

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3954 of 2014

**Asok Sinha Roy
-Vs-
The State of West Bengal**

For the Petitioner : Mr. Sekhar Basu
Mr. Soubhik Mitter

For the State : Mr. Avishek Sinha

Heard on : 17.01.2024, 20.02.2024, 14.03.2024,
21.03.2024, 26.06.2024

Judgment on : 25.09.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner praying for quashing of the proceedings pending before the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, North 24 Parganas being G.R. Case No.4323/2010 arising out of Belghoria Police Station Case No.237/2010 dated 25.07.2010 under Sections 471/477A of the Indian Penal Code.
2. In the year 2004 the petitioner was posted as the Inspector-in-Charge of Belghoria Police Station. On the intervening night of 27th/28th September, 2004 when the petitioner was outside the police station and was attending a

meeting in relation to law and order situation of the local, then one detained person namely Barun Chatterjee, hanged himself inside the lock up of the police station. The said detained person had been arrested by S.I. Jyotirmoy Chakraborty. With regard to the death of Barun Chatterjee enquiry was conducted by the police department and the Human Rights Commission also. The Government of West Bengal directed enquiry by the DIG, CID WB also. After enquiry the Human Rights Commission found that some GD entries had been tampered with and one lady Assistant Sub-Inspector of Police, namely Krishna Das who had taken charge of the lockup, gave a statement in that regard. Later of Krishna Das released from her statement stating that she had been pressurized and/or coerced into making such statement. However the commission suggested/recommended initiation of criminal proceedings against the petitioner and departmental proceeding against the lady A.S.I. Krishna Das and the arresting officer Sub-Inspector Jyotirmoy Chakraborty.

3. On 25.07.2010 one Subrata Bhowmick, Inspector-in-Charge of Belghoria Police Station lodged an information wherein it has been inter alia alleged that:-

“In compliance of the order vide memo no.3536/C/CA-I, dated 16.04.2010 of S.P. North 24 Parganas in consequence to the order of Govt. of West Bengal vide memo no.1851-ADM/HRC/Adm/HRC-60/2009 dated 31.03.2010 of West Bengal Police Directorate, Writer’s Buildings – 700001 and order 259-HS/HRC/R/Recom(WB0-18/08 dated 10.03.2010 of S.L. Chakraborty, Joint Secretary, Govt. of West Bengal, Writer’s Buildings over

recommendation of West Bengal Human Rights Commission vide Human Rights Commission File No.2872/WBHRC/COM/2004-05/44/W/WBHRC/IW/2004 on the complaint of Smt. Krishna Chatterjee in connection with the custodial death of her husband late Barun Chatterjee at Benghoria Police Lockup. I, Inspector Subrata Bhowmick, presently posted as Inspector-in-Charge, Belghoria Police Station, District – North 24 Parganas, hereby lodged this written complaint suo moto against Shri Asok Sinha Roy, former Inspector-in-Charge, Belghoria Police Station, North 24 Parganas, now retired from this police department. As it has been observed by Human Rights Commission, West Bengal, after enquiry, said Shri Asok Sinha Roy had intentionally and deliberately changed G.D. of the said Belghoria P.S. vide General Diary Entry No.1955 to 1991 dated 27.09.04 and other documents. As such he is responsible for falsification of records and for changing G.D. and for inserting incorrect records in place of the original and thereby committed a serious misconduct, relating to serious damage to the public records, relating to the custodial death of one Barun Chatterjee, of Abdul Latif Street, Belghoria, Kolkata – 700056 inside the Belghoria Police Lockup on night of 27/28.09.04 even though he is retired.”

4. On the basis of the said information, Belghoria Police Station Case No.237 of 2010 dated 25.07.2010 under Sections 471/477A of Indian Penal Code was registered for investigation against present petition. During the course of investigation, on 02-08-2010 the petitioner appeared before the Court of Learned Additional Chief Judicial Magistrate and obtained an order of bail.

