

Form J(1)

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

Present :

The Hon'ble Justice Bibek Chaudhuri

CRR 2372 of 2022

Abu Sahib Molla

Vs.

State of West Bengal & Anr.

**For the petitioner : Mr. Pratip Mukherjee, Adv.,
Mr. Suddadev Adak, Adv.**

**For the State : Mr. Ranabir Roy Chowdhury, Adv.,
Mr. Mainak Gupta, Adv.**

**For the opposite
Party : Mr. Bhaskar Seth, Adv.,
Mr. Prabir Rej, Adv.,
Mr. Pranab Kumar Das.**

Judgement on : 11.01.2023.

Bibek Chaudhuri, J.

Petitioner is one of the accused persons in connection with Kashipur Police Station Case No. 467/2021 dated 12th October, 2021 under Sections 448/323/354B/427/506/34 of the Indian Penal Code. He has approached this Court praying for quashing of the above-mentioned criminal proceeding under Section 482 of the Code of Criminal Procedure.

Indisputably in connection with the above-mentioned case charge-sheet has been filed against the petitioner and six other

accused persons under the above stated penal provisions in the Court of the learned jurisdictional Magistrate.

It is submitted on behalf of the petitioner that on 10th September, 2021 the father of the petitioner was brutally assaulted by the family members of the *de facto* complainant/opposite party no. 2. The petitioner lodged an FIR on the date of occurrence which gave rise to Kashipore Police Station Case No. 412/2021. Police took up the case for investigation and submitted charge-sheet in the said case on 30th September, 2021 against the *de facto* complainant and some other family members. After submission of charge-sheet only on 12th October, 2021, the opposite party no. 2 filed a written complaint against the present petitioner and six other accused persons under Section 156(3) of the Code of Criminal Procedure before the learned Additional Chief Judicial Magistrate at Baruipur alleging, *inter alia*, that on 10th September, 2021 at about 7.30 P.M. the accused persons in a group being armed with lathi, bamboo, iron rod etc. trespassed into the house of the *de facto* complainant. They assaulted her with fists and blows and kicks. They also outraged modesty of the *de facto* complainant and her daughter-in-law. They broke a portion of the house of the *de facto* complainant and thereby caused mischief and also ransacked the kitchen of the *de facto* complainant. All such incidents took place under the leadership of the present petitioner. It is also alleged that Police did not take action against the accused persons as the petitioner used to work as a civic volunteer in the jurisdictional Police Station.

Learned Advocate for the petitioner submits that the case which was instituted on the basis of an application under Section 156(3) of the Code of Criminal Procedure is a counterblast because of the fact

that upon a complaint filed by the petitioner Police has already filed charge-sheet on 30th September, 2021 against the opposite party no. 2 and her other family members. It is also pointed out by the learned Advocate that the *de facto* complainant in her petition under Section 156(3) of the Code of Criminal Procedure stated that the incident took place on 10th September, 2021. It is expected that the *de facto* complainant went to the Police Station immediately after the occurrence and the Police authority allegedly denied to accept the written complaint from the opposite party no. 2. Therefore, why did the opposite party no. 2 wait for more than one month to file the application under Section 156(3) of the Code of Criminal Procedure. Learned Advocate for the petitioner also submits that the name of the present petitioner was added as the leader of the alleged incident only to ascertain that he should be suspended from her post as a civic volunteer.

Learned Advocate for the opposite party no. 2, on the other hand, has referred to the relevant portions of paragraph 2 of the application under Section 156(3) of the Code of Criminal Procedure. It is submitted by him that the specific role of the petitioner has been meticulously described by the *de facto* complaint/opposite party. Charge-sheet has already been submitted against him. Under such circumstances, the case cannot be quashed at this stage.

The learned Public Prosecutor-in-Charge, on the other hand, has produced the case diary. Initially he takes me to the statement of the *de facto* complainant/opposite party no. 2 and her daughter-in-law recorded under Section 164 of the Code of Criminal Procedure. In her statement under Section 164 of the Code of Criminal Procedure she did not even mention the name of the present petitioner as the leader

or perpetrator of the offence. Daughter-in-law of the opposite party no. 2, on the other hand, did not even mention the name of any of the accused persons in her statement recorded under Section 164 of the Code of Criminal Procedure. From their statement it is ascertained that the dispute between the parties arose out of an incident of tying a cattle at a particular place. Learned Public Prosecutor-in-Charge has not suppressed to take me to the statements of the witnesses recorded under Section 161 of the Code of Criminal Procedure. In their statement the witnesses specifically named Hakim Molla, Masud Molla, Faruk Molla, Aklima Bibi and Mamata Rina Khatoon as the perpetrator of the offence. They stated that the petitioner was present at the place of occurrence.

Mere presence at the place of occurrence without attributing anything, offence was taking active part in committing the offence does not make a person accused of a criminal case.

Considering the materials-on-record and the case diary, this Court is of the firm opinion that in the instant revision, sub-paragraph 7 of paragraph 102 of Bhajan Lal's case is squarely applicable. The relevant portion of paragraph no. 102.7 of Bhajan Lal's case runs thus:-

"102.7 Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

In view of the above discussion this Court finds that this is a fit case where the criminal proceeding should be quashed as against the present petitioner. Accordingly, the instant revision is allowed on contest. Criminal case being Kashipur Police Station Case No.

467/2021 dated 12th October, 2021 under Sections 448/323/354B/427/506/34 of the Indian Penal Code corresponding to GR Case No. 6355/2021 be quashed as against the present petitioner.

The learned Additional Chief Judicial Magistrate at Baruipur is directed to record formal order of discharge of the petitioner on receipt of the server copy of this order.

The parties are at liberty to act on the server copy of the order.

Case diary be returned to the learned Public Prosecutor-in-Charge.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)
Item No. 05.