Form No. J(1)

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:
Hon'ble Justice R. K. Bag.

CRR 1410 of 2015

Bilayet Hossain @ Billal & Anr.
V.
The State of West Bengal.

For the Petitioners : Mr. Arindam Jana,

For the State : Mr. Aniket Mitra,

Heard on : 01.09.2015, 08.09.2015.

Judgment on : 23.09.2015

R. K. Bag, J.

The petitioners have prayed for quashing the proceeding of S.T. No.1 (3) of 2015 arising out of G.R. Case No.1408 of 2014 which corresponds to Tehatta Police Station Case No.720 of 2014 dated October 10, 2014 under Section 14B of the Foreigners Act, 1946 pending before the Court of Learned Additional Sessions Judge,

Tehatta, Nadia by filing revision under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

2. The backdrop of the revisional application filed by the petitioners is as follows: On October 10, 2014 at about 9.55 a.m. the Inspector-in-charge of Tehatta Police Station received information that one Bangladeshi National is residing in a rented house at Palashi para under Police Station Tehatta along with members of his family. The information was recorded in the general diary of the Police Station on October 10, 2014. The Inspector-in-charge of Tehatta Police Station accompanied by Sub-Inspector Pradyut Chakraborty and other police officers arrived at Palashi para at about 10.45 a.m. and found the petitioner no.1 residing in the house of Smt. Kanaklata Biswas for about six months after coming from Bangladesh. The petitioner no.2 being the wife of the petitioner no.1 resided along with the petitioner no.1 in the said house. As the petitioners failed to produce any document to establish that they are citizens of India, a specific criminal case was started against the petitioners on the allegation of committing offence under Section 14B of the Foreigners Act. The said criminal case being Tehatta Police Station Case No.720 of 2014 dated October 10, 2014 was investigated by one Chandan Dutta, Assistant

Sub-Inspector of Police. The Assistant Sub-Inspector of Police submitted charge-sheet in due course on completion of investigation disclosing offence under Section 14B of the Foreigners Act against the petitioners. The case was committed to the Court of sessions in due course. On October 30, 2015 Learned Additional Sessions Judge, Tehatta, Nadia framed charge against both the petitioners under Section 14A(b) of the Foreigners Act and against the petitioner no.1 under Section 467, 468, 471 of the Indian Penal Code.

3. Mr. Arindam Jana, Learned Counsel for the petitioner contends that the Assistant Sub-Inspector of Police cannot conduct the investigation of the criminal case when the Sub-Inspector of Police is available in Tehatta Police Station as per provisions of Regulation 207 of the Police Regulations, 1943 (in short referred to PRB). The next submission of Mr. Jana is that the Investigating Officer of the case submitted charge-sheet on December 22, 2014 disclosing offence under Section 14B of the Foreigners Act against both the petitioners and thereafter submitted supplementary charge-sheet on August 9, 2015 disclosing offence under Section 468, 471 of the Indian Penal Code against the petitioner no.1. According to Mr. Jana, the Investigating Officer has no authority under the law to file

supplementary charge-sheet under Section 173(8) of the Code of Criminal Procedure without the permission of the Court.

4. Mr. Aniket Mitra, Learned Counsel appearing on behalf of the opposite party State has produced copy of Notification No.4282-PL dated December 23, 2009 issued by Home (Police) Department, Government of West Bengal under Section 157(1) of the Code of Criminal Procedure and Notification No.4283-PL dated December 23, 2009 issued by the Home (Police) Department, Government of West Bengal, under Section 161(1) of the Code of Criminal Procedure and submits that the Assistant Sub-Inspector of Police can be deputed by the Officer-in-charge of any Police Station for conducting investigation and for recording statement under Section 161 of the Code of Criminal Procedure. Mr. Mitra specifically submits that both the above notifications issued under the specific provisions of the Code of Criminal Procedure by the State Government will override the provisions of Regulation 207 of the P.R.B., which was framed for running the administration of the police force of the State. He further submits that no right will accrue to the present petitioners for violation of provisions of Regulation 207 of the P.R.B., which is nothing but departmental instruction or administrative order issued

