

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 1926 of 2018

**Rajesh Kshetry.
Vs.
The State of West Bengal**

For the Petitioner : Mr. Ayan Bhattacharjee, Sr. Adv.
Mr. Apalak Basu
Ms. Sanghamitra Mridha
Mr. Sounak Mondal

For the State . Mr. Rana Mukherjee, Ld. APP
Ms. Debjani Sahu

Heard on : 01.08.2025

Judgement on : 17.11.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioner herein has prayed for quashing of proceeding being N.G.R case no. 8848 of 2018 presently pending before learned Chief Judicial Magistrate, Tamluk, arising out of Kolaghat Police Station NCR Case no. 185 of 2018 under section 186 of the Indian Penal Code (IPC).

2. On 25th March, 2018 an accident occurred due to collusion between the vehicle of the petitioner and a truck. One Rabi Sankar Das, a member of National Volunteer Force (NVF) who was on duty at that place was allegedly

requested by the petitioner to interfere and to take action against the truck driver but said Rabi Sankar allegedly abused the petitioner and also allegedly assaulted him.

3. The petitioner thereafter lodged a written complaint against said Rabi Sankar under section 341/323 IPC being Kolaghat Police Station case no. 134 of 2018. The petitioner also lodged a complaint with the superior officer of West Bengal National Volunteer Force Directorate on 10th April, 2018 and the said commandant of West Bengal National Volunteer Force Directorate forwarded the complaint to the Superintendent of police, Purba Medinipur for conducting necessary enquiry against said Rabi Sankar.

4. Immediate after such administrative action being taken against Rabi Sankar, at his behest, a prayer was made by one Mihir Kumar Sahu, Sub-Inspector of Police attached with Kolaghat Police Station, before the Chief Judicial Magistrate, Purba Medinipur asking for permission to conduct enquiry against the petitioner. Learned Magistrate by an order dated 16th April, 2018 allowed such prayer and directed him to submit a report on completion of the enquiry. After such enquiry a prosecution report (P.R) was submitted under section 186 of the IPC in connection with Kolaghat P.S G.D.E no. 1275 of 2018 dated 25th March, 2018 and G.D.E no. 279 of 2018 dated 6th May, 2018 by said Sub-Inspector of Police Mihir Kumar Sahu and on the basis of the same by the order dated 28th May, 2018 the court below took cognizance and issued process against the petitioner directly.

5. Being aggrieved by the impugned proceeding Mr. Ayan Bhattacharjee learned Senior Advocate appearing on behalf of the petitioner submits that the Magistrate concerned ought not to have permitted to conduct enquiry to

be initiated by the concerned Sub-Inspector of police as there is no such provision for directing an enquiry for alleged non-cognisable offence. It is only under section 155(2) of the Cr.P.C. that a Magistrate can permit the police officer to conduct investigation in connection with a non-cognizable offence. However such permission was never sought for and infact no prayer was made before the Magistrate in terms of section 155(2) of the Code praying for investigation.

6. He further submits that since the offence under section 186 of the IPC is a non-cognizable offence, the concerned police officer could not have conducted any enquiry nor the learned Magistrate could have permitted any enquiry/investigation when the Magistrate is debarred from taking cognizance on the basis of police report submitted in connection with such an offence under the provision of section 195(1) of the Cr.P.C.

7. He further submits that section 195(1) of the Cr.P.C. mandates that no Magistrate can take cognizance for an offence under section 186 of the IPC except a complaint lodged by the public servant concerned or any person directly superior to such public servant. That apart said Rabi Sankar is not a public servant within the meaning of section 21 of the IPC. Even if it is presumed for the sake of argument that he is an aggrieved person within the meaning of section 186 of the IPC, cognizance could have only been taken by the learned Magistrate on a complaint filed by him or any officer superior to him. In the instant case neither said Rabi Sankar nor his commandant has filed any complaint and in absence of such complaint the sub-inspector of police attached with Kolaghat PS could not have filed a police report and cognizance could not have been taken on the basis of the

