

18.03.2021  
Item no.19  
Ct. No.2  
CHC

**CALCUTTA HIGH COURT  
IN THE CIRCUIT BENCH AT JALPAIGURI  
APPELLATE JURISDICTION  
(Through Video Conference)**

**C.R.R. No.3 of 2021**

In Re:- An application under Section 482 of the Code of Criminal Procedure, 1973.

In the matter of:-

Sri Gour Saha  
.....petitioner

Mr. Sunil Kumar Sarkar,  
Ms. Smita Sinha  
.....for the petitioner

Mr. Aditi Shankar Chakraborty, Ld. A.P.P.  
Mr. Ujjwal Luksom  
.....for the State

Mr. Nabankur Paul  
...for the o.p. no.4

The affidavit-of-service furnished by the petitioner be taken on record.

This is for quashing of a proceeding in connection with N.J.P. P.S. Case No.1330 of 2020 dated 10<sup>th</sup> November, 2020 under Section 306 of the Indian Penal Code, corresponding to G.R. Case

No.4930 of 2020, now pending before the court of learned Chief Judicial Magistrate, Jalpaiguri.

At the very threshold of this case, the prayer for quashment of the pending proceeding has been sought for in a case, when the case is admittedly at the initial stage of investigation.

Learned Advocate, Mr. Sunil Kumar Sarkar representing the petitioner submits that there is absolutely no material under Section 107 I.P.C. justifying a prosecution under Section 306 I.P.C. against the petitioner/accused, under whom the deceased employee worked as a Manager in respect of a Truck Terminus, meant for collecting parking fees.

Adhering to the page 25 of the revisional application being Annexure-'P-4', learned advocate for the petitioner submits that after the death of a deceased employee, petitioner sent a complaint to I.C. N.G.P. Police Station by Speed Post for registering a case in the interest of undertaking an investigation. The deceased suffered death in this case on 10<sup>th</sup> November, 2020. The F.I.R. was registered against the petitioner on 10<sup>th</sup> November, 2020. Making reference to the averments contained in F.I.R., it is submitted by petitioner that if the allegations are accepted entirely on its face value, as true, in that event also, the allegations raised against the petitioner under Section 306 I.P.C. will not make out a *prima facie* case against the petitioner. According to learned advocate for the petitioner, there is absolutely nothing against the petitioner so as to constitute abetment.

Reliance is thus placed on a decision by the learned advocate for the petitioner reported in **1992 AIR 604** rendered in the case of ***State of Haryana and ors. Vs. CH. Bhajan Lal and ors.*** in order to establish that there is no *prima facie* materials in the F.I.R. lodged against the petitioner justifying a prosecution under Section 306 I.P.C.

Further reliance is placed by learned advocate for the petitioner on a decision of the Hon'ble Apex Court reported in **2004 (13) SCC 292**, rendered in the case of ***Upkar Singh vs. Ved Prakash & ors.*** in order to establish that whenever the petitioner has submitted a complaint over the death of the deceased, and which has reached to police, the same could have been registered. By referring another unreported decision, rendered by a coordinate Bench of this Court in CRR No.1246 of 2017 with CRAN 759 of 2019 learned advocate for the petitioner proposes that the extraordinary power available under Section 482 Cr.P.C. should be made use of in the given circumstances of the case in order give protection to the petitioner from harassive prosecution, like the instant one.

Learned advocate, Mr. Ujjwal Luksom representing the State submits that the prayer for anticipatory bail of the petitioner has already been rejected upon consideration of the materials already collected in the C.D.

It is also contended by the learned advocate for the State that the case is at the initial stage of investigation.

As regards the complaint, if any submitted to the police, which is independent of the instant allegation, and for the non-registration of the same, enough remedy is left open there, which may be adequately adhered to in support of the grievance, if there be any.

Learned advocate, Mr. Nabankur Paul representing the de facto complainant supporting the stand of the State submits that petitioner is highly involved in this case behind the death of the deceased.

Having considered the submission of learned advocates for the parties and bearing in mind the materials placed in the C.D. together with the averments contained in the F.I.R., the Court is of the view that it is not the appropriate stage to accede to the prayer, proposed for quashment, upon visualization of the investigation, which is at the nascent stage.

The extraordinary power available under Section 482 of the Cr.P.C. in the given circumstances of the case should not be made use of.

The points raised in the complaint, alleged to have been submitted to I.C. N.G.P. Police Station, may operate as a defence at the time of trial, but upon noticing on which, it would not be a justified ground to allow the prayer for quashing at this stage.

For the reasons, as aforesaid, the revisional application fails being without any merits.

There will be no order as to costs.

With this, the instant revisional application stands disposed of.

I.O. of the case is present with copy of the C.D. and the C.D. be returned releasing the I.O. from this case.

Urgent Xerox certified copy of this order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

**(Subhasis Dasgupta, J.)**