by the Government for guidance of the police department and the police officer who will violate the specific provisions of P.R.B. can be held liable for disciplinary action. The further submission of Mr. Mitra is that there is no conflict between the provisions of Regulation 207 of the P.R.B. and the above notifications issued by the Government of West Bengal on December 23, 2009. Mr. Mitra has urged this court to consider that the notifications issued by the Government of West Bengal authorising Sub-Inspector of Police to take up the investigation of criminal case have supplemented the departmental instructions laid down in Regulation 207 of the P.R.B. By placing reliance on "Istakuddin Mondal V. State of West Bengal" reported in (2005) 1 C Cr LR (Cal) 182 and "Hasanbhai Valibhai Qureshi V. State of Gujarat" reported in 2004 C Cr LR (SC) 865 Mr. Mitra submits that the Investigating Officer can carry out further investigation after submitting charge-sheet without taking permission of the Magistrate and file supplementary charge-sheet under Section 173(8) of the Code of Criminal Procedure even after taking of cognizance of the offence by the Presiding Officer of the Court.

5. Having heard the Learned Counsel representing both the parties, I find that Mr. Jana has challenged the criminal proceeding against the

petitioners on two grounds: first, investigation of Tehatta Police Station Case No.720 of 2014 dated October 10, 2014 by the Assistant Sub-Inspector of Police in spite of availability of Sub-Inspector of Police in Tehatta Police Station is done in violation of the provisions of Regulation 207 of the P.R.B. and secondly, the Investigating Officer of Tehatta Police Station Case No.720 of 2014 dated October 10, 2014 had no authority under the law to carry out the further investigation without any permission of the Magistrate and to submit supplementary charge-sheet under Section 173(8) of the Code of Criminal Procedure disclosing offence under Section 468, 471 of the Indian Penal Code against the petitioner no.1. On the other hand, Mr. Mitra has made two fold submissions: first, the notifications issued by the State Government authorising Assistant Sub-Inspector of Police to carry out the investigation have statutory force, whereas the provisions of P.R.B. are administrative instructions issued by the State Government for guidance of the police force of the State, and secondly the provisions of P.R.B. are complemented by the notifications issued by the State Government and as such there is no conflict between the same. It is necessary to reproduce the provisions of Regulation 207 of the P.R.B. which is as follows:

"207. **Duties of Assistant Sub-Inspectors. [S 12, Act V, 1861]**.- (a) The object of posting an Assistant Sub-Inspector to a police-station is to relieve the investigating Sub-Inspector of all clerical and routine duties. To ensure this relief superior officers should make Assistant Sub-Inspectors definitely responsible for these duties and punishable for omissions. The Sub-Inspectors will of course exercise general supervision but should not be held responsible unless there is gross neglect all round pointing to an entire absence of supervision.

(b) Assistant Sub-Inspectors shall be responsible for all returns and registers except the First Information Report, Case Diary, General Diary and Village Crime Note-Book. The first three cannot by law by made over to them unless they happen at the time to be officers in charge. Ordinarily entries in the Village Crime Note-Book will be made by the investigating officer or the officer who acquires information which is required to be entered, but the senior Sub-Inspector will be responsible for its proper maintenance.

(c) When the officer-in-charge and the junior Sub-Inspectors, if any, are absent or ill, the senior Assistant Sub-Inspector is competent under section 4(p), Code of Criminal Procedure, to assume charge of the station and to exercise any of the functions of an officer in charge. Except in unavoidable emergencies, however, he will not be employed in investigation. Even when the Sub-Inspector is absent, he shall, as a rule, on receipt of information of a cognizable case, do no more than take such preliminary steps (e.g., recording the first information report, and arranging for the pursuit of thieves) as may be necessary. Then, if the Sub-Inspector is within the limits of the police-

station, the Assistant Sub-Inspector shall send the complainant and the parties at once to him with a copy of the first information report. Only if the Sub-Inspector is ill or absent from his jurisdiction, shall the Assistant Sub-Inspector take up the investigation himself.

(d) When he can be spared from the station, he may and shall be freely deputed to pay night visits to surveilles, to enquire into their mode of living, to realise fines, to enquire into simple cases of unnatural death, to take command of patrols and parties of police detailed for guard, escort or similar duty."

6. The investigation of any cognizable offence is carried out by the Officer-in-charge of the Police Station as laid down in Section 156 of the Code of Criminal Procedure, which reads follows:

"156. **Police officer's power to investigate cognizable cases:** (1) Any officer-in-charge of a police station may, without the order of a Magistrate, investigate any cognizable case which a Court having jurisdiction over the local area within the limits of such station would have power to inquire into or try under the provisions of Chapter XIII.

(2) No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this Section to investigate.

(3) Any Magistrate empowered under Section 190 may order such an investigation as above-mentioned."

