

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1903 of 2011

Basudev Ghosh & Anr.

-Vs-

The State of West Bengal

For the Petitioners	: Mr. Tanmoy Chakraborty Mr. Bibek Chatterjee Ms. Susmita Saha
For the State	: Mr. Avishek Sinha
Heard on	: 07.02.2024, 20.03.2024, 30.04.2024, 23.08.2024
Judgment on	: 07.11.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner against the Habra Police Station F.I.R. No.100 of 2011 dated 02.03.2011 under Sections 279/304A of Indian Penal Code.
2. The grievances of the petitioners express the petitioner No.1 to be a businessman dealing in groceries at his residence since 12 years. Petitioner No. 1 had been suffering from eye and neurological issues. He purchased a vehicle, i.e. TATA Sumo Vista Ex-BS-II being Registration No. WB02V/7481, Engine No. 483DL56DPZ11739 and Chassis No. 446255DTZ919494.

3. On 11.02.2011 petitioner Nos.1 and 2 reached Disha Eye Hospital & Research Centre at 88(63A) Ghosh Para Road, Barrackpore, Kolkata-700120 at about 10.45 a.m. in his private car, i.e. Tata Sumo bearing registration No.WB02V/7481. The petitioners reached the said Hospital upto 4:45 p.m. and returned home at 5 p.m.
4. On 01.06.2011 at about 12:50 p.m., an advocate viz. Azijul Haque from Mobile No.9231348261 informed petitioner No.1 that on 11.02.2011 at about 3:30 p.m. his vehicle was involved in an accident in front of Habra Chaityana Commerce College and desired to meet petitioner No.1 on the next day at about 07:30 p.m.
5. On 2nd June, 2011 at about 07:30 p.m. the aforesaid advocate along with another advocate viz. Ram Prasad Chakraborty appeared at the house of the petitioner no.1 and expressed to be highly related with the local police station and the Investigating Officer named Tushar Ranjan Tanti, Taki Road, Kajipara Barasat possessing Mobile No.8001901340 of the Habra Police Station to be involved in illegal activities.
6. The said Azijul Haque stated that the I.O of the concerned Police Station involved in illegal activities for obtaining compensation from the concern insurance in MACC was searching for a valid insured vehicle. The petitioners had no risk and he would gain some money as a share from the said incident if he provided the number of his vehicle. Thereafter petitioner no.1 was disturbed and requested to participate in the said illegal activities continuously.

7. A complaint was filed by one Manuwara Begum wife of Muzammel Hossain who died in an accident at hospital named Nilratan Hospital on 20.02.2011 at 08:45 p.m. and the complaint was lodged on 02.03.2011 after a lapse of one month.
8. Immediately thereafter the petitioner No.1 filed an application dated 07.06.2011 stating the facts to the Superintendent of Police North 24-Parganas Barasat, Officer In charge Habra Police Station through Speed Post with A/D.
9. On 07.06.2011 further representations were submitted to the Officer-in-Charge, Airport Police Station and Inspector-in-Charge, Narayanpur Sub-Police Station Phanri stating all the facts.
10. Learned Advocate for the petitioners submitted as follows:-
 - i. The petitioners could not be fastened with any liabilities under Sections 279/304A of the I.P.C.
 - ii. The said complaint was a result of afterthought and there was overwhelming delay in lodging the said complaint.
11. The Learned Advocate for the State had placed a copy of the case diary before the Court and further submitted that prima facie case had been established against the present petitioners under Sections 279/304A of the Indian Penal Code. The revisional application accordingly should not be allowed at a nascent stage considering the serious allegations against the petitioners to constitute a cognizable offence required to be proved through trial.

12. The prosecution case precisely stated on 11.02.2011 at about 03:30 p.m., one Mojammel Hossain since deceased, of Village Hayderpur, P.S. Baduria, District North 24 Parganas, proceeded to Barasat by his own motorcycle bearing registration no. WB-024J-4612. It was alleged one Tata Sumo bearing registration no. WB-02V-7481 rushed speedily and negligently, smashed him in front of Habra Sri Chaitanya College (Commerce). Under such circumstances, he sustained injury and local people shifted him to Habra S.G. Hospital for treatment. Thereafter, he was referred to R.G. Kar Hospital for further treatment. On 20.02.2011 at 08:45 a.m. the aforesaid Mojammel Hossain expired at R.G. Kar Hospital.
13. With reference to the above incident, the complainant namely Manuwara Begam, the wife of the said deceased Mojammel Hossain, after expiry of 20 days, lodged a written complaint dated 02.03.2011 against which a Habra Police Station Case No. 100/2011, dated 02.03.2011, under Sections 279/304A of the Indian Penal Code, 1860 was initiated against the petitioners.
14. The petitioners submitted that the petitioner no.1 was suffering from eye, neuro and orthopaedic diseases since long and as such, the petitioner no.1 purchased a vehicle TATA Sumo Victa EX EGR, BS-II, Colour Green, being Registration No. WB02V/7481, Engine No. 483DL56DPZ11739 and Chassis no. 446255DTZ919494 for visiting hospital and doctors' chambers and other domestic and social purposes.
15. On the day of the commission of the alleged offence i.e. 11.02.2011 the petitioner no.1 was present at Disha Eye Hospital & Research Centre at

