

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 737 of 2022

With

CRAN 3/2022 & CRAN 7/2024

Swatilekha Maity

Versus

The State of West Bengal & Others

With

CRR 1550 of 2022

With

CRAN 2/2023, CRAN 3/2023 & CRAN 6/2024

Swatilekha Maity

Versus

The State of West Bengal & Another

For the Petitioner in CRR 737 of 2022 : Mr. Kaushik Gupta, Adv.
Mr. Anirban Tarafdar, Adv.
Mr. Arnab Nandi, Adv.
Mr. Sohel Tudu, Adv.
Mr. Daniel Sarkar, Adv.

Opposite Party No. 2 (in person)

In CRR 1550 of 2022 and

Opposite Party No. 3 in

CRR 737 of 2022 : Mr. U. S. Bhattacharya

For the State in CRR 737 of 2022 : Mr. Madhusudan Sur, Ld. A.P.P.
Mr. Dipankar Paramanick, Adv.

For the State in CRR 1550 of 2022 : Mr. Bidyut Kr. Roy, Adv.
Ms. Rita Dutta, Adv.

Heard on : 18.11.2024

Judgment on : 08.01.2025

Ajay Kumar Gupta, J:

1. Two Criminal Revisional applications, **CRR No. 737 of 2022** and **CRR No. 1550 of 2022**, are taken up together for disposal as both the case of the petitioner arises from the same incident.

2. In **CRR 737 of 2022**, the petitioner prayed for setting aside and/or quashing of the impugned order dated 22.02.2022 passed by the Learned Chief Judicial Magistrate at Howrah in connection with Case No. GR-5362 of 2020 arising out of AJC Bose Botanic Garden Police Station Case No. 198/2020 dated 25.11.2020 under Sections

341/323/354/506/34 of the Indian Penal Code, 1860 thereby rejected the petitioner's prayer for further investigation.

3. In another Criminal Revisional application i.e. **CRR 1550 of 2022**, the petitioner sought for quashing of the impugned proceedings being G.R. Case No. 5352/2020 arising out of AJC Bose Botanic Garden Police Station Case No. 199/2020 dated 25.11.2020 under Sections 341/323/506 of the Indian Penal Code, 1860 including the impugned Charge Sheet No. 214/2020 dated 31.12.2020 under Sections 341/323/506 of the Indian Penal Code, 1860 submitted by the Investigating Agency in connection with the aforesaid case pending in the Court of the Learned Judicial Magistrate, 1st Court at Howrah.

4. The brief facts of the petitioner's case are to the effect that on 25.11.2020 around 2 pm, while the petitioner was feeding a street dog near Cyber Point (near New Karmakar Studio), the opposite party no. 2, Mr. Bhattacharya/accused assaulted the petitioner. The opposite party no. 2 sexually harassed the petitioner by intentionally damaging petitioner's cloths and her spectacles and also slapped her thrice. One another accused, Projjwal Sanyal abetted the opposite party no. 2 during the commission of the aforesaid crime. Petitioner lodged written complaint before the concerned police station.

5. In view of the aforesaid written complaint lodged by the petitioner before the Officer-in-Charge, AJC Bose Botanic Garden Police Station on 25.11.2020, a case was registered being AJC Bose Botanic Garden Police Station Case No. 198/2020 dated 25.11.2020 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860 against the accused persons and initiated investigation.

6. It is further the contention of the Petitioner that as a counter blast to the aforementioned complaint, the opposite party no. 2 also lodged an utterly false, frivolous and concocted complaint against the petitioner herein on 25.11.2020 leading to the registration of an FIR being AJC Bose Botanic Garden Police Station Case No. 199/2020 dated 25.11.2020 under Sections 341/323/506 of the Indian Penal Code, 1860 against the Petitioner corresponding to G.R. Case No. 5352 of 2020. The investigation of both the aforementioned cases was conducted by different Investigating Officers and ultimately, after culmination of investigation Charge Sheets were submitted.

7. In G.R. Case No. 5352 of 2020, the petitioner is an accused, the Learned Chief Judicial Magistrate, Howrah, took cognizance of the offence allegedly committed by the petitioner. After supplying a copy to the petitioner herein, transferred the said case to the Court of the Learned Judicial Magistrate, 1st Court, Howrah for disposal.

