

17.01.2025
Sl. No.: 8 & 9
Court No.30
BM

CRR 26 of 2023

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IA No.: CRAN 5 of 2024

Bappa Ghosh @ Sujan Ghosh Dastidar
Vs.
State of West Bengal & Anr.

With

CRR 24 of 2023

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IA No.: CRAN 2 of 2024

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IA No.: CRAN 5 of 2024

Joy Ghosh @ Sagnik Ghosh Dastidar
Vs.
State of West Bengal & Anr.

Mr. Naba Kumar Das
Mr. Arindam Banerjee

... for the petitioner(in CRR 26 of 2023)

Mr. Naba Kumar Das
Mr. Debayan Roy Chowdhury

... for the petitioner(in CRR 24 of 2023)

Mr. Suman De
Ms. Sonali Das

... for the State(in CRR 26 of 2023)

Mr. Rudradipta Nandy
Ms. Sonali Das

... for the State(in CRR 24 of 2023)

1. The present revisional application has been preferred praying for quashing of the proceedings being GR 2343 of 2019 arising out of Manicktala Police Station case No.280 of 2019 dated September 04, 2019 under Sections 448/506/34 of the Indian Penal Code, 1860 pending before the learned 2nd Judicial Magistrate, Sealdah, 24 Parganas (South).

2. It appears from the written complaint that the parties are adjacent neighbours and had certain dispute on the date of incident that is 2.9.2019 at about 1 PM. It is alleged that the

petitioners herein abused the complainant in filthy language being in a drunken condition and also attempted to hit the complainant with iron rod.

3. The case diary has been produced by the State, which contains no medical papers.

4. The petitioner in CRR 24 of 2023 being Joy Ghosh @ Sagnik Ghosh Dastidar has relied upon the attendance sheet of the School being St. James School where he is engaged as a regular Teacher.

5. The daily attendance report of the school dated 2nd September, 2019 shows that the petitioner Sagnik Ghosh Dastidar **attended School at 7:32 A.M. and left the School at 14:19 hours.** The document has also been annexed at page 20 of the case diary.

6. Learned counsel for the State submits that there are statements in the case diary which support the allegation of the petitioner herein.

7. The other petitioner namely Bappa Ghosh @ Sujan Ghosh Dastidar is the brother of Sagnik Ghosh Dastidar and has a business at Posta.

8. The present case has been **registered two days** after the incident in this case and has been initiated for offence punishable under Section 448/506/34 of the Indian Penal Code.

9. 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.

10. 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."*

11. 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.

12. In the present case, the petitioner Joy Ghosh @ Sagnik Ghosh Dastidar has produced convincing and sufficient proof that he was not present at the place of crime as alleged. School attendance sheet shows he was present in school at the date and time of incident.

13. Thus the petitioner Joy Ghosh @ Sagnik Ghosh Dastidar has been successful in prima facie proving his Alibi and also by way of evidence beyond all reasonable doubt.

14. The allegations against the petitioners herein has not been even prima facie present in the materials on record including the case diary and as such the implication of the petitioners 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.

15. CRR 26 of 2023 with CRR 24 of 2023 are allowed.

16. The proceedings being GR 2343 of 2019 arising out of Manicktala Police Station case No.280 of 2019 dated September 04, 2019 under Sections 448/506/34 of the Indian Penal Code, 1860 pending before the learned 2nd Judicial Magistrate, Sealdah, 24 Parganas (South), **is hereby quashed in respect of the petitioners namely Bappa Ghosh @ Sujan Ghosh Dastidar and Joy Ghosh @ Sagnik Ghosh Dastidar.**

17. All connected applications, if any, stand disposed of.

18. Interim order, if any, stands vacated.

19. Copy of this Order be sent to the learned Trial Court for necessary compliance.

20. Urgent certified website copy of this Order, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)