

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

C.R.R. 1499 of 2020
(Via Video Conference)

Salik Zaman @ Salik Zama & Anr.
-vs.-
The State of West Bengal & Anr.

For the Petitioners : Mr. Sekhar Kumar Basu, Ld. Sr. Adv.
Mr. Bitosok Banerjee,
Mr. Bibaswan Bhattacharjee

For the State : Mr. Madhusudan Sur, Ld. A.P.P.'
Mr. Dipankar Paramanik

Heard on : 15.09.2021, 22.09.2021 & 24.09.2021

Judgment on : 28.09.2021

Tirthankar Ghosh, J:-

The present revisional application has been preferred by the petitioners challenging the charge-sheet filed in connection Bhadreswar Police Station Case no. 106 of 2017 dated March 11, 2017 under Sections 341/323/325/504/506/34 of the Indian Penal Code, 1860.

The prosecution case was initiated on the basis of a letter of complaint addressed by one Sagir Ahamed to the Officer-in-charge Bhadreswar Police

Station, Bhadreswar, Hooghly. The brief facts of the complaint which was registered as FIR are as follows :

On 10.03.2017 at about 9.30 A.M. the complainant went to Iqra Model Academy with a cheque of Rs.15000/- duly signed by him as one of the signatory being the president of Islamic Educational & Welfare Trust Champdani calling upon the second signatory namely, Mr. Ghulam Mohammad, who is the Secretary of the said Trust and who refused to sign the same in presence of his son Tarique Faisal and one Shahbaz Anwar. When the complainant asked Ghulam Mohammad that what is the reason of his refusal to sign the cheque then he replied that if Shahbaz Anwar did not withdraw the application made by him under RTI he will not put his signature on the cheque. Over this issue Shahbaz Anwar argued that it was his right to stop the forgery committed by Ghulam Mohammad and during this conversation the other sons and brothers of Ghulam Mohammad came to the school premises and started heckling the complainant and Shahbaz Anwar, while hearing such hue and cry some outsiders entered the school premises and all the accused persons in a pre-planned manner abused and attacked with lathi, iron rod and steel punch. All the accused persons caught hold Ershad Ahmed and Shahbaz Anwar and began to assault them rampantly with a view to kill them, causing severe fatal injury, as a result of which they had to be admitted at Chandannagore S.D. Hosipital and were fighting for their lives with serious wounds and stitches on their body. The complainant further alleged that Ghulam Mohammad has become musclemans of the institution with his family members and is extorting huge

amounts from several places on different pretext by dint of unlawful activities. The complainant, therefore, requested the Officer-in-charge of the Police Station to take steps against Ghulam Mohammad, Tarique Faisal, Osama Bakhtyar, Salik Zama, Md. Iqbal, Md. Salahuddin of 3, S.M. Road, Bye Lane-2 Champdani, P.O. Baidyabati, Dist. Hooghly.

Mr. Basu, learned Senior Advocate appearing for the petitioners namely, Salik Zama and Osama Bakhtyar contends that on conclusion of the investigation, charge-sheet has been filed being charge-sheet no. 207 of 2017 dated 31.05.2017 under Section 341/323/325/304/306/326/307/34 of the Indian Penal Code. According to the learned Senior Advocate, although, none died in connection with the instant case, the provision of Sections 304 and 306 of the Indian Penal Code has been incorporated which is grossly illegal and without applying any mind the Investigating Officer filed such charge-sheet, consequently in a mechanical manner the learned Court took cognizance of the offences. The second contention which has been advanced by the learned advocate appearing for the petitioners is that both this petitioners were not named by any of the witnesses including the eye witnesses and yet the investigating agency has submitted charge-sheet against them.

In view of the contention advanced by the learned advocate for the petitioners the Case Diary of Bhadreswar Police Station Case no. 106 of 2017 dated 11.03.2017 was called for and relied upon to clarify the first contention of the petitioner that although none expired or died in course of the assault why the provision of Section 304/306 of the Indian Penal Code

has been incorporated which is reflected from the certified copy of the charge-sheet so filed by the petitioners.