8. In connection with G.R. Case No. 5362 of 2020, petition was filed by the petitioner in connection with the said case. Her prayer for further investigation/re-investigation was rejected by the Learned Chief Judicial Magistrate, Howrah.

9. The petitioner being aggrieved by and/or dissatisfied with the initiation and continuation of the proceeding being G.R. Case No. 5352 of 2020 against her, has preferred the instant Criminal Revisional application i.e. CRR 1550 of 2022.

10. During the investigation of the case being AJC Bose Botanic Garden Police Station Case No. 198/2020 dated 25.11.2020 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860, lodged by the petitioner, the petitioner voluntarily submitted an original memory card along with the concerned mobile phone to the concerned Investigating Officer at the police station as the evidence of the crime. The said memory card along with mobile phone of the petitioner was accordingly seized by the Investigating Officer and a seizure list was prepared on 27.12.2020. The said mobile phone was, thereafter, returned to the petitioner on a Jimmanama. However, despite repeated request, the petitioner was not provided with a copy of the seizure list or Jimmanama. When the petitioner insisted, she was allegedly threatened by the Investigating Officer and warned that he would ruin her case and the Investigating Officer has, without

conducting proper investigation and unfair means, submitted Charge Sheet being No. 203/2020 dated 31.12.2020 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860. Notably, there was no whisper of the seizure list of the said memory card or the mobile phone by the Investigating Officer was reflected in the Charge Sheet. Actually, the Petitioner had recorded the entire incident using the video camera of her mobile phone being Model Samsung A50S. Additionally, petitioner also wrote a letter dated 06.07.2021 to the Commissioner of Police, Howrah Police Commissionerate highlighting the aforesaid fact that the said seizure list pertaining to the seizure of the memory card and mobile phone was made by the Investigation Officer but was not reflected in the Charge Sheet.

11. Feeling aggrieved and dissatisfied with the said lackadaisical and unfair investigation, the petitioner has preferred a Protest Petition before the Learned Chief Judicial Magistrate and the petition was fixed on several dates for hearing and finally the said petition was rejected by the Learned Magistrate on 22nd February, 2022 though the said memory card is important for proper and fair adjudication of the said case. Hence, these Criminal Revisional applications.

SUBMISSION ON BEHALF OF THE PETITIONER:

12. Learned counsel appearing on behalf of the petitioner submitted that the counter case has been lodged by the accused person only as a counter blast of the complaint lodged by the petitioner before the police station. Petitioner is the Colony Animal Caretaker and was authorized by Animal Welfare Board of India, Department of Animal Husbandry and Dairying, Government of India. When the petitioner was feeding a street dog near Cyber Point, the accused persons sexually harassed the petitioner and at the time of incident, she recorded the entire incident using video camera of her phone having IMEI Nos. *352158/11/067148/4*, *352159/11/067148/2* being model Samsung A50S. The Memory card and mobile phone were handed over to the Investigating Officer during investigation. However, no reflections were made in the Charge Sheet submitted by the Investigating Officer though it was seized by the Investigating Officer in presence of the petitioner and her father and mobile was handed over to the petitioner after Jimmanama. Therefore, the petitioner has prayed for re-investigation by filing a protest petition before the Learned Judicial Magistrate. However, the same was rejected mechanically and without applying judicious mind though the memory card is essential to prove the

actual incident since the case and counter case initiated by both parties on the same incident.

13. It is further submitted that when the Investigating Officer did not hand over the seizure list or Jimmanama, the petitioner had written a letter dated 06.07.2021 to the Commissioner of Police, Howrah Police Commissionerate highlighting the said fact that the said seizure list pertaining to the seizure of the memory card and mobile phone was made but, the same was not indicated. The Learned Magistrate, without considering the case of the petitioner, whimsically and mechanically, rejected the prayer only on the ground that the issue of further investigation was pending since long for Covid situation and paramount consideration is the expedite the trial and when the remedy is lying in the procedure of CrPC under Section 91 of the CrPC to accept any document or other thing in the trial for the purpose of investigation, enquiry, trial or other proceedings without indulging further delay by inviting further investigation. Therefore, the same order is required to be set aside. At the same time, proceeding being AJC Bose Botanic Garden Police Station Case No. 199/2020 dated 25.11.2020 under Sections 341/323/506 of the Indian Penal Code, 1860 initiated by the accused persons as counter blast of the case of the petitioner is totally false and fabricated, is also

required to be quashed otherwise the proceeding would be an abuse of process of law.

