

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

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

CRR 150 of 2025

**Sri Balaram Sharma
-Vs.-
The State of West Bengal & Anr.**

For the Petitioner	: Mr. Kunaljit Bhattacharjee Mr. Alok Saha
For the State	: Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Aniruddha Biswas
Hearing concluded on	: 29.07.2025
Judgment on	: 31.07.2025

Uday Kumar, J.:-

1. The instant revisional application, preferred under the inherent powers vested in this Court by virtue of Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (*pari materia* with Section 482 of the Code of Criminal Procedure, 1973), seeks to assail and consequently quash an order dated January 29, 2025. The said order was passed by the Learned Additional Chief Judicial Magistrate, Kurseong, in G.R. Case No. 31 of 2022, emanating from Pradhan Nagar Police Station Case No. 641 of 2020. By the impugned order, the Learned Magistrate took cognizance of an offence punishable under Section 302 of the Indian Penal Code, 1860, against the Petitioner, Sri Balaram Sharma, who was a Forest Guard at that time.

- 2.** The essence of the petitioner's grievance is that his actions, which regrettably culminated in the demise of Ajit Sawria, were undertaken strictly in the lawful exercise of his right of private defence and in the due discharge of his official duties. Consequently, he contends that he is cloaked with statutory immunity from prosecution. Furthermore, it is vociferously contended that the Learned Magistrate committed a manifest error in taking cognizance, especially since the Investigating Officer had, upon conclusion of investigation, submitted a Final Report Mistake of Fact (FRMF) which purportedly exculpated the Petitioner.
- 3.** The factual matrix giving rise to the present criminal proceedings commenced on the evening of September 5, 2020, around 7:30 p.m. On this fateful night, the petitioner, Sri Balaram Sharma, in his capacity as a Forest Guard attached to Sukna Range, was engaged in a routine patrolling duty within the confines of Mohourgang Block of the Mahananda Wildlife Sanctuary, along with three other forest personnel. During their patrol, they encountered approximately fifteen unidentified miscreants allegedly engaged in illegal tree felling.
- 4.** Upon being challenged to reveal their identity and surrender, the miscreants resorted to aggression, commenced pelting stones, openly brandished khukries, and attempted to forcibly snatch the petitioner's service rifle, simultaneously issuing threats to the lives of the patrol party. In response to what he perceived as an imminent and grave threat to life and government property, the petitioner reportedly discharged a single round from his service weapon, whereupon the miscreants forthwith fled the scene. The forest patrol subsequently seized certain

articles purportedly abandoned by the fleeing individuals. An internal departmental inquiry was initiated, and a case under U.D.O.R. No. 73 SK/2020-21 was duly booked at the Sukna Range Office on September 5, 2020.

5. On the ensuing day, September 6, 2020, the Beat Officer, Mahanadi Beat, Sukna, formally apprised the Officer-in-Charge, Sukna Investigation Centre, of the incident, lodging a written complaint against the unidentified miscreants. The petitioner's service rifle, having been used in the firing incident, was also handed over. This complaint culminated in the registration of Kurseong Police Station Case No. 112 of 2020, dated September 7, 2020, under Sections 186/189/307/379/34 of the Indian Penal Code, 1860.
6. Simultaneously, on the self-same date, September 6, 2020, Smt. Sabita Sawria (Opposite Party No. 2), who is the *de facto* complainant herein, lodged a distinct written complaint before the Inspector-in-Charge, Pradhan Nagar Police Station. She alleged *inter alia* that her husband, Ajit Sawria, who had ventured out in search of their cattle, was subsequently discovered with a bullet injury lying in the Kalabari Section of Mohourgang Tea Garden, approximately an hour and a half later. Regrettably, he succumbed to his injuries. They brought the dead body home. Suspecting the involvement of Forest Department personnel, her complaint formed the basis for the registration of Pradhan Nagar Police Station Case No. 614 of 2020, dated September 6, 2020, under Section 302 of the Indian Penal Code, 1860. It is this criminal proceeding which is presently sought to be quashed.

