

07.04.2022

Item No.71
Ct.No.34
dc.

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

C.R.R. 403 of 2020

**Sumanta Bhattacharyya
versus
The State of West Bengal & Anr.**

In Re: An Application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973.

Mr. Tapas Kumar Ghosh,
Mr. Tanmoy Chowdhury ... For the Petitioner.

Mr. Arijit Ganguly,
Mr. Sanjib Kumar Dan ... For the State.

Mr. Pradip Ray,
Mr. Ujjal Ray ... For the Opposite Party No.2.

Report dated 05.04.2022 submitted by Mr. Arijit Ganguly, learned advocate appearing for the State be kept on record.

The subject matter of challenge in the present revisional application relates to the grievance of the present petitioner being the complainant wherein the prayer for further investigation was refused by the learned Judicial Magistrate, 2nd Court, Hooghly Sadar in connection with Balagarh Police Station Case No. 67 of 2018 dated 07.04.2018.

The primary grievance of the petitioner is that in spite of one Raj Kumar Bala being named in the letter of complaint as also the doctor where the complainant has undergone treatment, the police authorities have not implicated him as an accused in the charge-sheet.

Mr. Arijit Ganguly, learned advocate appearing for the State has produced the case diary.

The reason for the said Raj Kumar Bala who has been impleaded as opposite party no.2 in this revisional application being left out in the charge-sheet is that according to the investigating officer, he has examined a number of witnesses as also collected documents to the effect that the said Raj Kumar Bala was suffering from Chicken Pox at the time of the incident.

I have scanned through the documents on which the investigating authority has relied upon which includes two documents of the medical officer, one a certificate stating that the petitioner was under treatment for suffering from Chicken Pox which is between 01.04.2018 and 16.04.2018. The said certificate has been signed and prepared on 17.04.2018. The other document which has been relied upon is a document of Ahmedpur B.P.H.C./R.H. which is a prescription issued on 09.03.2018 and the reverse side of the said prescription provides two dates i.e. 26.03.2018 and 17.04.2018. However, in the column referred to the list of diseases, the tick mark is on Influenza like illness and there is no tick mark so far as Chicken Pox is concerned.

I am unable to appreciate on the basis of which document, the Medical Officer of Ahmedpur B.P.H.C./R.H. has issued this stating to be Chicken Pox. At least there should have been an enclosure of a Medical Officer relying upon the foundation of preparation for such certificate. *Prima*

facie, the reasons assigned by the investigating officer are not acceptable to this Court. However, having regard to the fact that the incident referred to is of the year 2018 and more than four years have passed, at this stage, a direction for further investigation may delay the whole process.

Accordingly, liberty is granted to the petitioner, who happens to be the complainant, to file an application under Section 319 of the Code of Criminal Procedure before the learned Judicial Magistrate in seisin of the matter who would from the documents, already available on record, assess regarding the existence of suspicion so far as the opposite party no.2 is concerned.

Needless to state that such application under Section 319 of the Code of Criminal Procedure may be considered by the learned trial court having regard to the nature of the relief prayed for by the petitioner either prior to the stage of framing of charge or at the stage of framing of charge or after the examination-in-chief of the complainant is over.

Needless to state that the learned trial Judge would independently consider and exercise his discretion without being influenced by any observation made by this Court.

With the aforesaid observations, the revisional application being CRR 403 of 2020 is disposed of.

Interim order, if any, is hereby vacated.

All pending connected applications, if any, are consequently disposed of.

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

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

(Tirthankar Ghosh, J.)