

**19.01.2026**

Court No.34  
Item.45  
sg

**CRR 425 of 2023**

In the matter of: **R.V. Ghosh @ Rajyavardhan Ghosh & Anr.**

...Petitioners.

Mr. Somopriyo Chowdhury  
Mr. Debapratim Guha  
Ms. Anchita Sarkar

...for the petitioners.

Mr. Debasish Roy, Ld.P.P.  
Mr. Koushik Kundu

...for the State.

1. None appears on behalf of the opposite party no.2 In the order dated December 19, 2025 also no one appears despite appropriate service.
2. Hence the matter is taken up in absence of the opposite party no.2.
3. This is an application under Section 482 of the Criminal Procedure Code, 1973 filed by the present petitioners for quashing of the proceeding being G.R. Case No. 2778 of 2022 pending before the learned Judicial Magister, 2<sup>nd</sup> Court, Barasat arising out of Rajarhathat Police Station case no. 221 of 2022 dated June 20, 2022 under Sections 341/323/506/34 of the Indian Penal Code.

4. The fact of the case in a nut shell is that in the year 1920-21 petitioner had purchased flat by way of deed of sale from a company named and style as Magnolia Infrastructure Development Limited incorporated under the Companies Act, 1956. It is the case of the petitioners that from the very inception after flats were handed over to the residents of Magnolia Grand and Magnolia Grand-II; they found lot of deficiencies of service and amenities as promised. After the flats were handed over in an incomplete state, the residents /petitioners were even forced to get electric connection through the construction meter by the opposite party no.2 and since then they communicated with opposite party no.2 for installation and energization of transformer lawfully for which the company already collected Rs. 40/- per square foot from each resident for providing electric connection from the West Bengal State Electric Distribution Company Limited (WBSEDCL). The Petitioners were forced to live an in secured life without having essential amenities like electricity.
5. It is further case of the petitioner that number of meetings were held between the petitioners and other flat owners of the said apartment represented by opposite party no.2 on behalf of the company residents including the petitioners in presence of the person representing the opposite party no.2 but yielded with no result. After that present petitioners and

other residents also ventilated their grievances by exchange of e-mails to the opposite party no.2 of such illegal trade practices and false assurance.

6. During the end of the year, 2021 opposite party no.2 formed an association under the West Bengal Apartment Ownership Act, 1972 illegally and the registration of the same was cancelled by the competent authority on the basis of the complaint lodged by the present petitioners.
7. In order to throttle the protest of the flat owners the opposite party no.2 thereafter filed an application under Section 156 ( 3 ) of the code of Criminal Procedure Code before the Court of learned Judicial Magistrate, Barasat which was allowed and the case was started by the opposite party no.2.
8. On completion of investigation the charge sheet was also filed being charge sheet no. 214 dated 18<sup>th</sup> July, 2022 under Sections 314/323/506/34 of the Indian Penal Code against the present petitioner.
9. Being aggrieved by the same, present petitioners have come up before this Court for quashing of such proceeding pending before the learned Judicial Magistrate against an order dated September 23, 2022 whereby the learned Judicial Magistrate, Barasat took cognizance of the said offence.

10. Learned advocate appearing on behalf of the petitioner submits that the entire allegation leveled against the present petitioners are false and concocted as they are very respected residents of the said gated community. Despite assurance given on behalf of the opposite party no.2 the amenities were not provided and because of lack of amenities as assured, the petitioners are being harassed and had to live a very in secured life.
11. There is no iota of materials to attract allegations leveled against the present petitioners. Accordingly prayed to quash the charge-sheet as well as the proceeding pending before the learned Magistrate.
12. The Learned advocate relied upon decision of much celebrated judgement of State **of Haryana Vs. Bhajanlal & Ors.** reported in **AIR 1992 SC 604** where the parameters are given to be followed by exercising power under Section 482 of the Criminal Procedure Code for quashing of the proceeding.
13. Learned advocate has further relied upon the decision reported in **2022 SCC Online SC 2030 N.S. Madhangopal and Another Vs. K. Lalitha** in order to establish that none of the required parameters to attract Section 341 of IPC has been mentioned in the complaint lodged under Section 156 of Clause 3 Cr.P.C . The Learned advocate has further relied

upon the decision of Coordinate Bench of this Court reported in **2025 (Supreme)(Cal) 109 Sri Protip Mukherjee Vs. State of West Bengal & Another .**

