

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 1205 of 2022

**Indranuj Chowdhury
Vs.
The State of West Bengal & Anr.**

Mr. Moyukh Mukherjee
Mr. Abhijit Singh
Mr. Suvasis Saha
....for the petitioner

Mr. Madhusudan Sur, APP
Mr. Dipankar Paramanick
...for the State

Item No.11

Heard & Judgment on: 08.09.2022

Bibek Chaudhuri, J.

1. The petitioner/accused has assailed an order dated 15th February, 2022 passed by the learned Judicial Magistrate, 1st

Court at Barrackpore in G.R. Case No.7954 of 2019 rejecting an application under Section 239 of the Code of Criminal Procedure filed by the petitioner praying for discharging him from the case on the ground of absence of any material to frame charge against the accused/petitioner.

2. It is necessary to mention that Bizpur Police Station Case No.207 of 2019 dated 23rd April, 2019 under Sections 342/323/506 of the Indian Penal Code and Section 75 of the Juvenile Justice (Care and Protection) Act against the petitioner on the basis of a written complaint submitted by one Goutam Majhi.
3. It was alleged in the said written complaint that the petitioner is the teacher-in-charge of Dariwala Free Primary School. The daughter of the de facto complainant was a student of Class-I in the said school. On 22nd April, 2019 the petitioner mercilessly assaulted the daughter of the de facto complainant and wrongfully confined under the high bench of the school. Other guardians of the students of the school rescued the daughter of the de facto complainant.
4. The aforesaid case was entrusted to one Sanjay Naskar, SI of Bizpur Police Station for investigation. The above named

Investigating Officer conducted investigation and finally submitted charge sheet against the petitioner under Sections 342/323/506 of the Indian Penal Code read with Section 75 of the Juvenile Justice (Care and Protection) Act.

5. The petitioner duly appeared before the learned Magistrate and on the date of consideration of charge, he filed an application under Section 239 of the Code of Criminal Procedure praying for discharge which was taken by the learned Magistrate.
6. It is pointed out by the learned advocate for the petitioner that in the charge sheet, one Tapas Gayen, Himangshu Mondal, Bijoy Rajak, Pabitra Sarkar have been shown as witness to the occurrence apart from the de facto complainant who is cited as charge sheeted witness No.7. I am in agreement with Mr. Mukherjee, learned advocate for the petitioner that the de facto complainant is not an eye witness of the occurrence. He lodged a complaint in the local P.S. against the petitioner on being hearing the alleged fact from other guardians. The Investigating Officer did not examine any of the guardians of the wards of the said school who allegedly saved the daughter of the de facto complainant

from the clutches of the petitioner. No student of the said school was examined. Even the victim girl was not examined. The Investigating Officer also did not pray for recording statement of the victim girl under Section 164 of the Code of Criminal Procedure. Charge sheeted witnesses Tapas Gayen, Himangshu Mondal, Bijoy Rajak, Pabitra Sarkar are hearsay witnesses. They did not see the incident.

7. The learned Magistrate rejected the application under Section 239 of the Code of Criminal Procedure filed by the petitioner on the ground that the victim was examined by a medical practitioner on the date of occurrence and he found a faint abrasion on the cheek of the victim. The Medical Officer did not record the history of assault. The victim did not state as to how she received injury on her cheek. Therefore, there is no direct evidence in the record.
8. The petitioner has filed a supplementary affidavit annexing the documents received by him in compliance of Section 207 of the Code of Criminal Procedure. All such documents support the contention of the petitioner.
9. Learned P.P.-in-charge has produced the case diary.

10. Having heard the learned counsel and on perusal of the entire materials on record this Court is of the prima facie view that S.I. Sanjay Naskar, Investigating Officer of this case practically does not know how to investigate into a criminal case. It may also be the fact that like other cases the Investigating Officer submitted charge sheet without any investigation after making some table work. When it is alleged that a minor girl of class-I was mercilessly beaten by the petitioner, it was the primary duty of the Investigating Officer to examine the victim girl, get her statement recorded under Section 164 of the Code of Criminal Procedure and keep such statement in the case diary. In order to ascertain the truth, it was the bounden duty of the Investigating Officer to examine other students of Class-I of the said school. It is his duty while investigating into the case to examine the guardians of the wards of the school who allegedly saved the victim from clutches of the petitioner. The Investigating Officer has failed to discharge his duties. He failed to collect any evidence against the petitioner. He failed to consider that on the basis of hearsay evidence charge against the accused person cannot be established.

11. The investigation of the instant case is a glaring instance of dereliction of duty on the part of the Investigating Officer.
12. Therefore, this Court proposes to departmental action against S.I. Sanjay Naskar of Bizpur P.S.
13. Let a copy of this order be sent to the Commissioner of Police, Barrackpore Police Commissionerate directing him to initiate departmental proceeding immediately on receipt of the copy of this order against S.I. Sanjay Naskar. The Commissioner of Police is further directed to inform this Court about the action taken by him against the above named police officer within seven days from the date of receipt of server copy of this order.
14. Learned P.P.-in-charge is directed to communicate server copy of this order to the Commissioner of Police, Barrackpore Police Commissionerate within three days from the date of this order.
15. In view of the above discussion, the order dated 15th February, 2022 passed by the learned Judicial Magistrate, 1st Court at Barrackpore in G.R. Case No.7954 of 2019 is set aside.

16. The learned Magistrate is directed to consider the application under Section 239 of the Code of Criminal Procedure filed by the petitioner in the light of the observation made hereinabove to come to a finding as to whether continuation of the proceeding will be an instance of the abuse of the process of the Court or not.
17. With the above order, the instant revision is disposed of.
18. However, to ensure specific action against the Investigating Officer, the record of the instant revision be listed under the heading "To Be Mentioned" on 19th September, 2022.
19. The parties are at liberty to act on the server copy of this order.

(Bibek Chaudhuri, J.)