

25-08-2023  
Subha  
D/L 11  
Ct no.34

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

**CRR 3101 of 2023**

***Smt. Pampiya Saha @ Biswas***  
**-versus-**  
***State of West Bengal and Ors.***

Mr. Kamalesh Chandra Saha  
....for the petitioner.

Mr. Madhusudan Sur, Id. APP  
Mr. Manoranjan Mahata  
...for the State.

Petitioners are directed to serve a copy of the revisional application upon Mr. Madhusudan Sur, learned Additional Public Prosecutor, who ordinarily appears on behalf of the State. His appointment may be regularized by the concerned Authorities in due course.

The present petitioner is aggrieved by the order dated 28.07.2023 passed by the learned Additional Chief Judicial Magistrate, Barasat, North 24 Parganas wherein the learned Additional Chief Judicial Magistrate, Barasat was pleased to reject the petition of complaint holding that no offence has been made out against the accused persons for taking cognizance of the offence.

I have perused the allegations made in the petition of complaint wherein the subject matter of grievance is that the petitioner being the complainant initiated a case under Section 156(3) of the Code of Criminal Procedure where she alleged offences under Sections 325/307/327/406/34 of the Indian Penal Code.

There was a direction by the learned A. C. J. M, Barasat to register the case as FIR. Consequently, Ashoknagar P. S. Case No. 480 of 2023 dated 13.07.2023 was registered for investigation under Sections 341/323/506/34 of the Indian Penal Code.

The grievance of the petitioner is that she had filed the case for alleged offence under Sections 325/307/327/406/34 of the Indian Penal Code, however, for lesser prescribed punishment related offences the case was registered for investigation and for that the three accused persons being Police Officers associated with Ashoknagar PS have been implicated as accused in the petition of complaint which she has filed and for which she has alleged that offence has been committed under Sections 217/218/219/506/34 IPC and Sections 23/29 of the Police Act, 1861. The investigation of Ashoknagar PS being 480 of 2023 dated 13.07.2023 is in progress. The petitioner at this stage has filed the complaint. The learned Magistrate has assessed the totality of the circumstances and has arrived at his opinion that at a particular stage of investigation, the complainant will have the liberty to file his/her naraji petition/protest petition and for registering a case for a lesser offence. At this stage, the cause of action do not arise for taking cognizance under the alleged Sections being 217/218/219/506/34 IPC and Sections 23/29 of the Police Act, 1861.

I have assessed the impugned order of the learned Magistrate and I do not find any illegality in the same. The complainant of this case has tried to dictate the terms on which the police Authorities will register the case and the provisions of law do not permit that.

It is the discretion of the Investigating Officer at the time of registration of the FIR from the facts surfacing which sections would be incorporated at the initial stage. The gravity of the offence with the progress of the investigation may change and there may be addition of sections. To make the Investigating Agency and the Police Station as a whole an accused is malafide attempt which reflects the attitude of the complainant to pin down the police authorities on her terms so that they act according to her whims which is not permissible in law.

Learned advocate for the petitioner further submits that in this case it was incumbent upon the learned Magistrate to examine the complainant on oath and/or postpone the issue of process and thereafter decide whether to proceed under Sections 203/204 of the Code of Criminal Procedure. The learned Magistrate nipped the complaint at the bud stage. The Officers who are working in discharge of their duties cannot be saddled with criminal liabilities and they are entitled to protection, that is the settled proposition of law. If in discharge of official duty, a public servant is under a threat perception that he would be implicated in a criminal offence then in that case it would not be possible for the public servant to discharge his duty. The act of the complainant/petitioner in this case is mala fide and deserves to be interfered with by imposing costs. Accordingly, the present revisional application is dismissed with a cost of Rs.50,000/- to be deposited with the Legal Aid Services Authority, High Court, Calcutta.

Department is directed to communicate this order to the

learned A. C. J. M, Barasat.

Pending applications, if any, are consequently disposed of.

All concerned parties are to act in terms of a copy of this order duly downloaded from the official website of this court.

**[Tirthankar Ghosh, J]**