Mr. Madhusudan Sur, learned Advocate appearing for the State at the very inception submitted that the police authorities submitted charge-sheet under Sections 341/323/325/504/506/326/307/34 of the Indian Penal Code and the contention advanced by the petitioners that the provisions of Sections 304 and 306 of Indian Penal Code has been incorporated are not inconsonance with the records of the case. According to the learned advocate the same was a typographical error of office of the Court which issued the certified copy belonging to the Office of the learned Additional Chief Judicial Magistrate, Chandannagore, Hooghly.

In view of the aforesaid if there has been any typographical error the learned Additional Chief Judicial Magistrate, Chandannagore is directed to correct the same, as such a correction is a clerical error, falling within the ambit of Section 362 of the Code of Criminal Procedure and can be corrected by a court of law subsequently. Keeping in mind the facts of the case that none died to attract the provision of Section 304/306 of the Indian Penal Code nor was the charge-sheet submitted before the Court under the said Sections, any interference is uncalled for.

So far as the second point canvassed by the Senior Advocate appearing for the petitioners, I have perused the charge-sheet which has been submitted in connection with the instant case and I find that the prosecution has relied upon 12 witnesses which includes two doctors and two police Officers rest of the witnesses are Sagir Ahamed, complainant;

Mahatab Alam, eye witness; Qadhir Parwaz, eye-witness; Shakir Ali, eye-witness; Shahbaz Anwar, injured victim; Ersad Ahamed, injured victim; Nausad Pervej, seizure list witness and Tarique Anwar, seizure list witness.

The case reflects that after the statement of the complainant was recorded on the same date the statement of the witnesses Mahatab Alam, Quadhir Parwaz and Shakir Ali were recorded in close proximity of time after the FIR was registered. None of these four witnesses who were present at the time of the incident narrated the name of the present petitioners before the police authority. I have also checked the injury report and the statement of the injured Shahbaz Anwar who is also a charge-sheeted witness and who stated that he was assaulted by Tarique Faisal in his statement before the doctor and in his statement under Section 161 of Cr.P.C. before the Investigating Officer he referred the name of Ghulam Mohammad. Ershad Ahmed narrated before the Doctor that he was assaulted by Ghulam Mohammad, while in his statement before the police authorities he stated as Ghulam Mohammad and others. As such the consistent statement of all the witnesses to the case referred to a particular version i.e., 'Ghulam Mohammad and others' except the injury report which referred to another accused. I do not find that save and except the cause title of the complaint and the formal FIR the name of the present petitioners transpired anywhere in the Case Diary. The seizure list also reflects that the seizure of the iron rod was recovered, as produced by one Abdul Matallib. In such circumstances it was incumbent upon the investigating agency to atleast conduct TI Parade, so far as the identification of the accused persons who

have been named in the FIR are concerned. Bare allegations as 'Ghulam Mohammad and others' according to me are not sufficient to implicate the present petitioners in connection with the instant case.

In view of the documents which have been placed by the prosecution before this Court, I am of the opinion that so far as the present petitioners are concerned namely Salik Zama and Osama Bakhtyar who have not been subsequently named by any of the witnesses, no case is made out against them to face the ordeal of trial.

For the present the further proceedings so far as the petitioners namely Salik Zama and Osama Bakhtyar are concerned relating to Bhadreswar Police Station case No. 106 of 2017 and the charge-sheet filed therein against them the proceedings are hereby quashed.

However, if in course of trial their names surface by way of evidence with specific role assigned to them, the learned trial Court would be at liberty to invoke the provision of Section 319 of the Code of Criminal Procedure.

Learned Magistrate is directed to check the records of the case and incorporate necessary corrections before progressing further (if required at all).

Accordingly, CRR 1499 of 2020 is allowed.

Pending application, if any, is consequently disposed.

Interim order, if any, is hereby made absolute.

Case Diary be returned to the learned Advocate for the State.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)