

**CRR 2599 of 2019
With
CRAN 3 of 2025**

**Narendra Shaw & Anr.
Vs.
The State of West Bengal & Anr.**

Mr. Pawan Kumar Gupta	
Ms. Sofia Nesar	
Mr. Santanu Sett	...for the Petitioners
Ms. Sreyashi Biswas	
Ms. Puspita Saha	...for the State

Private opposite party/complainant is not represented.

The petitioners herein have challenged the impugned proceeding in connection with Budge Budge Police Station case no. 243 of 2018 dated 4.8.2018 which was initially started under Sections 341/376/511/120B of the Indian Penal Code, presently pending before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas.

Mr. Gupta, learned counsel for the petitioners submits that the allegations made against the petitioner appearing in the FIR, does not constitute offence under the above-mentioned sections. However, after investigation, the police has submitted charge-sheet under section 341/323/354/506/34 IPC against two accused persons who are the petitioners herein, though initially four accused persons were booked in terms of the FIR. He further submits that the dispute has arisen between the parties over the ownership of property and therefore initiation of the impugned proceeding is an abuse of process of the court. The

opposite party no. 2 by suppressing the real controversy has twisted the material fact for initiating the criminal case against the petitioners. He further submits that mere mentioning of the relevant sections are not sufficient to constitute the offence. In the instant case, the allegations levelled in the complaint are vague inasmuch as the allegations did not reflect any ingredients of the offence as alleged qua the petitioners herein. The allegations are baseless, frivolous and displays a clear misuse of the provisions of criminal law.

Mr. Gupta further submits that the opposite party no. 2 has not come before the court with clean hands and in the entire petition of complaint, no statement has been made to the effect that she is the relative of the petitioners. In fact, there are case and counter-case pending by and between the parties, concerning joint property dispute. Accordingly, the petitioners have prayed for quashing the entire proceeding.

Learned counsel for the State vehemently opposed the prayer of the petitioners contending that the materials collected during investigation, constitute offence against the present petitioners. Accordingly, she raised objection against the prayer made by the petitioners for quashing the impugned proceeding.

I have considered the submissions made by the both the parties. From the petition of complaint, it appears that the defacto-complainant, implicated four accused persons in the petition of complaint alleging that on 18.7.2018 at about 9 A.M., when complainant's husband was at Mumbai, the accused No.1 to 3 forcibly entered into complainant's house and hug the complainant from back side and thereafter the accused persons

forcibly laid down her on bed with intention to commit rape and when she raised alarm, the accused persons left the house.

Thereafter, during investigation, it discloses that at the time of alleged occurrence, two accused persons namely, Arun Shaw and Sandeep Kumar Shaw who were accused no.3 and 4 were not on the spot as they were far away from their residence and supportive documents to that effect also enclosed. At the end of investigation, police has submitted charge-sheet against the two accused persons namely, Narendra Shaw and Arabindra Shaw who are accused nos. 1 and 2 in the petition of complaint and are petitioners herein.

However, as stated above that the accused no. 3 namely Sandip Kumar Sah accused No.4 Arun Sah were at the relevant point of time at Andaman Industrial Training Institute, Rajapur, Begusarai, Bihar and Rajput regimental Centre at U.P. respectively and a certificate has been annexed and for which, the police did not file any charge-sheet against them. If that be so, the entire allegation that the accused nos. 1 to 3 forcibly entered into the house of the petitioners, or all the accused persons i.e. accused no.1 to 4 laid her on bed and tried to commit rape upon her does not hold water. The allegation levelled in the FIR against four accused persons is intermingled in such a way that if one part of FIR story is proved to be frivolous, other part of the story against the present two petitioners cannot stand. Therefore the suppression of the fact in the FIR that accused no.3 & 4 were far away from the place of occurrence at the material time is equivalent to the suggestion

that entire FIR story is untrue following the principle “*suppressio veri, suggestio falsi*”.

Moreover, from the statement of three witnesses recorded during investigation, it transpires that on 18.7.2018 scuffling took place between the parties over the property dispute relating to the family affairs and they have not stated anything which may constitute offence either under Sections 341/323/354/506/34 of the IPC. The allegation as well as materials collected during investigation clearly reveals that at best small skirmish between the parties herein might have taken place on the alleged date of occurrence over property dispute which does not warrant criminal prosecution.

Considering the above factual aspects, it is clearly found out from the record that with sole intent to harass the petitioners, a concocted story has been created by the complainant and FIR has been filed.

Accordingly, sub-paragraph (7) of paragraph 102 of the **Bhajanlal’s case**, 1992 SCC (Supp) 1 335 clearly attracts in the present context which may be reproduced below:-

(7) where a criminal proceeding is manifestly attended with *malafide* and/or where the proceeding is maliciously instituted within ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

In such view of the matter, I find that further continuance of the present proceeding will be a mere abuse of process of the court.

CRR 2599 of 2019 stands allowed.

The impugned proceeding being Budge Budge Police Station case no. 243 of 2018 dated 4.8.2018 under Sections 341/376/511/120B of the Indian Penal Code, presently pending before the learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas is hereby quashed.

Connected application being CRAN 3 of 2025 is accordingly disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)