

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 957 of 2019

Mojibur Rahaman

Vs

The State of West Bengal & Anr.

For the Petitioner : Ms. Sreyashee Biswas,
Ms. Benajir Hasna.

For the State : Mr. Saswata Gopal Mukherjee, Ld. P.P.
Mr. Arijit Ganguly.
Mr. Ashok Das.

Hearing concluded on : 04.09.2023

Judgment on : 27.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceedings being G.R. Case No. 2028 of 2017, pending before the Learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad, in connection with Farakka Police Station Case No. 359 of 2017 dated October 05, 2017 under Sections 341/325/326/307/427/506/34 of the Indian Penal Code and adding Section 302 of the Indian Penal Code, corresponding to Farakka Police Station Charge-Sheet No. 167/18 dated June 03, 2018.
2. The petitioner's case is that Farakka Police Station Case No. 359 of 2017 dated 05.10.2017 had been registered for investigation on the basis of a written complaint lodged by one Anjura Khatun with the Officer-in-Charge of Farakka Police Station inter alia alleging commission of offences by all the FIR named accused persons punishable under Sections 341/325/326/307/427/506/34 of the Indian Penal Code and added Section 302 of the Indian Penal Code.
3. **The allegation** leveled in the said complaint are inter alia to the effect that:-

“On 04.10.2017 at about 12:00 noon, all the FIR named accused persons started demolition of the common boundary wall made of Bamboo. It is further alleged that then the father of the defacto complainant namely – Naiful Sk along with one Tunu Sk, Tutul Sk, and Fichu

Sk brothers of the defacto complainant along with Champa Bibi, mother of the defacto complainant raised strong protested against the said act of all the FIR named accused persons, then all the FIR named accused persons started assaulting them. It is further alleged that due to such injury, the father of the defacto complainant has died in the hospital subsequently.”

4. The present petitioner submits that he was not named in the First Information Report although the same has been made by the eye-witness to the alleged incident.
5. It is further stated that on October 20, 2017, one Hasina Khatun lodged a counter written complaint with Farakka Police Station against the present defacto complainant and others for commission of offence punishable under Sections 447/323/325/506/34 of the Indian Penal Code. But Farakka Police Station did not register the said written complaint and compelled the said Hasina Khatun to file an application under Section 156(3) of the Code of Criminal Procedure, 1973 before the Court of the Learned Additional Chief Judicial Magistrate, Jangipur Murshidabad.
6. **The allegations so leveled in the said petition of complaint is as follows:-**

“That on 04.10.2017 at about 11.00 noon, the father of the present defacto complainant along with his three sons started demolishing the bamboo barrier between the property of the brother of said Hasina

Khatun, the defacto complainant of the counter case herein and also the house of the father of said Hasina Khatun. That the said property of the brother of said Hasina Khatun was newly purchased and the boundary wall made of bamboo was placed day before the said incident. It is further be noted that brother of said Hasina Khatun sustained serious fractured injuries on his arm as he was protecting himself from the attack on him as well as on his father and they were hospitalized for several days.”

7. The Learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad, thereby directed the Officer-in-Charge of Farakka Police Station to treat the said application as a First Information Report and to file a report to that effect.
8. As directed, Farakka Police Station has registered a case being Farakka Police Station Case No. 440 of 2017 dated 15.12.2017 under Sections 447/323/325/506/34 of the Indian Penal Code (G.R. Case 2481 of 2017).
9. It is stated that after completion of a purported investigation, the police authorities of Farakka Police Station submitted Charge Sheet vide Farakka Police Station Charge Sheet No. 167 of 2018 dated 03.06.2018 under Sections 341/325/326/307/427/506/34 of the Indian Penal Code, 1860 and added Section 302 of the Indian Penal Code, 1860 with the present petitioner and eight others being

arraigned as accused in the Court of the Learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad.

