

**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 323 of 2023

**Md Mehebub Alam @ Mehebub Alam
Vs.
The State of West Bengal and Anr.**

For the Petitioners

: Mr. Sabir Ahmed,
: Mr Soumyajit Das Mahapatra,
: Mr. Arijit Ghosh.
: Mr. Ali Ahsan Alam Gir
: Ms. Angana Rakshit

For the State

: Mr. Nilay Chakraborty, Ld. APP
: Mr. Ujjwal Luksom,

Heard On

: 19.02.2025.

Judgment On

: 11.03.2025.

Rai Chattopadhyay, J.

1. In the instant case, the petitioner has prayed for quashing of the proceeding arising out of Matigara Police Station Case No. 25 of 2023, dated 11.01.2023 under Sections 448, 325, 427 and 506 of the Indian Penal Code with the added Section 376 of the Indian Penal Code. The

connected case is G.R. No.-114 of 2023, presently pending in the court of Learned Additional Chief Judicial Magistrate at Siliguri. The petitioner has also challenged the order passed by the Additional Chief Judicial Magistrate, Siliguri in the said case dated June 5, 2023, thereby accepting the charge-sheet dated April 30, 2023 and taking cognizance of offence in connection with the said police case, as against the present petitioner.

2. The petitioner's grievance is that the entire criminal proceeding is baseless, malicious, filed for wrecking vengeance against him. The petitioner's further case is that, the F.I.R. narrated incident is frivolous and could not have been substantiated at all. The petitioner has taken the ground of *alibi* in the present case.
3. Let the F.I.R. be scrutinized here, for the benefit of discussion.
4. The informant/de facto complainant has stated herself to be a student of North Bengal Dental College and Hospital and a permanent resident of Baharampore, Murshidabad. She has narrated the alleged incident, which allegedly took place on January 07, 2023 at 9:30 a.m. in the morning. She has stated that her boyfriend, that is the accused person/present petitioner, has physically tortured her for more than 15 minutes at the said time and date; that the accused person has

damaged her phone and assaulted her physically by slapping and kicking her on her different body parts; that the accused person has also subjected her to verbal abuse and contacted physical relationship with her. The de facto complainant has mentioned the incident to have taken place at her rented accommodation/room in the North Bengal Medical College. She has stated that the accused person had a frequent visiting term to her room there. On the allegations as above, the victim/de facto complainant has sought for redress of her grievances.

5. The complaint as above, was registered as the Matigara Police Station Case No. 25 of 2023 dated 11.01.2023 as mentioned above. Later on, Section 376 I.P.C. was added as to the said case. Finally, police has submitted charge-sheet on April 30, 2023, mentioning the name of the present petitioner as the accused person therein, under Sections 448, 323, 427, 506 and added Section 376 I.P.C.
6. The petitioner's main ground to challenge the criminal proceeding as above, is that of *alibi*. Mr. Sabir Ahmed has represented the petitioner. He has referred to the documents annexed in the present application and submitted that the said relevant documents would clearly justify the petitioner's ground of *alibi* in so far as pursuant to those, it would

be found that the petitioner was not present at the place of occurrence on the date and time of the alleged incident.

7. Mr. Sabir Ahmed has referred to a reply, to the application of the petitioner under the provisions of the Right to Information Act, that is, dated July 21, 2023, given by the Medical Superintendent Cum Vice Principal, R.G. Kar Medical College and Hospital, Kolkata addressed to the present petitioner, which narrates as follows:-

“As per written information taken from HOD, Dept. Of Obst. & Gynae. R G Kar MCH , Md. Meheub Alam has worked in Dept Of Obst. & Gynae. From 06.01.2023 – 08.01.2023”

8. The petitioner has also relied on the working statement for the period from 1st January to 31st January, 2023, issued by the Director/H.O.D./N.S./Nodal Officer/Officer-in-Charge, R.G. Kar Medical College and Hospital on February 3, 2023, thereby certifying the period of work of the present petitioner in the said medical college and hospital, during that period. It is certified that the petitioner joined for duty on December 22, 2022 and enjoyed nine days off, including 2 days of casual leave on 19th and 20th of January, 2023.
9. Mr. Sabir Ahmed has also relied on the attendance register of S M O / M O SUPPY, S R / M O T R / S R (Fresh), Obstetrics & Gynaecology Department, R.G. Kar Medical College & Hospital, Kolkata – 700004,

with effect from October 22, 2022 and submits that, in accordance with the attendance register of January, 2023, on the date of alleged incidence, that is, January 07, 2023, the petitioner was on duty at the R.G. Kar Medical College and Hospital.

