

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1132 of 2020

Rahul Bakuli

Vs.

The State of West Bengal & Anr.

For the petitioner : Mr. Sk. Md. Ismail,
Mr. Suprotick Shyamal,
Ms. Somosreedebi Dutta.

For the State : Mr. Saibal Bapuli,
Ms. Sayanti Santra.

For the Opposite Party No.2 : Mr. Tapas Kumar Dey,
Mr. Ashis Kumar Dutta.

Hearing concluded on : 23.08.2023

Judgment on : 20.09.2023

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of proceeding being G.R. Case No.875 of 2020 arising out of Jangipara P.S. Case No.141 of 2020 dated 11.07.2020 under Sections 448/323/427/506/34 of the Indian Penal Code pending before the Sub-divisional Judicial Magistrate, Serampore Court.

2. The petitioner's case is that one Saheb Ali Khan, son of late Anowar Ali Kha of village Kotalpur, P.O. Jagat Ballavpur, Police Station-Jangipara,

District-Hooghly, on 11.07.2020 made a written complaint before the Officer-in-Charge, Jangipara Police Station alleging to the effect that his brother namely Sabir Ali Kha on 04.07.2020 by a registered Deed of Sale being No.1511 registered in the Office of A.D.S.R., Jangipara purchased Plot No.784 measuring 2.75 decimals of Viti land from one Sulekha Bakuli, wife of late Basudev Bakuli of village Kotalpur and on 10.07.2020 when the complainant and his brother were staking bricks on the aforesaid plot of land at about 12:40 to 12:45 noon, the accused person namely Lakshmi Kanta Bakuli, son of Pasupatu Bakuli came to the spot and slapped him and other accused persons namely Srimanta Bakuli, Mahadeb Bakuli both sons of Pasupati Bakuli, Rabi Bakuli, son of Jitendra Bakuli, Rahul Bakuli (petitioner herein) son of Rabi Bakuli came with a Katari and told that they will kill him and the female member namely Surupa Bakuli, wife of Mahadeb Bakuli and Sk. Jamaluddin, Sk. Badruddin, both sons of Sk. Piya Ali, Mosst. Sakina Begum, wife of Morsalim Molla and Selim Molla son of Morsalim Molla came to the spot and raised objection and shouted in slang language and forcibly entered into the house of the complainant and ransacked the house and also damaged the valuables. And they are still threatening the complainant and his family members with dire consequences. The complainant thus prayed for taking necessary steps against the accused persons.

3. On the basis of the said written complaint, Jangipara P.S. Case No.141/2020 dated 11.07.2020 under Sections 448/323/427/506/34 of the Indian Penal Code was started.

4. It is stated that the petitioner on 20.09.2008 was appointed as a Assistant Teacher of Geography of Geruapahari Labonyamoyee High School in the district of **Birbhum** by the Secretary, Managing Committee of the said School and joined on 30th September, 2008 in the said post and has been continuing his duties in the said School since then, wherein he has been residing, as it is situated over 230 K.M. away from his native village.

5. It is further stated that the petitioner is an Assistant Teacher of a High School and is a respectable person in the locality and there is no specific allegation against him but he has been implicated in the said case for harassment due to village rivalry.

6. That in the written complaint it has been alleged that one Lakshmi Kanta Bakuli first appeared at the spot and slapped the complainant, thereafter Srimanta Bakuli, Mahadeb Bakuli both sons of Pasupati Bakuli, Rabi Bakuli, son of Jitendra Bakuli, Rahul Bakuli (petitioner herein) son of Rabi Bakuli came with a Katari and allegedly told that they will kill him. There is no specific allegation against the instant petitioner as regards his participation in the alleged incident.

7. That the petitioner on 08.07.2020 with a view to reach his School at Khayrasole in the district of Birbhum was going from his native village and on the way he was taken into custody by the Emergency Medical Officer, Nakrakonda B.P.H. Centre on 08.07.2020 and was sent to **Home Quarantine at Khayrasole, Birbhum**, for 14 days and after 14 days isolation, he was released.

8. That in spite of the aforesaid facts, the petitioner was falsely implicated in the aforesaid case, though he was not at all present at the spot and in fact was in home quarantine at Khayrasole at the material time.

9. **Mr. Sk. Md. Ismail, learned counsel for the petitioner** has submitted that the petitioner is an Assistant Teacher of a High School and a respectable person of the locality and at the material time he was in quarantine on and from 08.07.2020 to 22.07.2020 and in spite of that the petitioner has been falsely implicated in the said case which has been allegedly occurred on 10.07.2020, when the petitioner was under home quarantine, as per advice of the Emergency Medical Officer, Khayrasole at the material time and as such the impugned proceeding is liable to be quashed against the petitioner as the impugned proceeding is being continued only to harass the petitioner.

10. **The learned counsel for the State** has placed the case diary along with a report which prima facie supports the case of the petitioner.

11. **Mr. Tapas Kumar Dey, learned counsel for the opposite party no.2** has submitted that the plea of the petitioner is a matter which is to be considered during trial and as such the revision is liable to be dismissed.