14. It is submitted that the allegations contained in the written complaint do not constitute the offence which are inherently improbable and pursuant to the case of **State of Haryana Vs. Bhajanlal & Ors. (Supra)** lastly the learned advocate relied upon the decision reported in **2023 SCC Online SC 946 Haji Iqubal alias Bala Vs. State of U.P and Others.**
15. Learned prosecution, on the other hand, hand over the Case Diary and candidly submits dispute pertains to cancellation of registration certificate on the basis of the complaint lodged by the present petitioners. It is further argued that no material can be found also to attract either of the charges leveled against the present petitioners.
16. Heard the submissions.
17. In the decision of **State of Haryana Vs. Bhajanlal & Ors.** (supra) the parameters have been narrated down when the extra ordinary power of this Court under Section 482 of the Cr.P.C., 1973 espoused as follows :

“ 102. This Court in the backdrop of interpretation of various relevant provisions of CRPC under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power

*under Article 226 of the Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that it may not be possible to lay down any precise, clearly defined and that it may not be possible to lay down any precise, clearly defined and that it may not be possible to lay down any precise, clearly defined and sufficiently channelized and inflexible guidelines or rigid formulae and to give an exhaustive list to myriad kinds of cases wherein such power should be exercised :*

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*

- (3) *Where the uncontroverted allegations made in the GIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- (4) *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of Magistrate as contemplated under Section 155(2) of the Code.*
- (5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) *Where there is an express legal bar engrafted in any of the provisions of the Code of the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.*
- (7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for*

*wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

18. It is seen from the complaint lodged under Section 156 (3) of Cr.P.C, the date of incident is mentioned as of May 15, 2022. The allegation was leveled against present petitions of using filthy language towards the complainant including physically assault and torture on the complainant. No medical paper was submitted in support of such contention.
19. In terms of the decision as relied upon in N.S. ***Madhangopal and Another Vs. K. Lalitha (supra)*** in paragraph 10 onwards it is disclosed that Section 341 of the IPC talks about punishment for wrongful restraint. Section 341 reads thus :
 

“341. Punishment for wrongful restraint-whoever wrongfully restrains any person shall be punished with the simple imprisonment for a terms which may extend to one month, or with fine which may extent to five hundred rupees or with both.”

In paragraph 11 the complaint also fails to disclose the necessary ingredients to constitute the offence of wrongful restraint. In order to attract application of Section 341 it has to be proved that (i) there was obstruction by the accused; (ii) such obstruction prevented a person from proceeding in a direction to which he had a right to proceed; (iii) the accused

caused such obstructions voluntarily. The obstructor must intend or know or would have reason to believe that the means adopted would cause obstruction to the complainant.

20. In the instant case on close scrutiny of the nature of the accusation leveled nothing can be found which permitted this Court to be satisfied that there was such ingredient in order to attract said provision. In the decision of ***Haji Iqubal alias Bala Vs. State of U.P and Others*** (supra) it was observed by the Hon'ble Supreme Court that when the accused before the Court invoking either inherent power under Section 482 of the Cr.P.C or extraordinary jurisdiction under extraordinary power under Article 226 of the Constitution to get the FIR or criminal proceeding quashed essentially on the ground of such proceeding are manifestly perverse vexatious, with an ulterior motive with wreaking vengeance, in such circumstances Court owes a duty to look into the FIR with care and little closely. That apart, it was further observed that the Court need not restrict only to the stage of the case but to take into account the overall circumstances leading to initiation or registration of the FIR as well as the materials collected in course of investigation.

21. In the instant case on close scrutiny of the Case Dairy and other materials prima facie nothing can be found to establish the contention of the de-facto complainant and even if they

are taken face value and accepted do not primary constitute offence to make out the case against the accused person. That apart on perusal of the order of the learned Magistrate dated 23<sup>rd</sup> September, 2022 taking cognizance when charge sheet submitted it transpire no reason was assigned for taking cognizance of the same.

22. Therefore, in view of the facts and circumstances of the case and law laid down in this regard this Court is of the clear view that there is no case made out for the present petitioners for which present proceeding should allowed to be continued otherwise it would be gross abuse of process of law.
23. Hence this criminal revisional application stands allowed.
24. The proceeding pending before the learned Court is hereby quashed.
25. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance of all formalities.

**[Chaitali Chatterjee (Das), J.]**