7. The investigation into Pradhan Nagar P.S. Case No. 614 of 2020 was conducted in due course, involving the collection of physical evidence, recording of statements of material witnesses, preparation of relevant sketch maps of the place of occurrence, seizure of the firearm, and obtaining the post-mortem report. The meticulous investigation eventually culminated in the submission of a Final Report Mistake of Fact (FRMF) No. 81 of 2024, dated June 20, 2024, before the Learned Additional Chief Judicial Magistrate, Kurseong. In the aforesaid FRMF, the Investigating Officer expressed his considered opinion that the Petitioner had acted in good faith to safeguard lives and Government property, and accordingly, prayed for the acceptance of the said report.
8. Be that as it may, by an order dated January 29, 2025, the Learned Additional Chief Judicial Magistrate, after independently perusing the First Information Report, the Case Diary, the statements of witnesses recorded thereunder, and all other pertinent materials on record, and further noting that the *de facto* complainant had raised no objection to the closure report, formed a *prima facie* opinion that there existed sufficient grounds to proceed. Consequently, the Learned Magistrate took cognizance of the offence punishable under Section 302 of the Indian Penal Code, 1860, against Sri Balaram Sharma. Thereupon, a summons was issued to the petitioner. Subsequently, on February 26, 2025, when the petitioner failed to appear personally despite being duly represented by his Learned Counsel (citing inability to secure leave), his time petition was declined, and a warrant of arrest was issued against

the petitioner. It is this continuum of events that has led to the preferment of the present revisional application.

9. Mr. Kunaljit Bhattacharjee, Learned Advocate appearing for the petitioner, vociferously contended that the impugned order of taking cognizance, along with the subsequent issuance of summons and the warrant of arrest, is *ex facie* unsustainable in law and ought to be set aside. He submitted vehemently that the petitioner's actions were, in essence, a lawful exercise of his right of private defence, necessitated by a grave and imminent threat posed by a numerically superior group of miscreants who were not only engaged in unlawful activity within a protected forest area but also resorted to overt acts of aggression, including pelting stones, brandishing khukries, and attempting to disarm the patrol party. Thus, the discharge of the single shot from his service weapon was, in the petitioner's submission, an act of last resort undertaken for the preservation of his own life, the lives of his colleagues, and the protection of government property from immediate peril.
10. Furthermore, Mr. Bhattacharjee emphatically asserted that the petitioner, being a public servant discharging his statutory duties, enjoys a concomitant immunity from prosecution by virtue of Section 60 of the Wildlife Protection Act, 1972. He highlighted that the said provision expressly protects acts done in "good faith" in pursuance of the Act. A pivotal procedural infirmity, according to Learned Counsel, inheres in the impugned order, because the Learned Magistrate took cognizance without the mandatory prior sanction as stipulated under Section 197 of

the Code of Criminal Procedure. The act complained of, it was submitted, was indubitably and inextricably linked to the petitioner's official duty, thereby necessitating such prior sanction. The fact that the Investigating Officer, after diligent investigation, filed an FRMF concluding that the petitioner acted in good faith, and that the *de facto* complainant, moreover, raised no objection to this report, ought to have been determinative, compelling the Learned Magistrate to accept the closure report. The Learned Magistrate's decision to proceed, notwithstanding these compelling factors, and the subsequent issuance of a warrant of arrest for mere non-personal appearance despite effective legal representation, demonstrably constitute a grave error of jurisdiction and a patent abuse of the judicial process, warranting the quashing of the entire proceedings.

11. Conversely, Mr. Aditi Shankar Chakraborty, Learned A.P.P., firmly opposed the revisional application. He contended that a Learned Magistrate, when considering a police report, is not subservient to the opinion of the Investigating Officer, particularly in the case of an FRMF. The Magistrate, it was underscored, is clothed with the inherent power and a solemn judicial duty to apply his independent judicial mind to the entirety of the material available on record, encompassing the First Information Report, the Case Diary, and the statements recorded during the investigation. In the case at hand, the Learned Magistrate explicitly recorded his finding of "sufficient grounds to proceed" and a "*prima facie* case under Section 302 IPC." This, it was argued, evinces a conscious and lawful exercise of judicial discretion.