5. On 06.08.2014, the petitioner preferred an application for discontinuation of investigation and/or discharge in terms of Section 167(5) of the Code of Criminal Procedure as the period of three years had elapsed and yet no final report had been filed in connection with the instant case.
6. On 07.08.2014, the Investigating Officer of the instant case preferred an application for extension of the time period of investigation as provided for, in Section 167(5) of the Code without ascribing any reason in the said application as to why the period of investigation was required to be extended on this statutory period.
7. Upon completion of investigation, the Investigating Agency on 22.08.2014 filed its report in the final form being Charge-Sheet No.361 dated 17.08.2014 under Sections 471/477A of the Indian Penal Code before the Court of the Learned Additional Chief Judicial Magistrate, Barrackpore, 24 Parganas (North).
8. The Learned Advocate for the petitioner submitted that a cursory glance at the charge-sheet will reveal that the materials were placed before the Learned Public Prosecutor, 24 Parganas (North) for obtaining his opinion, who initially opined that charge sheet be filed under Section 477A Indian Penal Code; but as the investigating agency found the same to be a non-cognizable offence hence the Learned Public Prosecutor (as aforementioned) opined that charge-sheet be submitted under Sections 471/477A of the Indian Penal Code. Such a procedure is not only foreign to criminal law but is completely against the scheme of the Code and such a charge-sheet which is filed as per the opinion of the Learned Public Prosecutor merits no

consideration at all and is liable to be set aside. Such a practice of obtaining the opinion of the public prosecutor has been severely deprecated by the Hon'ble Apex Court and no proceeding should be allowed to continue on the basis of such a tainted charge-sheet.

9. It was further stated that finally by Order dated 05.12.2014, the Ld. Addl. Judicial Magistrate, Barrackpore, 24 Parganas (North) was pleased to reject the prayer for discharge preferred on behalf of the petitioner and was further pleased to fix 26.02.2015 for appearance, deciding the issue of discharge so far an accused person is concerned is a serious matter and charges in a criminal trial cannot be framed as a matter of course. It was not only that the FIR has to disclose commission of a cognizable offence prima facie, but the materials collected during investigation and as reflected in the charge sheet has to specifically bring out the complicity of the accused person with regard to the crime so alleged to have been committed in order to allow the Learned Court to reject a prayer for discharge. A suspicion, which must be of a grave nature has to be disclosed in the charge sheet in order to enable the court to proceed to the stage of framing charges. The order of the Magistrate rejecting the prayer for discharge of the accused persons must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Learned Magistrate has to examine the nature of allegations made in the charge sheet and also look into the accompanying documents and cull out therefrom the complicity of the accused person against whom such charges are to be framed. It is not that the Magistrate is a silent spectator at the time of deciding on the issue of discharge but on the contrary the Learned

Magistrate has to carefully scrutinize the charge sheet and the accompanying documents and find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by the accused. The Learned Magistrate in the instant case mechanically and without application of mind rejected the prayer for discharge of the petitioner and the same is serving to be highly prejudicial for him.

10. It was further stated that it was trite law and needs no clarification from any end that any prayer for extension of the period of investigation, in the event such investigation is not completed before the expiry of the statutory period of three years as envisaged under Section 167(5) of the code (Qua the West Bengal Amendment) has to be made during the subsistence of such period of investigation. Once the period comes to an end, (i.e., once the period of three years comes to an end) any prayer for extension of the period of investigation is not maintainable. In the instant case there was nothing to show that the investigating agency made any prayer for investigation during the subsistence of the period as stipulated. Thus the prayer of the investigating agency on 07.08.2014 for allowing the time period for completion of investigation was otherwise bad in law and merits no consideration at all.
11. It was further stated that in the instant case, it was apparent that the petitioner appeared before the court of the Learned Magistrate on 02.08.2010 and was granted bail. Thus the period as stipulated under Section 167(5) of the I.P.C., the Court came to an end on 02.08.2013 but in the instant case after lapse of one year, on 07.08.2014, the Investigating Agency prayed for extension of time. Such a procedure is unwarranted in law

and merits no consideration. The Learned Magistrate by failing to consider this vital aspect in its proper perspective has committed a grave error in law and as such the order dated 05.12.14 was liable to be set aside on that score alone.