10. Mr. Sabir Ahmed, learned counsel for the petitioner, would submit that the documents produced before this Court to justify the petitioner's ground of *alibi* are public documents, unimpeachable and sterling in nature. He submits that there is no counter-evidence so far, in order to either dispute the veracity of those documents or deny the said documents. In such view of the fact, he says that those documents are enough eloquent to suggest that on the alleged date and time of incident, the petitioner was not present at the North Bengal Dental College and Hospital, in the room of the de facto complainant, as alleged. But he was present on duty in Kolkata at R.G. Kar Medical College and Hospital. Therefore, according to Mr. Sabir Ahmed, the entire allegation as made against the petitioner, which the investigating authorities, after a perfunctory investigation has found to be true is, only baseless and false. He would submit that, in view of those documents, there would not be any possibility of occurrence of any such incident, as alleged, involving the present petitioner and the incidents narrated, are not only untrue, but improbable and impossible. He says that it is a false complaint with malice and mala

fide motive, which does not at all disclose any cognizable case, leaving aside any heinous crime committed by him, as alleged, under Section 376 I.P.C., against the petitioner. He seeks that the criminal proceeding, pursuant to the F.I.R. being Matigara P.S. Case No. 25 of 2023, dated 11.01.2023 against the petitioner, be immediately quashed.

11. In support of his contentions, Mr. Sabir Ahmed has relied on the following judgments:-

- 1) ***Rajiv Thapar and Ors. Vs. Madan Lal Kapoor*** reported in ***(2013) 3 SCC 330.***
- 2) ***Harshendra Kumar D. Vs. Rebatilata Koley and Ors.*** reported in ***(2011) 3 SCC 351.***
- 3) ***Vineet Kumar and Ors. Vs. State of Uttar Pradesh and Anr.*** repoted in ***(2017) 13 SCC 369.***
- 4) ***Prashant Bharti Vs. State (NCT of Delhi)*** reported in ***2013 9 SCC 293.***
- 5) ***Salib alias Shalu alias Salim Vs. State of U.P. & Ors.*** reported in ***2023 SCC OnLine SC 947.***
- 6) ***Sk. Abdul Alim Vs. State of West Bengal & Anr.*** reported in ***2024 SCC OnLine Cal 1230.***

12. The State has raised objection as to the contentions and prayer of the petitioner in this case. The State says that, upon finding tangible and sufficient material against the petitioner, the Police has submitted charge-sheet after completion of investigation against the petitioner in this case. Therefore, prima facie materials against the petitioner are already on record.
13. There has been an issue regarding submission of a report by the State/ opposite party in the present case. Such report has, however, never been filed by the State, in spite of grant of numerous opportunity being granted to the same, for furnishing such report.
14. The record reveals that vide order dated April 25, 2024, the Court had directed the Investigating Officer to verify the truth and genuineness of the documents, as relied on by the petitioner in the present case (as discussed above) and submit a report to that effect in the Court. Since thereafter, till the last date of hearing, that is, February 19, 2025, on numerous occasions, the Court had extended time on the prayer made on behalf of the State, for submission of such report. However, the same has not been filed.
15. Since in spite of grant of several opportunities, the State opposite party is unable to furnish any report in Court, as regards the “truth and

genuineness” of the documents submitted by the petitioner, the Court shall not be precluded in any way to come to a conclusion that, the State has no report to file in Court, in this respect.

16. Hence, on this factual backdrop, the Court is now to decide as to the justifiability of the criminal proceeding, lodged against the present petitioner, pursuant to the F.I.R. as mentioned above, and whether it will be just, legal and proper to quash the same, by invoking power of the Court under Section 482 Cr.P.C.
17. As discussed earlier, the de facto complainant has mentioned in the F.I.R. dated January 11, 2023 about the incident, allegedly happened on January 07, 2023 at 9:30 a.m. in the morning, involving the present petitioner.
18. Physical assault, forceful physical relationship without consent of the victim and verbal abuse are the offences, alleged against the present petitioner. There are certain documents, which the petitioner has relied on, that is, (i) a reply to his application under the Right to Information Act dated July 21, 2023, (ii) the attendance register of R.G. Kar Medical College and Hospital, S M O / M O SUPPY, S R / M O T R / S R (Fresh), Obstetrics & Gynaecology Department and (iii) the ‘working statement’ for the month of January, 2023 of the R.G. Kar Medical College and Hospital.

