

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

The Hon'ble **JUSTICE SUVRA GHOSH**

C.R.R. 1486 of 2024

Subhajit Banerjee

v/s.

The State of West Bengal & Ors.

And

C.R.R. 1576 of 2024

Bikash Biswas

v/s.

The State of West Bengal & Ors.

For the Petitioner
(in CRR No. 1486 of 2024):

Mr. Sandip Chakraborty, Adv.,
Mr. Dipta Dipak Banerjee, Adv.,
Mr. Ishaan Aditya, Adv.

For the Petitioner
(in CRR No. 1576 of 2024):

Mr. Manoj Malhotra, Adv.,
Mr. Sandip Chakraborty, Adv.,
Mr. Ravi Kumar Dubey, Adv.,

For the State:

Mr. Debasish Roy, Ld. PP.,
Mr. Rudranil Nandy, Adv.,
Mr. Santanu Talukdar, Adv.

Judgment delivered on:

14-02-2025

SUVRA GHOSH, J. :-

1. One Bhushan Deshmukh was in police custody from 20th September, 2015 in connection with Burtolla Police Station Case no. 319 dated 20th September, 2015 under sections 25/29 of The Arms Act. He was shifted to the hospital from police custody and expired on the same day. Upon magisterial inquest and postmortem examination being held, a report was

submitted by the then Assistant Commissioner of Police (II), North and North Suburban Division, Kolkata before the then Deputy Commissioner of Police of the Division pursuant to which the present complaint being Burtolla Police Station Case no. 327 of 2015 dated 30th September, 2015 was initiated against the petitioners and others. Sanction for prosecution was granted under section 197 of the Code of Criminal Procedure.

2. Upon completion of investigation, charge sheet was submitted against four persons including the petitioners under sections 167/193/323/348/409//304/34 of the Indian Penal Code. The case was committed to the Learned Chief Judge, City Sessions Court, Calcutta and by the order impugned dated 28th February, 2024 in Sessions case no. 55 of 2022, the learned Chief Judge framed charges against the petitioners under sections 323/348/302/167/193/409/34 of the Indian Penal Code. The petitioners filed an application under section 227 of the Code of Criminal Procedure praying for their discharge from the case which was turned down by the learned Judge by the same order. The petitioners have assailed the said order and have sought quashing of the entire proceedings.
3. Learned counsel for the petitioners has submitted that the CCTV footage which was relied upon by the prosecution was not given to them. The learned trial Court framed charge under section 302 of the Indian Penal Code though sanction for prosecution was granted and charge sheet submitted for offence under section 304 of the Code. No reason has been assigned by the learned trial Court as to what prompted him to frame charge under section 302 despite the fact that the investigating agency

did not find any material under section 302 during investigation and chose to submit charge sheet under section 304. The petitioner Subhajit Banerjee was on leave at the relevant time and has no nexus with the alleged incident.

4. Charges have been framed under section 167/193 of the Indian Penal Code for fabricating false evidence in connection with Burtolla Police Station Case no. 319 and not the present FIR being Burtolla Police Station Case no. 327. The learned trial Court has, in effect, framed charge in connection with a separate case being no. 319 and not in respect of the present complaint.
5. Unless the documents which are claimed to be false are submitted before the trial Court and relied upon by the prosecution in the present complaint, the same cannot be said to be false without the documents being tested during trial.
6. In order to prosecute an accused under section 193 of the Indian Penal Code, the procedure laid down under section 340 and 195 of the Code of Criminal Procedure need to be followed. The complaint should be initiated by the learned Court and not by any other individual. In absence of the provision under section 340 being followed, charge under section 193 of the Indian Penal Code is not maintainable.
7. When the matter was taken up for consideration of charge, the prosecution did not open its case under section 226 of the Code and merely filed a draft charge on the basis of which the learned trial Court framed charges.

