

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

IA No.CRAN/1/2023

In

CRR 322 of 2023

Sri. Sanjib Chakraborty

Vs.

Sri. Subir Ranjan Chakraborty & Anr.

For the Petitioner: Md. Sabir Ahmed,
Md. Abdur Rakib,
Mr. Biswajit Sarkar,
Mr. Dhiman Banerjee,
Mr. Suman Biswas.

For the State: Mr. Rudradipta Nandy,
Mr. Prasun Kumar Dutta.

For the defacto complainant:
Mr. Debabrata Ray,
Mr. Santanu Mukherjee,
Mr. Soumik Mondal,
Ms. Sarbani Mukhopadhyay,
Ms. Sovra Sarkar.

Heard on: 10 April, 2023.

Judgment on: 4 May, 2023.

BIBEK CHAUDHURI, J. : –

1. The petitioner has prayed for quashing of the proceeding in connection with Complaint Case No.AC 2622 of 2022 pending in the 9th Court of the learned Judicial Magistrate at Alipore.
2. Petitioner is an Inspector of Police at present in charge of Sonarpur Police Station. The court complaint was alleged by the opposite party No.1

against the petitioner stating, inter alia, that on 7th February, 2022 he noticed involvement of a private vehicle bearing Registration No.WB06N-0699. In the front of back screen of the said vehicle the word “POLICE” were written in read colour in order to create a false impression in the mind of general public as well as the public authorities that the said vehicle belongs to Police Department. Seeing the said vehicle, one Parag Mukherjee, Advocate made an application under the provision of Right to Information Act to the State Public Information Officer of West Bengal Police Directorate to ascertain as to whether the vehicle bearing Registration No.WB06N-0699 belongs to the Police Department or not. The Public Information Officer sent a reply that there is no record in the Police Department of the State of having vehicle No.WB06N-0699. After getting the said information with a forwarding letter dated 31st May, 2022 the complainant understood that the accused No.1/petitioner committed personation by showing his private vehicle publicly as the vehicle of the Police Department for the purpose of taking unlawful advantage from the general public as well as the public authorities inducing them for the purpose of illegal gain by the registered owner of the vehicle and wrongful loss to the general members of the public. Moreover, it appears from the records of the Motor Vehicle Department that the petitioner’s residence was under the jurisdiction of Ward No.104 of the Kolkata Municipal Corporation, where as the accused No.1 either intentionally or deliberately showed his residential address under the jurisdiction of Ward No.96 of the Kolkata Municipal Corporation. Thus, the petitioner committed

cheating by personation, forgery of valuable security either to make or transfer or receive valuable security money etc punishable under Section 419/420/467/468/471/170 of the IPC.

3. The above stated complaint was filed by the opposite party before the learned Additional Chief Judicial Magistrate (IC), South 24 Parganas at Alipore on 21st September, 2022 and the learned Magistrate took cognizance of offence under Section 190(1)(a) of the Code and made over the case to the learned Judicial Magistrate, 9th Court at Alipore for examination of the complainant under Section 200 of the Cr.P.C and further order. On 21st November, 2022 the complainant was examined under Section 200 of the Cr.P.C on the basis of his statement on oath and materials on record, the learned Magistrate issued process against the petitioner No.1 under Section 419/420/467/468/471/170 of the IPC fixing 27th February, 2023 for service return and appearance. The order of taking cognizance dated 21st September, 2022 and the subsequent order dated 21st November, 2022 are assailed by the petitioner in the instant revision.

4. It is submitted by Mr. Sabir Ahmed, learned Advocate for the petitioner that the petitioner is the registered owner of the vehicle bearing No.WB06N-0699. It is also admitted by him that the word "POLICE" is written in read colour on the front and back screen of the said vehicle because of the fact that the petitioner does not used the said vehicle for his personal use. The said vehicle is used for the purpose of conducting official work including raid and also to work out some secret information.

It is contended furthermore by Mr. Ahmed that previously the opposite party made a complaint against the petitioner on the same allegation with the officer-in-charge of Survey Park Police Station. Police took up the investigation of the said complaint. Notice was issued to the petitioner by one Niladry Pal, Sub-Inspector of Police. From the said notice it was ascertained by the petitioner that a complaint has been lodged with regard to his car for displaying a board written police thereof and for parking the vehicle in no parking area. On due investigation, police submitted prosecution report against the petitioner under Sections 39/192 of the Motor Vehicles Act, 1988. The petitioner was compelled to deposit a sum of Rs.600/- as fine with the treasury for such wrongful act. On the selfsame ground, the petitioner has been vexed twice which is not permissible in accordance with law. The complaint case ought to have been summarily dismissed in view of the fact that for the same offence proceeding was drawn up against the petitioner under Sections 39/192 of the Motor Vehicles Act and he was sentenced to pay fine for committing such offence.

