

**CRR 1463 of 2017**

**Srikanta Kumar Bag  
Vs.  
The State of West Bengal & Ors.**

Mr. Kallol Kumar Basu  
Mr. Anup Dasgupta  
Md. Jannat Ul Firdous ...for the Petitioner

Ms. Anasuya Sinha, Ld. APP  
Mr. Saryati Dutta ...for the State

Private opposite party is not represented.

The order dated 27<sup>th</sup> January, 2017 passed by the learned Additional Chief Judicial Magistrate, Contai, Purba Medinipur in GR(E) no. 347 of 2014 is under challenge in the present application. By the order impugned, learned court below discharged all the accused persons and accepted the final report submitted by the investigating agency and thereby rejected the petitioner's objection (Naraji) petition. By the self-same order, the court below allowed investigating officer's prayer to initiate prosecution under Section 211 of the IPC against the complainant.

Mr. Basu, learned counsel for the petitioner submits that the petitioner is the eldest son of deceased, Sudhir Chandra Bag and during the life time of his father, the third brother of the petitioner being the opposite party no. 2 herein used to create disturbances in the family with regard to the possession and occupation of the landed property owned and possessed by his deceased father.

Petitioner's further contention is that some disputes differences thereafter arose with regard to the distribution of the

shares of the ancestral properties and a civil suit being Title suit no. 226 of 2009 was also filed by the other brothers of the petitioner against the third brother, who was creating disturbances over enjoyment of the property. The petitioner's further case is that after receiving a summon in a proceeding under Section 107 of the Code of Criminal Procedure, the petitioner and his other brothers went to the court of learned Special Judge, Executive Magistrate at Contai in the morning on 7<sup>th</sup> April, 2014 and after completion of the court's business while they were returning at their village, they found that a cremation was going on at the village crematory ground and immediately the petitioner along with other brothers rushed to the place and on being asked, they came to know that their mother died on that very day and her cremation was going on at that place.

The petitioner further submits that they came to know from the local people that the opposite party was putting pressure upon the widow mother to hand over her immovable property and as she did not agree to such proposal, the opposite party no. 2 in a pre-planned manner, might have killed their mother taking advantage of the absence of the petitioner and his brothers who attended the court proceeding on that day and since the dead body of his mother cremated in his absence and without his consent, there was no scope to conduct post mortem examination over the dead body. .

Under the above-mentioned circumstances, the petitioner finding no other alternative, lodged a complaint under Section 156(3) of the Code narrating the entire incident before the court and on being satisfied, the concerned Magistrate directed the

Officer-in-charge, Bhagwanpur police Station to start investigation and accordingly, Bhagwanpur police Station case no. 58 of 2014 was started against the opposite party under Section 302/201/176/34 of the IPC. However, after completion of the investigation, the police submitted a final report praying for discharge of the accused persons from the said case. The petitioner after getting notice, filed written objection (Naraji Petition) against such final report but the learned Magistrate after hearing both the parties, was pleased to accept the final report and was pleased to drop the proceeding and thereby also discharged the accused persons from their bail bonds.

Being aggrieved by the order impugned, learned counsel for the petitioner submits that the learned Magistrate ought to have considered that the manner how the mother of the petitioner was cremated by the opposite party no. 2 along with other accused persons without having any intimation of death to her other sons namely, the petitioner and other brothers and also in the manner in which they have not allowed them to perform the last rituals of their mother, speaks about the motive as well as interest of the opposite party herein to kill his widowed mother and the investigating agency ought to have made proper investigation to that extent but instead of that relying upon some forged and manufactured documents, the investigating agency came to a conclusion that it was a case of natural death and learned court below without applying judicial mind, had accepted the said final report. According to the petitioner, there are sufficient materials about the animosity among such brothers of the petitioner over the issue of ancestral property left by their deceased father but

the investigating agency in a mechanical and perfunctory manner, submitted the final report which ought not to have accepted by the court below and the order impugned is a cryptic one and is not a speaking order and as such, it is liable to be set aside.

Learned counsel for the petitioner in support of their contention, relied upon a judgment in the case of **Perumal Vs. Janaki** reported in **(2014) 5 SCC 377** .

Learned counsel for the State placed the case diary and submits that materials disclosed in the case diary does not make out any offence against the alleged offender and as such, the investigating agency was justified in submitting the final report in the form of FRT, which the court below had rightly accepted and the order impugned does not call for any interference.

I have heard the submissions made on behalf of both the parties. On perusal of the materials available in the case diary, it appears that the present petitioner made statement under Section 161 of the Code before the investigating agency that if his brothers make an amicable settlement with him over the property dispute, he is agreeable to withdraw the instant case. The concerned doctor who treated the deceased mother, had stated that the deceased mother was suffering from cancer which is also corroborated from the statement of another doctor made under Section 161 of the Code. During investigation, the prosecution also collected the medical documents in connection with the deceased mother to show that she was suffering from different ailments and most importantly, the daughter of the victim namely, Susama Jana had made statement before the learned Magistrate under Section 164 of the Code, wherein she is clearly

stated that she was physically present when her mother died and she died due to cancer.

In view of the aforesaid materials that were collected during investigation, I have no other option but to conclude that the order impugned, accepting the final report submitted by the investigating agency during investigation, does not suffer from any perversity or impropriety and therefore does not call for interference. However, the portion of the order by which the court below opined that there exists just and lawful ground to initiate proceeding under Section 211 of the IPC against the complainant and thereby allowed the investigating officer's prayer to initiate proceeding, is perverse in view of the fact that even if any offence is disclosed under Section 211 of the IPC, no court can take cognizance except in the manner specified under Section 195 of the Code. In this context, Section 195 of the Code may be reproduced below:-

*"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. – (1) No court shall take cognizance-*

*(b)(i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, Sections 193 to 196 (both inclusive), 199,200,205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any court, or*

*except on the complaint in writing of that court or by such officer of the court as that court may authorize in writing in this behalf, or of some other court to which that court is subordinate."*

Therefore unless a complaint in writing is made by the court concerned or by such officer of the court as the court may authorize in writing in that behalf or by some other court to which the court is subordinate, a prosecution under Section 211 of the IPC is not maintainable. It is settled law that before prosecuting a

person for making false charge under Section 211 of the IPC, he should be given by the Court an opportunity of substantiating his allegation. Therefore, where a Court accepts final report being untrue allegation and is of opinion that the complainant ought to be proceeded against under Section 211 of the IPC, the proper procedure for him to follow is to make complaint under Section 195 of Code of Criminal Procedure and not merely to allow any prayer made by the investigating officer to start prosecution under Section 211 IPC.

In such view of the matter, that portion of the impugned order which relates to allowing the investigating agency to initiate prosecution under Section 211 of the IPC against the complainant is hereby set aside.

CRR 1463 of 2017 is accordingly disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

**(Dr. Ajoy Kumar Mukherjee, J.)**