19. In consideration of those documents, it will be evident that, on the relevant date and time, that is, January 07, 2023, at 9:30 a.m. in the morning, the petitioner was present at Kolkata at R.G. Kar Medical College and Hospital on duty and not at the place of incident at North Bengal Dental College premises, as alleged.
20. It would be beneficial for discussion in the case, to consider the ratio decided in the judgments as referred to, on behalf of the writ petitioner, as mentioned above.
21. The ground of *alibi* is the principal ground of defence of the petitioner/accused person and for quashing of the criminal proceeding as prayed for in the present revision. The Supreme Court in the Case of ***Binay Kumar Singh Vs. State of Bihar*** reported in **1997 1 SCC 283** has held as below:-

“23. The Latin word alibi means “elsewhere” and that word is used for convenience when an accused takes recourse to a defence line that when the occurrence took place he was so far away from the place of occurrence that it is extremely improbable that he would have participated in the crime. It is a basic law that in a criminal case, in which the accused is alleged to have inflicted physical injury to another person, the burden is on the prosecution to prove that the accused was present at the scene and has participated in the crime. The burden would not be lessened by the mere fact that the accused has adopted the defence of alibi. The plea of the accused in such cases need be considered only when the burden has been discharged by the prosecution satisfactorily. But once the prosecution succeeds in discharging the burden it is incumbent on the accused, who adopts the plea of alibi, to prove it with absolute certainty so as to exclude the possibility of his presence at the place of occurrence. When the presence of the accused at the scene of occurrence has been established

satisfactorily by the prosecution through reliable evidence, normally the court would be slow to believe any counter-evidence to the effect that he was elsewhere when the occurrence happened. But if the evidence adduced by the accused is of such a quality and of such a standard that the court may entertain some reasonable doubt regarding his presence at the scene when the occurrence took place, the accused would, no doubt, be entitled to the benefit of that reasonable doubt. For that purpose, it would be a sound proposition to be laid down that, in such circumstances, the burden on the accused is rather heavy. It follows, therefore, that strict proof is required for establishing the plea of alibi."

22. The petitioner's contention is that, at the time and date of alleged occurrence of the offence, he was present at a place a Kolkata, far and distant and beyond any accessibility to the place of offence. Thus, he has raised the plea of *alibi*.

23. An *alibi* defence contains three key components :-

- At the time or place of the crime, the accused person was absent.
- No opportunity that was reasonable for the accused person to commit the crime, was available to him, and
- By any other means, the crime as alleged, could not have been committed by the accused person.

24. According to the petitioner, the documents which he has relied on as mentioned above, would successfully establish his such plea of *alibi* thereby, negating all probability of the petitioner to be present at the date and time of the alleged commission of offence at the place of

occurrence. The said documents which would not have been otherwise relevant in the case, thus, become relevant, thus, bear the evidentiary value to demonstrate whether the accused person were present elsewhere than the place of occurrence on the particular date and time. The Court is to ascertain whether the documents as relied on by the petitioner are of such unimpeachable or sterling quality to either exclusively or together with the other facts of the case, makes the acceptance of the facts narrated in the F.I.R. as highly improbable.

25. At the cost of reiteration, it is stated that the petitioner has relied on the reply given by the Medical Superintendent cum Vice President, R.G. Kar Medical College and Hospital, Kolkata dated July 21, 2023 as to his application under the Right to Information Act, the attendance register starting from October, 2022 and the working statement of the said hospital for the month of January, 2023. Needless is to mention that, all the said documents are in the nature of public documents.
26. Therefore, the unimpeachable characteristics thereof are self-evident. In this case the Court specially notices that, in spite of grant of ample opportunity to the Investigating Officer to submit a corroborating report from the R.G. Kar Medical College and Hospital, as to the documents and facts relied on by the petitioner, it has not been able to produce any report to that effect, particularly, to deny the claim of the petitioner. In such circumstances, the Court has no hesitation to hold

the said documents to be of such sterling and unimpeachable nature, which must be taken into consideration by this Court, for adjudication in the present matter.

