

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

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 143 of 2024

**Smt. Binny Jaiswal & Ors.
Vs.
The State of West Bengal & Anr.**

For the Petitioners	: Mr. Avrojoyti Das, : Mr. Rajdeep Das,
For the O.P. No. 2	: Mr. Arnab Sengupta, : Mr. Nirnoy Dutta : Mr. Rajat Chandra Singha
For the State	: Mr. Abhijit Sarkar : Ms. Namrata Das

Heard On : 18.02.2025

Judgment On : 03.04.2025

Rai Chattopadhyay, J.

1. Two of the petitioners are minors, being represented by their respective guardians who are the other two petitioners in this revision.
2. The present case has been filed by the said petitioners under Section 482 of the Code of Criminal Procedure. The petitioners have prayed for quashing of the proceedings in GR Case No. 362 of 2024, now pending

in the Court of learned Additional Chief Judicial Magistrate at Siliguri, which has been started pursuant to Matigara Police Station Case No. 69 of 2024 dated 31.01.2024 under Sections 341, 323, 324, 506 of the Indian Penal Code.

- 3.** The gist of the FIR as mentioned above, may be stated as hereinbelow.
- 4.** The alleged incident happened on 29.12.2023, at about 18:15 hours. The complainant's son, who is aged about 9 years, informed the complainant about being abused and assaulted by the petitioners no. 2 and 4 at a nearby park, who are also minors and neighbourhood residents. The complainant's son received various injuries due to the assault on his face and body, including bruises under the eye. It is alleged that the victim has also suffered injury due to firing of air-pistol by the said petitioners. It is also alleged that the petitioners nos. 2 and 4 had instigated the other children present in the park, to assault the son of the petitioner, on the threat of being assaulted by themselves. Allegedly also, the petitioners nos. 2 and 4 made forceful attempt on the victim to make him smoke a half-burnt cigarette with warning, not to disclose the incident to anyone.
- 5.** The similar incident was repeated by the petitioners nos. 2 and 4 again on 03.01.2024 at about 18:00 hours. This time there had been involvement of the petitioners nos. 1 and 3 also. At their instance, the son of the petitioner is alleged to have been forcibly dragged from the park to the office of the society and illegally detained there, in

confinement for almost about an hour, that he has been manhandled by the petitioners nos. 1 and 3. It is alleged in the said FIR that, on 04.01.2024 at about 19:00 hours, a meeting was held in presence of all of them, when the complainant was threatened with dire consequences by the petitioners nos. 1 and 3, to restrain her from initiation of any action against them. After the incidence as above, the de facto complainant has filed the present case on 31.01.2024. She has explained the delay in filing the FIR by stating in the FIR that, the incidence as above, had traumatized her so much so, that she was not able to come out of his room and take necessary action against the petitioners. Learned advocate appearing for the petitioners have firstly stated that, in the incident as alleged, if at all it has happened, there has not been any involvement of any of the petitioners in the same. Learned advocate for the petitioner has stated that, evidently, the FIR narrated incident is a concocted one, in so far as there is no plausible explanation as to why, after the alleged severe assault being committed against the son of the complainant on 29.12.2023, no complaint has ever been filed since thereafter. It is stated further that the subsequent incident alleged to have happened on 03.01.2024 is a manufactured one, obviously untrue and for the purpose of wrecking vengeance. The petitioners nos. 1 and 3 have been implicated therein, though without any specific role of them shown to be there as regards the crime as alleged. It is stated that the allegations made in the FIR, do not satisfy the essential ingredients and parameters of offence, as alleged against

the petitioners. Therefore, according to the petitioners, initiation and proceeding in a criminal case against them, would only be a gross abuse of the Court's process and thus the proceeding before the Trial Court is liable to be set aside by this Court.

6. Mr. Avrojoyti Das, learned advocate for the petitioner has relied on the specific provision of the Juvenile Justice (Care and Protection of Children) Act, 2015 and the Model Rules of 2016 framed thereunder, to submit that Model Rules 8(1) of the rules of 2016 has provided specifically that, no FIR shall be registered against a child in conflict with law, except where a heinous offence is alleged to have been committed by the child or when such offence is alleged to have been committed jointly with adults. It is submitted that just to bring the accused within the purview of the said provision, the petitioners nos. 1 and 3 have been implicated in the present case, whereas otherwise, lodging of FIR is not permissible as against a minor, in view of Rule 8(1) of the Juvenile (Care and Protection of Children) Model Rules 2016. In this regard, a judgment of Rajasthan High Court is referred to, that is, ***dated 30.08.2024 in S.B. Criminal Misc (PET) No. 8580 of 2022***, where taking into reckoning the said provision of law, the Court has found that, lodging of FIR against the minor is a complete abuse and misuse of Police power and not sustainable. During argument, learned advocate for the petitioner has also referred to the other judgments as follows:

- i) ***Behram Khurshid Pesikaka (1) Vs. State of Bombay***
reported in ***AIR 1955 SC 123***
- ii) ***Popular Muthiah Vs. State*** reported in ***(2006) 7 SCC 296***
- iii) ***'AK' Vs. State of Maharashtra and Ors.*** reported in ***2022 SCC OnLine Bombay 4555***