5. Mr. Ahmed next submits that the complainant has filed the instant complaint on mere apprehension. He thought that by using the word "POLICE" on a private vehicle, the owner of the vehicle is prima facie guilty for committing offence of cheating of personation. It is submitted by Mr. Ahmed that the registered owner and user of the said vehicle is admitted a police officer. There is no allegation against the petitioner that he personated as public servant and thereby committed offence under

Section 170 of the IPC. Section 170 attracts when a person pretends to hold any particular office as a public servant, knowing that he does not hold such office. In the instant case the identity of the petitioner is that of a police officer he is an Inspector of Police therefore no allegation of personation attracts against the petitioner. The complainant failed to make out any case that the petitioner by using his personal vehicle as a vehicle of the Police Department dishonestly induced the person deceived to delivery any property to any person or to make any valuable security and thereby committed an offence under Section 420 of the IPC. In order to attract Section 420 of the IPC there has to be a dishonest intention from the very beginning which is sinequanon to hold the accused guilty for commission of offence of cheating. Even if the allegation made in the complaint is accepted to be true and correct, the petitioner cannot be said to have committed any offence of cheating.

6. According to Mr. Ahmed allegation of forgery and using a forged document as genuine against the petitioner is a myth as there is no ingredient made out in the complaint.

7. The learned Advocate for the petitioner next draws my attention to Memo No.TCR/241/2012 dated 19th June, 2012 issued by the Deputy Commissioner of Police, Traffic Department, Kolkata wherein the competent authority directed all officers and men of Kolkata Police to comply with certain directives. Amongst the said directives display of “KP” sign is prohibited on private vehicles. Violation of the above direction

makes a police personnel liable for violation of traffic rules. Such violation does not put the violator guilty for committing offence under IPC.

8. The learned counsel on behalf of the opposite party No.1/defacto complainant on the other hand submits that indisputably the petitioner wrote the word "POLICE" on the front and rear screen of his private vehicle. The petitioner has failed to produce any prima facie document to show that the said vehicle is or was used at any point of time in course of discharging official duties. Learned Advocate for the opposite party No.1 has submitted a written note of argument. It is stated by him that by displaying the word "POLICE" on the private vehicle, the petitioner had the opportunity to park traffic signal or to get some privileges under inducement by denying payment of parking fees etc. the petitioner may take advantage from the general public and official authorities with dishonest intention for wrongful gain causing wrongful loss to the general public. It is submitted on behalf of the opposite party that the petitioner is posted at Sonarpur Police Station as Inspector-in-Charge. It is stated by the petitioner in another proceeding under Section 397 read with Section 399 of the Code of Criminal Procedure before the learned District Judge at Alipore that the petitioner seldom gets a chance to meet his family due to official duties. He also stated that his family resides at 13 Middle Road, Kol-75.

9. In his written note of argument the defacto complainant has raised a doubt with regard to ownership and possession of the petitioner in respect of premises No.13 Middle Road, Kol-75 but the said facts are not

in issue in the instant revision. The opposite party vehemently disputed that the petitioner uses his personal car also for official duties. On the other hand, it is stated by him that the said car is always parked in front of his residence at the premises No.13 Middle Road, Survey Park, Kolkata.

10. The learned Advocate for the complainant further submits that being a government employee the petitioner must know that the undersecretary to the government of India issued an Officer Memo dated 30th September, 2022 directing the government employees not to mention government of India in their private/personal vehicles. The learned Advocate for the petitioner submits that from word "POLICE" on the private car of the petitioner causes a grave fear and anxiety in the mind of the common people. By writing the word "POLICE" on his personal vehicle the petitioner deliberately violated the directions of his superior authority with the intention to project the said vehicle as a vehicle of the police department and thereby prima facie case under Section 467/468/471 of the IPC is also established against the petitioner.