- 12.** Mr. Chakraborty further contended that the pleas of self-defence and acts done in good faith during the discharge of official duty are specific defences which by their very nature necessitate a full-fledged trial for their proper determination. These involve complex questions of fact, including the assessment of proportionality, necessity, and intent, which cannot be conclusively determined at the preliminary stage of taking cognizance or within the confines of a revisional application under Section 528 BNSS. Such a premature determination, it was asserted, would effectively usurp the function of the trial court.
- 13.** Regarding the contention for sanction under Section 197 Cr.P.C., it was argued that if the act committed by a public servant is found *prima facie* to have exceeded the legitimate scope of their official duty, or if it constitutes a deliberate criminal act not directly connected to the duty, then prior sanction is not an absolute prerequisite for taking cognizance. The intricate issue of sanction, particularly in the context of a grave offence like murder, can be appropriately considered by the Trial Court at a later stage, such as at the time of framing of charges, after the complete factual matrix unfolds.
- 14.** Lastly, it was submitted that the issuance of a warrant of arrest was merely a procedural consequence of the Petitioner's non-compliance with the valid summons, and such a procedural step, taken by the Court on its own initiative, cannot conceivably serve as a ground to quash the substantive criminal proceedings.
- 15.** In view of the intricate factual backdrop delineated hereinabove and the divergent legal contentions advanced by the Learned Counsel for the

respective parties, the pivotal question that falls for this Court's determination is framed thus:

“Whether the Learned Additional Chief Judicial Magistrate, Kurseong, in exercising his judicial discretion to take cognizance of an offence punishable under Section 302 of the Indian Penal Code against the petitioner, notwithstanding the submission of a Final Report Mistake of Fact (FRMF) by the Investigating Officer and the petitioner's manifold assertions of self-defence, performance of official duty, and the alleged absence of requisite sanction, has committed such a fundamental jurisdictional error or occasioned such a patent abuse of the legal process as to necessitate the invocation of and interference by this Hon'ble Court in its extraordinary revisional jurisdiction.”

- 16.** At the very outset, it is necessary to outline the circumscribed contours of the inherent power of the High Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (corresponding to Section 482 Cr.P.C.). Though vast, it is to be exercised with scrupulous caution and circumspection. Its primary object is to prevent a clear miscarriage of justice or an abuse of the process of any Court or to secure the ends of justice, and not to function as an appellate or revisional forum for re-appreciation of evidence or to act as a substitute for a comprehensive trial. The exercise of this jurisdiction is founded upon sound judicial discretion and not on a mechanical or routine application.
- 17.** It is *trite* law, repeatedly expounded and affirmed by the Hon'ble Supreme Court of India in a plethora of pronouncements, *inter alia*, in *H.S. Bains v. The State (UT of Chandigarh)*, AIR 1980 SC 1883, and the *locus classicus* in *Abhinandan Jha v. Dinesh Mishra*, AIR 1968 SC 117, that a Learned Magistrate is not bound by the conclusions or opinions

contained in any police report, be it a charge-sheet, a closure report, or, as in the instant case, a Final Report Mistake of Fact (FRMF). The role of the police is to investigate and form an opinion, but the ultimate decision to take cognizance vests solely with the Magistrate, who is obligated to apply his independent judicial mind to the entire material available on record.

18. Upon receipt of a police report suggesting that no case is made out (such as an FRMF or closure report), the Learned Magistrate is presented with several judicial avenues. He may, firstly, accept the report and conclude the proceedings; secondly, he may, upon disagreement with the police report, take cognizance on the basis of the material already before him (including the First Information Report, the Case Diary, statements recorded under Section 161 Cr.P.C., and other relevant documents), and thereupon proceed with the issuance of process; or thirdly, he may direct further investigation.
19. In the instant case, the Learned Additional Chief Judicial Magistrate, after a perspicacious scrutiny of the FIR, the Case Diary, the statements of witnesses, and other pertinent materials, consciously exercised his judicial prerogative to disagree with the Investigating Officer's conclusion articulated in the FRMF. He has explicitly recorded his finding that there are "sufficient grounds to proceed in this matter" and, moreover, that there exists a "*prima facie* case under Section 302 IPC against Balaram Sharma, a Forest Guard." This articulation unequivocally signifies an independent application of judicial mind, a power well within the statutory mandate of the Learned Magistrate. The mere circumstance