14. Learned counsel appearing on behalf of the petitioner relied a judgment passed in the case of ***Hasanbhai Valibhai Qureshi V. State of Gujarat and Others***¹ to bolster his submission that the learned Magistrate should have allowed the prayer for further investigation when there is material in the contention of the Petitioner.

15. Per contra, Mr. Bhattacharya, appearing in person vehemently objected the prayer of the Petitioner and further submitted that the petitioner has falsely lodged the complaint against the Opposite Party No. 2 and Mr Projwal Sanyal though the actual incident is wholly different. Actually, on 25.11.2020 at about 1.30 pm, the opposite party no. 2 (U. S. Bhattacharya) was working at a Cyber Cafe situated at Danesh Sk. Lane under P.S. – AJC Bose Botanic Garden. At about 13.30 hrs while he went outside of the said cyber cafe for some refreshment, at that moment one lady was outside of the said cybercafé. Suddenly one stray dog approached near that lady. He immediately called the dog to save her from the stray dog. She purposely started argument and suddenly she attacked him with dire consequence and pushed him inside the cyber

¹ AIR 2004 Supreme Court 2078 : 2004 AIR SCW 2063

cafe. As a result of pushing, his small finger got cut and started bleeding. He lodged a written complaint before the concerned police station. On the basis of said complaint, a case was registered against the petitioner herein being AJC Bose Botanic Garden Police Station Case No. 199/2020 dated 25.11.2020 under Sections 341/323/506 of the Indian Penal Code, 1860 and subsequently, Charge Sheet has been submitted against her.

16. It was further submitted that the opposite party no. 2 was treated by the Doctor as an outdoor patient for his injuries sustained due to assault by the Petitioner.

17. It was further submitted that the protest petition, filed by the petitioner in GR-5362 of 2020 arising out of AJC Bose Botanic Garden Police Station Case No. 198/2020 dated 25.11.2020 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860, is totally false, frivolous and fabricated only to linger the trial. The essence of filing said petition is to get re-investigation of the case which was already culminated by filing Charge Sheet. It is totally false allegation of molestation in a broad day light on heavy traffic road. How the petitioner could record the video of the incident, when the petitioner's allegation to the effect that she was molested by the opposite party no. 2 and was assaulted by slapping her face thrice. The petitioner had never given any memory card or mobile phone to

the Investigating Officer. How an Investigating Officer will ignore that seizure list as well as Jimmanama as claimed by the Petitioner. The petitioner is a well-educated lady. How she can handover the original memory card and mobile phone to the Investigating Officer without getting the seizure list and how she received the mobile phone without copy of Jimmanama. It is totally unbelievable and illogical only for to defer the trial pending since 2020. The Investigating Officer has after culmination of investigation submitted charge sheet against the present petitioner as the case was totally different. Therefore, both the Criminal Revisional applications are required to be dismissed and a separate proceeding may be started against her for misusing the Section 354 and other Sections of the IPC. She was not a Colony Animal Caretaker and was authorised by Animal Welfare Board of India, Department of Animal Husbandry and Dairying, Government of India. She is authorised as per her document filed in her petition after 2021 whereas the incident took place in the year 2020.

SUBMISSION ON BEHALF OF THE STATE:

18. Learned counsel appearing on behalf of the State produced two Case Diaries in connection with AJC Bose Botanic Garden Police Station Case No. 198/2020 dated 25.11.2020 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860 and the

counter case being AJC Bose Botanic Garden Police Station Case No. 199/2020 dated 25.11.2020 under Sections 341/323/506 of the Indian Penal Code, 1860.

