

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1077 of 2020

Sk. Abdul Alim @ Sk. Abdul Haque

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Sk. Toslim Ali.

For the State : Mr. Swapan Banerjee,
Mrs. Purnima Ghosh,
Mr. Anindya Sundar Chatterjee.

For the Union of India : Mr. Siddhartha Lahiri.

Hearing concluded on : 18.01.2024

Judgment on : 05.02.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred praying for quashing of the proceeding and all orders in G.R. Case no. 1372/2016 arising out of Uluberia Police Station Case no. 394 of 2016 dated 23.06.2016 under Sections 147/148/149/379/427/506 of IPC & 3/4 E.S. Act, pending before the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah.
2. The case in short is that, one Nikhil Chandra Majhi, ASI of Uluberia Police Station lodged a Suo Moto complaint on 23.06.2016 to the effect that on 22.06.2016 at around 23.05 hrs., two group of people clashed near a sporting club on Natibpur Road under Uluberia Police Station by throwing brick bats and hurling bombs. The complainant and other superior officers came to the said spot with force and controlled the situation and dispersed the unlawful mob. During enquiry some shops and houses were found to be damaged and huge quantity of broken bricks and remnants of bomb could be found at the place of occurrence.
3. This gave rise to the present case which ended in Charge Sheet. The petitioner states that he is a serving soldier in army medical corps and on the said date and time of incident i.e. 23/06/2016, he was present at his place of duty at Jammu and Kashmir. The petitioner after knowing of the said incident duly approached the Commanding Officer, 439 Field Hospital on 11.05.2017 stating about the said incident and praying for

taking steps in respect of the said incident. On 13.05.2017 the second in command officer of 439, Field Hospital issued a Memo vide no. 4156/Copy/2017 addressed to the Superintendent of Police, Howrah Rural Area as well as District Magistrate Howrah and also Solider Board Howrah and Sub Divisional Officer, Uluberia, Howrah, and also the Officer in Charge Uluberia Police Station and requested the said authorities to take necessary steps to discharge the petitioner in the said case.

4. It is stated that the allegation made in the FIR is false and concocted, and impossible, as the petitioner was busy discharging his duty at South Kashmir 439 Field Hospital on the date and time of the alleged incident. It is further stated that the investigating agency without any proper and effective investigation has submitted the Charge Sheet which is an abuse of the process of the Court and law and thus not sustainable in law.
5. The said Criminal proceeding which has been initiated against the petitioner is totally malicious and has been started only with the intention to harass the petitioner.
6. On 09.04.2018, the second in command officer of 439, Field Hospital again issued a Memo vide no. 4156/Copy/2018 addressed to the Superintendent of Police, Howrah Rural Area as well as District Magistrate, Howrah and also Solider Board Howrah and Sub-Divisional Officer, Uluberia, Howrah and also the Officer in Charge Uluberia Police Station and again requested the said authorities to take steps to

discharge the petitioner in the said case. But no action was taken by the authorities. Hence the revision.

7. From the materials on record it appears that:-

- i) The petitioner has filed copies of certificates dated 9th April, 2018 and 13th May, 2017, stating the non involvement of the petitioner in the present case as the petitioner was a serving soldier in Army Medical Corps and was serving with 439 Field Hospital at South Kashmir on the date and time of incident.

On thorough enquiry by the Commanding Officer it was found that the petitioner was on duty on the date of incident in the present case. As such, it was stated that the name of the petitioner was to be deleted from the case.

- 8. The present case is for offence punishable under Sections 147/148/149/379/427/506 of IPC and 3/4 E.S. Act.
- 9. The State has placed the case diary.
- 10. **Learned counsel appearing for the Union of India has filed a copy of an email received on his official e-mail. The said mail has been sent by Col. D.S. Gulati, Commanding Officer, 439 Field Hospital, Army Medical Corps, Kashmir.**
- 11. **This mail dated 31.08.2020 has verified/authenticated that the earlier letters dated 13th May, 2017 and 9th April, 2018 were**

issued by their unit and that the petitioner served at that unit (at Kashmir) from 23rd January, 2016 to 31st July, 2019.