12. **From the materials on record** including the case diary, it appears that:-

i) *The alleged dispute took place when the complainant and his son were stacking brick on their land.*

ii) *The petitioner is a Teacher since 2008 in Birbhum at a distance of 230 K.M. away from his village and the alleged place of occurrence.*

iii) *The petitioner on 08.07.2020 with a view to reach his School at Khayrasole in the district of Birbhum was going from his native village and on the way he was detained by the Emergency Medical Officer, Nakrakonda B.P.H. Centre, District Birbhum on 08.07.2020 and was sent to Home Quarantine at Khayrasole, Birbhum for 14 days and after 14 days isolation, he was released.*

iv) *Annexure 'P-4' at page 16 is a document dated 08.07.2020 (**PEAK of Covid-19 pandemic lockdown**), in respect of the petitioner being put under strict home quarantine at his place of work at Birbhum, as he had travelled from Ganesh bati, at district Hooghly to Khairasole at district-Birbhum.*

v) *The report submitted by the State is supported by medical papers issued by Government Doctors which state as follows:-*

Memo No.337/NBBAS dated 24.11.2020

“As per our hospital record, it appears that Mr. Rahul Bakuli (petitioner) has attended our hospital emergency on 08.07.2020 with a travel history from Ganeshbati (Hooghly) to Khayrasole (Birbhum), at Lockdown period due to Covid'19.

He was examined by on duty E.M.O Dr. Sekh Washim and was found asymptomatic with stable vital and advised as per COVID'19 regulation for 14 days strict home quarantine from 08.07.2020 to 22.07.2020.

After 14 days later Mr. Rahul Bakuli attended our hospital for check up on 22.07.2020 and was examined by on duty E.M.O. Dr. Ashok Gupta and found him asymptomatic and certified completion of 14 days home quarantine and he may join his normal daily activities as per Govt. rule.”

vi) *The incident in this case allegedly occurred on 11.07.2020 at Jangipur, District- HOOGHLY.*

vii) The distance between the place of incident and the place where the petitioner was in quarantine are in different district and at a distance of almost 230 KMs.

viii) The offence alleged against the petitioner is of intimidation with a Katari (no seizure), with threat to kill.

13. According to **Black's Law Dictionary**, '**Alibi**' is defined as:-

“A term used to express that mode of defence to a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence to show that he was in another place at the time, which is termed setting up an alibi”. The term 'Alibi' is not defined either in the Indian Penal Code, 1860, or the Evidence Act, 1872. It is a Rule of evidence that was recognized in Section 11 of the Evidence Act.”

14. **Section 11 of the Indian Evidence Act, 1872:-**

*“When facts not otherwise relevant become relevant:-
Facts not otherwise relevant are relevant (i) if they are inconsistent with any fact in issue or relevant fact, (ii) if by themselves or in connection with other facts they make the existence or non-existence of any in issue or relevant fact highly probable or improbable.”*

15. **Section 103 of the Indian Evidence Act, 1872:-**

According to this:-

“The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.”

16. 'Alibi' should be pleaded at the earliest possible opportunity. The plea of Alibi is to be supported with evidence.

17. In **Pappu Tiwary vs. State of Jharkhand, Criminal Appeal No. 1492 of 2021, on 31 January, 2022**, the Supreme Court held:-

“16.In the end it was contended that there was no attempt made to distinguish the appellant’s role from that of Ajay Pal and the appeal of Ajay Pal being dismissed, the only aspect which had to be examined was whether the concurrent findings of the two courts below rejecting the plea of alibi was required to be interfered with by this Court when the burden lay heavy on the appellant as when such a plea is raised the accused must discharge that burden. We may refer to the judicial view in this behalf in Vijay Pal v. State (Government of NCT of Delhi)¹ wherein this Court held that:

“27. In our considered opinion, when the trial court as well as the High Court have disbelieved the plea of alibi which is a concurrent finding of fact, there is no warrant to dislodge the same. The evidence that has been adduced by the accused to prove the plea of alibi is sketchy and in fact does not stand to reason. It is not a case where the accused has proven with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. The evidence adduced by the accused is not of such quality that the Court would entertain a reasonable doubt. The burden on the accused is rather heavy and he is required to establish the plea of alibi with certitude.” In Jitender Kumar v. State of Haryana² this Court stated that:

*“71. The burden of establishing the plea of alibi lay upon the appellants and the appellants have failed to bring on record any such evidence which would, even by reasonable probability, establish their plea of alibi. **The plea of alibi in fact is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the place of occurrence and in the house which was the home of their relatives.**”*

18. In the present case, the prosecution by its report has supported the defense of alibi of the petitioner and the petitioner has also discharged his liability as to his ‘Alibi’ with certainty, which excludes

the possibility of the presence of the petitioner at the place of occurrence.

19. Considering the said materials on record, continuation of the proceedings in the present case shall be an abuse of process of law and the present case against the petitioner is thus liable to be quashed in the interest of justice.

20. **The revisional application being CRR 1132 of 2020 is accordingly allowed.**

21. The proceeding being G.R. Case No.875 of 2020 arising out of Jangipara P.S. Case No.141 of 2020 dated 11.07.2020 under Sections 448/323/427/506/34 of the Indian Penal Code pending before the Sub-divisional Judicial Magistrate, Serampore Court is quashed in respect of the petitioner Rahul Bakuli.

22. All connected applications, if any, stands disposed of.

23. Interim order, if any, stands vacated.

24. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

25. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)