8. Learned counsel for the petitioner has placed reliance on the authorities in M.S. Ahlawat v/s. State of Haryana and Another reported in 2000 Supreme Court Cases (Cri) 193, S. H. Narendra Kumar Srivastava v/s. The State of Bihar & Ors. in criminal appeal no. 211 of 2019, and Ashok Shambhubhai Chovatiya v/s. State of Gujarat & Another in R/CR.RA/No. 1535 of 2019 in support of his contention.
9. Per contra, learned counsel for the State has submitted that it is the prerogative of the learned trial Court to frame charges upon consideration of the material on record and obtaining sanction for prosecution under a particular section does not preclude the Court from framing charges beyond the same if sufficient material is found on record.
10. It is a fact that Subhajit Banerjee was on leave when the victim expired but was present in the concerned police station when the victim was assaulted as well as records manipulated. Material available in the case diary clearly indicates that both the petitioners were in the process of interrogation in course of which the police personnel indulged in assaulting the victim.
11. The CCTV footage has been supplied to the petitioners in terms of section 207 of the Code of Criminal Procedure and the footage endorses presence of the petitioners in the police station at the relevant time. No prayer was ever made by the petitioners for playing the CCTV footage in open Court.
12. Learned Court has referred to authorities in Sachida Nand Singh and Another v/s. State of Bihar and Another reported in 1998 Supreme Court Cases OnLine SC 107, Iqbal Singh Marwah and Another v/s. Meenakshi Marwah and Another reported in 2005 Supreme Court Cases OnLine SC

531, and Kishorbhai Gandubhai Pethani v/s. State of Gujarat and Another reported in 2013 Supreme Court Cases OnLine SC 1179 in support of his contention.

13. I have considered the rival contention of the parties and material on record.

14. According to the petitioners, charge under section 193 of the Indian Penal Code (in short the IPC) could not have been framed without taking recourse to section 340/195 of the Code of Criminal Procedure (hereinafter referred to as the Cr.P.C.). It shall be useful to reproduce section 193 of the IPC and section 195 and 340 of the Cr.P.C.:-

“193. Punishment for false evidence.- Whoever intentionally gives false evidence in any stage of a judicial proceeding, or fabricates false evidence for the purpose of being used in any stage of a judicial proceeding, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.- (1) No Court shall take cognizance –

(b) (i) of any offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205, to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such

offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court.”

“340. Procedure in cases mentioned in section 195.- (1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in clause (b) of sub-section (1) of section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary.-

- a) record a finding to that effect;*
- b) make a complaint thereof in writing;*
- c) send it to a Magistrate of the first class having jurisdiction;*
- d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary so to do, send the accused in custody to such Magistrate; and*
- e) bind over any person to appear and give evidence before such Magistrate.*

(2) The power conferred on a Court by sub-section (1) in respect of an offence may, in any case where that Court has neither made a complaint under sub-section (1) in respect of that offence nor rejected an application for the making of such complaint, be exercised by the Court

to which such former Court is subordinate within the meaning of sub-section (4) of section 195.

(3) A complaint made under this section shall be signed,-

- a) where the Court making the complaint is a High Court, by such officer of the Court as the Court may appoint;*
- b) in any other case, by the presiding officer of the Court or by such officer of the Court as the Court may authorise in writing in this behalf.*

(4) In this section, "Court" has the same meaning as in section 195.

15. Section 193 of the IPC deals with giving false evidence in any stage of a judicial proceeding or fabricating false evidence for the purpose of being used in any stage of a judicial proceeding. Section 195 of the Cr.P.C. lays down the procedure for taking cognizance of an offence under section 193 besides other penal sections when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court.