7. The Officer-in-charge of Police Station can carry out the investigation himself or can depute one of his subordinate officers not below such rank as the State Government may prescribe in this behalf to investigate the same. The relevant portion of provision of Section 157(1) of the Code of Criminal Procedure is as follows:

> "157. **Procedure for investigation**: (1) If, from information received or otherwise, an officer in charge of a police station has reason to suspect the commission of an offence which he is empowered under Section 156 to investigate, he shall forthwith send a report of the same to a Magistrate empowered to take cognizance of such offence upon a police report, and shall proceed in person, or shall depute one of his subordinate officers not being below such rank as the State Government may, by general or special order, prescribe in this behalf, to proceed, to the spot, to investigate the facts and circumstances of the case, and, if necessary, to take measures for the discovery and arrest of the offender."

8. The investigation is to be carried out by the police under Chapter XII of the Code of Criminal Procedure. Section 161 of the Code of Criminal Procedure lays down how the State Government can authorise police officer of certain rank for the purpose of examining any person who is acquainted with the facts and circumstances of the case in course of investigation. It is pertinent to quote Section 161(1) of the Code of Criminal Procedure, which is as follows:

> "161. **Examination of witnesses by police**: (1) Any police officer making an investigation under this chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case."

9. The Government of West Bengal has issued two notifications on December 23, 2009 authorising police officer not below the rank of Assistant Sub-Inspector for carrying out the investigation and for examination of any person acquainted with the facts of the case in course of investigation. Those notifications are as follows:

GOVERNMENT OF WEST BENGAL
HOME (POLICE) DEPARTMENT.

ORDER

No.4282-PL – the 23.12.2009 – In exercise of the power conferred by sub-section (1) of Section 157 of the Code of Criminal Procedure, 1973 (2 of 1974), and in supersession of earlier orders on the subject, if any, the Governor is pleased hereby to prescribe the officer not below the rank of Assistant Sub-Inspector to be deputed by the

officer-in-charge of Police Station for the purposes of sub-section (1) of section 157 of the said Code.

By order of the Governor,
A. Sen
Addl. Chief Secy. to the
Govt. of West Bengal.

GOVERNMENT OF WEST BENGAL
HOME (POLICE) DEPARTMENT

ORDER

No.4283-PL – the 23.12.2009 – In exercise of the power conferred by sub-section (1) of section 161 of the Code of Criminal Procedure, 1973 (2 of 1974), and in supersession of earlier orders on the subject, if any, the Governor is pleased hereby to prescribe the Police Officer not below the rank of Assistant Sub-Inspector for the purposes of section 161 of the said Code.

By order of the Governor,
A. Sen
Addl. Chief Secy. to the
Govt. of West Bengal.

10. While Regulation 207 of the P.R.B. lays down that the Assistant Sub-Inspector of Police is competent to act as the officer-in-charge of police station as defined in Section 4(o) of the Code of Criminal

Procedure, 1973 corresponding to Section 4(p) of the Code of Criminal Procedure, 1989, it is relevant to point out that any police officer above the rank of officer-in-charge of the police station may exercise the power of officer-in-charge of the police station under Section 36 of the Code of Criminal Procedure, 1973. However, on perusal of Regulation 207 of the P.R.B., I find that except in unavoidable emergency Assistant Sub-Inspector of Police will not be employed in investigation. It is also laid down in the said Regulation 207 of the P.R.B. that the Sub-Inspector of Police can take up the investigation only if the Sub-Inspector is ill or absent from his jurisdiction. The provisions of the P.R.B. clearly indicate that the Assistant Sub-Inspector of Police can be employed in carrying out investigation in unavoidable emergencies and when the Sub-Inspector of Police is ill or absent from his jurisdiction. The language used in framing Regulation 207 of the P.R.B. does not blatantly negate employment of Assistant Sub-Inspector of Police in carrying out investigation of criminal case. On the contrary, Regulation 207(a) of the P.R.B. has clearly laid down that the object of posting an Assistant Sub-Inspector of Police in a police station is to relieve the investigating Sub-Inspector of all clerical and routine duties and it is the duty of

the superior police officer to make the Assistant Sub-Inspector responsible for the duties and punish for the omissions. It is a fact that one Sub-Inspector of Police accompanied the Inspector-in-charge of the Tehatta Police Station at the time of conducting raid in connection with the instant case, but whether the said Sub-Inspector of Police was available for carrying out the investigation or was ill or absent from the station at the subsequent stage is a question of fact to be decided by the Court during the trial of the case. What transpires from the language used in Regulation 207 of the P.R.B. is that an Assistant Sub-Inspector of Police can carry out the investigation of the criminal case in unavoidable emergencies and when the Sub-Inspector of Police is ill or absent from his jurisdiction.

