

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 4158 of 2024

With

IA NO: CRAN 1 of 2024

Hisey Gyaltzen & Anr.

Vs.

The State of West Bengal & Anr.

For the Petitioners (in person) :Mr. Hisey Gyaltzen, Adv.

For the State :Mrs. Subhasree Patel, Adv.
Ms. Madhumita Basak, Adv.

Last Heard on :15.07.2025

Judgment on :21.08.2025

Bibhas Ranjan De, J.

1. The instant revision application has been preferred with the prayer for quashing the proceeding in connection with G.R. Case no. 174 of 2013 dated 17.02.2013 corresponding to Bidhannagar South Police Station case no. 30/13 pending before the Court of Learned Chief Judicial Magistrate, Barasat.
2. The proceeding was initiated on a written complaint dated 17.02.2013 addressed to the officer-in-charge of Bidhannagar South Police Station by the defacto complainant/opposite party no. 2 herein, alleging *inter alia*, that his son namely Deepro Guha aged about 23 years, was mercilessly assaulted in the night of 17.02.2013, by two boys namely Akshay Chowdhury and Hissey Gyaltsen, students of N.U.J.S. (National University for Juridical Sciences).
3. On receipt of that written complainant, Bidhannagar South Police Station case no. 30/2013 under Section 341/325/34 of the Indian Penal Code (for short IPC) was started. The case was investigated by one S.I., A.T. Rahaman attached to Bidhannagar South Police Station. Investigating Officer

visited place of occurrence and prepared sketch map with index. He recorded statement of available witnesses under Section 161 of the Code of Criminal Procedure (for short CrPC). Investigating officer also seized one bicycle and one iron rod under a seizure list. From perusal of the injury report of the victim, it appears that he was treated at AMRI Hospital, where in course of treatment, several injuries were found on the person of said Victim namely Deepro Guha and I.O collected the discharge certificate along with other reports from AMRI Hospital. After completion of investigation charge sheet was submitted against both the petitioners under Section 341/325/307/34 of the IPC. Thereafter, one application was filed under Section 239 CrPC with a prayer for discharging the accused of the charge. Ld. Chief judicial Magistrate, North 24 Parganas, Barasat considered the submission addressed on behalf of the parties and disposed of the application under Section 239 of CrPC holding *inter alia* that there were ingredients of the offence punishable under Sections 341/325/34 IPC.

AT the Bar :-

4. Mr. Hissey Gyaltsen, being one of the petitioners appearing in person, has submitted that there is no ingredient to attract the offence under Section 341/325 of the IPC. It has been contended that nothing specific has been disclosed against any of the accused persons in the written complaint lodged before the police station. By referring to the ingredients of Section 320 of the IPC, Mr. Gyaltsen has submitted that none of the parameters has been satisfied by the injury report relied on behalf of the prosecution and accordingly offence punishable under Section 325 of the IPC does not attract. Mr. Gyaltsen also contended that FIR did not disclose any cognizable offence justifying and investigation by the police.
5. In support of his submission relating to quashment of proceeding with regard to exercise of discretionary power, Mr. Gyaltsen has referred to couple of judgments of the Hon'ble Apex Court which are as follows:-
 - ***State of Haryana vs. Bhajanlal, 1992 SCC (Cri) 426***

- ***State of West Bengal & Ors. vs. Swapan Kumar Guha & Ors, (1982) 1 SCC 561***

6. Per contra, Mrs. Subhasree Patel, Ld. Counsel appearing on behalf of the State has submitted that both the FIR as well as the evidence collected during investigation clearly disclose a cognizable offence and at this stage the entire proceeding cannot be quashed only on the ground of nature of injury.

Analysis:-

7. At the very outset it would be pertinent to remind one and all that the Hon'ble Apex Court in various landmark decisions has made a very clear suggestion that the High Court while exercising its power under Section 482 of the CrPC **is not required to conduct a mini trial** as this is not the stage where the prosecution/ investigating agency is required to prove the charges. The charges are required to be proved during the trial on the basis of the evidence led by the prosecution/investigating agency. Therefore, the Hon'ble Apex Court handed down that if the High

Court while exercising inherent jurisdiction under Section 482 of the CrPC makes an observation that the charges against the accused are not proved, by going in detail in the allegations and the material collected during course of the investigation against the accused, then they will commit material err in doing so.

8. As at the stage of discharge and /or while exercising the power under Section 482 of the CrPC, the Court has a very limited jurisdiction and is only required to consider “whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not.” In addition to that the Hon’ble Apex Court has further held that at the **initiation of the Criminal Proceedings, whether the criminal proceedings are malicious or not, is not required to be considered at the stage of quashing as it is required to be considered only at the conclusion of the Trial.** The only material

requirement which is to be considered is a prima facie case and the material collected during investigation, which warrants the accused to be tried.

9. I have gone through the case diary and from there it appears that a good number of evidence has been collected by the Police during investigation. Keeping in mind that context, in no stretch of imagination it can be said that the allegation made in the complaint is devoid of merits and does not prima facie constitute the alleged offence. It is too premature a stage, to focus on the veracity of the prosecution case as it is a settled proposition of law that **the High Court in exercise of its jurisdiction under Section 482 of Cr.P.C does not function either as a Court of appeal or revision,** also having no power to conduct a mini trial.

10. If we place both the written complaint addressed to the officer in charge, South Bidhannagar Police Station and the evidences particularly the statement recorded

under Section 161 of the CrPC along with injury report, in juxta position, it is clear that there is prima facie ingredients to attract the offence of wrongful restraint under Section 341 of IPC and for the offence of voluntarily causing hurt. Gravity of the offence is a mixed question of law and fact and that can only be ascertained through process of trial. Therefore, petitioners cannot be said to have committed no offence punishable under Section 341/325 of IPC at this nascent stage of proceeding.

- 11.** In light of the above discussion, I am unable to interfere with impugned proceeding at this stage by invoking power under Section 482 of CrPC as all the material contradictions with regard to the alleged occurrence is a subject matter of trial and from careful perusal of the available evidence this Court cannot conclude that the allegations made in the complaint do not prima facie make out any offence. Nor can it

conclude that the allegations made therein are patently and inherently improbable which will make the instant application a fit case for quashing as per the exhaustive guidelines of the Hon'ble Apex Court laid down in the case of **Bhajanlal** (supra) which has been relied on by Mr. Gyaltzen.

12. To exercise the inherent power under Section 482 of the Cr.P.C is not the rule but it is an exception which can be applied only if it appears to the Court that miscarriage of justice would be committed if the trial is allowed to proceed further. This Court at the risk of repetition would like to reiterate that it is also not oblivious to the settled proposition of law that this Court cannot function either as a Court of appeal or revision and this power can only be exercised to prevent abuse of the process of the Court.
13. As a sequel, the instant revision application being no. CRR 4158 of 2024 stands dismissed.

14. Ld. Trial Judge is requested to dispose of this case as expeditiously as possible.
15. Connected applications, if any, also stand disposed of accordingly.
16. Interim order, if there be any, stands vacated.
17. Photocopy of the case diary be returned.
18. All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
19. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]