

**IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
(Criminal Revisional Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

CRR No. 386 of 2024

- 1. Kezo Dorjee Bhutiya @ Dasho**
- 2. Rahul Gupta**

-Versus-

- 1. State of West Bengal**
- 2. Smt. Tashi Palmu Namgyal Bhutia**

Ms. Radhika Agarwal

Mr. Dhiraj Lakhotia

Ms. Meghna Joshi

Ms. Khushi Kundu

.....For the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. PP. In-Charge

Mr. Nilay Chakraborty, Ld. APP

Mr. Kallol Acharjee

.....For the State.

Hearing Concluded On : 21.05.2025

Judgment on : 23.05.2025

Krishna Rao, J.:

1. The petitioner has filed the present application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 praying for quashing of entire proceedings of Pradhan Nagar Police Station Case No. 140 of 2023 dated 3rd March, 2023 under Section 306 of the Indian Penal Code, 1860, Charge Sheet No. 922 of 2023 dated 28th November, 2023 under Section 306 of the Indian Penal Code, 1860, corresponding to G.R. Case No. 683 of 2023 pending before the Learned Additional Chief Judicial Magistrate, Siliguri.
2. On 23rd February, 2023 at 09.05 hours, the Siliguri Police Station received an information from one Indrajit Chakraborty, Ward Master of Siliguri District Hospital that at about 04.15 hours one patient, namely, Tenzing Lhendup Kutsabpa brought at the hospital and on examination by Dr. A.K. Saha declared him as brought dead. On receipt of the said information, the Police of P.S. Siliguri registered an Un-natural Death case being FIR No. 73 of 2023. During investigation, the Investigating Officer came to know from family members and other witnesses that staff of Blue Mount Country Club and Restaurant brought the patient at the Hospital. The Investigating Officer has conducted inquest on the body of the deceased and sent the body for Post Mortem examination.
3. Pending investigation of U.D. Case, on 3rd March, 2023, the complainant Smt. Tashi Palmu Namgyal Bhutia has lodged a written complaint before the Officer In-charge, Pradhan Nagar Police Station

stating that on 22nd February, 2023 her husband Tenzing Lhendup Kulsabpa had committed suicide inside the bed room of Blue Mountain Resort, Siliguri wherein the petitioners along with others running illegal poker game. She stated that on 22nd February, 2023, her husband went to play poker on the invitation of the petitioners. When she came to know, she called the petitioner no.1 but he did not answer to her call after which she had called petitioner no.2 and told to him that her husband is not well. The petitioner no.2 informed the complainant that her husband is there and he played poker on credit given by petitioner no.1 and lost Rs. 35 lakhs. She told to petitioner no.2 that they are not in a position to pay the money and the business run by the petitioners is illegal and if any untoward incident is happen, the petitioners will be responsible as her husband is suffering from depression.

4. On receipt of complaint from the wife of the deceased, the Police has registered FIR No. 140 of 2023 under Section 306 of the Indian Penal Code against the petitioners herein. On completion of investigation, Charge Sheet against the petitioner being Charge Sheet No. 922 of 2023 dated 28th November 2023 under Section 306 of the Indian Penal Code is submitted.
5. Ms. Radhika Agarwal, Learned Advocate representing the petitioners submits that on perusal of Charge Sheet, Post Mortem Report, statements recorded under Section 161 of the Code of Criminal Procedure and other evidences collected by the Investigating Officer

does not disclose the commission of offense under Section 306 of the IPC against the petitioners.

- 6.** Ms. Agarwal submits that the essential ingredients of the offence under Section 306 of the IPC is (i) abetment and (ii) the intention of the accused to aid, instigate or to abet the deceased to commit suicide. She submits that to sustain a conviction under Section 306 of the IPC, it is imperative that there be a clear, positive action by the accused, proximate to the time of suicide, which directly led or compelled the deceased to take an extreme step.
- 7.** Ms. Agarwal submits that in order to constitute abetment, in the facts of the instant case, the second clause of Section 107 of the IPC will not be attracted. To invoke second clause, there must be a conspiracy on the part of the accused persons to abet the deceased to commit suicide hence the accused persons must have *mens-rea* to instigate the deceased to commit suicide. She submits that the act of instigation must be of such intensity that it intended to push the deceased to such position under which he has no other choice but to commit suicide.
- 8.** Ms. Radhika submits that in the present case even if assuming that the complaint is true and correct, it is impossible to conclude that the petitioners instigated the deceased to commit suicide by allegedly demanding the payment, which the deceased allegedly lost in the poker game.

