

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

**CRR 1720 of 2017
With
IA No. CRAN 14 of 2025**

**Prabir Roy
Vs.
Parag Mukherjee
With
CRR 4316 of 2022
Prabir Roy
Vs.
Parag Mukherjee**

For the petitioners : Mr. Moyukh Mukherjee
Mr. Pritam Roy
Ms. Sarmistha Basak

For the opposite party : Mr. Anand Keshri
Ms. Soumili Chaudhuri
Ms. Pubali Debnath

Heard on : 17.03.2025

Judgment on : 17.06.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The present application being CRR 1720 of 2017 has been preferred with a prayer for quashing of the proceeding being complaint case no.

C/11369 of 2011, initiated under sections 219/500/34 of IPC presently pending before learned 9th Judicial Magistrate Alipore.

2. It is submitted that during pendency of a civil dispute between the co-sharers of the joint undivided paternal property, situated at 3, Sarat Bose Colony, on 23rd January, 2017 and 13th February, 2007 paternal uncle of the opposite party Prantosh Mukherjee and cousin brother of opposite party Snehasish Mukherjee received two notices from the Sub-Divisional Magistrate Alipore, which discloses that police officer of Kasba police station filed two reports under Kasba P.S. PR. No. 864 of 2006 and 867 of 2006 dated 30.12.2006 and 2nd November, 2006 respectively and prayed for issuance of process under section 107 of the Cr.P.C. against said Prantosh and Snehasish. It is further case of the opposite party that curiously the Sub Divisional Magistrate Alipore initiated a proceeding under section 107 of Cr.P.C. against the complainant herein Parag Mukherjee also on the basis of a police report being Kasba P.R. No. 1005 of 2006 dated 28.12.2006. Opposite party obtained a certified copy of said police report dated 28.12.2006, wherefrom it appears that without any specific allegation police implicated the opposite party in the said case. Not only that in the said police report complainant/opposite party Parag Mukherjee was described as an accused and without any specific allegation against the petitioner, it was written therein that the accused including the said Parag Mukherjee are 'desperate and dangerous in nature' and are liable to be prosecuted under section 107 of the Code of Criminal Procedure. It is further case of the opposite party that said Pranotosh and Snehasish moved a criminal revision petition being CRR 867 of 2007 before this High Court and by an order

dated 25th June, 2008, the said proceeding under section 107 of Cr.P.C. was quashed. Further cases of the opposite party is that since the opposite party herein acted as an Advocate of aforesaid Pranotosh Mukherjee and Snehasish Mukherjee, the police submitted the said false report against the opposite party herein to initiate the prosecution under section 107 of Cr.P.C. and on the basis of said police report learned Magistrate issued notice asking the opposite party to show cause as to why he should not be ordered to execute a bond for maintaining peace and good behaviour in the locality for a period of one year.

3. The grievance of the opposite party which prompted him to initiate proceeding under section 219/500/34 is that the petitioner herein as police officer defamed the opposite party/complainant, who is an Advocate, in the eyes of the public as well as his clients. The intention of the police was to ruin the professional career of the petitioner. His further case is that there is no allegation against the opposite party herein but even then he was described as a man of desperate and dangerous nature. Further grievance of the opposite party/complainant is that such sort of remarks and/or allegation against him caused serious damage to his reputation and professional dignity and social prestige. Because of such proceeding complainant had to appear before the High Court as an accused and complainant's clients and friends enquired him as to why police had filed the said report against him. Many others have developed bad impression about the complainant/opposite party because of the said false and malicious report of the police. His further case is because of initiation of proceeding under section 107 of the Code, two of the petitioners clients

namely Smt. Ruma Chakraborty and Shri Pradip Das by writing letter dated 07.12.2009 and 13.03.2010 took back their briefs from the petitioner. When the letter of Smt. Ruma Chakraborty was reached to the petitioners chamber, at that time one of his colleague lawyer namely Santanu Mukherjee and one of his relative namely Pradip Kumar Pandey and one of his client Sri Sukhendu Mazumder were present in his chamber. On the request of the complainant the said letter of Ruma Chakraborty containing allegation against the petitioner was read over by said Advocate Santanu Mukherjee. As such he prayed before magistrate for initiating proceeding under section 209 and 500 of IPC and learned Magistrate took cognizance and thereafter by an order dated 15.12.2011 observed as follows:-

“Complaint is received under section 200 Cr.P.C. Perused the order of Hon’ble High Court being annexure 12. Considering order of Hon’ble High Court process under section 209/500/34 IPC is issued. Issue summon to the accused. Requisite at once. To 02.02.2012 for S/R and A/D.”