19. Learned counsel further submitted that no memory card was handed over to the concerned Investigating Officer. If it would have been handed over upon preparation of seizure list and Jimmanama that should be reflected in the case diary but no such indication are appearing in the case diary. It is unbelievable that when a person handed over an original memory card and mobile phone to the Investigating Officer, she would not take any seizure list or Jimmanama in return. The story of seizure list and returning mobile phone under Jimmanama is a totally false and fabricated by the petitioner and same is afterthought. When she was not given any seizure list or Jimmanama even on insistence from their part, then why the petitioner had not lodged any complaint to the Commissioner of Police or the Court immediately. But that is not done by the Petitioner. Therefore, the Learned Court below has not relied upon the contention of the Petitioner and rightly rejected her prayer for further investigation or re-investigation. There are several other materials in the charge sheet against the petitioner with regard to the offence as alleged by the opposite party no. 2. Therefore, the two

Criminal Revisional applications have no merit as such same may be dismissed.

DISCUSSIONS AND FINDINGS BY THIS COURT:

20. Heard the arguments of the rival parties and upon perusal of the case diary meticulously, it appears there is no whisper about the seizure list of memory Card and mobile phone in the case diary. Additionally, there is no copy of seizure list or zimmanamma as well. It is contention of the Petitioner that one original memory card along with her mobile phone was handed over to the concerned Investigating Officer out of her accord at the police station as evidence of the actual incident. The said memory card along with mobile phone of the petitioner was accordingly seized by the Investigating Officer by preparing seizure list on 27.12.2020. The said mobile phone was, thereafter, returned to the petitioner on a Jimmanama. But, no copy of the seizure list or Jimmanama was handed over to the petitioner. However, despite repeated requests made by the petitioner, she was threatened by the Investigating Officer that he would ruin her case and the Investigating Officer has, without proper investigation and unfair means, submitted Charge Sheet being No. 203/2020 dated 31.12.2020 under Sections 341/323/354/506/34 of the Indian Penal Code, 1860. However, no whisper of the seizure list or zimanamma of the said memory card or

the mobile phone was mentioned in the case diary. Furthermore, it is significant to note that the petitioner had made the submission of the memory card and mobile phone voluntarily and out of her own free will, which should have been duly acknowledged in the case diary, but the same is missing in the case diary.

21. Petitioner also wrote a letter dated 06.07.2021 to the Commissioner of Police, Howrah Police Commissionerate highlighting the issue regarding the seizure list pertaining to the seizure of the memory card and mobile phone but the petitioner lodged complaint before the Commissioner of Police after expiry of about more than seven months though the petitioner claimed she submitted memory card to the Investigating Officer on 27.12.2020. This delay raises question about the authenticity and timely response to the petitioner's grievance.

22. By filing protest petition by the petitioner, the petitioner seeks to introduce additional evidence despite the Investigating Officer has submitted charge sheet against the accused person. In the peculiar facts and circumstances of this case, this Court is of the view that further investigation is not required in the instant case because even the sole evidence of the petitioner is sufficient to convict a person if her oral evidence brought before the Court without any reasonable doubt. The flavor of the present case is criminal Act

punishable under Sections 341/323/354/506/34 of the Indian Penal Code, 1860. Accordingly, the order passed by the Learned Court is not required to be interfered.

23. Even for the sake of argument, she had recorded the video from her mobile phone but it is unexpected when she claiming at the time of incident, the opposite party no.2 sexually harassed the petitioner by intentionally damaging petitioner's cloths and her spectacles and also slapped her face thrice. Recording of video is piece of scientific evidence, which is naturally secondary in nature. Conviction can be made even only satisfactory and convincing oral evidence of Prosecution witness. Therefore, the Learned Court correctly rejected her prayer for further investigation. After all the Investigation officer has filed charge sheet against the opposite parties. Now, it is duty of prosecution to prove the case beyond reasonable doubt then conviction can be awarded.

24. There are sufficient prima facie materials available in the case diary against the petitioner. The medical document is also appearing in case diary with regard to the injury sustained by the opposite party Sri U.S. Bhattacharya during the incident as alleged.

25. Accordingly, **CRR No. 737 of 2022** and **CRR 1550 of 2022** are **dismissed**. Consequently, **CRAN 3/2022, CRAN 7/2024, CRAN**

2/2023, CRAN 3/2023 and **CRAN 6/2024** are also, thus, disposed of.

26. Let a copy of this Judgment be sent to the Learned Trial Court for information.

27. Case Diaries, if any, are to be returned to the learned counsel for the State.

28. Interim order, if any, stands vacated.

29. All parties will act on the server copies of this Judgment uploaded from the official website of this Court.

30. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)