

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

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

**CRR 2360 of 2016
With
IA No. CRAN 1 of 2017 (Old No: CRAN 2560 of 2017)**

**Sri Sankar Bose
-Vs-
The State of West Bengal & Anr.**

For the Petitioner	: Mr. Anirban Dutta Mr. Arka Ghosh Mr. Younus Sultan Ms. Shiba Das
For the CID	: Mr. Sudip Ghosh
For the State	: Mr. Ranadeep Sengupta
Hearing concluded on	: 07.11.2025
Judgment on	: 07.11.2025

UDAY KUMAR, J.: –

1. This Criminal Revision Application, preferred under Sections 401 read with 482 of the Code of Criminal Procedure, 1973, challenges the legality and propriety of the order dated March 16, 2016, passed by the Learned 10th Judicial Magistrate, Alipore, 24 Parganas (South), in G.R. Case No. 598 of 2008. The petitioner seeks to quash the framing of charges under Section 363 of the Indian Penal Code against the Opposite Party No. 2, Miss Saraswati Mishra, on the fundamental ground that the Learned Magistrate committed a

serious procedural error by failing to adjudicate the pending Naraji Petition (Protest Petition).

2. The facts are deeply distressing: the petitioner's seven-year-old nephew, Avijit Bose, went missing on February 21, 2008. The initial investigation by the West Port Police, despite the child never being recovered, culminated in a charge-sheet on July 15, 2010.
3. Deeming the initial investigation incomplete and inadequate, the petitioner filed a Naraji Petition (Protest Petition) on April 21, 2011, formally challenging the efficacy of the police probe. This substantive petition remained unadjudicated when the Learned Magistrate, on March 16, 2016, proceeded to frame the charges.
4. It is further noted that the investigation was subsequently transferred to the CID, which has since concluded its probe and submitted its Final Report/Charge-Sheet on August 4, 2025, before the Learned Magistrate, confirming the validity of the complainant's long-standing concerns about the initial police work.
5. The singular question for determination is that whether the Learned Magistrate's act of framing charges, while a substantive Naraji Petition challenging the investigative foundation was pending, is legally sustainable.
6. The answer is unequivocally in the negative. The duty of the Magistrate, when dealing with a police report, is judicial, not ministerial. He is obligated to apply his mind to all materials, which, by settled law, necessarily includes the complainant's formal Protest Petition.
7. The Learned Magistrate's failure to resolve the four-year-old protest before framing the charge constitutes a patent and grave procedural irregularity.

This error goes to the root of the jurisdiction exercised, as the order framing the charge was passed on an inadequate foundation that the complainant was expressly seeking to challenge. Such an omission is tantamount to a denial of the complainant's right to be heard and vitiates the entire subsequent proceeding.

- 8.** The framing of charges, while a Protest Petition is pending, is legally unsound and requires the quashing of the order, as it denies the complainant the statutory right to be heard and bypasses the mandatory judicial duty to scrutinize the investigation before initiating trial.
- 9.** For the reasons recorded above, the procedural error vitiating the impugned order cannot be sustained. The Criminal Revision Application (CRR 2360 of 2016) is allowed.
- 10.** The impugned order dated March 16, 2016, passed by the Learned 10th Judicial Magistrate, Alipore, in G.R. Case No. 598 of 2008, whereby charges were framed against Opposite Party No. 2, is hereby set aside and quashed.
- 11.** The matter is remanded back to the Court of the Learned 10th Judicial Magistrate, Alipore, with the following mandatory and exhaustive directions:
 - a) The Learned Magistrate shall first take up and hear the Naraji Petition (Protest Petition) dated April 21, 2011, and pass a fresh, reasoned order on its merits in strict accordance with the law. A full opportunity of hearing must be afforded to the petitioner (complainant) and the prosecution.
 - b) The Learned Magistrate shall then proceed to take necessary steps, applying his judicial mind, simultaneously considering both the

merits of the Naraji Petition and the findings presented in the Final Report/Charge-Sheet submitted by the CID on August 4, 2025. The ultimate decision on acceptance, rejection, or cognizance shall be based on a comprehensive consideration of these crucial materials.

- 12.** All interim order/orders, if any, granted in this matter, stand vacated.
- 13.** The Trial Court Record (TCR) and the Case Diary shall be sent down to the Learned Magistrate forthwith.
- 14.** The Registry shall forward a copy of this Order to the Learned Magistrate for necessary compliance and intimation.
- 15.** With the aforesaid observations and directions, CRR 2360 of 2016 stands disposed of.
- 16.** All connected applications, if any, stand disposed of.
- 17.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

(Uday Kumar, J.)