

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 1460 OF 2025

INDRA DEO DUBEY & ORS.

VS

THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Kallol Kumar Basu, Adv.
Mr. Anindya Sundar Das, Adv.
Mr. Md. Jannat ul Firdous , Adv.
Mr. Rajsekhar Hota , Adv.
Mr. Suva Gayen , Adv.
Mr. Suman Halder, Adv.

For the State : Mr. Madhusudan Sur, Adv.
Mr. Rahul Ganguly, Adv.

Last Heard On : 09.09.2025.

Judgement On : 19.09.2025.

CHAITALI CHATTERJEE DAS, J. :-

- 1.** This is an application filed under section 528 of B.N.S.S, 2023 read with section 442 of B.N.S.S 2023 filed by the by the petitioners for quashing of the proceeding in connection with G.R Case No.1919 of 2024 arising out of Shibpur P.S Case No.154 of 18.4.2024, under section 188 of Indian Penal Code and Section 15 of the Environmental Protection Act, pending before Learned CJM at Howrah Kolkata, Sadar, Howrah.
- 2.** The case of the petitioner are that they are the active members of Vishwa Hindu Parishad. The petitioner No.1`being the convenor of Ram Navami

Shobha Yatra Rally scheduled to be held on 17.4.2024 from B.E College gate No. 1 to Ramkrishnapur Ghat along with GT Road, which was not allowed for procession through the said route. Having no other alternative a writ petition was filed being W.P.A number 9937 of 2024 before the Hon'ble High Court at Calcutta for permission for procession and prayed for appropriate relief. On 15.4.2024 an order was passed, permitting the petitioners to take out the procession of Ram Navami through the said route as prayed for between 3 P.M. to 6 P.M., subject to certain conditions and other mandatory directions to be observed by both the petitioners and the police Authorities. It is the further case of the petitioner that accordingly a procession of 200 persons were taken out through the specific route on that day within the specified time period and there was no breach of peace, altercation, chaos, and communal riot.

3. On 16 April 2024, an officer in charge of Shivpur Police Station lodge suo motu complaint and on the basis of such complaint, Shivpur Police Station case number 154 of 2024 dated 18.4.2024, under Section 188 of Indian Penal Code and Section 15 of Environmental Protection Act was started against the present petitioners with the allegation that during the procession high sound of microphones, electric sound box were used more than thousand participants joined in the said rally from Kazipara More and there by violated the sound limits and directions passed by the High Court at Calcutta.

4. After competition of investigation, the charge-sheet has been submitted on 26.9.24 with the above mentioned charges and the petitioner surrendered before the Learned Court on 6 July 2024, and prayed for Bail, which was allowed on the same date.

5. The Learned Advocate representing the petitioner submitted that the charge-sheet submitted against the petitioners is not sustainable in the eye of law as the prime of allegations and charges levelled against the petitioners are absurd and the procession was taken out strictly in compliance with the order passed by the Hon'ble High Court at Calcutta, and hence the same is required to be quashed.
6. Per contra the submission advanced on behalf of the State/ Respondent is a complete violation of the order passed by the Hon'ble Court and the complaint had to be lodged against the organizers and on the basis of the investigation, visiting the different points , after drawing the rough sketch and examining the available public witnesses and after Caesar of CCTV footage on working CCTV cameras of GT Road in between Batalitala Bazar to Fazir Bazar preserving in a 64 GB pen drive ,the charge-sheet was submitted. It is appropriate case for trial to be commenced and after taking evidence, and after assessing the material exhibits, which will be placed before the Court, it can be ascertain as to whether there is any violation or not. Hence, prayed for dismissal of this revisional application.
7. Admitted fact, as it appears from the record and from the submissions of the respective Learned Advocates that by virtue of an order passed by the Coordinate Bench of this Court, certain guidelines were framed which were to be followed by the parties, conducting the procession, and also the police authorities monitoring the same while allowing the prayer of the present petitioners to conduct such rally. Usually in the event of violation of the order passed by a court of law the application to issue a Rule of contempt is to be

filed. In this case, no such proceeding was initiated as it can be found from the record.

- 8.** Since the complaint has been lodged under section 188 of Indian penal code, let the provision be look into;

Section 188 IPC deals with disobedience duly promulgated by public servant.