- 9.** Ms. Agarwal submits that the evidence collected by the Investigating Officer does not support the contention that an illegal poker game was taking place in the said hotel on the alleged date and time. The statement of the employees of the hotel recorded under Section 161 of the Code of Criminal Procedure, 1973, does not suggest that any such activities were conducted on the alleged date of incident. She submits that there is no eye witness or any evidence to prove that the accused persons were conducted poker game in the hotel and the deceased borrowed an amount of Rs.35 laks from the petitioners and the deceased lost all the amount in the alleged game and the petitioners have demanded from the deceased for payment of the said amount.
- 10.** Ms. Agarwal submits that in the written complaint, the complainant admitted that the deceased was suffering from depression which indicates that the deceased was suffering mental health issues which led to the unfortunate decision to take his own life. She submits that the allegation made in the FIR and Charge sheet are totally vague, baseless and do not meet the essential ingredients required for an offence under Section 306 of the IPC.
- 11.** Mr. Aditi Shankar Chakraborty, Learned Public Prosecutor In-Charge submits that initially when the police has received information about the incident, immediately, the police has initiated an UD Case and during investigation when the police has received a written complaint from the wife of the deceased, the police has initiated regular FIR

against the petitioner as in the complaint specific allegation is made against of the petitioners.

12. Learned Public Prosecutor submits that prior to initiation of FIR and during investigation of UD Case, the Investigating Officer had conducted inquest of the body of the deceased and body was sent for post mortem. He submits that from the post mortem report is clear that the death was caused due to suicide but as per complaint of the wife of the deceased it is categorically mentioned that the Rs. 35 lacks given by the petitioner no.1 to the deceased on credit, the deceased has lost the total amount in the said game and the petitioners have started demanding the said amount from the deceased due to which the deceased has committed suicide.

13. Learned Public Prosecutor submits that during investigation, the Investigating Officer has collected sufficient materials which suggest that the petitioners are involved in the death of the deceased. He submits that during investigation all the witnesses have categorically stated in their statement recorded under Section 161 of the Cr.P.C that the petitioners have forced the deceased for payment of amount which the deceased lost in the poker game and due to which he has committed suicide.

14. Learned Public Prosecutor submits during investigation, it is established that the petitioners have called the deceased to play poker in the said hotel and the deceased came to the hotel and booked one

room. The deceased played poker and had lost Rs. 35laks in the said game and the petitioners have demanded the said amount from the deceased due to which the deceased committed suicide.

- 15.** He submits that the materials which have been collected during investigation is to be proved at the time of trial and thus it is not a fit case wherein this Court can invoke the provisions of Section 482 of the Cr.P.C.
- 16.** On 23rd February, 2023, the Officer-in-Charge, Siliguri Police Station received a written information from Ward Master, Siliguri District Hospital that at 4.15 AM wherein it is mentioned that the body of one Tenzing Lhendup Kulsabpa was brought by one Shri Rahul Chhetri of Hotel Blue Mountain Country Club and Resort and on examination by Dr. A.K. Saha, it was found that the body was brought dead. On receipt of report an U.D. FIR No. 73 of 2023 under Section 174 of Cr.P.C. dated 23rd February, 2023 is initiated. This Court finds that in connection with UD Case, the first case diary was opened by the Siliguri P.S. at 9.05 hours. In the first entry, it is mentioned that on 23rd February, 2023 at 09.05 AM an information was received from Shri Indrajit Chakraborty, Ward Master of Siliguri District Hospital that on 23rd February, 2023 at 04.15 AM, one patient, namely, Tenzing Lhendup Kutsavpa was brought to Siliguri District Hospital and Dr. A.K. Saha examined the patient and declared him as brought dead.