16. The authority in *M.S. Ahlawat (supra)* deals with forgery and making false statements at different stages in the Court. The authority in *Iqbal Singh Marwa (supra)* has endorsed the view taken in the authority in *Sachida Nand Singh* that the bar contained in section 195 (1) (b) (ii) of the Cr.P.C. is not applicable to a case where forgery of the document has been committed before the document was produced in a Court. It is attracted only when the offence has been committed during the time when the document was in *custodia legis*. The same view has been echoed by the Hon'ble Supreme Court in *Kishorbhai (supra)*. In dealing with section 340 and 195 (1) (b) of the Cr.P.C., the Hon'ble Supreme Court, in the authority

in SH. Narendra Kumar Srivastava (supra) has distinguished between section 195 (1) (b) (i) and 195 (1) (b) (ii) of the Cr. PC. In the said case, the respondents had filed false affidavits prepared/forged outside the Court on the basis of which the High Court dropped the contempt case. The judgment clearly defines the first category of offences [section 195 (1) (b) (i)] as offence of giving false evidence and offences against public justice and the second category of offence [195(1) (b) (ii)] as offence in respect of a document produced or given in evidence in a proceeding in any Court. The Hon'ble Supreme Court has recorded that section 195(1) (b) (i) and section 195(1) (b) (ii) of the Cr.P.C. cater to separate offences. Though section 340 of the Cr.P.C. is a generic section for offences committed under section 195(1)(b), the same has different and exclusive application to clauses (i) and (ii) of section 195(1) (b) of the Cr.P.C.

17. In the present case, the authorities relied upon by the State pertain to Section 195 (1) (b) (ii) of the Cr.P.C. and have no manner of application herein. One of the allegations against the petitioners is fabricating false evidence in connection with Burtolla Police Station Case no. 319 for the purpose of using the same in the present proceeding. It is not in dispute that the alleged offence was committed prior to registration of the present FIR, or in other words, "in relation to" the present proceeding as stated in section 195 (1) (b) (i) of the IPC. As such, bar contained in section 195 (1) (b) (i) of the Cr.P.C. is applicable herein. Had the offence been committed in respect of a document when the document was in *custodia legis*, that is, the document was produced or given in evidence in the proceeding, section 195(1) (b) (ii) would be applicable. Therefore the learned trial

Court has erred in framing charge against the petitioners under section 193 of the IPC without compliance of the provision laid down under section 340 of the Cr.P.C.

18. Sanction for prosecution under section 304 of the IPC besides other penal sections was accorded. Charge sheet has also been submitted under section 304. The learned trial Court has framed charge under section 302 of the IPC upon considering the submission made on behalf of both the parties as well as material on record including the case diary. The observation made by the learned trial Court in framing charge that sufficient ground for presuming that the petitioners/accused committed an offence under section 302 of the IPC appears to be sufficient at that stage of the proceeding. The learned trial Court appears to have arrived at such conclusion upon considering the entire material before him. Therefore framing of charge under section 302 of the IPC, by the learned trial Court cannot be vitiated merely on the ground that sanction was accorded for prosecution under section 304 or charge sheet was submitted under the said provision.
19. Learned counsel for the petitioners has submitted that when the matter was taken up for consideration of charge the prosecution did not open its case under section 226 of the Cr.P.C. by describing the charge brought against the accused and stating by what evidence he proposed to prove the guilt of the accused.
20. True, the order framing charge does not disclose the submission made by the prosecution on the point of consideration of charge in detail. However, since the learned trial Court appears to have framed charges upon

considering the submission made by the prosecution as well as on behalf of the accused and upon careful scrutiny of the entire material on record including the case diary, the order cannot be faulted for non-disclosure of the submission in detail.

21. In the said backdrop, this Court is of the view that the portion of the order impugned dated 28th February, 2024 framing charge against the petitioners/ accused under section 193 of the IPC is required to be set aside/quashed.
22. The order impugned dated 28th February, 2024 passed by the Learned Chief Judge, City Sessions Court, Calcutta in Sessions case no. 55 of 2022 in so far as charge is framed against the petitioners under section 193 of the IPC is set aside/quashed. The remaining portion of the order is affirmed.
23. Prima facie material for framing charges against the petitioners having been found during investigation, the allegations need to be substantiated by way of evidence. The question of exonerating them at this stage of the proceeding by allowing the application filed by them under section 227 of the Cr.P.C. does not arise.
24. The revisional applications being C.R.R. 1486 of 2024 and C.R.R. 1576 of 2024 are disposed of accordingly.
25. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)