

IN THE HIGH COURT AT CALCUTTA**Criminal Revisional Jurisdiction****Present: - Hon'ble Mr. Justice Subhendu Samanta.****C.R.R. No. - 3733 of 2018****IN THE MATTER OF****Shyamal Middya & Ors.****Vs.****The State of West Bengal & Anr.**

**For the petitioner : Mr. Kallol Kumar Basu, Adv.,
Ms. Tithi Mazumder, Adv.**

**For the State : Mr. Narayan Prasad Agarwala, Adv.,
Mr. Pratick Bose, Adv.**

For the Opposite Party No 2 : Mr. Uday Sankar Chattapadhyay, Adv.

Judgment on : 13.01.2023

Subhendu Samanta, J.

This is an application u/s 482 of the Criminal Procedure Code quashing of a criminal proceeding of GR No. 599 of 2013 arising out of Das Pur Police Station case No. 204 of 2013 dated 01.09.2013 u/s 147,149,326,307,354,506 of IPC and subsequently C.S. filed being No. 251 of 2018 dated 12.07.2018 now pending before the Additional District and Sessions Judge, Ghatal, Paschim Medinipur.

The brief fact of the case is that husband of private OP No. 2 was the private tutor at the house of one Ajit Bera. One day, at the evening, husband of OP- 2 without the will of the wife of Ajit Bera namely Krishna bera embraced her with an intent to commit rape. The lady raise hue and cry, villagers appeared at spot and the husband OP No. 2 was beaten by the mob. Police with OP No.- 2 rescued him from the P.O. and he was admitted to hospital. On the basis of the complaint of Krishna Bera, Daspur Police Station case No. 192 of 2013 dated 18.08.2013 u/s 354A(1)(ii)(v) of IPC was initiated.

After some days the OP No. 2 lodged this criminal proceeding against the petitioner by virtue of an application u/s-156(3) Cr.P.C. before the ACJM, Ghatal. Magistrate allowed the prayer and directed police to investigate.

Initially, the investigation of the police of this case is ended in FRT being No. 42 of 2014 dated 10.03.2014. Against the said FRT the OP No. 2 filed a 'Narazi' petition before the Magistrate and after hearing Learned Magistrate allowed the said petition and directed the O.C of Daspur Police Station to cause further investigation.

The police took up further investigation and after 5 years of incident submitted a charge sheet being No. 251 of 2018 dated 12.07.2018 u/s 147,149,326,307,354,506 of IPC against the present petitioner.

Hence this revision.

Learned Advocate, for the petitioner submitted before this court that initially investigation conducted by the police and after through investigation it was the opinion of the investigating agency that the victim (husband of OP-2) was beaten up by unidentified mob due to his conduct as depicted in Daspur Police Station case No. 192 of 2013 dated 18.08.2013. He further pointed out that the present case is the counter case filed by the wife of the accused Buddhadeb Mudli of the earlier case. He further pointed out that the allegation in the petition of complaint lodged by the OP NO. 2

are false and fictitious. The statement of available witnesses were recorded by the erstwhile I.O. on spot but the present I.O. has collected the statement of available witnesses after long time of the incident. In considering the facts and circumstances of Daspur Police Station Case No. 192 of 2013, the fact of the present case would proved to be false. He further argued that there are nothing materials in the CD to substantiate the offence u/s 354 of IPC against the present petitioner; thus he prayed for quashing of the instant criminal proceeding.

Learned Advocate appearing on behalf of the State submitted that the police took up investigation as per direction of the Magistrate; during the course of investigation police has collected sufficient materials against the present petitioners. The injury report of the injured was also collected by the police wherefrom it would be revealed that the prima facie ingredients u/s 326 of IPC is well established and the report of the police submitted in this case has stated the actual facts and circumstances; the I.O. as also mentioned the factum Daspur Police Station Case No. 192 of 2013 in the CD of this case; thus the charge sheet is justified.

Heard the Learned Advocate perused the CD of Daspur Police Station Case No. 192 of 2013 dated 18.08.2013 and also the Daspur Police Station Case No. 204 of 2013 dated 01.09.2013.

I have perused the CD as well as the injury report. Initially the FRT was filed by the police with a noting that the injured was sustained injury by the unidentified mob. The Magistrate directed further investigation, which is not the matter of challenge before this court. During the course of investigation the I.O. has recorded the statement of available witnesses who stated the name of the present petitioner to be involved in the alleged offence. These statements cannot be disbelieved at the stage only because of the reason that they were recorded much after the incident. more over, the injury report also indicates the present ingredients of 326 IPC of this case. Charge sheet filed in this case may not support the entire facts of FIR but this shall not negate the prima facie probative value of the evidences collected by the I.O.

during the course of investigation. Considering the same there are prima facie materials to proceed against the present petitioner.

Considering the aspect at this juncture I refrained myself to interfere with the criminal proceeding.

I find no merit in the instant criminal revision consequently it is liable to be dismissed.

CRR is dismissed.

Pending connected CRAN applications if any, is also disposed.

Any order of stay passed by this Court during the continuation of the CRR is also vacated.

Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

(Subhendu Samanta, J.)