

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 706 of 2016

**Annapurna Majhi & Ors.
Vs.
The State of West Bengal & Ors.**

For the Petitioners	:	Mr. Pradip Kumar Roy Ms. Sumedha Mukhopadhyay Ms. Dipanwita Sarkar Ms. Shruti Mitra
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For the Opposite Party no.2	:	Mr S.P. Pahari
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For the State	:	Ms. Anasuya Sinha, Ld. APP Mr. Rahul Ganguly
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Heard on	:	03.09.2025
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Judgment on	:	02.12.2025
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Dr. Ajoy Kumar Mukherjee, J.

1. On 09.06.2015 opposite party No.2 herein/*de facto* complainant, who is also the wife of alleged victim Gour Gopal Sahoo lodged instant complaint alleging that on 07.06.2015 at about 9:30 A.M, her husband was physically assaulted by the accused/petitioners on the way, when he went out from his residential house. Due to such physical assault, her husband received

bleeding injury on his head. The accused/petitioners also injured different parts of his body, using different type of weapons. However the victim was rescued with the interference of the local people, who saved his life. Immediately thereafter he was admitted at Contai S.D Hospital where his initial treatment was done by one Dr. Udit Roy, who was on duty. Since the condition of petitioner was deteriorating, he was referred to State Medical Hospital by another Dr. Prasenjit Sinha at 5:30 P.M, for better treatment. The patient was accordingly issued referral card, signed by Dr. Sinha along with injury report signed by Dr. Roy. However complainant's contention is due to financial hardship, the complainant could not admit the victim at referral hospital but he was treated by local physician and recovered gradually. Opposite party/herein lodged written complain over the said incident and police started instant proceeding under section 341/324/307/506/34 IPC.

2. The petitioners herein/accused persons filed a Writ Application being W.P Case no 15927 (W) of 2015 with a prayer to issue the Writ of Mandamus with a direction to constitute a medical board with the medical officers of medical college, Calcutta to find out the genuineness of injury, if any allegedly inflicted on the person of the victim Gour Gopal on 07.06.2015.

3. After much deliberation the Superintendent, EMO and the Surgeon of Contai S.D. Hospital personally appeared before this court when Hon'ble Judge made certain queries to ascertain the facts and circumstances involving the nature and character of the injuries suffered by the injured person. Upon such enquiries the concerned doctor admitted that no such

injury was suffered by the injured person as mentioned in the report and expressed their repentance and apology before the High Court.

4. Since on the basis of the purported injury report the petitioners were suffering from humiliation, a prayer was made before said Bench seeking quashing of the instant criminal proceeding, in the said Writ Application and also for adequate compensation for the tortious act perpetrated by the State and its machinery. Upon hearing the submissions advanced before this Court, the said Bench was pleased to dispose of the said Writ Petition after recording the admission made by the doctors, while granting liberty to the petitioners to approach before appropriate forum for seeking quashment of the instant criminal proceeding and in view of such direction the Instant Revisional Application has been preferred by the petitioner, seeking quashment of proceeding being contai police station case no. 231 of 2015 dated 09.06.2015 pending before Additional Chief Judicial Magistrate, Medinipur against the petitioners.

5. As stated above the case was initially registered under section 341/324/307/506/34 of the Indian Penal Code and after completion of investigation police initially submitted charge sheet against the petitioners on the above mentioned sections. However the petitioners herein approached before this Court by filling a Criminal Revisional application being C.R.R. 706 of 2016 contending that the investigation conducted by the police has deliberately overlooked the vital aspect of the incident like injury report. This High court by an order dated 21.03.2016 was pleased to direct for further investigation being conducted by the police officer not below the Rank of Deputy Superintendent of Police under the supervision of S.P of

Purba Medinipur. Pursuant to such order passed by this court, the investigating agency ultimately submitted supplementary charge sheet on 22nd February, 2020 under section 341/323/506/34 of IPC against all the petitioners.

6. Being aggrieved by the charge sheet submitted by the investigating agency, learned counsel for the petitioner submits that it took about four years to complete such investigation and none of the officers entrusted with the responsibility of conducting a fair investigation, have examined the tortious act committed by the doctor which amounts to professional negligence. The injury report prepared by Dr. Udit Roy, which forms the basis for filing charge-sheet against the accused persons was admittedly prepared in haste and without due care. His further allegations is all the investigating officers who are entrusted with the further investigation by this court did not make any attempt to unearth the veracity of the complain and the unholy alliance of the surgeon and other doctors of the Government Hospital and the police officers who entertained the false complain at the behest of the *de facto* complainant. Moreover there are no ingredients of the alleged offence under section 341 or 323 or 506 of IPC. Even the alleged victim Gour Gopal Sahoo admitted before Dr. Arubinda Nayak that he felt down one and half month ago and that is why he was advised to consult the E.N.T specialist and Neurologist and to do the C.T scan of the brain. The aforesaid statement of the alleged victim before the said doctor negates the incident on 07.06.2015 as a whole. Furthermore the interested witnesses who were very close to the *de facto* complainant and the injured, whose

names were mentioned in the written complaint, they denied that they have witnessed any incident on the date of occurrence.