4. So far as the other proceeding in connection with CRR 4316 of 2022 is concerned it pertains to the allegation that said accused Prabir Roy ex inspector-in-charge of Kasba police station by describing the complainant as man of desperate and dangerous in nature filed false report and thereby caused serious damage to the complainant as his intention was to ruin the professional career of the complainant. The said Prabir Roy and his associates in collusion with each other submitted the false report with criminal intention to cause huge loss to the opposite party herein for their personal gain and as such present petitioner Prabir Roy and his associates are also guilty of committing offence.

5. Being aggrieved by the said proceedings Mr. Mukherjee leaned Counsel appearing on behalf of petitioner Prabir Roy submits that even if the story narrated by the opposite party in the complaint is accepted to be the gospel truth then also the placements of facts singularly lacks either of the ingredients of the offence alleged. He further submits that mere mentioning of relevant sections and language of those sections is not sufficient. Particulars of offence committed by each accused person and role played by them in committing that offence needs to be stated. In the instant case the incidents disclosed in the petition of complaint do not make out any contravention of the provisions of the IPC and as such no offence under the said section can be said to have been made out. The proceeding has been initiated just to harass the petitioner with *malafide* intentions and with ulterior motive of wrecking vengeance on the other side.

6. He further argued that in the instant proceeding the order taking cognizance of the cases do not reflect application of judicial mind. The order issuing process itself states that complainant was examined and thereafter only after perusing the order of the High Court which relates to order of quashing of proceeding under section 107 of the Code dated 25.06.2008, the process has been issued by the Magistrate in a whimsical manner, without applying judicial mind as if High Court has asked him to initiate instant proceeding. Infact before issuance of process learned Court below only considered the statement of the complainant and the order of quashing of proceeding under section 107 of the Cr.P.C. passed by the High Court. Such consideration is bereft of any legal standing and is baseless because prime consideration required while issuing summon is the satisfaction of the

learned magistrate that the complainant prima facie satisfied the court that a case has been made out and there are reasonable grounds to proceed against the petitioner.

7. He further argued that the quashing of section 107 Cr.P.C proceeding by the High Court has no relevance for consideration of issuance of process in a criminal proceeding which has been initiated with *malafide* intention. High Court nowhere suggested in his order dated 25.06.2008 to initiate any such proceeding against petitioner which the court below failed to understand and furthermore the order of quashing is no way related and has no implication for initiating such proceeding. The *malafide* and malicious intent of the opposite party is clearly reflected from the mere perusal of the mode and manner, in which the instant case has been given a shape and colour of criminal proceeding. Petition of complaint itself discloses that the police authorities were discharging their official duties as police officer and there is no specific allegation against the petitioner which may constitute any such offence as alleged. In the said proceeding under Section 107 Cr.P.C the petitioner herein was only discharging his duties and as he was directed to submit report before the concerned magistrate, the petitioner had only submitted what had surfaced during investigation. He further said that the result of investigation if found against a person, the same cannot be said to have made to defame the said person.

8. He further argued that under the amended sub section (1) of section of 202 Cr.P.C., it is mandatory upon the Magistrate that before summoning the accused residing beyond his jurisdiction, he shall enquire into the case himself or direct the investigation to be made by a police officer or such

other person as he thinks fit for finding out whether or not, there is sufficient ground for proceeding against the accused. In the present case such mandatory provision has also not been followed, while process was issued under section 204 Cr.P.C., against all the accused persons. Petitioner accordingly prayed for quashing of the impugned proceeding qua the petitioner.

9. I have considered submission made by both the parties .

10. As held in ***Subrmanian Swamy Vs. Union of India***, reported in **(2016) 7 SCC 221** to constitute the offence of defamation there has to be imputation and it must have been made in the manner as provided in the provision with the intention of causing harm or having reason to believe that such imputation will harm the reputation of the person about whom it is made. Therefore, causing harm to the reputation of a person is the basis on which the offence is founded and *mens rea* is a condition precedent to constitute the said offence. Moreover the complainant has to show that the accused has intended or known or had reasons to believe that the imputation made by him would harm the reputation of the complainant. The criminal offence emphasizes the intention to harm and section 44 IPC defines injury which denotes any harm whatever illegally caused to any person in body, mind, reputation or property. Therefore the word injury encapsulates harm caused to the reputation of complainant.

11. Here in the present case admittedly the petitioner herein was asked to submit a report in a proceeding initiated under section 107 of Cr.P.C., where in the course of official business as per direction of the Magistrate, petitioner as police officer submitted his report. In such circumstances complainant

was required to show that the petitioner herein had intended or had reason to believe to cause harm the reputation of the complainant and thereby injury caused to his reputation. The order taking cognizance of the offence clearly shows that the magistrate in a typed order after striking “section 138 of the N.I. Act” put section 219/500/34 of the IPC and thereby took cognizance. Moreover, the complainant had not examined any other witness to show that it had actually caused injury or harm to his reputation. Though some of the accused resides outside the jurisdiction of the court the Magistrate also blatantly flouted to comply the mandatory provision of section 202 of the Cr.P.C.

