of all such reports are required to be considered by the Court for all purposes including framing of charge or for determining whether there are grounds to presume that the accused had committed the offence.

Finally, the power to direct further investigation is required to be exercised sparingly in exceptional cases to meet ends of justice.

With such observations, the petition dated 03.03.2022 filed on behalf of the present accused is rejected on contest and disposed of.

CD be returned to the Ld.PP-in-charge.

Fixing **13.06.2022** for production and consideration of charge.

D/C by me

ADJ, FTC-II
Raiganj, Uttar Dinajpur

Addl. Sessions Judge
FTC-II, Raiganj.

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