7. Mr. Roy further submits that alleged incident took place on 07.06.2015 and the case was registered on 09.06.2015 when the investigation commenced and it continued till 22.02.2020 which is more than four years and therefore the investigation hits by section 167(5) of Cr.P.C and the investigation so done is without jurisdiction as there was no prayer for extension of time for continuation of investigation after expiry of the stipulated period. Even if it counts from the date of further investigation, then also it took near about four years which also hits by the said provision of the Cr.P.C .

8. Moreover section 468 of the Cr.P.C prescribes period of limitation in taking cognizance by the learned Magistrate after completion of the investigation under section 173(2) of the Cr.P.C. The punishment as prescribed under section 341/ 323/ 506/34 of Indian Penal Code are very much covered to the ambit of section 468 of the Cr.P.C and as such the cognizance taken by the learned magistrate after expiry of the period as stipulated in section 468, are barred by law.

9. His further contention is that the entire criminal proceeding is malicious in nature and has been initiated with an ulterior motive solely to harass and intimidate the petitioner. Since 2012 there have been ongoing disputes between the petitioner and the alleged victim herein regarding an illegal electric connection installed with some illegal and unauthorized construction, which has been made on over the petitioners' plot of land. The

present proceeding is nothing but a continuation of the said personal vendetta cloaked under the garb of a criminal case.

10. Furthermore on perusal of the supplementary charge sheet it reveals that the injury report prepared by Dr. Udit Roy appears to have been influenced by the statements of the alleged victim as the nature of injury was opined to be 'grievous'. However during the course of investigation it transpired that the said report was prepared in haste due to the overwhelming pressure of patients both in the outdoor and indoor wards of the hospital. The admission made by the doctors of Government Hospital stood unequivocally established that no grave injury was ever sustained by the alleged injured person and that he was in fact in sound health, thereby exposing the falsity of the earlier injury report prepared to implicate the petitioners. He strenuously argued when the very foundation of the case namely the written complaint alleging injury and the corresponding medical report appears to suffer from vagueness and internal inconsistencies and particularly when the medical report does not support, rather undermines the complaint, the continuance of the criminal proceeding in such circumstances would be a mere abuse of the process of the court. The dispute between the parties is purely civil in nature and the opposite parties who are enjoining the injunction order granted by civil court had deliberately sought to misuse the criminal justice system as a weapon of vengeance arising out of the ongoing family dispute concerning illegal electric fencing and unauthorised construction over the petitioner's plot of land. Therefore he prayed for quashing the said proceeding.

11. Learned counsel appearing on behalf of the state as well as learned counsel appearing for the private opposite party no. 2 opposed such prayer and relying upon the judgment of ***Rama Chaudhary Vs. state of Bihar*** reported in **(2009) 6 SCC 346** contended that the further investigation within the meaning of section 173(8) of Cr.P.C. is additional and supplemental and it is a continuation of earlier investigation and not a fresh investigation or reinvestigation to be started from the beginning superseding the earlier investigation all together. The prosecution should get an opportunity to examine the doctor in the witness box and the medical report which was issued in connection with the alleged incident. Dr. Udit Roy who filed affidavit before this court is also required to be examined by the prosecution. Therefore the genuineness of the injury report has not yet been proved and the statement made by Dr. Udi Roy contrary to his injury report is not final and conclusive. The statement of Dr. Udit Roy in the form of affidavit filed before this Court ought to be examined during the trial.

12. The argument advanced by learned counsel for the petitioner for quashing the instant proceeding is not maintainable as there are no procedural lapses in the instant proceeding and they cannot make such prayer for quashment of the instant proceeding without facing trial. The High Court cannot at this stage hold a mini trial of all the defences raised by the accused based on disputed question of facts. The injury report issued by Dr. Udit Roy cannot be withdrawn or cancelled by a subsequent statement that the injury report was given by mistake or inadvertently or hurriedly.

