

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 1207 of 2019

Rajib Sahoo

Vs.

Purnendu Maity

For the petitioner : Mr. Rana Mukhopadhyay

Heard on : 13.05.2025

Judgment on : 20.05.2025

Dr. Ajoy Kumar Mukherjee, J.

1. This applications pertain to a prayer for quashing of the proceeding being complaint case no. 19 of 2019 presently pending before learned Metropolitan Magistrate 20th Court Calcutta, under sections 341/323/506/34 of IPC.

2. Mr. Mukhopadhyay learned counsel for the petitioner submits that the background of the present case is that on 22.01.2019, while the petitioner was on duty at Jorabagan police station, a lady made a phone call to the police station alleging ill treatment and torture at the behest of her husband. After diarising the matter some of the police officers (not the petitioner herein), attached to the police station left the police station to

work out the said information. When they reached the spot and made necessary enquiry by calling the warring couple, they were informed that the informant who is a pregnant lady allegedly beaten by her husband and she was driven out from her house. However with the intervention of local people she again managed to enter at her house. When the police officers were on the spot the wife of the opposite party/complainant and her mother handed over two separate complaints containing the allegations against the opposite party herein.

3. The opposite party was brought to Jorabagn police station in the intervening night of 22.01.2019 and 23.01.2019, where he expressed his intention to lodge a complaint against police personnel of Jorabagan police station, alleging that he is a practicing lawyer of different courts and knowing that police persons have abused and manhandled him, interfering with his personal life. Opposite party accordingly submitted a written complaint with the officer in charge in Jorabagan Police Station against some police officials.

4. The opposite party herein thereafter filed one application under section 156(3) of Cr.P.C. before Additional Chief Judicial Magistrate Calcutta on 15.02.2019 in connection with the above incident and prayed for registration of FIR, though the name of the petitioner herein does not transpire in the said petition of complaint. Learned ACMM instead of making direction for lodging FIR, treated the same as petition of complaint and took cognizance of the offences punishable under sections 341/323/506/114 of the IPC. and thereafter transmitted the case record to learned MM 20th Court, Calcutta for disposal.

5. Thereafter the concerned magistrate examined complainant and his witness on solemn affirmation in terms of section 200 of the Cr.P.C. and by the impugned order dated 06.03.2019 issued process against the accused persons including the petitioner invoking his jurisdiction under section 204 of Cr.P.C.

6. Being aggrieved by the impugned proceeding the petitioner submits that the petition of complaint must contain the name of the accused and summons have to be issued in his name and not in respect of the designation of a person, which is highly illegal and impermissible in law. Learned court below being completely oblivious of the fact that the petitioner was nowhere named in the petition of complaint, mechanically and in complete non application of judicial mind, issued process against the official designation of the petitioner i.e. in the capacity of additional officer in charge of the Jorabagan Police Station which is grossly illegal and impermissible.

7. In the examination on solemn affirmation, the opposite party deposed that on 22.01.2019 at around 11.55 p.m. a family dispute was going on at his residence when police personnel came to his residence and asked the reason of the dispute. At that time in-laws and others tried to enter his residence and on protest one Motor cycle rider ASI, Mr. Dev became violent and started abusing him with filthy languages and thereafter by holding his shirt collar dragged him out from his residence in presence of the neighbours of his locality. The said person even did not allow him to put on full clothing since he was almost in his night dresses and also did not allow to wear his slipper and dragged him to the police station on naked feet. The said police personnel while taking him out of his residence slapped him

throughout the stair case of his residence and twisted his arm. Thereafter, he was brought to Jorabagan Police Station. At about 1.30 a.m. in the night, he was allowed to speak with the additional officer in charge of the Jorabagan Police Station and he was again abused and asked not to take up the issue and to leave the police station silently.

8. Therefore, the entire incident occurred allegedly in between ASI Mr. Dev and the other police officers accompanied him to the residence of the opposite party and all the allegations of assault slapping and twisting of his arms has been done allegedly at the behest of those police officers who had been to the house of the opposite party. It further appears that there is no allegation that the petitioner went to the house of the opposite party nor committed any offence alleged in the petition of complaint. The only allegation levelled against the petitioner herein may be that the petitioner was posted as additional OC Jorabagan P.S. at the time of commission of alleged offence and at about 1.30 a.m. in the night he asked the complainant to leave the police station silently. In the entire examination on solemn affirmation of the opposite party, no overt act at the behest of the petitioner has been specifically alleged. The other witness who was examined under section 200 of Cr.P.C. in his examination on solemn affirmation has also not made any whisper of any overt act committed by the petitioner and he has also not taken the name of the petitioner at the time of initial deposition.

9. In the aforesaid facts and circumstances of the case it is quite clear that a person cannot be implicated in a criminal proceeding merely because he was posted in a particular police station or on the ground that he has

allegedly asked the complainant to leave the police station silently. Ld. Court below without going through the materials including the complaint and the initial deposition of two witnesses, unjustly issued process against the present petitioner against whom no specific overt act or criminal offence has been attributed. It is settled law that the condition precedent for issuing process under section 204 Cr.P.C. is the satisfaction of the Magistrate, either by examination of the complainant and the witnesses or by the inquiry contemplated under section 202 Cr.P.C. that there is sufficient ground for proceeding against a particular accused. The order impugned has failed to demonstrate what prompted learned Magistrate for satisfying himself that there are sufficient ground for proceeding against this particular petitioner /accused.

10. Every complaint should contain not only the name of the accused person but also the specific role played by each and every accused in furtherance of commission of offence. A bald allegation that the additional O.C. Jorabagan P.S. had abused him or had asked him to leave the police station silently does not constitute any offence. Complainant's initial statement would reflect that allegation is against one ASI Mr. Dev and other police personnel. The allegation against present petitioner is vague and complainant may have made an attempt to fasten the petitioner with vicarious liability, which is unknown for the alleged offences under IPC. Infact from the contents of the allegation the vengeance is palpably demonstrated and for which clause (7) of para 102 of **Bhajanlal's Case, 1992 Supp (1) SCC 335**, which has dealt with the situations , where prayer

for quashment can be allowed, clearly attracts in the present case, which states:-

“102.....(7) where a criminal proceeding is manifestly attended with malafide 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”.

11. I am also informed by learned counsel appearing on behalf of the petitioner that on 26.03.2019, the opposite party/complainant preferred another application before learned court below *interalia* for addition of one Rajib Ghosh (not the petitioner) claiming him to be in charge of additional officer in charge Jorabagn Police Station on the date of incident and prayed for issuance of process against said Rajib Ghosh and others but the court below has not disposed of said application, may be on the ground of pendency of the present application before this Court. All the aforesaid facts and circumstances of the case lead to the inevitable conclusion that the impugned order passed by the court below about issuance of process against the present petitioner is perverse and is not sustainable in the eye of law.

12. In such view of the matter the impugned order dated 06.03.2019 by which the court below issued process to the present petitioner is hereby quashed and as a consequence the complaint case being C case no. 19 of 2019 presently pending before Id. M.M. 20th Court Calcutta is hereby quashed qua the present petitioner Rajib Sahoo.

13. CRR 1207 of 2019 thus stands 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.)