- 17.** The Investigating Office of the UD Case has conducted inquest of the body of the deceased at 11.05 AM and sent the body for conducting Post Mortem. From the case, it reveals that Investigating Officer has not visited the place of occurrence and on 23.59 hrs. He has closed the case diary of that day and thereafter he has not conducted any investigation till 4th March, 2023.
- 18.** In the meantime on the basis of written complaint of Smt. Tashi Palmu Namgyal Bhutia, wife of the deceased, the police of Pradhan Nagar initiated FIR No. 140 of 2023 dated 3rd March, 2023 under Section 306 of the IPC against the petitioners and investigation was handed over to S.I. Kalyan Saha for investigation. During investigation of FIR No. 140 of 2023, the Investigating Officer by an e-mail dated 4th March, 2023 requested the I.O. of the U.D Case to supply the case diary of U.D Case along with Post Mortem Report. The I.O. of U.D. Case has handed over the case diary along with Post Mortem Report to the I.O. of the instant case on 18th May, 2023. From the C.D. of UD. case it reveals that the I.O. of the UD case has not done anything except by sending the body for post mortem and collected post mortem report from 23rd February, 2023 till 18th May, 2023.
- 19.** The police registered the instant case on the complaint of the wife of the deceased. In the complaint, it is contended that the deceased lost an amount of Rs. 35 Lacs in poker game which he has taken on credit from the petitioner no.1 and after the deceased lost the said amount in

the game, the petitioners have pressurized the deceased for payment of money due to which the deceased committed suicide.

20. As per the case of the of the prosecution the wife of complainant had first called the petitioner no.1 over phone on 22nd February, 2023 but the petitioner no.1 has not answered to the call and then she has called petitioner no.2 and during conversation the petitioner no.2 informed her that her husband is there and played poker on credit given by the petitioner no.1 and the deceased lost Rs.35 lacks. This Court did not find any seizure of the mobile phone of the deceased, complainant or of the petitioners but it reveals that the I.O. has requested the Deputy Commissioner of Police (HQ) on 4th March, 2023 for obtaining Call Details Report of the following mobile numbers: 8371850117, 7407370611, 9907528357, 9933435377 and 7866909998. Though there is request for obtaining CDR but there is no documents available whether CDRs was obtained or not. It is also not clear that how the Investigating Officer got the above mobile numbers and the mobile numbers belongs to whom.

21. The allegation that the deceased has taken Rs.35 lacks from petitioner no.1 on credit and the deceased lost the said amount in poker game. The Police during investigation, has not made any investigation whether in the said hotel/ resort poker game was organized or not. There is no investigation to the effect that whether the petitioner no.1 has given Rs. 35 lakhs on credit to the deceased or the deceased lost the said amount in poker game.

22. As per the statement of two witnesses, namely, Rahul Chettri (Receptionist) and Dilip Murmu (House Keeping Staff) who are the employees of the hotel stated that the deceased checked in the hotel on 18th February, 2023 and was supposed to check out on 22nd February, 2023 at 10.00 PM from room No. 112. When the deceased has not checked out at 10.00 PM, the housekeeping staff knocked the door but there was no response and at 10.30 P.M. both staffs opened the room with master key and found that the deceased was lying on the floor of room and immediately they informed to the police. As per UD Case initiated by the Police, the police received first information about the death of the deceased at 09.05 AM on 23rd February, 2023 only but there is no investigation what has happened in between 10.30 P.M. of 22nd February, 2023 to 4.15 AM on 23rd February, 2023.

23. After initiation of FIR No. 140 of 2023 dated 3rd March, 2023, the Investigating Officer opened case diary on 3rd March, 2023 at 13.55 hours and recorded statement of four witnesses and reached place of occurrence and prepared site plan. In the site plan the I.O. has shown the geographical conditions of the rooms of the hotel but has not visited the actual place of occurrence i.e. inside the room No. 112 where the incident was occurred and not made any site plan of actual place of occurrence.

