

Form J(1)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Jay Sengupta**

CRR 1458 of 2025

**Gautam Halder and Others
Vs.
State of West Bengal and Anr.**

Mr. Partha Chakraborty
Mr. Debayan Ghosh
..for the petitioner

Mr. Jayanta Narayan Chatterjee, Sr. Adv.
Ms. Moumita Pandit
Ms. R. Banerjee
Mr. Bhaskar Mondal
..for O. P. No.2

Mr. Anand Keshari
Ms. A. Dey
..for the State

Item No.290

Heard on: 09.07.2025 & 14.07.2025

Judgment on: 14.07.2025

Jay Sengupta, J.

This is an application for quashing of a complaint case being AC-1081/2024 under Sections 448/427/506/509/354/380/114/120B/34 of the Penal Code.

Learned counsel appearing on behalf of the petitioners submits as follows. Earlier the complainant in this case had lodged an FIR on similar allegations against the petitioner and another. The same ended in discharge of the present petitioners. The matter was

continued only against one accused. Yet, the present complaint was filed making all the petitioners accused again on similar allegations. This is clearly a mala fide act. On facts, the development in question is in respect of a property with plot no.111 while the complainant made allegations in respect of another property being plot no.169/2. This would be evident from an enquiry report done in respect of a complaint filed by the present petitioner, although no direction was passed in the same finally under Sections 156(3) of the Code. No prima facie case is made out as would be evident from a plain reading of the petition of complaint and the initial allegations. Any further continuation of the impugned proceedings would be an abuse of process of Court.

Learned counsel appearing on behalf of the complainant/opposite party denies the allegations and submits as follows. It is purely a question of fact whether the alleged offences or for that matter, an attempt to damage or destroy the property took place in respect of plot no.111 or plot no.169/2. It is also pertinent to state that a charge sheet was submitted in the police case against one. Incidentally, if two cases, one a complaint case and the other a police case remain pending over similar allegations, law does not say that one of the proceedings has to be quashed or dropped. Section 210 of the Code of Criminal Procedure corresponding to Section 233 of the BNSS provides that in such event an enquiry is to be done by the learned Magistrate and it is found that two proceedings pertain to the same allegations and there is a common accused, then both the cases have to be tried together by the Magistrate as police case. Besides, no case for quashing of proceedings is made out by the petitioner.

Learned counsel appearing on behalf of the State submits that although a charge sheet has been submitted against only one of the accused in the police case, the report has not been accepted as yet.

So far as the position of law is concerned, it is clear from a plain reading of Section 210 of the Code of Criminal Procedure corresponding to Section 233 of the BNSS that if in a case instituted otherwise than a police report, it is made to appear that the investigation by the police was in progress in relation to an offence that was the subject matter of enquiry or

trial by the Magistrate, the Magistrate shall stay the proceeding of such enquiry or trial and call for a report from the Investigating Officer. If the report is made by the Investigating Officer under Section 193 of the Code and on such report cognizance of any offence is taken by the Magistrate against any person who was an accused in the complaint case, the Magistrate shall enquire into and try together the complaint case and the case arising out of police case, as if both the cases were instituted on the police report. Furthermore, if the police report does not relate to any accused in the complaint case or if the Magistrate does not take cognizance of any offence on the police report, he shall proceed with the enquiry or trial which was stayed by him.

In this case, the police report relates to an accused in the complaint case. It is another thing that the present petitioner who is an accused in the complaint case was discharged from the police case. But, the thing has not attained its finality. The Magistrate is yet to decide on taking cognizance over the said charge sheet.

Therefore, it shall be open to the Magistrate in the complaint case to decide whether to proceed in terms of Section 210 of the Code corresponding to Section 233 of the BNSS or not.

On facts, the petitioners' contention that the development agreement was in respect of another property is purely a disputed question of fact that can best be decided by the Trial Court. A development agreement in respect of the said plot no.111 does not necessarily preclude the possibility of commission of offences in respect of plot No.169/2.

In view of the above, I do not find any merit in the application and, therefore, the same is dismissed.

However, it shall be upon to the learned Magistrate to take steps in terms of Section 210 of the Code of Criminal Procedure corresponding to Section 233 of the BNSS, if he thinks so fit.

Urgent photostat certified copy of this order, if applied for, be supplied to the learned advocates for the parties on usual undertakings.

(Jay Sengupta, J.)