13. Referring to the judgment of Apex Court in ***State of Andhra Pradesh Vs. Bajjori Kanthaiah and another*** reported in **(2009) 1 SCC 114**

learned counsel for opposite party no. 2 contended that the High Court at this stage would not originally embark upon the enquiry whether the evidence in question is reliable or not and whether on a reasonable appreciation of it, conviction would be sustainable or not, which is the function of the trial Judge and High Court being the highest court of a State should normally refrain from giving a *prima facie* decision in a case where the entire facts are incomplete and hazy and more so when the evidence has not been collected and produced before the court and the issue involved whether factual or legal are of magnitude and cannot be seen in their true perspective without sufficient trial. Therefore the opposite parties and the state prayed for dismissal of the instant application.

14. I have gone through the statements made in the complain as well as statements recorded under section 161 Cr.P.C during investigation and other materials available in the case record including the injury report issued by Dr. Udit Roy and the report of other Medical Officer including referral order passed in connection with the alleged victim. In the instant case on a careful reading of the aforesaid documents I am of the view that it cannot be said, first of all that complain does not disclose commission of any offence alleged in the charge sheet. The materials available in the Case diary indicates the ingredients of the offence mentioned in the charge sheet and it cannot be said that the ingredients are absent on the basis of allegations made in the FIR. Now whether the allegations in the complaint are otherwise correct or not has to be decided on the basis of the evidence to be laid during the course of trial. Simply because Dr. Udit Roy retracted by way of filing an affidavit before this court that the mentioning of “grievous

hurt” in the injury report was made due to hot haste, that does not by itself clothe the court to come to a conclusion that there was no wrongful restraint or no hurt or criminal intimidation, caused to attract the penal remedy or the continuation of instant criminal proceeding any further will be an abuse of the process of the court for exercising inherent power of the High Court under section 482 Cr.P.C. for quashing such proceeding.

15. Upon hearing learned counsel for both the parties, I am satisfied that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. The affidavit filed by Dr. Roy declining that any grievous hurt was found while the victim was treated by him is hardly a reason for holding that the offence of hurt or unlawful restraint or criminal intimidation would elude from such occurrence. The High Court cannot overlook the contents of the charge-sheet which is on the record to reach at the conclusion that criminal offence as stated in the supplementary charge sheet has prima facie case against the petitioners, though veracity of it indeed be examined during the course of trial.

16. Where factual foundation for the offence have been laid down in the FIR and has also been reflected in the statements recorded during investigation, the High Court should not hasten to quash criminal proceeding merely on the premise that one or two ingredients have not been stated with the details or that the retracted statement of the concerned doctor discloses that no grievous hurt was caused. The crux of the allegation is the intention of the petitioners against whom the allegation is for wrongful restraint and causing hurt and criminal intimidation and not the nature of the injury which would become decisive in discerning whether there was

commission of offence or not. The complainant has stated in the complaint that accused persons had assaulted her husband mercilessly and that the complainant was treated in a Government Hospital and that thereafter he was referred for better treatment and subsequently treated at the chamber of private practitioner. Even Dr. Udit Roy in his statement before police has stated that his only mistake is he mentioned that injury was caused in forehead instead of head. Such averments coupled with materials collected during investigation prima facie makes out a case for charge hearing by the trial court.

17. Therefore, the allegations made in the complaint and the materials collected during investigation, if taken at their face value and accepted in their entirety, it cannot be said that it do not prima facie disclose the commission of an offence nor the uncontroverted allegations made in the FIR and the statements recorded by IO do not disclose the commission of any offence against the accused persons/petitioners or that the allegations are so absurd and inherently improper that on the basis on which no prudent person could have reached a just conclusion that there were sufficient grounds in proceeding against the accused persons or there is any express legal bar engrafted in the Code or any other statute to the continuance of the criminal proceeding. Beside a stray statement made by the petitioners during argument, there is also nothing to show that the criminal proceeding is actuated with *malafide* and has been initiated maliciously with an ulterior motive for wrecking vengeance on the accused and with a view to spite them due to private or personal grudge. When the facts available in record constitutes prima facie case against the petitioners,

the criminal proceeding will not be quashed merely because the person who filed the complaint had a personal grudge, animosity or a malicious intent, which if any, needs to be tested during the trial.

18. Since prima facie there is an allegations that there was a guilty intention to cause hurt to the complainant, I may hasten to clarify that it is not a case where the allegation is totally unfounded in the materials collected during investigation. It is also not a case where it could be said that even if the allegations in entirety are accepted, no case is made out. In this context it is needless to emphasise that High Court while exercising his power under section 482 Cr.P.C. has to adopt a very cautious approach.