12. It was further stated that the Learned Magistrate in the most erroneous manner has come to the conclusion that the court by order dated 30.08.2013, 30.12.2013 and 08.04.2014 had extended the time for filing the report of the investigating agency. Furthermore the investigating agency on 22.07.2014 had prayed for recording the statement of a witness under Section 164 of the Code, which was allowed by the Learned Court and the next date was fixed on 02.09.2014. The Learned Magistrate has without any basis come to the conclusion that impliedly the Court had extended the time for filing the report of the I.O. till 02.09.2014 as no objection was raised on 22.07.2014. The learned Magistrate has further observed that on 13.08.2013 and 30.12.2013 the petitioner raised no objection for stoppage of investigation. However, such observation of the Ld. Magistrate was completely erroneous on two counts -

a) On 30.08.2013 and 30.12.2013 the petitioner was not present in court and thus the conclusion of the Learned Magistrate that the petitioner failed to raise any objection with regard to the continuation of investigation and for adequate relief, does not arise. Furthermore on 22.07.2014 the petitioner was not present in court (as it was not a date fixed by the Learned Court) and it is well nigh impossible for the petitioner to know when the investigating agency had prayed for

recording of statement under Section 164 of the Code and when the same had been allowed by the Learned Magistrate.

- b) No prayer for extension can be automatically granted by the court without there being a specific prayer by the Investigating Agency in that regard.

The facts narrated hereinabove, clearly show that the Learned Magistrate transgressed his jurisdiction and had come to an erroneous conclusion that the period of extension stood automatically extended. Such erroneous reasoning in law can neither be accepted nor supported in any way and was liable to be set aside.

13. It was further stated that the continuation of the instant proceeding any further than the stage it has already reached will be a gross abuse of the process of court inasmuch as from the fact narrated hereinabove it is crystal clear that the present proceeding is vexatious and harassive in nature and has been instituted at the behest of a malicious complainant. The allegations when taken in their entirety do not disclose the commission of any offence by the petitioners at all. Mere bald allegations cannot constitute an offence under Section 471 or 477A of the Indian Penal Code and no useful purpose will be served by allowing the impugned proceedings to continue any further. The petitioner further states that the facts and circumstances narrated hereinbefore clearly indicate that the allegations are wholly false and are the product of an afterthought and as such the entire proceeding is liable to be quashed.

14. The Learned Advocate for the petitioner further submitted that –

- i. Section 167 of Cr.P.C. laid down the *“Procedure when investigation cannot be completed in twenty-four hours.”* Sub-section (5) of Section 167 had been amended by the Code of Criminal Procedure (West Bengal Amendment) Act, 1988 which read as follows:-

“(5) if, in respect of –

- i. any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months, or*
- ii. any case exclusively triable by a Court of Sessions or a case under Chapter XVIII of the Indian Penal Code, the investigation is not concluded within a period of three months, or*
- iii. any case other than those mentioned in clauses (i) and (ii), the investigation is not concluded within a period of two years,*
from the date on which the accused was arrested or made his appearance, the Magistrate shall make an order stopping further investigation into the offence and shall discharge the accused unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the periods mentioned in this sub-section is necessary.”

In the instant case, petitioner had been alleged to have committed offences punishable under Sections 471/477A of IPC under Chapter XVIII. Hence, Section 167(5)(ii) of Cr.P.C. as amended by the Code of Criminal Procedure (West Bengal Amendment) Act, 1988 would apply to the instant case.

- ii. If investigation was not completed within the stipulated period of 3 years as envisaged under Section 167(5) of Cr.P.C., an application for extension of the period of investigation had to be filed within the subsistence of the period of investigation i.e. within the period of 3 years. Once the period of 3 years came to the end, no application for extension of period of investigation would be maintainable. Hence, the order by which the Learned Magistrate extended the period of investigation was bad in law and ought to be set aside.
- iii. On 02.08.2010, the petitioner appeared before the Learned Court and was granted bail. The period of 3 years as stipulated under Section 167(5) of Cr.P.C. expired on 02.08.2013. However, on 07.08.2014, i.e. about 1 year after the lapse of the period of 3 years, the investigating agency prayed for extension of period of investigation. Such order by which the application for extension of period of investigation was extended after 1 year from the lapse of the stipulated period of 3 years was bad in law and should be remedied at the instance of the Hon'ble High Court.
- iv. Charge sheet indicated that materials were placed before the Learned P.P. for his opinion and he initially opined that charge sheet be filed under Section 477A of IPC. Since the investigating agency found this to be a non-cognizable offence, hence, Learned P.P. opined that the charge sheet be filed under Section 471/477A of IPC. The practice of obtaining opinion from the P.P. was bad in law and had been deprecated by the Hon'ble Supreme Court.