27. On perusal of the documents as produced by the petitioner, it clearly transpires that, on the date and time of the alleged incident, that is, on January 07, 2023 at 9:30 a.m. in the morning, the petitioner has been elsewhere that is, at Kolkata at the R.G. Kar Medical College and Hospital, attending his duties and he was not there at the place of alleged occurrence of incident. The reply to the queries of the petitioner under the Right to Information Act, that is, dated July 21, 2023 shows that the petitioner was working in the Department of Obstetrics and Gynaecology from January 06, 2023 to January 08, 2023. Such statement is duly corroborated by the attendance register of the said Department and also from the working statement issued on the subsequent month, for the month of January.
28. The evidentiary value of the said documents could not have been overridden by any sufficient material in this case. Under such circumstances, the Court finds that the petitioner has been able to discharge the burden of him of proving those documents of unimpeachable character, and also his plea of *alibi*. In such view of the fact, the Court is constrained to hold that, it is not only unlikely but improbable and impossible for the petitioner to be present at the date

and time of alleged occurrence at the place, where the offence is said to have been committed by the petitioner.

29. Upon finding the facts as above, the Court turns to the decision of the Supreme Court in the case of **Rajiv Thapar (Supra)** to find out the steps as the Courts have determined therein to check the veracity of the prayer for quashment, as raised by the accused person, by invoking its power vested under Section 482 Cr.P.C. Let the relevant portion thereof be quoted as herein below:-

“30.1. Step one: whether the material relied upon by the accused is sound, reasonable, and indubitable i.e. the material is of sterling and impeccable quality?

30.2. Step two: whether the material relied upon by the accused would rule out the assertions contained in the charges leveled against the accused i.e. the material is sufficient to reject and overrule the factual assertions contained in the complaint i.e. the material is such as would persuade a reasonable person to dismiss and condemn the factual basis of the accusations of false?

30.3. Step three: whether the material relied upon by the accused has not been refuted by the prosecution/complainant; and/or the material is such that it cannot be justifiably refuted by the prosecution/complainant?

30.4. Step four: whether proceeding with the trial would result in an abuse of process of the court, and would not serve the ends of justice?

30.5. If the answer to all the steps is in the affirmative, judicial conscience of the High Court should persuade it to quash such criminal proceedings in exercise of power vested in it under Section 482 CrPC. Such exercise of power, besides doing justice to the accused, would save precious court time, which would otherwise be wasted in holding such a trial (as well as proceedings arising

therefrom) specially when it is clear that the same would not conclude in the conviction of the accused."

30. As discussed earlier, in the present case, the materials relied on by the accused person appear to be sound, reasonable and indubitable and of sterling and impeccable quality. Those appear to be sufficient to overrule the factual assertions made by the de facto complainant in the F.I.R. Also that the plea of *alibi* with the petitioner, has not been refuted by the prosecution/State in any way whatsoever. Under such circumstances and following the ratio of the judgments as above, this Court is of considered view that, the allegations made in the F.I.R. against the accused persons, are only improbable.
31. No less important is the dictum of the Supreme Court as held in ***Harshendra Kumar D's case (Supra)*** that, a criminal prosecution is a serious matter; it affects liberty of all person. That no greater damage can be done to the reputation of a person than dragging him in a criminal case.
32. In derogation of and controverting to what has been stated in the F.I.R., the petitioner has successfully brought on record evidence in support of the plea of *alibi* of him, thereby showing sufficient material in favour of the fact that, he has been present at the date and time of alleged occurrence at some other place at Kolkata, at the R.G. Kar Medical College and Hospital on duty, which makes the entire

allegation as leveled against him as impossible and nugatory. Such F.I.R. and the proceeding, pursuant thereto, and also the charge-sheet submitted in the said case, therefore, should not stand, nor the petitioner should be committed to face trial in the case as above, as in view of the facts as discussed above, the same would be an abuse of the process of Court.

33. Hence, the Court finds this to be a fit case in which the Court should invoke its inherent and extraordinary jurisdiction, vested as per Section 482 of the Cr.P.C. and quash the entire criminal proceeding against the present petitioner, in terms of the F.I.R. being Matigara Police Station Case No. 25 of 2023, dated 11.01.2023.
34. Hence, the present revision being No. 323 of 2023 is allowed thereby, directing that the Matigara Police Station Case No. 25 of 2023 along with connected G.R. Case No. 114 of 2023, now pending in the Court of Learned Additional Chief Judicial Magistrate at Siliguri, is quashed.
35. Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)