11. Now, the question which calls for determination of this court is whether the provisions of Regulation 207 of the P.R.B. will be treated as administrative instructions for guidance of the administration of the police force in the State or the same will have force of statutory rules. The rules can be issued by the Executive Government by virtue of the power delegated by the legislature under specific provision of the statute or under specific provision of the Constitution of India. On perusal of the provisions of the P.R.B., I do not find the

source under which Police Regulations, Bengal, 1943 were framed by the Executive Government. Moreover, the P.R.B. came into force in 1943 and the Police Act for running the administration of the police force of the entire country came into force in 1861. So, the question of framing of the P.R.B. under Section 12 of the Police Act, 1861 does not arise, particularly when the source of framing the P.R.B. is not disclosed in the P.R.B. itself. It is pertinent to point out that Indian Railways Vigilance Manual, 1996 which is also departmental code came up for consideration before the Supreme Court in "Chief Commercial Manager, South Central Railway V. G. Ratnam" reported in (2007) 8 SCC 212. In the said report the departmental traps were laid against three ticket examiners of the Railway Department. They were found to have collected excess amount of money for arranging sleeper class reservation accommodation to the passengers. The punishment was imposed on them in the departmental proceedings. The penalty imposed in the departmental proceedings was set aside by the Central Administrative Tribunal on the ground that the departmental traps were laid by the Vigilance Officers without following the mandatory provisions contained in Paras 704 and 705 of the Indian Railways Vigilance Manual, 1996. By setting aside the

order of the Central Administrative Tribunal the Supreme Court has held as follows in paragraph 24 of the report:

> "24. On consideration of the foregoing facts and in the teeth of the legal aspect of the matter, we are of the view that the instruction contained in Paras 704 and 705 of the Vigilance Manual, 1996 are procedural in character and not of a substantive nature. The violation thereof, if any, by the Investigating Officer in conducting departmental trap cases would not ipso facto vitiate the departmental proceedings initiated against the respondents on the basis of the complaints submitted by the Investigating Officers to the Railway Authorities. The instructions as contemplated under Paras 704 and 705 of the Manual have been issued not for the information of the accused in the criminal proceedings or the delinquent in the departmental proceedings, but for the information and guidance of the Investigating Officers."

By taking inspiration from the above report, I would like to hold that Regulation 207 of the P.R.B. was issued for running the administration of the police force and as such the provisions of Regulation 207 of the P.R.B. must be followed by the Police Officers of the State. A Police Officer who violates the provisions of Regulation 207 of the P.R.B. can be subjected to disciplinary action by the police department, but no right is accrued to the accused person for challenging the criminal proceeding on the ground that the provisions of the P.R.B. have been violated by the police force of the State. I

have come to the above conclusion by holding the provisions of the P.R.B. as administrative instructions issued to the Police Officers of the State for running the administration of the police force. In view of my above findings, I would like to hold that the provisions of Regulation 207 of the P.R.B. are administrative instructions issued by the Government which cannot have the force of statutory rules.

12. Now, the next question for consideration of the Court is whether the notifications issued by the State Government under Section 157(1) and under Section 161(1) of the Code of Criminal Procedure will have the statutory force. Both the notifications No.4282-PL dated December 23, 2009 and No.4283-PL dated December 23, 2009 have been issued by the State Government by the order of the Governor by citing the source of the statute which empower the State Government to issue the said notifications. In other words, the legislature delegated the power to the State Government under Section 157(1) of the Code of Criminal Procedure and under Section 161(1) of the Code of Criminal Procedure to issue the order empowering police officer of certain rank to investigate the criminal case and to record the statement of the persons acquainted with the facts of the criminal case during investigation. Since both the notifications have been