12. The date of incident in this case is 23.06.2016.

13. According to **Section 11 of the Indian Evidence Act, 1872**, facts that are not otherwise relevant become relevant, when they:-

- i) Are incompatible with any fact in issue or any relevant fact;
- ii) Independently or together with other facts make the existence or lack of any fact in issue or relevant fact highly probable or improbable.
- iii) As per Section 103 of the Evidence Act, 1872, the burden of proof as to any particular fact will be upon the party desiring the Court to believe in its existence except as otherwise provided by any law that the proof thereof shall lie upon a particular person.
- iv) To prove an 'Alibi', it requires presenting evidence to demonstrate that the accused was elsewhere during the commission of the offence, thereby creating reasonable doubt challenging the prosecution's case.

14. The Supreme Court in **Kamal Prasad & Ors. vs The State of Madhya Pradesh (Now State of Chhattisgarh), in Criminal Appeal No. 1578 of 2012, on 10th October, 2023**, held:-

*“18. Another defence taken by the convict-appellants is that of the plea of alibi. This Court in **Binay Kumar Singh v. State of Bihar, (1997) 1 SCC 283**, has noted the principle as:*

“23. The Latin word alibi means “elsewhere” and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime.”

19. The principles regarding the plea of alibi, as can be appreciated from the various decisions⁷ of this Court, are:-

19.1 It is not part of the General Exceptions under the IPC and is instead a rule of evidence under Section 11 of the Indian Evidence Act, 1872.

19.2 This plea being taken does not lessen the burden of the prosecution to prove that the accused was present at the scene of the crime and had participated therein.

19.3 Such plea is only to be considered subsequent to the prosecution having discharged, satisfactorily, its burden.

19.4 The burden to establish the plea is on the person taking such a plea. The same must be achieved by leading cogent and satisfactory evidence.

19.5 It is required to be proved with certainty so as to completely exclude the possibility of the presence of the accused at the spot of the crime. In other words, a standard of ‘strict scrutiny’ is required when such a plea is taken.

21. In our considered view, both these defence witnesses do not conclusively establish the plea of alibi, based on the principle of preponderance of probability as their statements stand unsupported by any other corroborative evidence.

22. We find that for the plea of alibi to be established, something other than a mere ocular statement ought to have been present.”

15. The Latin word ‘alibi’ means elsewhere. When a defendant claims a plea of alibi, they are essentially stating that they were elsewhere at the time of the crime.

- i) Plea of alibi can be raised only if the person proves that he was present at a place, far and distant and beyond any accessibility to the place of offence.
- ii) The burden is on the accused and strict proof is required for establishing the plea of alibi.
- iii) An alibi defence contains three key components:-
 - At the time or place of the crime, the defendant was absent.
 - No opportunity that was reasonable for the defendant to commit the crime had presented itself; and
 - By other means, the crime could not have been committed by the defendant.
- iv) Thus, for a successful alibi, the defendant's lawyer must show evidence that the client was not present at the specific place of crime, at the time when the offence occurred.

16. In the present case, the petitioner has produced convincing and sufficient proof that he was not present at the place of crime as alleged. The Commanding Officers of his unit have certified by way of duly authenticated documents that at the relevant time the petitioner was posted and was on duty at Kashmir.

17. The alleged incident occurred in District Howrah, which is at a distance of about 1,734 kms, from the place of duty (Kashmir) of the petitioner.

- 18. Thus the petitioner has been successful in proving his Alibi by way of evidence beyond all reasonable doubt.**
- 19.** The implication of the petitioner in the present case is clearly an abuse of the process of law and is thus liable to be quashed in the interest of Justice.
- 20. CRR 1077 of 2020 is allowed.**
- 21.** The proceedings in G.R. Case no. 1372/2016 arising out of Uluberia Police Station Case no. 394 of 2016 dated 23.06.2016 under Sections 147/148/149/379/427/506 of IPC & 3/4 E.S. Act, pending before the Learned Additional Chief Judicial Magistrate, Uluberia, Howrah **is hereby quashed in respect of the petitioner Sk. Abdul Alim @ Sk. Abdul Haque.**
- 22.** All connected applications, if any, stand disposed of.
- 23.** Interim order, if any, stands vacated.
- 24.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 25.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)