12. Needless to repeat that the allegation of the complainant in connection with the proceeding under section 107 of the Code, is that the petitioners submitted a report where he stated that the complainant is a man of dangerous and desperate in nature to public peace and tranquillity which allegedly caused damage to the reputation of the complainant. Mere mentioning in the report that the complainant is a dangerous and desperate person is not per se defamatory. There must be some prima facie evidence that in the estimation of the general public by such imputation, the reputation of the complainant has been harmed or lowered down. In the present case the complainant in support of his allegation only examined himself and no other person was examined under section 200 of the Code of Criminal Procedure. None of the persons mentioned in the complaint were examined nor has made statement before the court, that due to such mentioning in the report by the police, that the opposite party herein is a dangerous and desperate person, the moral or intellectual character of the

complainant has been lowered down in their estimation and thereby his reputation has been harmed. In the absence of any such statement by the alleged witnesses that due to such imputation the reputation of the complainant has been lowered down in the estimation of the public it is of no use to make out an offence of defamation. No such witness was examined in whose estimation the reputation of the complainant has been lowered down due to such alleged imputation made by the accused.

13. In *Dipankar Bagchi Vs. State of West Bengal*, reported in **(2010) 1 CCR.L.R (Cal) 403** this court held that moral and intellectual character of the complainant must be lowered down in the estimation of the witness and only then his reputation may be treated to have been harmed. Explanation (4) of section 499 of the IPC states that no imputation is said to harm a person's reputation, unless that reputation directly or indirectly, in the estimation of others lowers the moral or intellectual character of that person or lowers the character of that person in respect of his caste or of his calling or lowers the credit of that person or causes it to be believed that the body of that person is in a loathsome state or in a state generally considered as disgraceful.

14. This court in *M/S Nishka Properties (pvt). Ltd. & anr. Vs. State of West Bengal* reported in **(2014) 1 AICLR 1018** held that defamation is a species of which *mens rea* is the genesis. Any sort of allegation with a touch of imputation against any person per se cannot be categorised as defamation. There is nothing to show in the proceeding that the petitioner has any *mens rea* for making any such imputation. The inference of the complainant/opposite party that due to any such imputation, his reputation

has been lowered down in the estimation of the public is of no use to make out an offence of defamation, in the absence of examination of any such witness and also in the absence of making inquiry by the learned magistrate. Surprisingly the magistrate had also issued summon without meeting the mandatory requirement of section 202 of Cr.P.C., though the accused persons are residing outside his territorial jurisdiction. The provisions of section 202 of Cr.P.C. was amended in 2005 making it mandatory to postpone the issue of process where the accused resides in an area beyond the territorial jurisdiction of the Magistrate concerned. The same was found necessary in order to protect the innocent persons from being harassed and making it obligatory upon the Magistrate to enquire into the case himself or to direct investigation to be made by a police officer or by such other person as he thinks fit for the purpose of finding out whether or not there was sufficient ground for proceeding against the accused before issuing summon in such cases.

15. There is also nothing to show that the petitioner herein in his report has pronounced anything corruptly or maliciously or contrary to law knowing it to be so. There is also nothing to show that the report has been proved to be a false one causing huge loss to the complainant in order to make any personal gain for the petitioner to continue any proceeding under sections 193/196/199/200/209/211/120B of IPC to proceed under section 340 Cr.P.C.

16. Inherent power of High Court under section 482 Cr.P.C is to be exercised with the purpose and object of advancement of justice. If it is found that the process of the court is sought to be abused by a person with

some oblique motive, the High Court has to interfere with the proceeding. From the facts of the present case and materials placed before me I find that there are sufficient reason to believe, in view of aforesaid discussion, for not allowing the proceeding any further as in case of both the proceedings category (1),(3),(7) of paragraph 102 of the salutary Judgement of ***State of Haryana Vs. Bhajan Lal***, reported in **1992 Supp (1) SCC 335**, clearly attracts.

17. In such view of the matter **CRR 1720 of 2017** is allowed. The impugned proceeding being complaint case no. C/11369/11 presently pending before 9th Judicial Magistrate Alipore is hereby quashed qua the petitioner ***Prabir Roy***.

18. Accordingly **CRR 4316 of 2022** is also allowed and thereby the proceeding under section 340 of Cr.P.C. before Sub divisional Magistrate Alipore being misc. Case no. 1 of 2015 is hereby quashed qua the petitioner ***Prabir Roy***.

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.)