19. In ***CBI Vs. Rabi Shankar Srivastava*** reported in **(2006) 7 SCC 188** it was held that the power possessed by High Court under section 482 Cr.P.C. are very wide and the very plausitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise this power is based on sound principle and such inherent power should not be exercised to stifle a legitimate prosecution. The court has further cautioned that it is not proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrived at a conclusion that the proceeding are to be quashed. It has been further pronounced that it would be erroneous to assess the materials before it and conclude that the complaint could not be proceeded with. In fact *Ex debito justitiae* is inbuilt in the exercise of section 482 and the whole idea is to do real, complete and substantial justice for which it exists. The power is no

doubt of wide amplitude but requires exercise with great caution and circumspection.

20. Learned Counsel for the petitioner has also taken a specific plea that the alleged incident took place on 07.06.2015 and the case was registered on 09.06.2015 which continued till 22.02.2020, which is near about more than 4 years and therefore, the cognizance which was taken by the Magistrate on the offence under section 341/323/506/34 of the IPC is barred under section 468 of the Cr.P.C. and investigation is also barred under section 167(5) of the Cr.P.C.

21. The amendment made by State of West Bengal in connection with section 167(5) of the Cr.P.C. made it clear that such provision regarding stopping of further investigation is applicable only in a case where the investigation is still pending and not in a case like the present one where charge sheet has been filed on completion of the investigation. Infact the provisions of 167(5) has been incorporated with an intention to ensure speedy completion of investigation and not for nullifying any investigation which has been done under the High Court's order.

22. Similarly, 468 definitely creates a bar in taking cognizance after lapse of six months, if the offence is punishable with fine only and one year if the offence is punishable with imprisonment for a term not exceeding one year and three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Now section 190 of the code of criminal procedure states as follows:-

“ 190. Cognizance of offences by Magistrates

- (1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under Sub-Section (2), may take cognizance of any offence—
 - (a) upon receiving a complaint of facts which constitute such offence;
 - (b) upon a police report of such facts;
 - (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.
- (2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under Sub-Section (1) of such offences as are within his competence to inquire into or try.

23. If I read the abovementioned section along with section 460 of the Cr.P.C., I find that the later provision deals with the irregularities which do not vitiate proceedings and it includes in section 460(e) to take cognizance of an offence under clause (a) or Clause (b) of sub section (1) of section 190. Since in the instant case cognizance is taken upon a police report, so it comes within section 190(b) and therefore, protected under section 460(e) of the Cr.P.C.

24. The Apex Court in the case of ***Ravindra Kumar Madhanlal Goenka and another Vs. Rugmini Ram Raghav Spinners Pvt. Ltd.*** reported in **(2009) 11 SCC 529** after considering the principles relating to exercise of inherent jurisdiction of the High Court to quash criminal proceeding have reiterated the principles which may be reproduced below:-

16. This Court in *Indian Oil Corpn. v. NEPC India Ltd.* [(2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] at pp. 747-48 has observed as under: (SCC para 12)

“12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by this Court in several decisions. To mention a few—*Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre* [(1988) 1 SCC 692 : 1988 SCC (Cri) 234] , *State of Haryana v. Bhajan Lal* [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] , *Rupan Deol Bajaj v. Kanwar Pal Singh Gill* [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059] , *CBI v. Duncans Agro Industries Ltd.* [(1996) 5 SCC 591 : 1996 SCC (Cri) 1045] , *State of Bihar v. Rajendra Agrawalla* [(1996) 8 SCC 164 : 1996 SCC (Cri) 628] , *Rajesh Bajaj v. State (NCT of Delhi)* [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] , *Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269 : 2000 SCC (Cri) 615] , *Hridaya Ranjan Prasad Verma v. State of Bihar* [(2000) 4 SCC 168 : 2000 SCC (Cri) 786] , *M. Krishnan v. Vijay Singh* [(2001) 8 SCC 645 : 2002 SCC (Cri) 19] and *Zandu*

Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque [(2005) 1 SCC 122 : 2005 SCC (Cri) 283] . The principles, relevant to our purpose are:

(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not.”

25. After going through the record including materials collected during investigation I do not consider that it is fit case where the proceeding can be quashed invoking this courts jurisdiction under section 482 of the Code. Since it cannot be said that the FIR lodged by the opposite party does not disclose the commission of an offence or there existed no other circumstances which can be made the basis for quashing of the proceeding.

26. CRR 706 of 2016 thus stands dismissed.

27. However, this dismissal order will not preclude the petitioners to agitate all the points referred herein at the time of charge hearing and if such points are taken by the accused persons/petitioners at the time of

charge hearing, the court below will adjudicate such submissions in accordance with law without being influenced by any observation made herein.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)