

03.07.2026
Court No.34
S/L.5
sg

CRR 4356 of 2024

In the matter of : **Sweta Yadav @ Sweta Kumari & Anr.**
Petitioners.
Mr. Kusal Kumar Mukherjee
Mr. Narattam Acharyya

...for the petitioners.
Mr. Soumyajit Das Mahapatra
Ms. Madhuri Sinha
Ms. Upsana Banerjee
Mr. Bisal Roy

...for the O.P. No.2.

1. This revisional application has been filed under Section 482 and Section 401 of the Code of Criminal Procedure, 1973 corresponding to Section 528 and Section 442 of the Bharatiya Nagarik Suraksha Sanhita, against an order passed by Learned Additional Chief Judicial Magistrate, Khragpur in connection with G.R. No. 1006 of 2023 under Sections 498A/323/509/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act, 1961 whereby prayer for reinvestigation in the aforesaid matter has been allowed against her-in-laws /present petitioner nos. 1 and 2.
2. The factual matrix of the case unveils that aforesaid case was initiated at the behest of the opposite party no.2 by filing written complaint alleging inter alia of physical and mental torture as well as demand of dowry upon the opposite party no.2 since after their marriage. The said marriage was solemnized on 28.1.2022 on the basis of the said written complaint lodged before the All Women Police Station, Khragpur Town. A case was initiated being AWPS KGP Case No. 124 of 2023 for commission of offence under the aforesaid Sections on the basis of the said written complaint lodged before All Women Police Station, Khragpur Town against the nine accused persons including present petitioners.

3. On completion of investigation charge sheet was submitted against seven accused persons and the learned Magistrate took cognizance of the said chargesheet and vide order dated 14.8.2024 the present petitioners were not sent for trial in the aforesaid charge sheet. An application was filed by the opposite party no.2 praying for re-investigation before the Court of ACJM, Khragpur which was allowed and prayed for re-investigation .Being aggrieved thereby this revisional application has been filed.

4. Learned advocate representing the petitioner submits that the learned Magistrate has no jurisdiction to conduct the de novo or re-investigation in relation to the offence for which report has been filed in terms of Section 172 of the Code of Criminal Procedure. That apart once a report under Section 173(2) of the Code of Criminal Procedure has been filed it can only be cancelled, proceeded further or case closed by the Court of competent jurisdiction in accordance with law and neither the police nor a specialized investigating agency has any right to cancel the said report. Learned Magistrate can direct to conduct further investigation only in exceptional circumstances. However, the Magistrate possess no power to direct re-investigation. It is further submitted that in the order impugned the learned Magistrate observed that IO did not record statement of the defacto-complainant under Section 161 and did not bring before the learned Magistrate to record her statement under Section 164 of the Code of Criminal Procedure and the Learned Court found justification in the prayer of the defacto-complainant and allowed such prayer for re-investigation which is not sustainable in the eye of law.

5. Learned advocate put reliance upon decision reported in **(2013) 2 C Cr LR (SC) 83 Vinay Tyagi Vs. Irshad Ali @ Deepak & Ors** in this regard .

6. Learned advocate representing opposite party no.2 on the other hand raises vehement objection and submits that there is no infirmities in order passed by the learned Magistrate and mere acceptance of incorrect phraseology by the learned Magistrate would not inure in favour of the petitioner. It is specifically argued that when specific reason was assigned by the learned Magistrate it

demonstrate clearly that there was sufficient application of mind by the learned Magistrate while passing such order which ought to have been treated as 'further investigation' and not as 're-investigation'. In this regard, learned advocate further relied upon decision reported in **2007 SCC Online Cal 604 : 2008 Cri L.J 841 Prabir Kumar Chatterjee Vs. State of West Bengal & Ors.**

7. Heard the submission of both the learned advocates. On perusal of the record as well as the submissions advanced by both the learned advocates the seminal issue to be decided is whether learned Magistrate is denuded of any power to direct 're-investigation' or 'fresh investigation' or whether due to mistake of the nomenclature or the incorrect phraseology by the petitioner/opposite party no.2/defacto-complainant in drafting their application or accepting the same in the order portion can itself be treated as not having legal sanctity in the eye of law.

8. In the decision of **Vinay Tyagi (supra)** it was specific question that was raised before the Hon'ble Supreme Court and there it was observed 'further investigation' is whether the investigating officer obtains further oral and documentary evidence after final report has been filed before the Court in terms of Section 173(8). It is the continuation of a previous investigation and, therefore, is understood and described as a 'further investigation'. It was further held that scope of 'further investigation' is restricted to the discovery of further oral and documentary evidence. The Hon'ble Supreme Court observed and held that the learned Magistrate has no jurisdiction to direct fresh or *de novo* investigation. However once the report is furnished the Learned Magistrate has the jurisdiction to accept or reject the same right at the threshold. There is no provision in the code which empowers the Magistrate to disturb the status of an accused pending investigation or when report is filed, to wipe out the report and effects in law.