24. It is found from case diary only on 23rd March, 2023 i.e. after the period of twenty days of the incident the Investigating Officer visited

the place of occurrence i.e. room No.112 along with Forensic experts and the Forensic experts collected available materials from the place of occurrence and handed over to Investigating Officer.

25. This Court astonish to see that the Forensic expert came to the place of occurrence on 23rd March, 2023 and collected materials available at the place of occurrence but the Investigating Officer brought the finger print expert at the place of occurrence on 7th May, 2023 i.e. after the period of two months from the date of occurrence. After finger print examination, it was informed by the Finger Print Bureau that the materials do not bear a few ridge details worth attempting comparison. There is no details how the investigating officer of UD Case or the I.O. of this case preserved the place of occurrence.

26. The Forensic Expert submitted report on 15th June, 2023. The conclusion of the report read as follows:

“Conclusion: *From the above discussions it could be concluded that although the hanging point measurements collected from the P.O. suggested that death in this case could have been possible by the deceased’s actions but based upon other evidence obtained in the P.O it appeared that the deceased was probably strangled and an attempt was made to make it look like a suicidal hanging.”*

27. In the report, it is categorically mentioned that the death in this case could have been possible by the deceased’s action but based upon other evidence obtained in the P.O.it appears that the deceased was probably strangled and an attempt was made to make it look like

suicidal hanging. The expert has given opinion but inspite of that Investigating Office ignored the said opinion of the expert and not made any investigation further in that aspect.

28. On 7th March, 2023, the Investigating Officer has seized CCTV footage of the hotel but there is no analysis report of the CCTV footage to ascertain who has entered in the room of the deceased on the alleged date of incident. As per the materials collected by the Forensic Expert two used condoms were also collected but there is no investigation about the same.
29. Though both the parties argued the matter on merit but after considering the case diary and the charge sheet this Court finds that both the Investigating Officers have conducted investigation in a casual manner and have not conducted the investigation properly to bring out truth.
30. While dealing with the question in hand as to the High Court's exercise of its inherent powers under Section 482 of Criminal Procedure Code it is advantageous to reproduce the relevant provisions of law:

“482. Saving of inherent powers of High Court. - *Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”*

- 31.** Section 482 of the Code of Criminal Procedure Code affirms that the High Court retains inherent powers to issue orders to uphold the principles of justice, irrespective of the provisions outlined in the Code. This means that the High Court can intervene to ensure the enforcement of court orders or to prevent any misuse of legal processes, as deemed necessary. Thus, the language used in Sub-section 8 of Section 173 of the Code does not constrain the powers of the High Court to order a fresh investigation or re- investigation under Section 482 of the Code, if it determines such action essential for achieving fair and impartial justice.
- 32.** This Court is supported by the view taken by the Hon'ble Apex Court in a recent case titled ***Devendra Nath Singh Vs. State of Bihar*** reported in **(2023) 1 SCC 48**, wherein, it has been observed as under:

“45. For what has been noticed hereinbefore, we could reasonably cull out the principles for application to the present case as follows:

45.1 The scheme of the Code of Criminal Procedure, 1973 is to ensure a fair trial and that would commence only after a fair and just investigation. The ultimate aim of every investigation and inquiry, whether by the police or by the Magistrate, is to ensure that the actual perpetrators of the crime are correctly booked and the innocents are not arraigned to stand trial.

45.2 The powers of the Magistrate to ensure proper investigation in terms of Section 156 CrPC have been recognised, which, in turn, include the power to order further investigation in terms of Section 173(8) CrPC after receiving the report of investigation. Whether further investigation should or should not be ordered is within the discretion of the Magistrate, which is to be exercised on the facts of each case and in accordance with law.

45.3 Even when the basic power to direct further investigation in a case where a charge-sheet has been filed is with the Magistrate, and is to be exercised subject to the limitations of Section 173(8) CrPC, in an appropriate case, where the High Court feels that the investigation is not in the proper direction and to do complete justice where the facts of the case so demand, the inherent powers under Section 482 CrPC could be exercised to direct further investigation or even reinvestigation. The provisions of Section 173(8) CrPC do not limit or affect such powers of the High Court to pass an order under Section 482 CrPC for further investigation or reinvestigation, if the High Court is satisfied that such a course is necessary to secure the ends of justice.