7. The petitioner has thus sought for an order of the Court to quash the FIR as above and the entire criminal proceeding pursuant thereto.
8. The challenge by the petitioner made out as to the legality and propriety of the FIR as well as the criminal proceeding, has been vehemently contested by the opposite party no. 2.
9. Mr. Arnab Sengupta, learned advocate appearing for the opposite party no. 2, has submitted that, in view of the materials available in the case so far, there cannot be any scope to address the FIR as to have contained baseless allegations only. It is submitted that not once but twice, the son of the de facto complainant has been subjected to severe physical assault, second time at the instigation of mothers of the minors, that is, petitioners nos. 1 and 3. Therefore, an FIR incorporating the names of the petitioners nos. 1 and 3 is only justified and maintainable within the exception clause of Rule 8(1) of model rules 2016. It is submitted further that as per the law, the de facto complainant would not be eligible to file the second FIR over the similar issue and against the same accused persons. In such view of

the law and the mode and manner of development of the facts of the case, thereby involving the petitioners nos. 1 and 3 into the offence, there would not be any legal bar in maintaining the FIR or the criminal proceeding against the petitioners, Mr. Sengupta has stated. He says that, since there are sufficient materials on record to prima facie suggest occurrence of the alleged incidence and the petitioner's role performed in such occurrence, the Court may not exercise its extraordinary power under Section 482 of the Cr.P.C. for quashing of the said proceeding.

10. The Hon'ble Division Bench of Bombay High Court in the case of '**AK**' (*supra*) has stated as follows:

15. Misconception or ignorance of law is not an excuse, much less, for a police officer and in the peculiar facts, more so, having regard to the fact that the child was only 9 years of age. This action of the police i.e. of registration of FIR, has resulted in traumatizing a 9 year old boy.

11. The Rule 8 of the Juvenile (Care and Protection of Children) model rules, 2016 stares at the face of the investigating authorities. The rule is as follows:-

"8. Pre-Production action of Police and other Agencies.-

(1) No First Information Report shall be registered except where a heinous offence is alleged to have been committed by the child, or when such offence is alleged to have been committed jointly with adults. In all other matters, the Special Juvenile Police Unit or the Child Welfare Police Officer shall record the information regarding the offence alleged to have been committed by the child in the general daily diary followed by a social background report of the child in Form 1 and circumstances under which the child was apprehended,

wherever applicable, and forward it to the Board before the first hearing:

Provided that the power to apprehend shall only be exercised with regard to heinous offences, unless it is in the best interest of the child. For all other cases involving petty and serious offences and cases where apprehending the child is not necessary in the interest of the child, the police or Special Juvenile Police Unit or Child Welfare Police Officer shall forward the information regarding the nature of offence alleged to be committed by the child along with his social background report in Form 1 to the Board and intimate the parents or guardian of the child as to when the child is to be produced for hearing before the Board.”

12. The Rule clearly prohibits lodging of FIR against the minor.

Admittedly, the petitioners no. 2 and 4 are minors. The exceptions carved out from the provision as above, are either the child has committed a heinous offence or has committed offence jointly with adults. In those exceptional circumstances, FIR can be registered against a juvenile offender and otherwise, there is a statutory bar for the same. According to the complainant, the exception clauses as above, in the said Rule are satisfied in the present case, so far as involvement of the adults along with the juveniles are concerned. It is stated that, on the second day, the petitioners nos. 1 and 3 have been involved in inflicting assault upon the son of the complainant. It is stated further that the occurrence on the second day is the fall out of the occurrence on the first day. Therefore, the occurrences of both the days are part of single transaction. It is stated that for the reason as above, the exception clause under Rule 8 of the Model Rules, 2016, would be applicable in the present case and there is not illegality so far

as FIR No. Matigara Police Station Case No. 69 of 2024 dated 31.01.2024 is concerned.

13. The crux of the FIR has been that the son of the complainant has been severely assaulted by the petitioners, not once but twice. Firstly, on 29.12.2023 and thereafter on 03.01.2024, when the mothers of the said minors were also involved which caused him to suffer several injuries over his person, including injury by the pellets of air-pistol. The petitioners have dragged him and confined him also.

14. On perusal of the materials available in CD, however, the Court is unable to find any injury report. Thus, there is no prima facie material substantiating the complainant's allegation as above. The Court has ventured upon the look into the statements of the witnesses. There also no statement of any witness is available regarding the victim having suffered any injury, as stated in the FIR. The witnesses have only stated about altercation having taken place between the de facto complainant and the petitioners nos. 1 and 3.

15. Thus, from the materials available on record the Court finds no case to have been made out against the accused person here. The allegations being devoid of any prima facie supporting material do not constitute any cognizable case against the petitioners. On the contrary, since there are material on record to suggest that the minor children of the petitioners nos. 1 and 3 as well as the de facto complainant were

somehow involved in childish altercation during their play, one cannot rule out the possibility of the present criminal case, having emerged due to the intention of the de facto complainant, to wreck vengeance against the petitioners. That being so, the Court finds no necessity to further venture into the discussion, regarding applicability of Rule 8 of the Model Rules 2016, under the Juvenile Justice (Care and Protection of Children) Act, 2015 or the legality and propriety of the FIR lodged against the petitioners. In such circumstances, as per the settled position of law, the Court has to interfere to prevent the abuse of the process of Court, in absence of any sufficient and tangible material to proceed with the criminal case or to go for trial. The Court finds this to be a fit case to exercise such plenary power for the reasons as discussed above.

16. Hence, the present revision is allowed. The criminal case initiated with filing of the Matigara Police Station Case No. 69 of 2024 dated 31.01.2024 and is now pending in the Court of learned ACJM, Siliguri being GR Case No. 362 of 2024, is quashed along with the orders therein made so far.

17. CD be returned immediately.

18. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

RAI
CHATTOPADHYAY

Digitally signed by RAI
CHATTOPADHYAY
Date: 2025.04.03 10:02:27
+05'30'

(Rai Chattopadhyay, J.)