10. The petitioner further states that, on May 11, 2016 the brother of said Hasina Khatun, the defacto complainant of the counter case, namely Habibur Rahaman purchased the said plot of land regarding which the dispute arose between the neighbours.
11. That some of the witnesses of the above named case filed an application under Section 164 of the Code of Criminal Procedure, 1973 before the Learned Additional Chief Judicial Magistrate, Jangipur, Murshidabad for recording their statements before the Learned Court but the same was rejected on 13.12.2017.
12. On 23.02.2018, the statements under Section 164 of the Code of Criminal Procedure, 1973 of the three witnesses namely (1) Anjura Khatun, (2) Jerat Ali and (3) Tutul Sk has been recorded and on 26.02.2018, the statements under Section 164 of the Code of Criminal Procedure, 1973 of the two witnesses namely (1) Fitu Sk and (2) Champa Bibi @ Bewa has been recorded.
13. **Ms. Shreyashi Biswas, learned counsel for the petitioner** has submitted that the petitioner is the supporter of a particular political party, and in the run up to the current parliamentary elections, he had fallen afoul with certain police authorities, as he had raised questions regarding certain illegalities being perpetrated by another prominent party. Subsequently, when the police had pressurized him to act as

per their dictates and to stop complaining of foul play, he had refused to do so, and this case is a result of vindictive police action to teach the petitioner a lesson and ensure that he is incarcerated for no rhyme or reason.

- 14.** That the petitioner had been called over to the police station for settlement of the disputes with the rival Political party, and thereafter the petitioner came to know that he was being charged with murder, in a completely ridiculous attempt by the police to fabricate the case with the assistance of stock witnesses and manufactured allegations.
- 15.** The petitioner had no knowledge or involvement with any of the allegations that has been sought to have been made out as against him, and the entire case is one that has been crafted and manufactured by the investigating agency at the behest of a malicious de-facto complainant arising out of political rivalries and vendettas.
- 16.** That all allegations made against him is wholly false and manufactured and have no truth or substance whatsoever. The petitioner has no involvement in the said alleged incident in any manner or at all, and are innocent victims of the instant proceeding which have no merit whatsoever, and are based in internecine disputes and political rivalries as is admitted in the First Information Report itself.
- 17.** The petitioner has been falsely implicated in connection with the instant case, and has no culpability or involvement whatsoever with

regard to the allegations made in the instant complaint. There are no materials whatsoever against the petitioner and the petitioner has been falsely implicated in connection with the instant case by the de-facto complainant acting in collusion with the investigating agency.

18. It is further submitted that in the instant case, it is apparent that the First Information Report as also other materials collected in course of investigation by the police authorities, do not make out the charges under Sections 341/325/326/307/427/506/34 of the Indian Penal Code, 1860 and added Section 302 of the Indian Penal Code, 1860 against the present petitioner herein and in such circumstances, continuance of the impugned proceeding any further, would be a clear abuse of the process of Court and hence the same is liable to be quashed.

19. Mr. Saswata Gopal Mukherjee, learned Public Prosecutor has placed the case diary and a report as called for.

20. In spite of due service there is no representation on behalf of the opposite party no. 2.

21. From the materials on record including the case diary it appears that:-

- i) The post mortem report shows that **the death of the victim herein was due to serious injuries to his skull and fractures.**

ii) Several statements under Sections 161 and 164 Cr.P.C. has been recorded.

22. As such there is a prima facie case against the petitioner in respect of the offences alleged, to proceed towards trial.
23. On perusal of the materials on record including the case diary, it appears that the brief facts of the case stated in the charge sheet is of a different case.
24. **In the report submitted by the learned prosecutor, the Officer-in-Charge has admitted the mistake and has prayed for leave to rectify the said part of Charge Sheet.**
25. It appears that, the actual facts of the case as per the written complaint has been prima facie substantiated by the materials in the case diary and as such the said leave to rectify the formal part of the Charge Sheet as prayed for will not prejudice the accused person. Accordingly, the prayer to rectify the formal part of the charge sheet is allowed in the interest of Justice. **The Investigating Officer shall submit a rectified Charge Sheet as observed herein and file the same before the Trial Court within a period of 15 days from the date of this order.**
26. But there being a prima facie case against the petitioner in respect of the offences alleged as discussed earlier, **the present revision stands dismissed.** Trial Court to proceed with the trial expeditiously.
27. All connected applications, if any, stands disposed of.

- 28.** Interim order, if any, stands vacated.
- 29.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 30.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)