- v. Learned Magistrate observed that petitioner had failed to raise objection on two dates, being 13.08.2013 and 30.12.2013. However, the Learned Magistrate failed to take into consideration that on 13.08.2013 and 30.12.2013, petitioner was not present in Court and thus the conclusion of the Learned Magistrate that petitioner had failed to raise any objection had no factual foundation whatsoever. The Learned Magistrate failed to appreciate that the investigating agency filed the application for extension of the period of the investigation only on 07.08.2014, hence, prior to filing of the application by the investigating agency (i.e. on 13.08.2013 and 30.12.2013), petitioner could not have raised any objection thereto. Moreover, it was trite law that court cannot extend the period of investigation automatically unless there was an application filed specifically praying for such extension.
- vi. In view of the facts as mentioned hereinabove and the settled principle of laws on that issue, it was evident that the petitioner's application for discharge was rejected on erroneous grounds, which warrants interference by that Hon'ble Court. Moreover, the Learned Magistrate did not afford any opportunity for hearing to the petitioner while extending the period of investigation in terms of Section 167(5) of Cr.P.C. The manner in which the period of investigation was extended by the Learned Magistrate was contrary to the established principles and ought to be remedied by that Hon'ble Court. Continuing the proceedings against the petitioner on the strength of the ex-parte order by which the period of investigation was extended and on the opinion of the Ld. P.P. that

Section 477A of I.P.C., should be added since Section 471 of I.P.C., was merely a non-cognizable offence will only amount to abuse of process of the court. The materials as appearing against the petitioner, if analyzed in the correct perspective, do not warrant continuation of the proceedings any further. Hence, the impugned proceedings should be quashed.

15. Learned Advocate for the State submitted as follows :-

- i. From the sequence of orders passed by the jurisdictional court it was clear after the lapse of statutory period of investigation, by orders dated 30.08.2013, 30.12.2013 and 08.04.2013 the court has suo moto extended the period of investigation. By order dated 22.07.2014 the court has allowed the prayer of the investigating officer to record the statement of a witness under Section 164 of the Code of Criminal Procedure and fix the next date of hearing on 02.09.2014 for filing of the report of the investigating officer. From the tenor of the aforesaid orders it was palpably clear from the date of lapse of investigation, till the date of filing of application by the present petitioner to stop investigation and finally filing of charge sheet on 22.08.2014, the period of extension was impliedly extended.
- ii. The instant case has germinated from a serious allegation of falsification of evidence by the Officer-in-Charge in connection with the case of custodial death. From the charge-sheet it was evidence that at least 4 investigating officers investigated the case in a utterly sloth, lackadaisical manner just to delay the conclusion of investigation. All the investigating officers have shunned their responsibilities in some or the other manner

which resulted in such a delay. Under such circumstance closing of investigation under Section 167(5) of the Cr.P.C., would be prejudicial to the victim and would cause travesty of justice.

- iii. The orders stopping further investigation into the offence and the consequential order of discharge are not intended to be automatic sequel to the failure to complete investigation within the period as is evident from the succeeding words in Section 167(5) of the Code of Criminal Procedure.
- iv. Even in a case where the order of stopping investigation and the consequent discharge of accused has been made that was not the last word on it because of Section 167(6). Therefore the time schedule shown in Section 167(5) of the Code was not to be treated with rigidity and it was not mandatory that on the expiry of the period indicated therein, the magistrate should necessarily pass the order of the discharge of the accused. Before ordering of stoppage of investigation of Magistrate shall consider whether, on the facts of the case, on further investigation would be necessary to foster interest of criminal justice. The Magistrate at that stage must look into the record of investigation to ascertain the progress of investigation thus far registered. If substantial part of investigation by then over, the Magistrate should seriously ponder over the question whether it would be conducive to the interest of justice to stop further investigation and discharge the accused. (Reference may be made to a decision – *Nirmal Kanti Roy Vs. State of West Bengal* reported in (1998) 4 SCC 590 : 1998 SCC (Cri) 1100, Para 7 and 8).

16. The order dated 05.12.2014 in G.R. Case No. 4323 of 2010 passed by the Learned Additional Chief Judicial Magistrate states as follows:-

“To day is fixed for passing order. Sole accused on bail is present.

Heard the Learned Advocate for the accused person as well as Learned A.P.P. Perused the application dated 06.08.2014 filed by the accused person under section 167(5) of the Code of Criminal Procedure as amended by West Bengal Act(24 of 1988) on the grounds stated therein.