same. Since the prosecution report has been filed by the above named sub-inspector of police disclosing a non-cognizable offence under section 186 of the IPC, such prosecution report is to be treated as a complaint within the meaning of section 2(d) of the Cr.P.C. and the said police officer was required to have been treated as a complainant and ought to have been examined under section 200 of the Cr.P.C. but the said procedure was not adopted by the learned Magistrate and he had directly taken cognizance on the basis of police report and issued summon. Moreover examination of the concerned police officer as a complainant could not sub serve any purpose in as much as only the complainant on whose complaint, cognizance is permitted in respect of an offence under section 186 of the IPC is the aggrieved public servant or his administrative superior but none of them have filed any complaint or report before the court below. In such circumstances continuance of further proceeding would be an abuse of process of the court and as such he had prayed for quashing the impugned proceeding.

8. Learned counsel appearing on behalf of the State opposed the prayer made by the petitioner and contended that there are sufficient reasons to proceed instant proceeding and as such prayed for dismissal of the instant application.

9. Before going further details let me reproduce the prosecution report submitted by aforesaid sub-inspector of police

“The fact of the case in brief is that as endorsed by O/c- Kolaghat PS, after getting permission of Ld. C.J.M., Purba Medinipur, I enquired Kolaghat PS GDE No- 1275 dated 25.03.2018 and came to learn that on 25.03.2018 NVF-Reg. 16.14.0187 Rabi Sankar Das, now posted at Kolaghat PS went for traffic duty at F-type more vide C.C. No – 990/18. During his Govt. Duty at

*about 10:00 hrs, one truck having bearing no- WB-23D/0593 and one small vehicle No. AP 31 TVB 0415 coming towards Haldia and at traffic point/signal at F-type more on NH-41 Road the small vehicle violate traffic signal and dashed left side of the above noted truck, resulting he tried to stop the both vehicle, but the person who inside the small vehicle no AP 31 TVB 0415 namely Mr. Rajesh Kshetry (32) S/o- Jibonlal of Souhardya, Apartment 892 Purbachal Main Road, Kol-700078 abused filthy language and misbehaved with on duty traffic NVF- Rabi Sankar Das and obstructed him in discharge of his Govt. duty.
So, I pray before your honours Court that the side noted person as noted in Col.III may kindly be prosecuted u/s 186 IPC”*

10. Having heard ld. Counsel appearing on behalf for the petitioner and the states it appears that in the instant case cognizance has been taken by the concerned Magistrate under section 186 of Indian Penal code. Under section 195 of the Code of Criminal Procedure (In short Cr.P.C) no court can take cognizance of an offence punishable under section 186 of I PC except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate.

11. The term complaint has been defined in section 2 (d) of Cr.P.C. which means any allegation made orally or in writing to a magistrate with a view to his taking action under the Code that some person whether known or unknown has committed an offence but does not include police report. However, explanation to said section states that a report made by a police officer in a case which discloses after investigation the commission of a non-cognizable offence shall be deemed to be a complaint and the police officer by whom such report is made shall be deemed to be the complainant. The term “investigation” has also been defined in section 2(h) which includes all the proceedings under this Code for the collection of evidence conducted by a police officer or any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.

