

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 16 OF 2022

JAGADISCHANDRA MAJUMDAR

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner : Mr. Shibaji Kumar Das.

For the State : Mr. R. D. Nandi,
Ms. Amita Gaur,
Ms. Puspita Saha.

Hearing concluded on : 29.11.2024

Judgment on : 17.12.2024

SHAMPA DUTT (PAUL), J. :

1. The present revisional application has been preferred against the order no.11 dated 4th December, 2021 passed by the learned Additional District & Sessions Judge, Fast Track Court No.2, Barrackpore, District – North 24 Parganas in connection with Sessions Case no.231 of 2019 arising out of Baranagar PS case no.530 of 2018 dated 9th September, 2018 which culminated in Chargesheet being No.53 of 2019 dated 28th February, 2019 under Sections 448/323/325/506/379/34 of the Indian Penal Code, 1860 (for short “IPC”) with added Sections 326/308 of the IPC corresponding to GR case no.5269 of 2018.
2. On perusal of the order under revision, it appears that the chargesheet in the present case was filed under Sections 448/323/325/506/379/34 of IPC adding Sections 326/308 of IPC. The case was committed to the Court of Sessions. The learned Sessions Judge by the said order under revision, prima facie conducting a mini trial on erroneous findings, which will be discussed later here in remitted the case to the Magistrate’s Court on the finding that materials in the case diary justifies framing of charge against the accused persons under Sections 448/324/34 of IPC.

3. Admittedly in the present case the **victim is an 80 year old person**. The order under revision has been passed by Shri Deb Kumar Goswami, ADJ, FTC II, Barrackpore.
4. Considering the nature of the order under revision before this Court, the relevant extract of that order is required to be produced here :-

“Order No.11 dated 04.12.2021

.....To satisfy this Court that there is ingredients of Section 308 IPC which makes this case sessions triable, Ld. PP in Charge has requested this Court to go through the medical documents of Sri Jagadish Chandra Majumder.

The physical assault upon Sri Majumder is stated to have taken place on 06.09.2018 and he is found to be firstly treated by the Medical Officer of Baranagar State General Hospital on 09.09.2018 at 11.00 p.m.

Explaining the cause of delay in treatment, Ld. PP in Charge submits that Sri Majumder was confined in room and for that reason he could not get access to medical facilities just after the alleged incident.

*Be that as it may, **on 09.09.2018 the Medical Officer of Baranagar State General Hospital** after mentioning the injuries found on the person of Sri Majumder opined the*

same to be apparently simple. However, **he advised X-Ray.**

The first X-Ray report dated 22.10.2018 which is available in the CD in page No.45 reveals old fracture with bony union seen at left 6th and 7th ribs. Fracture of 6th and 7th ribs are also evident from page no.44 of the CD which is the report of CT Scan of chest.

*In the light of aforesaid two documents there is no denial of the fact that Mr. Majumder had fracture injury on 6th and 7th ribs but he report dated 22.10.2018 (page 45 of CD) described **the fracture to be old one.***

On asking to the Ld. PP in Charge *whether the old fracture of Mr. Majumder would be sufficient to hold a prima facie case against the accused persons u/s.326/308 IPC, Ld. PP in Charge replies that as Mr. Majumder was confined he did not get access to medical facilities and accordingly the fracture which held on 06.09.2018 **was found to be old one on 22.10.2018.***

This court is not unmindful of the fact that on 09.09.2018 Mr. Majumder was examined by Medical Officer by Baranagar State General Hospital and accordingly he had every scope to get him treated and the X-Ray done at that point of time.....

.....There is nothing to correlate that the fracture of ribs of Mr. Majumder is outcome of the said alleged incident. It is unthinkable that at the age of 80 years Mr. Majumder endured the pain of fracture injury of his two ribs for almost 1½ months without treatment and that too without any material in the C.D. revealing that in the mean time he was otherwise prevented by the accused persons from taking medical assistance. It is to be kept in mind that on 09.09.2018 Mr. Majumder was examined by medical officer of Government Hospital and there is nothing in the C.D which could spell as to why on that day or soon thereafter he did not conduct his X-Ray of his chest.....

..... Neither the medical documents nor the statement made by the witnesses inspire the confidence of this Court to hold that there is prima facie material in this case to frame charge against the accused persons u/s. 308/326 IPC.....

.....However, the materials in Case Diary prima facie justify to frame charge against the accused persons u/s 448/324/34 IPC.”