*The Learned Advocate for the accused person in course of hearing contended that investigation was carried beyond the prescribed period as provided in clause (ii) of section 167(5) of the Code of Criminal Procedure as amended by West Bengal Act (24 of 1988). In this respect he specifically argued that accused made appearance in this case on 02.08.2010 and he was released on bail on the same day. According to him, in terms of clause (ii) of section 167(5) of the Code of Criminal Procedure, the investigation should have to be completed within three years from 02.08.2010 i.e within 02.08.2013 but police report under section 173 of Code of Criminal Procedure was filed after completion of investigation on 22.08.2014. The Learned Advocate further argued that no such prayer was made by the I.O praying for extension of time. At the same time he has invited my attention to the order dated 07.08.2014 by which this court allowed the application of I.O by extending the time. By inviting my attention he submits that the said prayer was made by the I.O after expiry of the period as prescribed in section 167(5) of the Code of Criminal Procedure. Therefore, materials collected by I.O after expiry of statutory period of three years i.e on or after 02.08.2013 cannot be taken in to consideration and accordingly, accused person is entitled to get and order of discharge. In this regard he has placed reliance of the decision of the Hon’ble Calcutta High Court reported in i) **2007(2) C.Cr.L.R(Cal), page- 67** {Sashi Bhusan Mahapatra Vs. State of West Bengal} and ii) **1998(II) CHN, page 136** {K.K.Das & Anr vs. State of W.B & Anr}.*

On the contrary, Learned A.P.P also by placing reliance upon the decision of the Hon'ble Calcutta High Court reported in **2007(2) C.Cr.L.R(Cal), page-67** {Sashi Bhusan Mahapatra Vs. State of West Bengal} submits that sufficient materials has been collected by the I.O during the statutory period along with extended period for taking cognizance of offence under sections- 471 and 477A of the Indian Penal Code against the accused person. As such, the application filed by accused 167(5) of the Code of Criminal Procedure as amended by West Bengal Act (24 of 1988) is liable to be rejected.

Before pondering over the merits of the argument as put forward by the Learned Advocates for the respective parties, I think it necessary to discuss about the checkered history of the present case. The present case has been initiated against the accused person under section 471 and 477A of the Indian Penal Code. Accused person surrendered voluntarily in this case on 02.08.2010. That means, the investigation should have to be completed within 02.08.2013 in terms of clause (ii) of section 167(5) of the Code of Criminal Procedure as amended by West Bengal Act (24 of 1988). Lastly, date was fixed on 08.04.2014 and on that date accused was present before this court and as no report was received on that date under section 173 of the Code of Criminal Procedure, the next date was fixed on 02.09.2014 for I.O's report. In the mean time, on 22.07.2014 I.O made a prayer for recording statement of a witness under section 164 of the Code of Criminal Procedure. That prayer of I.O was allowed on the same day and accordingly statement of witnesses under section 164 of the Code of Criminal Procedure was recorded on that date. Thereafter, on 06.08.2014 accused filed the present application. After hearing C.D was called for and case was posted for hearing of the application dated 06.08.2014 on the date that was already fixed i.e on 02.09.2014. In between 06.08.2014 and 02.09.2014 I.O submitted charge sheet against the accused person under section 471 and 477A of the Indian Penal Code. Cognizance of offence was not taken on that date as because the application dated 06.08.2014 filed by accused was fixed for hearing on 02.09.2014. On

02.09.2014 case was adjourned on the prayer of accused person and the next date was fixed on 15.11.2014. On 15.11.2014 present application was heard.

Thus, from the facts as stated above, one thing is clear that statutory period of three years was already elapsed on 02.08.2013. But this court by orders dated 30.0.2013, 30.12.2013 extended the period time to time and lastly by order dated 08.04.2014 extended the time for filing I.O's report till 02.09.2014. Though, there was no prayer of L.O for extension of time. But at the same time it is to be borne in mind that accused person failed to make any prayer on those dates praying for stopping further investigation and for consequential relief. Though, it is evident from record that accused person was very much present in court on those dates. More so, by allowing the prayer of I.O for recording the statement of witness under section 164 of Code of Criminal Procedure on 22.07.2014, impliedly extended the time till 02.09.2014 and prior to that date i.e 22.08.2014 I.O submitted charge sheet against the accused person under section 471 and 477A of the Indian Penal Code.