11. Having heard the learned Advocates for the petitioner and the opposite party and on careful perusal of the entire materials on record, this Court finds that the issue involved in the instant revision is as to whether the specific act done by the petitioner amounts to a penal offence under which the trial court has taken cognizance.

12. It is needless to say that it is not only the police personnel but officials of the State and Central Government the Judicial Officers, the representatives of the people, i.e., member of legislative assembly and

members of parliament and other dignitaries indiscriminately used their designation and the name of the office etc in their personal vehicles. It is almost regular experience of this Court that in spite of specific directions, even the High Court has not been able to stop this practice regularly committed by the judicial officers displaying their designation in their personal vehicles. However the question that falls for consideration in the instant case is as to whether such display of designation in the personal vehicle amounts to an offence under the Indian Penal Code or it is a violation of the traffic rules.

13. According to the Kolkata Police display of “KP” sign on the private vehicles is violation of basic traffic rules. In support of my contention let me court Memo No.TCR/241/2012 dated 19th June, 2012 issued by the Deputy Commissioner of Police, Traffic Department, Kolkata:-

“It has been alleged through public complaints that certain basic traffic rules are violated by the officers and men of Kolkata Police.

In view of the above all officers and men of Kolkata Police are directed to comply with the following directives.

1. Both rider & pillion rider to wear helmets while riding two wheelers.
2. Only IS-4151 standard helmets should be worn.
3. There should be no Triple riding on two wheelers.
4. Vehicles and Motorcycles should not be parked in “No Parking Zone”.
5. Stop line is to be adhered to.
6. Traffic Signs and one way restrictions should be followed.
7. Display of “KP” sign is prohibited on private vehicles.
8. All vehicles must have Pollution Under Control (PUC) Certificate.

This order will come into force with immediate effect and any breach of the order will be dealt with as per rules.

Sd/-

Deputy Commissioner of Police
Traffic Department, Kolkata”

14. I have thoroughly considered various provisions of the Indian Penal Code however I do not find violation of any penal provision under the IPC only for displaying the word “POLICE” on the front and rear screen of the personal vehicle of the petitioner.

15. The court complaint filed by the opposite party is totally based on apprehension, if not surmise and conjecture. It is alleged by the complainant that by using as personal vehicle with the word “POLICE” written thereon, the petitioner may violate traffic signal. He may with dishonest intention induce another person to part with any property or valuable security. Causing wrongful loss to the petitioner and he has used his personal vehicle at public glance as if the said vehicle belongs to the police department. This act amounts to forgery. The learned Magistrate who issued process against the petitioner fails to consider that an apprehension that a person may commit an offence cannot be a basis of allegation.

16. It is needless to say that there are different stages of crime, the first stage being the intention of the offender to commit a crime. This intention includes mens rea and actus reus. At the second stage comes preparation. In certain cases preparation is not punishable though there are exceptions in which criminal liability may be imposed. The third stage

is attempt to commit offence which is generally punishable under Section 511 of the IPC and when the attempt is successful there is accomplishment of crime.

17. The general rule and the law is that it is nearly impossible to prove that the accused made preparation to execute the crime. The exceptions to the general rule is stated in Sections 122,233,234,235,244,246, 247,255,256,257,399 and Section 474 of the IPC. Attempt to commit offence is generally punishable under Section 511 of the IPC. Beside there are Sections 121,131,307,308,309,326B,356,357,393 and 397 are punishable for an attempt to commit particular offences envisaged in the said sections.

18. In the instant case, no specific overt act has been complained by the opposite party against the petitioner which may come within the meaning of an offence under the penal code. The complaint was filed against the petitioner only on suspicion. I fail to understand as to how and why the learned Magistrate took cognizance of offence against the petitioner for committing offence under various penal provisions of IPC. Only allegation which has specifically made by the petitioner is that the petitioner parked his vehicle in no parking zone. Such act is punishable under the motor vehicle act and he was prosecuted under the Motor Vehicle Act and paid fine of Rs.600/-.

19. For the reasons stated above I do not find any ground for further proceeding of Case No.AC 2622 of 2022 pending before the learned

Judicial Magistrate, 9th Court at Alipore. Further proceeding of the above mentioned case will be abuse of the process of the court.

20. In view of the above discussion, the instant criminal revision is allowed. Complaint Case No. AC 2622 of 2022 pending in the 9th Court of the learned Judicial Magistrate at Alipore be quashed.

(Bibek Chaudhuri, J.)