It reads as follows;

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

And if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

- 9.** a) Promulgation of an order b). Such promotion was made by public servant who was legally empowered to make such promulgation c) promulgation directed not to do certain things or to take certain orders in connection with certain property in his possession or management ;d) Accused had the knowledge of the promulgation but disobeyed it and it caused, intended to

cause obstruction, annoyance, injury, or risk of the same to a person, lawfully employed, or caused or tender to cause danger to human life, health, or safety, or a riot or affray.

10. In this case, the complaint was lodged by, the Inspector of police, O.C Shivpur Police Station, HPC alleging that on 17 April 2024, at about 16 hours the organizers and others assembled and started procession from B.T College Gate No.1 carrying tableau, and 1000 participants also join the said rally from Kazipara More and they used high sound of microphones, electronic sound box which was also violating the sound limit which was passed by the Hon'ble High Court at Calcutta and as they violated the order of High Court. No significant volunteers were deployed by organisers for the movement of procession. There was every possibility of serious breach of peace like previous two years. But somehow the situation was managed due to strong police arrangement and different precautionary measure. So in this case, the rally was conducted by the petitioner organiser and the prime facie case made out is disobedience of the direction of the High Court. The content of the F.I.R clearly manifest that it is not the case that any criminal force was exhibited or any intent was there to resist the execution of any legal process.

11. Furthermore nothing can be found from the written complaint that any annoyances or injury or risk of obstruction was caused to a person lawfully employed. In a decision of Ram Leela Maidan incident in Re: Suo Motu (W.P (Crl) NO.122 of 2011 decided on February 23, 2012, the Supreme Court was of the view that the disobedience of the prohibitory order becomes punishable under Section 188 IPC, only if such disobedience causes or intend to cause an

obstruction or injury or risk of obstruction, and or injury to any persons lawfully employed. Disobedience of an order promulgated by a public servant lawfully empowered will not be an offence unless it leads to an immediate consequences stated in the provision. That apart by virtue of a judicial direction, the procession was allowed to be continued with certain guidelines and direction was given to the state to make to request for Central paramilitary forces with a prior notice of 24 hours if necessary. Further direction was given to the police authorities to ensure that they deployed adequate number of armed personal to ensure peace and to see that no harm ensues to the participants or to the residence and the passers-by.

12. It is not a case of the prosecution that they had to request the central Paramilitary forces with such prior notice to be deputed, which itself established that no such situation occurs for that prior notice of 24 hours was to be issued. More particularly the authorities did not prefer any contempt application before the Hon'ble Court for violation of any of such terms.

13. In a well celebrated judgment reported in ***State of Haryana and others Vs. Ch. Bhajan Lal***¹, Hon'ble Supreme Court has carved out certain guidelines, wherein FIR or proceedings may be quashed but cautioned that the power to quash FIR or proceedings should be exercised sparingly and that too in the rarest of rare cases. The Hon'ble Court held as under:

"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

¹ AIR 1992 SC 605

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) 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 17 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.

The Hon'ble Supreme court further observed in paragraph 103 ;

'103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice.'

14. Therefore when from the circumstances it can be collected that no ingredients can be found to say any offence has been committed and merely a complaint has been lodged by a police officer alleging violation of a judicial order it cannot be said that offence under Section 188 I.P.C has been

committed. Further, the police have no powers to initiate prosecution under section 188 of IPC. The offence under section 188 of IPC can be taken cognizance only on the complaint in writing by a public servant whose order is violated or any officer higher than the order passed by the public servant and there is a clear bar under Section 195 of Cr.P.C. for the Court to take cognizance of the offence and non-compliance of the same would vitiate the prosecution and all other consequential orders.

15. Therefore, in absence of any exhibition of criminal force, any resistance to execute any legal process or any complaint by any person, alleging of annoyance, obstruction, or injury or even risk of such obstruction, annoyance or injury during the time when the procession took place, this Court is of the view that even though the charge-sheet has been submitted if it is allowed to be proceeded with by way of trial, that will be amount of gross abuse of process of law.

16. Therefore this court is of the view that in the aforesaid facts and the circumstances, continuing the proceedings against the petitioners would be a futile exercise and hence the proceeding is to be quashed.

17. Therefore the instant Criminal Revisional stands allowed. The proceeding pending before the court is hereby quashed.

18. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)