12. Now the question is whether the Magistrate concerned has taken cognizance upon the alleged offence under section 186 of IPC in accordance with law or not. In the instant case the report for prosecution has been considered by the Magistrate as complaint. From the description of offence as mentioned in the police report it appears that after getting permission from learned CJM, concerned police officer/complainant enquired Kolaghat P.S. GDE No. 1275 dated 25.03.2018 and came to learn that the present petitioner abuses said NVF person with filthy languages and also misbehaved with said on duty traffic NVF Rabi Shankar Das and obstructed him in discharge of his duty. Though section 2(h) of the Act gives inclusive definition of the term “investigation” but it is palpably clear from the prosecution report upon which the court had taken cognizance is not the result of any investigation but it is merely an enquiry report wherein the alleged complainant has only stated that he came to learn that the petitioner has committed the above mentioned offence. He nowhere disclosed as to what are the evidences upon which he came to such finding. Moreover investigation of a non-cognizable offence can only be done by police, when such prayer is made before Magistrate under section 155(2) of Cr.P.C and Magistrate having jurisdiction allowed to make such investigation, which has not been followed in the present context. Therefore, such police report which had been treated as complaint by the Magistrate and upon which offence he had taken cognizance can hardly be said to be a report made by a police officer after investigation, disclosing commission of non-cognizable offence.

13. Secondly in the instant case admittedly the alleged victim had not lodged the complaint. If the police report at all has to be treated as “complaint” then it appears that it has been submitted before the court by a Sub-Inspector of police. There is nothing to show that Sub-Inspector of Police is administrative superior to the National Voluntary Force. This is because NVF is appointed under section 3 of the West Bengal National Voluntary Act 1949, in order to discharge function envisaged under section 4 of the said Act. Under the Act, NVF is subordinate to State Commandant, Deputy State Commandant, District or Unit Commandant, Company Commander, Platoon Commander and section commander as prescribed under section 6 read with section 5 of the Act of 1949. In this context it is also to be made clear that section 185 of Cr.P.C. has not merely used the term ‘subordinate’ but the legislature has consciously used the words ‘administratively subordinate’ which etymologically means ‘in a way that relates to the running of business organization etc.’

14. The Act of 1949 though enumerates about administrative subordination but it does not specify position of a police officer appointed under the Police Act 1861. Therefore, it is difficult to conclude that the National Volunteer Force is administratively subordinate to a Sub-Inspector appointed under the Police Act. Hon’ble Supreme Court while dealt with such an issue has held in para 7 in the judgment in **R.G. Jacob Vs.**

Republic of India reported in **AIR 1963 SC 550**

“7. Subordination of public servants to other public servants is a well known and inevitable feature of public administration. And when a question arises in any case whether a public servant A is subordinate to public servant B it presents little difficulty. Thus, in that branch of the State’s public administration which deals with regulation of imports into and exports from India, one would state without difficulty that an Assistant Controller of Imports

is "subordinate" to the Joint Chief Controller of Imports and Exports; so also the Assistant Controller of Exports is subordinate to the Joint Chief Controller of Imports and Exports; but the Assistant Controller of Exports is not subordinate to the Assistant Controller of Imports; nor is the Assistant Controller of Imports subordinate to the Assistant Controller of Exports. According to the learned counsel, in Section 165 the word "subordinate" should be interpreted as "functionally subordinate". He contends that while the appellant was administratively subordinate to the Joint Chief Controller of Imports and Exports he was not "functionally subordinate" to that officer; as Assistant Controller of Imports, he had nothing to do with the matter of appeal against the rejection of the application for exports licence, so, he was not "subordinate" to the Joint Chief Controller, within the meaning of the section."

15. The mandate of section 195(1) (a) is that the complaint has to be lodged by the appropriate public servant. In ***Daulat Ram Vs. State of Punjab*** reported in **AIR 1962 SC 1206** has made it clear that the words 'no courts shall take cognizance' have been interpreted on more than one occasion and they show that there is absolute bar against the court taking cognizance of the case except in the manner provided by the section. In the instant case though it is incumbent upon the prosecution to show that the prosecution has been lodged by a police officer who is administratively superior to the victim but in the instant case prosecution failed to establish the same even the prosecution failed to produce any document that an N.V.F. is functionally subordinate to a S.I. of Police. Thus it can be said unhesitatingly that there was no due compliance with the provision of section 195(1) (a) of Cr.P.C. and there appears to be reason to believe that the cognizance of the offence has been wrongly assumed by the Magistrate without proper complaint in writing made by appropriate public servant.