88(63A) Ghosh Para Road, Barrackpore, Kolkata 700120, along with the alleged vehicle and its driver, i.e. petitioner no. 2, for an eye check-up and treatment of the petitioner no. 1. The petitioners reached the aforesaid hospital on 10:45 A.M. The alleged vehicle was parked nearby the said Eye Hospital and Opposite of Barrackpore Nursing Home at 60/51, Ghosh Para Road, North 24-Pargana near by a wall, from 11 A.M. to 5.00 P.M. The said hospital issued an outpatient ticket/card in the name of the petitioner no.1 at 11:31 a.m. for proper treatment and collected medicine at 4:40 P.M. on that date i.e. 11.02.2011. Throughout the day the petitioners were at the said hospital and they returned home around about 07:15 P.M. by the alleged vehicle along with petitioner no.2.

16. The alleged incident occurred on 11.02.2011 at around 03:30 P.M. on Jessore Road at area of Habra Police Station but no case was registered at the Habra S.G. Hospital as well as at Habra P.S. whereas at the date and time of the occurrence of the alleged offence, the petitioners were at aforesaid Disha Eye Hospital & Research Centre at 88(63A) Ghosh Para Road, Barrackpore, Kolkata – 700120.
17. The concerned I.O. of that case deliberately framed the petitioner's vehicle number in the F.I.R. and also in the charge-sheet since the original offending vehicle fled after hitting the complainant's husband and the concern I.O. of this case did not trace the said offending vehicle and took 20 days to find out a insured vehicle for the sake of investigation and only to obtain a compensation for the complainant from the insurance company falsely booked the petitioners under Sections 279/304A of I.P.C. for the

purpose of receiving unlawful gratification from the complainant, collusively with an agent/broker namely Azijul Haque, Mobile no. 9231348268, who was engaged in settling insurance claim.

18. The petitioners stated that charge was framed on 18.12.2014 and, thereafter on each and every date after duly service of summons, none appeared on 04.02.2016, 09.02.2017, 24.01.2018, 18.09.2019, 16.07.2021, 11.10.2023 before the Learned Court below for recording of evidence.
19. The Learned Advocate representing the petitioners submitted the instant proceeding and charge framed by the Learned Trial Court had become groundless and not sustainable in the eye of law as 12 years had passed from the date of appearance of petitioners in accordance with Section 245(2) Cr.P.C., State Amendment, WEST BENGAL stated that sub-section namely :-

“(3) If the evidence referred to in Section 244 are not produced in support of the prosecution within four years from the date of appearance of the accused, the Magistrate shall discharge the accused unless the prosecution satisfies the Magistrate that upon the evidence already produced and for special reasons there is ground for presuming that it shall not be in the interest of justice to discharge the accused.”[W.B. Act 24 of 1988, Section 2];

20. The claim of the petitioners to have been falsely implicated in Habra Police Station F.I.R. No.100 of 2011 dated 02.03.2011 claiming their absence on the relevant day being occupied with medical treatment at the aforesaid

hospital is required to be proved through recording of evidence to justify their alibi and to absolve themselves from the accusations in the complaint.

21. The statements recorded under Section 161 of the Code of Criminal Procedure, seizure of the documents, vehicle and the injury report etc. preliminary infer the commission of a cognizable offence. The veracity of the complaint alleging the offence to have been committed by the petitioners resulting in an accident as well as the contrary claim of the petitioners of being imputed in a fabricated case of false accident can only be unraveled through the process of trial.
22. High Court, exercising its power under Section 482 of the Code of Criminal Procedure, cannot act as a Trial Court or even consider the claim of the petitioners to have been falsely implicated based merely on their assertions in the revisional applications.
23. The Learned Advocate representing the petitioners submitted that the petitioner no.1 is an aged person suffering from eye disease and neurological problems.
24. The Learned Trial Court may consider the absence of the petitioner no.1, if legally represented by a Learned Advocate on the dates fixed for conducting the trial.
25. The Learned Trial Court is to further pass necessary orders against the complainant to ensure her presence for conclusive determination of the aforesaid police station case at the earliest without granting unnecessary adjournments to either of the parties since a considerable period of 13 years has already elapsed.

26. In view of the above discussions, the instant criminal revisional application being CRR 1903 of 2011, along with connected applications, if any, stands dismissed.
27. There is no order as to costs.
28. Case Diary, if any, to be returned forthwith.
29. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
30. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)