I have perused the decisions of the Hon'ble Calcutta High Court reported in i) **2007(2) C.Cr.L.R(Cal), page-67** {Sashi Bhusan Mahapatra Vs. State of West Bengal) and ii) **1998(II) CHN, page 136** {K.K.Das & Anr vs. State of W.B & Anr). Also Perused the decision of the **Hon'bl Apex Court reported in AIR 1998 Supreme Court, page- 2322** { Niramal Kanti Roy vs State of West Bengal }. On perusal of the judicial pronouncement of the Ho'nble Apex Court and the Hon'ble Calcutta High Court in my considered view the settled position of law is that discharge is not intended to be automatic sequel to the failure of investigation within the period prescribed in section 167(5) of the Code of Criminal Procedure as amended by West Bengal Act(24 of 1988). The duty of the court to look in to the records of investigation done during the statutory period along with the extended period before passing any order.

In the present given situation, it has already been discussed earlier that time, was extended up to 02.09.2014 and charge sheet has duly been

submitted within the said period. On perusal of the charge sheet, case diary and other materials on record prima facie it appears to me that there is sufficient materials for taking cognizance against the accused person under section 471 and 477A of the Indian Penal Code.

In the light of the foregoing discussion and regards being had to the provision of law and borrowing wisdom from the judicial pronouncement of the Hon'ble Apex Court and the Hon'ble Calcutta High Court I have no other alternative but to reject the application dated 06.08.2014 filed by the accused person under section 167(5) of the Code of Criminal Procedure as amended by West Bengal Act(24 of 1988) praying for discharging himself from this case. Accordingly, the same is rejected.

Cognizance of offence under sections 471 and 477A of the Indian Penal Code is taken against the accused person.

Fix 26.2.15 for appearance and copy.”

17. In **Nirmal Kanti Roy Vs. State of W.B.**¹, the Hon'ble Apex Court observed as follows:-

“7. The order stopping further investigation into the offence and the consequential order of discharge are not intended to be automatic sequel to the failure to complete investigation within the period fixed in the sub-section. The succeeding words in the sub-section confer power on the court to refrain from stopping such investigation if the Investigating Officer satisfies the Magistrate of the fusion of two premises (1) that in the interest of justice it is necessary to proceed with the investigation beyond the period shown in the sub-section and (2) that there are special reasons to do so.

8. A reading of sub-section (6) further shows that even in a case where the order stopping investigation and the consequent discharge of accused has been made that is not the last word on it because the sub-section opens another avenue for moving the Sessions Judge. If the Sessions Judge is

¹ (1998) 4 SCC 590

satisfied that “further investigation into the offence ought to be made” he has the power to allow the investigation to proceed. Hence we take the view that the time schedule shown in Section 167(5) of the Code is not to be treated with rigidity and it is not mandatory that on the expiry of the period indicated therein the Magistrate should necessarily pass the order of discharge of the accused. Before ordering stoppage of investigation the Magistrate shall consider whether, on the facts of that case, further investigation would be necessary to foster interest of criminal justice. Magistrate at that stage must look into the record of investigation to ascertain the progress of investigation thus far registered. ...”

18. In the case of **State of Haryana and Others v. Bhajan Lal and Others**²

the Hon’ble Supreme Court observed as follows :-

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or 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 a case against the accused.

² 1992 SCC(Cri) 426

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non- cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

19. The allegations against the petitioner *prima facie* constituted commission of cognizable offence and the role of the petitioner in the alleged offence to have been instrumental in the death of the victim in the custody should have to be assessed on trial, adducing documentary and oral evidences.
20. The Learned Trial Court while rejecting the prayer for discharge of the petitioner did consider the constituents of the charge-sheet, case diary and other materials on record and had correctly opined the existence of a *prima facie* case to be taken cognizance of against the accused person under Sections 471/477A of the Indian Penal Code.
21. Moreover, in view of the observation of the Hon'ble Apex Court mentioned above, the Magistrate had power to allow the investigation to proceed beyond the time schedule mentioned in Section 167(5) of the Code of Criminal Procedure considering the facts, circumstances and gravity of distinct case without applying the same generally.
22. In view of the above discussions, the instant criminal revisional application being CRR 3954 of 2014 is dismissed.
23. There is no order as to costs.
24. 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.
25. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)