

Form J(1)

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

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

**CRR 2581 of 2022**

**Krishnendu Rarhi  
Vs.  
The State of West Bengal & Anr.**

**For the petitioner : Mr. R. Chattopadhyay, Adv.,  
Mr. Sayan Chattopadhyay, Adv.,  
Mr. Ivan Sarkar, Adv.**

**Judgement on : 08.12.2022.**

**Bibek Chaudhuri, J.**

On 12<sup>th</sup> February, 2022 the *de facto* complainant filed an application under Section 156(3) of the Code of Criminal Procedure against the petitioner before the learned Additional Chief Judicial Magistrate at Barrackpore praying for sending the application to the I.C., Dum Dum Police Station to treat the same as FIR under Section 156(3) of the Code of Criminal Procedure and to register a specific case against the petitioner. In the application the *de facto* complainant made allegation against the accused for committing offence punishable under Sections 323/341/343/347/351/354D/376/383 of the Indian Penal Code. The learned Additional Chief Judicial Magistrate has passed the following order on 12<sup>th</sup> February, 2021:-

"This is an application under Section 156(3) of the Code of Criminal Procedure, 1973 filed by one Kalpana Bose.

Herein it has been prayed that let the matter be sent to the inspector in Charge of Dum Dum Police Station, 24-Parganas (North), for the purpose of registering the same as First Information Report and cause investigation in respect of the same by the said Police Station, followed by needful acts on the part of investigation agency.

Heard for the petitioner.

Perused the petition that is intended to be sent to Police for registering the same as FIR.

Considered.

This Court, given the material in hands, finds that the petition discloses prima facie existence of cognizable offence which requires investigation. Further it is also become evident that the complainant has duly complied with the requirement of Section 154(1) and 154(3) of Cr. P.C.

Given the nature of the layout of allegations against the accused named in the petition, this Court thinks that the same should be investigated by the concerned Police as per the prayer of the petitioner and report about commencement of investigation, marked with treating the instant petition as FIR. It is also become evident from the petition filed on affidavit that no case has been started by concerned P.S.

Accordingly, send the petition in hand to the I.C., Dum Dum Police Station with a direction in the Inspector in Charge thereof to treat the same as First Information Report disclosing a cognizable offence, only after causing a preliminary enquiry and thereafter submit compliance report. It is made clear that the Police shall cause

investigation as per the materials in the petition and will not be influenced by the section of offence mentioned in the nomenclature of the petition”.

In the impugned order there is no direction to delete the allegation containing offences punishable under Section 354D//376 of the Indian Penal Code. However on receipt of the said application Police registered Dum Dum Police Station Case No. 209/2021 dated 18<sup>th</sup> February, 2021 under Sections 323/341/343/347/351/383 of the Indian Penal Code. This Court does not find any reason as to why the offences under Sections 354D/376 were omitted. Though the application under Section 156(3) is absolutely explicit and vivid with the allegation of committing such offence. The *de facto* complainant/opposite party narrated the said facts giving specific dates and place where she was allegedly ravished by the petitioner.

It is contended by the Learned Advocate for the petitioner that between 12<sup>th</sup> February, 2021 and 18<sup>th</sup> February, 2021, the *de facto* complainant lodged a complaint before the I.C., Dum Dum Police Station on 15<sup>th</sup> February, 2021 and on the basis of the said complaint Dum Dum Police Station Case No. 210/2021 dated 15<sup>th</sup> February, 2021 under Sections 417/376 of the Indian Penal Code was registered.

It is contended by the learned Advocate that this is an instance of double jeopardy and accused cannot be tried twice for the same offence.

It is also contended by the learned Advocate for the petitioner that the learned Additional Chief Judicial Magistrate struck down Section 354D and 376 from the application under Section 156(3) of the Code of Criminal Procedure. Therefore, Dum Dum Police Station

Case No. 210/2021 actually being the subsequent complaint cannot be proceeded with and is liable to be quashed.

This Court fails to understand as to how the Police Authority while registering FIR Case No. 219/2021 dated 18<sup>th</sup> February, 2021 omitted Sections 354D/376 of the Indian Penal Code though there was specific allegation in the application against the petitioner.

The *de facto* complainant could not wait till 18<sup>th</sup> February, 2021 and filed a written complaint before the Police Authority for redressal of her grievances and the Police Authority finding *prima facie* material registered FIR Case No. 210/2021.

In view of such circumstances, I. C., Dum Dum Police Station is directed to tag both FIR Case No. 210/2021 and 219/2021 and investigate to the case together either by himself or by a competent Police Officer in his disposal.

In view of the above discussion, I do not find any merit in the instant revision and accordingly, the instant revision is dismissed.

A copy of this order be sent to the learned Public Prosecutor for communication to the I.C., Dum Dum Police Station for information and strict compliance.

**(Bibek Chaudhuri, J.)**

**Srimanta, A.R.(Ct.)**  
**Item No. 06.**