issued by the State Government by virtue of the power delegated by the legislature, I am of the view that both the notifications No.4282-PL dated December 23, 2009 and No.4283-PL dated December 23, 2009 issued by the State Government have statutory force. If there is any conflict between the notifications having statutory force with the provisions of the P.R.B. which is in the nature of administrative instructions issued by the State Government, the notifications having statutory force will prevail over the provisions of Regulation 207 of the P.R.B., which have authorised the Assistant Sub-Inspector of Police to carry out the investigation of the criminal case in unavoidable emergencies and when the Sub-Inspector of Police is ill or absent from his jurisdiction. The notifications issued by the State Government on December 23, 2009 under Section 157(1) and under Section 161(1) of the Code of Criminal Procedure, 1973 have authorised the Assistant Sub-Inspector of Police to carry out the investigation of the criminal case and to record the statement of the persons acquainted with the facts of the criminal case during investigation. So, on plain reading of the provisions of Regulation 207 of the P.R.B. and the notifications issued by the State Government, I do not find any conflict between the same. On the

contrary, the provisions of Regulation 207 of the P.R.B. are complemented by the notifications issued by the State Government on December 23, 2009. In view of my above findings, I do not find any merit in the submission made by Learned Counsel for the petitioners.

13. The next contention of Mr. Jana for challenging the criminal proceeding is that the further investigation was carried out by the Investigating Officer without the permission of the Magistrate and the supplementary charge-sheet was submitted under Section 173(8) of the Code of Criminal Procedure after taking cognizance of the offence by the Magistrate. In the instant case, the supplementary charge-sheet submitted by the Investigating Officer disclosed the offence under Section 468/471 of the Indian Penal Code against the petitioner no.1. It appears from the said supplementary charge-sheet produced on behalf of the opposite party State that the Ration Card produced by the petitioner no.1 in support of Indian citizenship is fake and that the transfer certificate of the school produced by the petitioner no.1 in support of his education in India as Indian citizen is also found to be not genuine. With the above factual matrix the question for consideration of the Court is whether the Investigating

Officer had the authority under the law to make further investigation after filing of the charge-sheet and to submit supplementary charge-sheet under Section 173(8) of the Code of Criminal Procedure at a belated stage of the proceeding.

14. The proposition of law laid down by our High Court in "Istakuddin Mondal alias Haradhan Mondal V. State of West Bengal and Ors." reported in (2005) 1 C Cr LR (Cal) 182 is that the power of the police to conduct further investigation, after laying final report, is recognised by Section 173(8) of the Code of Criminal Procedure. It is held in paragraph 18 of the said report that even after the Court took cognizance of any offence on the strength of the police report first submitted, it is open to the police to conduct further investigation and in such a situation the power of the Court to direct the police to conduct further investigation cannot have any inhibition. The Supreme Court has held in "Hasanbhai Valibhai Qureshi V. State of Gujarat" reported in 2004 C Cr LR (SC) 865 that the police can carry out further investigation without seeking any permission from the court, even when the court has taken cognizance of the offence on the basis of the police report submitted earlier on completion of

investigation. It is relevant to quote paragraph 12 of the said report which is as follows:

> "Sub-section (8) of Section 173 of the Code permits further investigation, and even de hors any direction from the court as such, it is open to the police to conduct proper investigation, even after the Court took cognizance of any offence on the strength of a police report earlier submitted."

The above proposition of law is reiterated by the Supreme Court in "Rama Chaudhary V. State of Bihar" reported in (2009) 2 SCC (Cri) 1059 wherein it is laid down that it is evident from Sections 173(2) and (8) of the Code of Criminal Procedure that even after submission of the police report on completion of the investigation, the police has a right to make further investigation, but not fresh investigation or reinvestigation. The further investigation is the continuation of the earlier investigation and not a fresh investigation or reinvestigation to be started ab initio wiping out the earlier investigation altogether. The law does not mandate for taking prior permission from the Magistrate for such further investigation by the police. The Supreme Court has clearly laid down in "Rama Chaudhary V. State of Bihar" (supra) that carrying out further investigation by the police even after filing of the charge-sheet is a statutory right of the Investigating

Agency and the same cannot be curtailed only because it has been filed at the late stage of the trial. In view of the above proposition of law laid down by our High Court and the Apex Court, I do not find any merit in the submission made on behalf of the petitioner that the police is not authorised under the law to carry out further investigation without permission of the Court after taking cognizance of the offence by the Court and file charge-sheet under Section 173(8) of the Code of Criminal Procedure.

15. In view of my above findings, I cannot persuade myself to quash the instant criminal proceeding as contended on behalf of the petitioner. There is no merit in this revision. As a result, the criminal revision is dismissed. There will be no order as to costs.

Let a copy of this judgment and order be sent down to the learned Court below forthwith for favour of information and necessary action.

The urgent photostat certified copy of the judgment and order, if applied for, be given to the parties on priority basis after compliance with all necessary formalities.

(R. K. Bag, J.)