9. In paragraph 30 of the said decision Hon'ble Supreme Court analyzed the various judgements and arrived at a conclusion which reads as follows :

30. *"Having analysed the provisions of the Code and the various judgments as afore-indicated, we would state the following conclusions in regard to the powers of a Magistrate in terms of Section 173(2) read with Section 173(8) and Section 156 (3) of the Code.*

1. The Magistrate has no power to direct 're-investigation' or 'fresh investigation' (de novo) in the case initiated on the basis of a police report.

2. A Magistrate has the power to direct 'further investigation' after filing of a police report in terms of Section 173 (6) of the Code.

3. The view expressed in (2) above is in conformity with the principle of law stated in Bhagwant Singh's case (supra) by a three Judge Bench and thus in conformity with the doctrine of precedence.

4. Neither the scheme of the Code nor any specific provision therein bars exercise of such jurisdiction by the Magistrate. The language of Section 173(2) cannot be construed so restrictively as to deprive the Magistrate of such powers particularly in face of the provisions of Section 156(3) and the language of Section 173(8) itself. In fact, such power would have to be read into the language of Section 173(8).

5. The Code is a procedural document, thus, it must receive a construction which would advance the cause of justice and legislative object sought to be achieved. It does not stand to reason that the legislature provided power of further investigation to the police even after filing a report but intended to curtail the power of the Court to the extent that even where the facts of the case and the ends of justice demand, the Court can still not direct the investigating agency to conduct further investigation which it could do on its own.

6. It has been a procedure of propriety that the police has to seek permission of the Court to continue 'further investigation' and file supplementary charge-sheet. This approach has been approved by this Court in a number of judgements. This as such would support the view that we are taking in the present case."

10. On perusal of the decision of **Prabir Kumar Chatterjee (supra)** as relied upon by the learned advocate by the opposite party also it is seen question arose before the Court whether order of the learned Magistrate for re-investigation of the case or legally justifiably or not.

The Hon'ble Supreme Court took note of the decision in *Abhinandan Jha vs Dinesh Mishra* AIR 1968 SC117 where it was held that the Magistrate has the jurisdiction to disagree with a final Report and can taken cognizance of an offence under section 190(1)© of CrPC or may order further investigation under section 156(3) of CrPC . The Hon'ble court further considered *Popular Muthiah VS State Represented by Inspector of police* (2006)7SCC 296 wherein it was held by Hon'ble Supreme Court that the jurisdiction of the Magistrate in the matter of issuance of process or taking cognizance offence depends upon the existence of condition precedent thereto. In the said case lastly Hon'ble court held that although the word 're-investigation' is used in the decision of the Hon'ble Supreme Court in *Popular Muthiah(supra)*, to all intents and purposes it is actually a direction for 'further investigation' and therefore held that the order passed by the learned Magistrate was not bad in law.

11. In the light of the above proposition of law as laid down by the Hon'ble Supreme Court let me come to the fact and circumstances of the case where the complaint was lodged by the opposite party no.2 before the Officer-in-charge against her parent-in-law, husband and as well as other in law including present petitioner nos. 1 & 2 who happens to be sister-in-law. Primarily on perusal of the entire written complaint it is apparent that the complaint lacks specific detailed description of the torture inflicted by the present petitioners upon opposite party no.2. In the chargesheet the investigating officer discussed the process of investigation and that examining complaint and after recording her statement under Section 161 he submitted the report whereby it was specifically mentioned that in column no.13 that the present petitioners /accused may be discharged from the case as their involvement with the incidents were not proved. Thereafter defacto-complainant filed the application for re-investigation with

specific averment that the investigating officer without mentioning the adequate reasons and lack of investigation not sent up 2 F.I.R named accused persons in serial nos. 8 and 9 qua the despite the specific part played by them was described in the written complaint .

12. Learned Trial Court after hearing parties observed in his order that the I.O did not record their statement under Section 161 of Cr.P.C and did not bring him before the Learned Magistrate and the allegation in respect of defacto-complaint against her sister-in-law were accordingly not investigated properly and thereafter found justification in the prayer for re-investigation and directed the I.O to re-investigate the case in respect of the specific allegations against those two persons being the petitioners herein .

13. This court from aforesaid factual matrix do not find substance in the argument that the word re-investigation as mentioned in the petition and in the order impugned is simplicitor a mistake of incorrect phraseology and the actual meaning and purport of such word is to be treated as 'further investigation' . Even assuming such contention it would be incorrect interpretation of law as discussed above since no new fact or circumstances were found to allow the prayer for further investigation.

14. More so it is apparent that even though the investigating officer recorded the statement under section 161 of CrPC the Learned Magistrate was of the view that no such statement was recorded and the allegations against the petitioners were not investigated properly .

15. It is settled proposition of law that the court must ensure the investigation is fair and does not in any way hamper the freedom of individual except in accordance with law .On going through the materials and factual aspect and the law laid down this Court is of the view there is sufficient reason to exercise the inherent power in order to prevent abuse of the process of law not to allow the proceeding as directed for re-investigation since the order is clearly not sustainable in the eye of law .

16. Hence this revisional application being CRR 4356 of 2024 is hereby allowed. Order passed by the learned Magistrate on 19.9.2024 is hereby set aside.

17. Parties are to act on the server copy of this order downloaded from the official *website* of the Calcutta High Court.

[Chaitali Chatterjee (Das), J.]