

19.03.2026

Sl. No.12.

D/L.

Mithun.

Ct.No.29.

CRR/716/2026

Soham Dey & Anr.

Vs.

State of West Bengal

Mr. Sourav Chatterjee, Sr. Adv.,
Mr. Moyukh Mukherjee,
Mr. Koustav Lal Mukherjee,
Ms. Sarmistha Basak

...for the petitioner

Mr. Suman De,
Mr. Abhinaba Mukherejee

...for the State

The petitioners herein have assailed the proceeding being G.R. Case No.1250(A) of 2023 presently pending before learned Additional Chief Judicial Magistrate, Bidhannagar.

The *de facto* complainant being the Sub-Inspector of Police, Bidhannagar North Police Station lodged the *suo moto* complaint alleging that on 02.12.2023 at 1:45 hours in the midnight during RT mobile duty, he received a telephonic information that loud music was being played at BD-88, Salt Lake City, Sector-I and upon the instruction of the Inspector-in-Charge of Bidhannagar North Police Station, the *de facto* complainant along with other officials arrived at the gate of the said house and heard the loud music which was playing at the rooftop and was playing beyond the permitted time. On being asked, the petitioners were failed to produce any necessary permission as per Section 34A of Police Act, and furthermore, when the police requested them to stop the loud music, they did not pay heed to their request.

It is further alleged that the petitioners had also abused police with unparliamentarily languages and when the police tried to record the

incident, the petitioner no.2 herein snatched his mobile phone and threw down on the road.

Being aggrieved by the aforesaid proceeding, learned Counsel for the petitioners submits that the allegation levelled against the six accused persons are omnibus and no specific role has been attributed against any of the petitioners. Even the allegation of snatching mobile phone and threw it on the road has not been corroborated during investigation while police recorded the statement under Section 161 of the Cr.P.C.

Learned Counsel for the petitioners submits that being aggrieved with the aforesaid proceeding, both the petitioners prayed for discharge application before the Court below but the Trial Court by an impugned order dated 8th December, 2025 was pleased to reject their prayer for discharge on the ground that the involvement of the accused persons is apparent and the allegation against the petitioners can only be substantiated at the time of trial and not at the time of hearing discharge petition.

It appears from the record that the other four accused persons preferred a civil revisional application before this Court being CRR 3790 of 2024 and the Co-ordinate Bench of this Court while disposing the prayer made by the other four accused persons has categorically held that the Case Diary is silent as to how the said four petitioners were identified in the melee since admittedly there were 15/20 persons who were present at the relevant time.

It was further recorded that there appears to be no scrap of papers in the Case Diary to indicate prima facie involvement of the petitioners in the alleged offence and furthermore, charge sheet which has been submitted against the said accused persons is also silent as to the

specific overt act attributed to each of them and the extent of involvement of each of the petitioner in the alleged incident as mandated by the Supreme Court in the case of ***Sharif Ahmad Vs. State of U.P. & Anr.*** reported in **2024 SCC OnLine SC 726**.

The Supreme Court in ***Union of India Vs. Prafulla Kumar Samal***, reported in **(1979) 3 SCC 4** has held that at the stage of framing of charge, the trial court has the power to sift and weigh evidence through for a limited purpose and finding out whether or not a prima facie case against the accused has been made out. Charge can be framed not on mere suspicion but on the facts giving rise to grave suspicion of the accused having committed the offence.

In ***Sajjan Kumar Vs. CBI*** reported in **(2010) 9 SCC 368** Supreme Court has made it clear that the judge while considering the question of framing the charge, cannot act merely as a post office or a mouth piece of the prosecution but has to consider the broad probabilities of the case, total effect of the evidence and the documents produced before the court, any basic infirmities etc, though roving enquiry by the court at this stage is not required.

The order impugned passed by Magistrate suffers from perversity mainly on two grounds. Firstly he was erred in holding that he is not supposed to consider the contention of accused persons at this stage, which can only be considered at the time of trial and secondly he failed to explain why the present petitioners are not on the same footing with that of the four accused persons, in respect of whom the same proceeding has been quashed quo the said four accused persons.

On a fare reading of section 239 Cr.P.C., if upon consideration of the materials collected during, investigation and making such examination if any, of the accused as he thinks necessary, he thinks that

the charge against the accused is “groundless” he can discharge. In the present case, it may be seen from the materials available in record that no specific allegation against either of the petitioner could be substantiated during investigation. Supreme Court in ***State Vs. Arun Kumar***, reported in **(2014) SCC Online SC 1018** has held that even at the stage of charge, if two views are possible and one of the views give rise to suspicion only as distinct from grave suspicion, the court would be empowered to discharge accused at that stage.

On perusal of the materials available in the Case Diary, it also appears that the injury report does not suggest any external injury. The statements recorded under section 161 Cr.P.C. shows that 15/16 persons were involved and “all of them”/ “some of them” have committed offence. No corroborative material to show present petition’s specific role in committing alleged offence. On the basis of such material there is hardly any chance of conviction of the petitioners at the end of trial. Moreover, the present petitioners are on the same footing with that of the four accused persons in respect of whom the instant proceeding has already been quashed by a Coordinate Bench of this Court.

Having considered the aforesaid facts and circumstances of the case, I am of the view that further continuance of the impugned proceeding will be mere abuse of the process of the Court and, as such, G.R. Case No.1250(A) of 2023 presently pending before learned Additional Chief Judicial Magistrate, Bidhannagar is hereby quashed.

Parties to act on a server copy of this order duly collected from the official website of the Hon’ble High Court, Calcutta.

(Dr. Ajoy Kumar Mukherjee, J.)