- 5. The said order was passed considering an application filed by the accused persons stating that there are no material under Section 308 of IPC.**

6. It appears from the said order under revision that the Judge held that **on 09.09.2018 the Medical Officer of Baranagar State General Hospital after mentioning the injuries found on the person of the victim advised X-Ray.**
7. The Court considered the X-ray dated 22.10.2018 in the case diary at page 45 which revealed old fracture seen at left 6th and 7th ribs. The Court also considered the report at page 44 of the case diary. **What the Court did not see is the report of CT scan of chest dated 25.09.2018 at page 44 of case diary wherein it is clearly shown that the victim suffered evidence of fracture involving rib cage on left side involving 6th and 7th ribs.**
8. At page 43, the pathological report dated 15/9/2018 shows prostate cancer.
9. The Court considered the X-Ray report dated 22.10.2018 which was conducted almost one and a half month and **as such was noted as old.** The dates of the reports are different.
10. The report at page 46 of the case diary is of a prior date, i.e., **13.09.2018, which was conducted after seven days of the incident, the said x-ray report clearly shows fracture between 6th and 7th ribs.**

- 11.** The nature of assault on the victim supports the said fractures sustained by the victim who is admittedly an eighty year old man.
- 12.** Unfortunately, the Court in paragraph 1 of page 2 of the order held that the fracture is an old one and the learned public prosecutor without bringing the reports dated 13.09.2018 and 15.09.2018 at page 46 admitted before the Court that the fracture was old on 22.10.2018 as the incident occurred on 06.09.2018.
- 13.** The Court came to the finding relying upon the report dated 22.10.2018 that there is nothing to correlate the fracture of ribs in the said incident.
- 14.** It is evident from the case diary and medical papers therein that the fractures sustained by the victim was detected immediately after the incident in this case.
- 15.** The nature of assault recorded by the Doctor who examined the victim also clearly correlates to the injuries including the fractures sustained by the victim.
- 16.** It appears that the Judge for reasons best known to him was inclined to shift the case before the Magistrate, which appears to this Court to be a sheer abuse of process of law and Court and completely against the principles of natural justice.

17. The injuries as noted prima facie make out a case under Section 326 of IPC and considering the nature of dispute between the parties and the age of the victim being eighty years the case clearly comes within the scope of Section 308 IPC having the ingredients required to prime facie constitute the said offence.
18. Considering the said findings this is fit case where the inherent powers of this Court is to be exercised to prevent the miscarriage of justice.
19. As called for, the explanation being filed by the officer-in-charge and the investigating officer in this case states that on 25.11.2024 only case diary was available with them in the police station and was produced before the Court. **Admittedly, the case diary did not contain the injury reports as specifically discussed by the Court in its order dated 04.12.2021 which is under challenge in the present revisional application.**
20. It is submitted by the learned counsel for the State that the police officers could trace the original case diary from the custody of the learned public prosecutor appearing before the Sessions Court. **The case of the missing injury reports in the other copies of the case diaries is a serious issue and as such is to be enquired into by the Commissioner of Police, having jurisdiction. The Commissioner of police, Barrackpore Police Commissionerate shall conduct an**

enquiry in the present case as to why the injury reports were missing in the other case diaries, when the same are available in the case diary in the custody of the public prosecutor and take necessary action in accordance with law.

- 21.** Considering the nature of submissions made before the learned Sessions Judge by the learned public prosecutor wherein it appears that the date of the injury report have been wrongly submitted, the nature of injury has been wrongly placed and the learned public prosecutor before the trial court who is bound by his duty towards the court to place the exact case of the prosecution before the Court, failed to discharge his duties diligently. **As such, the conduct of the learned public prosecutor is also brought to the notice of the Director of Prosecution, West Bengal who shall also have an enquiry conducted and take necessary action in accordance with law.**
- 22.** Let a copy of this judgment and order be sent to the Learned District Judge, North 24 Parganas, Commissioner of Police, Barrackpore Police Commissionerate and Director of Prosecution, West Bengal at once by the department.
- 23.** The order under revision dated 4th December, 2021 is thus set aside. The court shall proceed to frame charge on hearing the

parties, in accordance with the findings in this judgment and complete the trial on passing a reasoned judgment in accordance with law based on evidence adduced during trial without being influenced by the findings herein.

24. CRR 16 of 2022 is thus allowed.

25. The order no.11 dated 4th December, 2021 under revision, passed by the learned Additional District & Sessions Judge, Fast Track Court No.2, Barrackpore, District – North 24 Parganas in connection with Sessions Case no.231 of 2019 arising out of Baranagar PS case no.530 of 2018 dated 9th September, 2018 which culminated in Chargesheet being No.53 of 2019 dated 28th February, 2019 under Sections 448/323/325/506/379/34 of the Indian Penal Code, 1860 (for short “IPC”) with added Sections 326/308 of the IPC corresponding to GR case no.5269 of 2018 **is hereby set aside.**

26. The case arising out of Baranagar PS case no.530 of 2018 dated 9th September, 2018 which culminated in Chargesheet being No.53 of 2019 dated 28th February, 2019 under Sections 448/323/325/506/379/34 of the Indian Penal Code, 1860 (for short “IPC”) with added Sections 326/308 of the IPC corresponding to GR case no.5269 of 2018, **is restored to the file of the Learned Additional District & Sessions Judge, Fast Track Court No.2, Barrackpore, District – North 24**

Parganas who shall proceed as per the observations & findings in this Judgment and dispose of the case expeditiously and the evidence before it, in accordance with law, on completion of trial.

- 27.** All connected application, 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 Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

[Shampa Dutt (Paul), J.]