

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE

CRR 1560 of 2022

IA No. CRAN 7 of 2025

**Mousumi Das
Vs.
The State of West Bengal & anr.**

For the petitioner : Mr. Prodyut Banerjee
Mr. Suvendu Bhattacharya
Mr. Dhruvaraj Bhowmick
Mr. Ankit Misra
Ms. Seuli Banerjee

For the state : Mr. Imran Ali
Mr. Debjani Sahu

Heard on : 16.06.2025

Judgment on : 23.06.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The accused/petitioner herein, who is the ex-wife of opposite party no.2/defacto complainant herein has prayed for quashing of the proceeding being Uttarpara Police Station Case no. 282/2020 dated 16.09.2020 corresponding to GR Case no. 1240 of 2020 presently pending before Id. ACJM Searampore Hooghly.

2. Petitioners contention is that she was married with the opposite party No.2 on 17.01.2004 and due to such wedlock one female child and one male child were born. However, the girl child expired on 16.09.2005 and the male child had also expired on 19.11.2019. Petitioners further case is that it would be evident from the medical record that both the children were born with some severe deceases and for which they did not survive. Her further contention is that their matrimonial life was not peaceful and it got dissolved by way of a decree of mutual divorce on 13.11.2014.

3. Petitioners further case is that she had jointly purchased a flat under a registered deed of conveyance with one Mr. Ananta Roy (one of the witness of this case) on 07.03.2012. At a later point of time the petitioner transferred her 50% share in favour of said Ananta Roy by a deed of sale on 19.11.2013. The defacto complainant herein concealing the aforesaid facts and circumstances of the case, levelled an allegation of cheating and breach of trust with respect to the aforesaid sale of flat and superficially levelled an allegation that he (defacto complainant) had paid Rs. 10,00,000/- to the petitioner at the time of purchases of the flat, which is a blatant lie because opposite party no.2 never paid any amount and in support of which, he could not furnish any document for aforesaid purported payment in favour of the petitioner. In fact the defacto complainant is playing hand and gloves with the aforesaid witness Ananata Roy and under his instigation and for some undisclosed consideration has lodged the instant false FIR against the petitioner, wherein it has been falsely alleged that the petitioner had cheated him with the aforesaid amount of Rs. 10,00,000/- which he had purportedly given to the defacto complainant for purchasing the aforesaid flat.

4. The second limb of allegation levelled in the FIR is that defacto complainant received a sum of Rs. 3 lakhs from the petitioner for heart surgery of her son (since deceased) but said surgery was not done and the petitioner mis appropriated the said amount and for such rash and negligent act of the petitioner, their son died and for which the petitioner has also been booked in the instant case under section 304 A along with section 420/406 of the Indian Penal Code.

5. Being aggrieved by the impugned proceeding petitioner contended that the petitioner jointly purchased the flat and being 50% owner of the said flat, she had every right to sale the same. Her further contention is that said registered deed of sale which is a public document was executed in the year 2013 and after expiry of about 7 years, present allegation has been lodged. The ground of such exorbitant delay in lodging FIR has not been explained anywhere and as such the proceeding is not maintainable and in this context she relied upon the judgment of ***Manoj Kumar Sharma and others Vs. State of Chattisgarh and another***, reported in **(2016) 7 SCR 154**.

6. She further submitted that date of purported payment of Rs.10,00,000/- by the FIR maker in favour of petitioner was never disclosed nor the mode of payment of Rs. 10,00,000/- has been specified anywhere. During investigation no document could be seized or is available in support of the aforesaid purported payment. In fact no such transaction had taken place and the FIR has been lodged with an imaginary story. He further submits even if the contents of aforesaid prosecution case is taken to be gospel truth, even then the dispute by and between the parties regarding non-refund of any amount allegedly advanced towards loan/help, could

have been a civil dispute for money recovery but by no stretch of imagination can attract section 406 or 420 of the IPC.

7. So far as the second part of allegation of receiving Rs. 300,000/- by the petitioner for the treatment of their male child, it appears that here also no date or time of payment of such amount has been specified anywhere. All of a sudden after dissolution of marriage mutually in the year 2014, the opposite party no.2/ex husband has lodged this complaint in the year 2020 i.e. after expiry of a period 6 years. In respect of such allegation though opposite party no.2 made statement during investigation while he was examined under section 161 of the Cr.P.C., that the said amount of Rs. 3 lakhs was given by bank transfer but no such document is available in record nor any such document could be seized during investigation. On the contrary the petitioner has filed the relevant documents with the instant application which go to show that there exists no recommendation by any medical practitioner for heart surgery of child. In fact no document is on record or has been seized containing medical recommendation for heart surgery, which clearly reveals that the second part of FIR which relates to misappropriation of Rs. 300000/- by the petitioner and thereby causing negligence in son's treatment, allegedly for which he ultimately succumbed is a manufactured story created by the defacto complainant. Though the charge sheet mentioned about a demand of post mortem report by the defacto complainant but since the death of the child was a natural death, the question of post mortem examination does not arise and the death certificate of the child annexed with the instant petition also reveals the truth. In fact the death certificate shows that child was lastly admitted to

one of the best hospital in Kolkata and as such the allegation of cheating or breach of trust or any rash and negligent act on the part of the petitioner for causing death of the male child does not and cannot arise. The petitioner has taken a specific plea that the petitioner earlier lodged an FIR against aforesaid witness Ananta Roy under section 376 of the IPC on 12.09.2020 and immediately thereafter on 16.09.2020 the instant FIR has been lodged by her ex husband under the instigation and instruction of said Ananta Roy in order to prevent the petitioner from proceeding further with her aforesaid case lodged under section 376 IPC. Accordingly petitioner has prayed for quashing instant proceeding.