that the Investigating Officer arrived at a divergent conclusion, or that the *de facto* complainant did not raise any objection to the FRMF, does not, by any stretch of judicial interpretation, divest the Learned Magistrate of his inherent power and solemn duty to take cognizance if he discerns sufficient material to proceed. The Magistrate's paramount obligation is towards the due administration of criminal justice, rather than a mere acquiescence to the opinion proffered by the investigating agency or the initial stance of a complainant.

- 20.** The petitioner's robust reliance upon the doctrines of self-defence and actions undertaken in good faith during the strict discharge of his official duties—thereby claiming protection under Section 60 of the Wildlife Protection Act, 1972—constitute substantial defences available to an accused. However, it is a well-entrenched principle of criminal jurisprudence that such pleas are primarily questions of fact, the veracity and applicability of which necessitate a thorough and comprehensive examination of evidence during the course of a trial.
- 21.** The burden to establish that an act was committed in the legitimate exercise of the right of private defence, and that the quantum of force employed was necessary and proportionate to the apprehended danger, squarely rests upon the accused. Similarly, the determination of whether an act was truly performed in "good faith" in pursuance of official duty requires a meticulous assessment of the entire factual matrix, including the *mens rea* or intent of the accused, the reasonableness of the actions taken in the prevailing circumstances, and whether such actions remained within the bounds of lawful authority.

- 22.** These are not matters amenable to conclusive determination by this Court within the confined parameters of its revisional jurisdiction, nor by the Learned Magistrate at the preliminary stage of taking cognizance. By taking cognizance, the Learned Magistrate has merely formed a *prima facie* view that there is sufficient material to warrant the petitioner facing a trial, during which he will be afforded every opportunity to adduce evidence, subject the prosecution's evidence to rigorous cross-examination, and thereby establish his defences before the Learned Trial Court. To quash the proceedings on these grounds at this nascent stage would amount to a premature curtailment of a legitimate prosecution and an unwarranted usurpation of the functions exclusively reserved for the Trial Court, a course impermissible within the scope of revisional jurisdiction.
- 23.** The contention raised by the petitioner regarding the alleged absence of prior sanction under Section 197 of the Code of Criminal Procedure (or its corresponding provision in the Bharatiya Nagarik Suraksha Sanhita) for prosecuting a public servant is undeniably a point of critical legal significance. Section 197 Cr.P.C. *inter alia* mandates prior governmental sanction for the prosecution of a public servant for any act done or purporting to be done in the discharge of his official duty. The litmus test for the applicability of this provision lies in ascertaining whether there exists a direct and reasonable nexus between the act complained of and the official duty of the public servant. If the act is so intrinsically woven into the fabric of the official duty that it cannot be separated therefrom, then prior sanction is generally indispensable.

- 24.** However, the Hon'ble Supreme Court of India, in a consistent line of authorities, has elucidated that the protective umbrella of Section 197 Cr.P.C. is not an omnibus shield designed to grant absolute immunity for every act committed by a public servant. Where the alleged act constitutes a grave offence, such as murder (Section 302 IPC), and the Learned Magistrate, upon a judicious application of his mind to the entirety of the factual material, arrives at a *prima facie* conclusion that the act might have transgressed the legitimate bounds of official duty or constituted an excessive use of force, then cognizance can legitimately be taken. The question of whether the act was genuinely "in the discharge of official duty" or was merely an act camouflaged by it, and consequently, whether sanction is indeed required, transmutes into a mixed question of fact and law.
- 25.** Such an intricate determination is more appropriately reserved for adjudication by the Trial Court at a later, more apposite stage of the proceedings, such as at the time of framing of charges or even during the trial itself, once the complete body of evidence has been adduced. To quash the entire proceedings at the very threshold solely on the ground of absence of sanction, particularly for an offence as serious as murder, would be a premature exercise of this Court's extraordinary powers, since it would entail a conclusive pre-determination that the act fell squarely within the strict parameters of official duty, without the benefit of a full and fair trial.
- 26.** The petitioner's final grievance pertains to the issuance of a warrant of arrest on February 26, 2025, consequent upon the rejection of his time

