

06.11.2025

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Bd.

(Reject)

Calcutta High Court
In the Circuit Bench at Jalpairuri
Appellate Side

C.R.R. 452 of 2025

Sri Sourav Saha

-vs-

The State of West Bengal & Anr.

Mr. Avrojoyti Das

Mr. Rajdeep Das

...for the Petitioner.

Mr. Aditi Shankar Chakraborty

Mr. Subhasis Misra

... for the State

Mr. Sayan Banerjee

Ms. Rishita Chakraborty

... for the De-facto complainant.

Petitioner herein has challenged the criminal proceeding being Cooch Behar Women Police Station Case No. 162 of 2025 dated 03.08.2025 under sections 64(1)/115(2)/351(2) of the Bharatiya Nyaya Sanhita (in short BNS) read with section 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 (in short Act of 1989) which is presently pending before learned 1st Additional District Judge, Cooch Behar.

The allegation inter alia leveled against the petitioner is that opposite party no. 2 and the petitioner had a friendly relationship and on 31st March, 2025 the opposite party no. 2 was invited to his house by the petitioner and when she had gone there the petitioner had made forceful physical relationship with the opposite party no. 2 against her will and

threatened the opposite party no. 2 stating that if the opposite party no. 2 informs anyone about the incident, the petitioner will leak her private video in social media. It is further alleged that on 1st July, 2025 the petitioner further blackmailed the opposite party no. 2 and called her to a hotel and thereafter she was physically assaulted by the opposite party no. 2, and also had physical relation against her will. On that day when the complainant met with the petitioner she was forced to go to the said hotel and when she denied, the petitioner, defamed her by castigating her in front of other people. On the basis of said complaint investigation started and after completion of investigation police submitted charge-sheet.

Being aggrieved by the aforesaid proceeding, Mr. Das, learned counsel appearing on behalf of the petitioner submits that the allegation of castigation as made out in the FIR even if taken to be true had not taken place within public view and in this context relying upon a judgment of the Apex Court reported in **(2023) 17 SCC 615** in the case of **Ramesh Chandra Vaisya -vs- State of Uttar Pradesh and Anr**, he pointed out that the place where the alleged castigation was made is not a place within public view and as such the sections leveled in the charge-sheet under the Act of 1989 does not attract in respect of the present petitioner. He further submits that from the charge-sheet it is clear that the prosecution cited three witnesses out of which witness no. 1, is the alleged victim, witness no. 2, is the husband of the alleged victim and witness no. 3, is the manager of the hotel

wherein the incident allegedly had taken place. Accordingly, it is clear that neither FIR nor the materials collected during investigation refers the presence of other individual i.e., a member of the public at the place of occurrence and the other two witnesses cited in the charge-sheet, one is her husband and the other is the manager of the hotel, who were not present at the time of occurrence and as such since the utterance, if any, even made by the petitioner herein is not “in place within public view” the ingredients of section 3(1)(s) of the Act of 1999 is missing.

So far as the other allegation of forceful physical relationship leveled against the present petitioner is concerned learned counsel for the petitioner submits that both the petitioner and the alleged victim lady are married and even if there was any physical relationship between them that was consensual and huge amount of money has already been paid by the petitioner to the alleged victim. The allegation of forceful sexual intercourse has got no merit at all and does not fulfill the ingredients of the said offence. Accordingly, this is a fit case where the High Court invoking its inherent jurisdiction under section 482 of the Cr.P.C./ 528 of the BNSS can quash the proceeding.

Learned counsel appearing on behalf of the State opposed the prayer contending that sufficient incriminating materials have been collected against the petitioner during investigation and after completion of investigation police has submitted charge-sheet against the petitioner. He further

contended that the statement made by the victim in the FIR fully corroborates with the statement made before the Magistrate under section 164 of the Code of Criminal Procedure and also corroborates with the medical report where history of assault has been noted. He further submits that other materials including statement recorded under Section 161 of the Code of Criminal Procedure also corroborates the allegations leveled in the complaint. In such circumstances, this is not a fit case where the proceeding can be quashed invoking court's inherent jurisdiction.

Learned counsel appearing on behalf of the defacto-complainant also opposed the prayer for quashing contending that the police had made a perfunctory investigation and being dissatisfied with such insufficient investigation they have already preferred a writ application before this High Court being WPA 2231 of 2025, which is pending for disposal.

In reply, learned counsel appearing for the petitioner referred another judgment in the case of **Mukesh & Ors. Vs. The State of Uttar Pradesh & Ors.** and contended that while arguing a case for discharge the appellant will not be in a position to rely upon any document which is not the part of charge sheet. In the instant proceeding seeking quashment, wider challenge is available including the challenge on the ground of abuse of process of law. At this stage, the petitioner can also rely upon the document, which are not part of the charge-sheet. Accordingly relying upon his submissions as well as the document upon which the petitioner has placed

reliance, the Court may consider petitioner's prayer favourably.

I have considered the submissions made on behalf of the petitioner and both the opposite parties and on perusal of the materials available in the case diary, I find that so far as the allegation leveled in the FIR has also been corroborated with the statement made by the petitioner while she was examined under Section 164 of the Code and it also discloses that the petitioner has stated before the Medical Officer that she was raped. The document placed before me prima facie discloses cognizable offence against the petitioner.

In view of ***Madhavrao Jiwajirao Scindia -vs- Sambhajirao Chandrojirao Angre (1988) 1SCC 692*** the legal position is well settled that when a prosecution at the initial stage is asked to be quashed, the test to be applied by the court is as to whether the uncontroverted allegations as made out prima facie establish the offence.

Turning to the facts of the instant case it appears from the contents of FIR as well as materials collected during investigation that prima facie case of committing cognizable offence has been made out against the accused. The High Court at this stage has no authority or jurisdiction to go deep into the matter or examine its correctness. What appears on the face of the complaint and materials collected during investigation shall be taken into consideration without any critical examination with medical report or like evidence. Since ex facie allegation of committing cognizable offence

appears, it would not be prudent for the High Court to judge truthfulness or falsity of the allegation, which is the task of the Trial Court. Time and again the Apex Court has pointed out that quashing of a proceeding in exercise of the inherent powers of the High Court should be limited to very extreme exceptions.

Considering the factual aspect of the matter it can be unhesitatingly said that the issue involved in the matter under consideration is not a case in which the criminal trial should have been short-circuited. Without expressing any opinion on the merit of the case, it can be said that this is not a fit case where power of High Court under Section 528 of BNSS can be invoked in the facts and circumstances of the case.

In such view of the matter, the prayer made by the petitioner for quashing the instant proceeding is rejected.

CRR 452 of 2025 thus stands disposed of.

However, liberty is given to the petitioner to agitate all the points at the time of charge hearing before the Trial court.

It is also made clear that rejection of instant application will not preclude the petitioner to make prayer under Section 482 of BNSS merely because petitioner has been booked inter alia with certain provision of Act of 1989 and if he is so instructed that no case under the Act of 1989 has been disclosed in the facts and circumstances of the case, he will be at liberty to make such prayer for anticipatory bail before appropriate forum and in the event of filing such application,

the concerned forum will dispose of such application in accordance with law without being influenced by any observation made herein.

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.)