16. That apart, from the allegation it is also clear that quintessential of section 186 of IPC are not satisfied. It is reported in the alleged complaint that the petitioner accused has abused the victim with filthy languages and misbehaved with him and obstructed him with discharge of his government

duty. In order to attract section 186 IPC following ingredients are to be satisfied :-

- (i)** a public servant was in discharge of his official duty
- (ii)** Voluntary obstruction was caused to such public servant
- (iii)** Such obstruction was in the discharge of public function of such public servant.

17. Mere usage of filthy language and mis behaviour per se cannot constitute “obstruction” in discharge of his official duty. Though in the report it has been evasively stated that the petitioner obstructed the victim/NVF in discharge of his government duty but nowhere it has been stated how such obstruction in discharge of his public function has been created. There is nothing to say that the petitioner actually obstructed with his hands or block the way or deed anything that could be interpreted as a threat which was likely to be immediately carried out. The word “obstruction” connotes some overact in the nature of violence or show of violence. It is true that to constitute obstruction it is not necessary that there should be actual criminal force but it is sufficient if there is either a show of force or threat or even an act preventing the execution of any act by a public servant but in the instant case nothing has been stated in the report that petitioner has done something which can be construed as ‘obstruction’.

18. I have already indicated above that in the report only it has been stated that the petitioner obstructed the NVF in discharge of his government duty without alleging anything as to what is the exact role played by the petitioner in the commission of such offence.

19. In ***Neelu Chopra and Others Vs. Bharti*** reported in **2010 CRI L.J. 448** it was observed that in order to lodge proper complaint mere mention of the section and the language used in the section is not be all and end all of the matter. What is required to be brought to the notice of the court is the particular of the offence committed by the accused and the role played by the accused in committing the offence. When the instant complaint is judged in the aforesaid touchstone, I find that it is sadly vague and it does not say as to how the accused committed the offence of obstruction in discharging public duty by the NVF person or what exact role he played in the commission of offence.

20. Furthermore from the time line of events there exists sufficient reason to believe that the report submitted by the sub inspector which was treated as complaint is merely a counterblast and has been initiated out of vengeance in order to spite the petitioner. The petitioner's contention is that while he was driving his vehicle he was wrongly stopped and was assaulted by the concerned NVF and he was medically treated and therefore he lodged FIR on 25th March, 2018. Thereafter on 10th April, 2018 he approached the State Commandant, WBNF as well as the Superintendent of Police, Paschim Medinipur for redressal. 6 days thereafter on 16th April, 2018 the present case has been initiated. Therefore it clearly attracts para 102 (6) & (7) of the judgment of ***Bhajan Lal Vs. State of Haryana*** reported in **1992 Supp (1) SCC 335** which runs as follow:-

"6.where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party".

“7.where a criminal proceeding is manifestly attended with mala fide 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.”

21. It is also abundantly clear from the order taking cognizance dated 28.05.2018 that the Magistrate concerned did not apply at all his judicial mind while taking cognizance upon the offence and he has only filled up a word in the order which has been written previously and thereafter he only put his signature, which has got no recognition under Rule 183 of the Calcutta High Court Criminal (subordinate court) Rules 1985.

22. Having considered all the aforesaid circumstances, since the pre condition and mandatory requirement of a written complaint is missing in this case, therefore the court below ought not to have taken cognizance of the offence punishable under section 186 of IPC. Since taking cognizance itself is bad in law in view of aforesaid discussion, I find that this is a fit case where the proceeding should be quashed invoking this courts jurisdiction under section 482 of the code of criminal procedure code.

23. In such view of the matter **CRR 1926 of 2018** is thus allowed.

24. The impugned proceeding being NGR Case No. 8848 of 2018 presently pending before learned CJM, Purba Medinpur at Tamluk arising out of Kolaghat P.S. NCR No. 185 of 2018 under section 186 of IPC is hereby quashed.

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.)