petition seeking exemption from personal appearance. While it is true that a criminal court, in its discretion, may permit an accused to be represented through counsel, especially if genuine and compelling reasons for non-personal appearance are demonstrated, the ultimate decision to insist on personal presence rests with the wisdom of the trial court, depending on the stage and exigencies of the proceedings.

- 27.** In any event, the issuance of a warrant for non-appearance following valid service of summons is a standard procedural step available to a court of criminal jurisdiction to ensure the attendance of the accused. An alleged procedural irregularity in this regard, which can be appropriately addressed by the Petitioner through moving a suitable application before the Learned Trial Court or by his eventual appearance, cannot conceivably serve as a valid basis for quashing the substantive criminal proceedings which concern an alleged offence as grave as murder. The fundamental validity and maintainability of the underlying criminal case are distinct from procedural steps employed to secure the presence of the accused.
- 28.** Having meticulously considered the detailed factual averments, the arguments advanced by the Learned Counsel for both sides, and having given due regard to the relevant principles of law governing the exercise of revisional jurisdiction and criminal procedure, this Court is of the considered opinion that the Learned Additional Chief Judicial Magistrate, Kurseong, has acted entirely within the legitimate bounds of his lawful authority and sound judicial discretion. His decision to take cognizance of the offence under Section 302 of the Indian Penal Code

against the petitioner, notwithstanding the submission of the Final Report Mistake of Fact by the Investigating Officer, reflects a proper and independent application of judicial mind to the available material.

- 29.** The multifarious defences raised by the petitioner—namely, the exercise of the right of private defence, the performance of acts in good faith in the discharge of official duty, and the alleged imperative for prior sanction under Section 197 Cr.P.C.—are, by their very nature, complex factual and legal questions. These are emphatically not matters capable of definitive adjudication or conclusive determination within the constrained parameters of this Court's revisional jurisdiction or at the nascent stage of taking cognizance. The precise veracity, the proportionality of force employed, and the ultimate applicability of these defences can only be properly ascertained, examined, and adjudicated upon through a full-fledged trial, wherein both the prosecution and the defence will be afforded ample opportunity to adduce, test through rigorous cross-examination, and lead evidence, allowing the Learned Trial Court to weigh the same judicially. To intervene and quash the proceedings at this preliminary juncture would amount to a premature stifling of a legitimate prosecution concerning a grave allegation, thereby impeding the due process of law.
- 30.** Furthermore, the procedural aspect concerning the issuance of the warrant of arrest is demonstrably a separate and distinct matter from the intrinsic maintainability of the criminal case itself. Any grievance in this regard can be appropriately addressed before the Learned Trial

Court and does not, in any manner, provide a compelling ground for quashing the entire criminal proceedings.

- 31.** In view of the foregoing findings, I do not find any jurisdictional error, illegality, impropriety, or abuse of process in the impugned order dated January 29, 2025, or any subsequent orders passed thereunder, that would necessitate or warrant the invocation of its extraordinary revisional powers.
- 32.** Consequently, the revisional application, CRR 150 of 2025, being entirely devoid of merit, is hereby dismissed.
- 33.** There shall be no order as to costs.
- 34.** The interim order or orders, if any, granted hitherto, stand vacated with immediate effect.
- 35.** The Trial Court Records (TCR), if any, shall be forthwith transmitted to the Learned Additional Chief Judicial Magistrate, Kurseong.
- 36.** The Case Diary, if any, be returned forthwith.
- 37.** Let a copy of this judgment be sent to the learned court below forthwith for necessary information and compliance.
- 38.** An urgent certified copy of this judgment and order, if applied for, be issued to the parties, as expeditiously as possible, upon compliance with all necessary legal formalities in this regard.

(Uday Kumar, J.)