45.4 Even when the wide powers of the High Court in terms of Section 482 CrPC are recognised for ordering further investigation or reinvestigation, such powers are to be exercised sparingly, with circumspection, and in exceptional cases.

45.5 The powers under Section 482 CrPC are not unlimited or untrammelled and are essentially for the purpose of real and substantial justice. While exercising such powers, the High Court cannot issue directions so as to be impinging upon the power and jurisdiction of other authorities. For example, the High Court cannot issue directions to the State to take advice of the State Public Prosecutor as to under what provision of law a person is to be charged and tried when ordering further investigation or reinvestigation; and it cannot issue directions to investigate the case only from a particular angle. In exercise of such inherent powers in extraordinary circumstances, the High Court cannot specifically direct that as a result of further investigation or reinvestigation, a particular person has to be prosecuted.”

- 33.** Furthermore, the Hon'ble Supreme Court in case **titled State of Punjab Vs CBI and Ors** reported in **(2011) 9 SCC 182**, in Para 22 and 24 has observed as follows:

“22. Section 482 of the Cr.P.C., however, states that nothing in the Cr.P.C. shall be deemed to limit or affect the inherent powers of the High Court to make such orders as is necessary to give effect to any order under the Cr.P.C. or to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. Thus, the provisions of the Cr.P.C. do not limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under the Court or to prevent the abuse of any process of the Court or otherwise to secure the ends of justice. The language of sub-section (8) of Section 173 of the Cr.P.C., therefore, cannot limit or affect the inherent powers of the High Court to pass an order under Section 482 of the Cr.P.C. for fresh investigation or re-investigation if the High Court is satisfied that such fresh investigation or re-investigation is necessary to secure the ends of justice.

24. It is clear from the aforesaid observations of this Court that the investigating agency or the Court subordinate to the High Court exercising powers under Cr.P.C. have to exercise the powers within the four corners of the Cr.P.C. and this would mean that the investigating agency may undertake further investigation and the subordinate court may direct further investigation into the case where charge sheet has been filed under sub-section (2) of Section 173 of the Cr.P.C. and such further investigation will not mean fresh investigation or re-investigation. But these limitations in sub-section (8) of Section 173 of the Cr.P.C. in a case where charge sheet has been filed will not apply to the exercise of inherent powers of the High Court under Section 482 of the Cr.P.C. for securing the ends of justice.”

- 34.** It is true that while dealing with the matter by the Court under Section 482 of the Code of Criminal Procedure, 1973, the Court cannot conduct mini trial but in the present case while considering the materials on record, this Court finds that the Investigating Officer has conducted investigation in a very casual manner instead of

investigate the actual cause of death. Once the Court came to know the case has not been investigated properly and required further investigation, the Court cannot shut its eye by allowing the faulty investigation so that the culprit be saved.

- 35.** Considering the above, this court finds that the case is required to be reinvestigated by the Senior Police Officer not below the rank of Superintendent of Police.
- 36.** The Commissioner of Police is directed to initiate disciplinary action against Kalyan Saha, Sub-Inspector of Police and Shri Biswajit Saha, Assistant-Sub-Inspector of Police for dereliction of duty assigned to them by not conducting proper investigation of the case.
- 37.** The Commissioner of Police is directed to appoint a Senior Police Officer not below the rank of Superintendent of Police for reinvestigation of the Case of No. 140 of 2023 dated 3rd March, 2023 of P.S. Pradhan Nagar within a period of one week from the date of receipt of this order.
- 38.** Original Case Diary be returned to the Learned Public Prosecutor In-Charge.
- 39.** The original record of G.R. Case No. 683 of 2023 be sent back to the Learned Court of Additional Chief Judicial Magistrate, Siliguri forthwith.

40. The Registrar is directed to communicate this order the Commissioner of Police for compliance.

41. CRR No. 386 of 2024 is disposed of.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)