

**In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction**

C.R.R. 11 of 2024
Mohanlal Banerjee & Anr.
Vs.
The State of West Bengal & Anr .

Mr. Hillol Saha Poddar *...For the Petitioners*

Mr. Aditi Shankar Chakraborty
Mr. Ujjwal Luksom
Mr. Aniruddha Biswas

...For the State

Mr. Subham Chanda *...For the Opposite Party*

This is an application under Section 482 of the Criminal Procedure Code wherein the petitioner has sought for quashing the charge sheet, being Charge Sheet No. 1133 of 2023 dated 31st October, 2023 under Sections 341/323/354/506/34 of the Indian Penal Code, filed in G.R. Case No. 1191 of 2022 pending before the Court of the learned Chief Judicial Magistrate at Cooch Behar.

The allegations levelled against the present petitioners in the FIR are that the accused persons frequently abuse the de facto complainant and his wife by using filthy language without any reason. On 15th July, 2022 at about 3.30 p.m. to 4.00 p.m., the de facto complainant while returned home, the accused persons started abusing by using filthy language and when the de facto complainant protested this activity, the accused persons assaulted the de facto complainant by fist and blows and thereafter wife of the de facto complainant came to the spot and the accused No. 2 pushed her and thereby outraged her

modesty.

After completion of investigation, police submitted charge sheet on 31st October, 2023 under Sections 341/323/354/506/34 of the Indian Penal Code.

Mr. Hillol Saha Poddar, learned Counsel appearing on behalf of the petitioners submits that the petitioner herein lodged complaint dated 14th July, 2022 before the Inspector-in-Charge, Kotwali Police Station, where he has specifically alleged that the de facto complainant and his family members are causing nuisance and are not taking steps against the faulty and unhygienic toilet. As a counterblast of the said complaint, the present FIR has been lodged on 18th July, 2022. Though it has been alleged in the FIR that the alleged occurrence took place on 15th July, 2022, the complainant in his FIR has not assigned any reason as to why delay was caused in lodging the FIR.

Mr. Saha Poddar further contended that though the charge sheet has been submitted under Section Sections 341/323/354/506/34 of the Indian Penal Code but prosecution agency has not complied the Provision laid down in Section 164(5A) (a). Section 354 of the Indian Penal Code has got no application as in such cases, recording of the victim's statement by a Judicial Magistrate is a must. Accordingly, he submits that from the complaint and also from the materials available in the record it clearly establishes that the prosecution has miserably failed to bring the charge against the accused persons under the above-

mentioned sections and as such continuance of the present proceeding will be sheer abuse of process of the Court and as such proceeding should be quashed invoking inherent power of this Court under Section 482 of the Criminal Procedure Code.

Mr. Aniruddha Biswas, learned Counsel for the State and Mr. Subham Chanda, learned Counsel appearing on behalf of the de facto complainant submit that during investigation, the Investigating Agency have collected sufficient materials to go for trial and they further submit, if the Investigating Agency did not produce the victim for examination under Section 164 of the Cr. P.C. then they will face consequence during trial but such irregularity, if any, cannot stand as a ground for quashing the present proceeding.

He further submits that the victim has made statement under Section 161 of the Criminal Procedure Code, which can be used for contradiction and corroboration during trial. Though, Mr. Saha Poddar contended that no injury report has been collected during investigation but in reply he submits that in a proceeding under Section 323 of the Indian Penal Code, the injury report is not a must to constitute that offence.

I have considered the submissions made on behalf of the parties and I have perused the material available on record.

At this stage I am not inclined to look into the correctness of the allegations made in the FIR. Ex-facie, the allegations in the FIR

discloses offence. Whether the persons named in the FIR have committed the offence or not, has to be decided upon trial.

It is well settled that the criminal proceedings can be said to be an abuse of process of Court, to justify intervention under Section 482 of the Criminal Procedure Code, if the allegations in the FIR do not at all disclose any offence or there are materials on record from which the Court can reasonably arrive at a finding, that the proceedings are in abuse of process of Court. In this case from the statements made by the witnesses and the victim and also from the contents of FIR, I find that there are materials which suggest that present case should go for trial. Accordingly I do not find any substance to quash the proceeding, invoking power under Section 482 of the Criminal Procedure Code.

The application, being C.R.R. 11 of 2024 is accordingly dismissed.

(Ajoy Kumar Mukherjee, J.)

Later

After delivery of the judgment Mr. Saha Poddar submits that the petitioner No. 2 has succeeded in WBCS (Executive) Examination but his appointment is stalled due to pendency of the present proceeding and as he prays for disposal of the case within a short period.

The Court below is directed to expedite the trial of the present proceeding and he will make every endeavour to dispose of the entire proceeding without granting unnecessary adjournment to either side

preferably within a period six months from the date of communication of this order.

(Ajoy Kumar Mukherjee, J.)