8. Private opposite party is not represented.

9. Mr. Ali, Learned counsel appearing on behalf of the state submits that it is true that the dispute between the parties relating to non refund of Rs. 10 lakhs by the petitioner to the FIR maker is a civil dispute but the petitioners negligence for causing death of their son, inspite of taking money from the FIR maker, cannot be ruled out and as such section 304 A of IPC attracts against the petitioner and the proceeding should not be quashed at its threshold invoking courts jurisdiction under section 482 of the Code of Criminal Procedure.

Decision

10. At the outset it is to be noted that in the present case about 6 to 7 years after the alleged occurrence the FIR has been lodged. Such delay in lodging FIR has not been explained anywhere which raises grave doubt about the truthfulness of the allegations made by opposite party no.2 herein/ex husband against the present petitioner and that too in respect of

an allegation which basically connected with civil dispute. It is apparent that by making such reckless and vague allegation the opposite party no.2 has tried to rope the petitioner in criminal proceeding. In **Jai Prakash Singh Vs. State of Bihar and another**, reported in (2012) 4 SCC 379 the Apex court held in this connection in para 12 as follows:-

12. The FIR in a criminal case is a vital and valuable piece of evidence though may not be substantive piece of evidence. The object of insisting upon prompt lodging of the FIR in respect of the commission of an offence is to obtain early information regarding the circumstances in which the crime was committed, the names of the actual culprits and the part played by them as well as the names of the eye-witnesses present at the scene of occurrence. If there is a delay in lodging the FIR, it loses the advantage of spontaneity, danger creeps in of the introduction of coloured version, exaggerated account or concocted story as a result of large number of consultations/deliberations. Undoubtedly, the promptness in lodging the FIR is an assurance regarding truth of the informant's version. A promptly lodged FIR reflects the first hand account of what has actually happened, and who was responsible for the offence in question.

11. In this context I have also gone through the materials collected during investigation including the statements recorded under section 161 of Cr.P.C. Infact the statement made in the FIR and the statements recorded during investigation do not disclose any offence against the petitioner. Police during investigation has also seized the death certificate of the said male child which does not disclose any case of unnatural death. It is well settled principle of law that the criminal court cannot be used as money recovery agency nor the criminal proceedings can be used as a short cut method of any other proceeding for recovery of the money. Petitioner in this case has made specific allegation that in order to wreck vengeance, the present criminal proceeding has been initiated on 16.09.2020, as retaliation for previous complaint lodged by the petitioner against one witness under section 376 IPC, which was lodged on 12.09.2020.

12. It is true that whether an allegation has disclosed an offence or not must necessarily depend on the facts and circumstances of each case but on consideration of relevant materials placed before me including materials available in the cases diary, I am satisfied that the allegations does not disclose any offence.

13. In the above backdrop it is also imperative to discuss the scope of inherent power of the High Court under section 482 of the Code. This point has been more clarified in ***State of Haryana and others Vs. Bhajanlal and others***, reported in **1992 supp (1) SCC 335** wherein the supreme Court stated that though it may not be possible to lay down any precise, clearly defined, sufficiently channelized and inflexible guidelines or rigid formula or to give an exhaustive list of myriad kind of cases wherein the power of quashing should be exercised, but there are circumstances where the court may be justified in exercising such jurisdiction. These are where the FIR does not prima facie constitute any offence, does not disclose a cognizable offence justifying investigation by the police, where the allegations 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, where there is express legal bar engrafted in any of the provisions of the code and where a criminal proceeding is manifestly attended with *malafide* and/or where the proceeding is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge.

14. In view of the materials collected so far as discussed above I am of the considered view that the allegations made in the FIR are inherently improbable and the evidence collected in support of the same do not disclose commission of any offence nor it makes out any case against the petitioner. From the facts and circumstances of the case it has been further surfaced that the first part of FIR was lodged by the ex husband of the petitioner for wrecking vengeance after a period of 6 to 7 years and the second part of FIR was lodged on the basis of mere belief and not on the basis of any cogent evidence that act of petitioner's negligence has caused the death of their son and which has also not been substantiated during investigation. During the previous 6 to 7 years there was no acquisition against the present petitioner before lodging the FIR and as such the allegation are not trustworthy and also vague and do not warrant continuation of criminal proceeding against the present petitioner.

15. In view of aforesaid discussion I find that the continuation of instant proceeding any further will be a mere abuse of the process of court.

16. CRR 1560 of 2022 thus stands allowed.

17. The impugned criminal proceeding being Uttarpara Police station case no. 282/2020 dated 16.09.2020 corresponding to GR Case no. 1240 of 2020 presently pending before Id. ACJM Searampore Hooghly stands quashed.

18. In view of the disposal of main application the connected application is also disposed of.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)