

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

**CRR 1499 of 2025
Emon Roy
Vs.
The State of West Bengal and Anr.**

For the Petitioner : Mr. Moyukh Mukherjee
Ms. Sagnika Banerjee

For the state : Mr. Bidyut Kumar Ray
Mr. Ashok Das

Heard on : 09.02.2026

Judgment on : 22.05.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The instant application has been preferred seeking quashment of GR Case no. 7201 of 2022, corresponding to Chatterjeehut Police Station Case No. 241 of 2022 under section 428/429 of IPC read with section 11(1) (a) of the Prevention of Cruelty to Animal Act, 1960 (in short Act of 1960). According to the FIR lodged by the complainant, a stray dog was run over on 04.12.2002 by a slow moving car, near 2/9 Olaibibitala Bylane, Howrah. The FIR emphasises deliberate cruelty by the petitioner.

2. Being aggrieved by the impugned proceeding, Mr. Mukherjee, learned Counsel appearing on behalf of the petitioner submits that inordinate delay in lodging the written complaint has not been explained anywhere. The investigating authority recorded the statements of some persons under

section 161 Cr.P.C., who stated before the investigating authority that the car approached at a slow pace and they are of the view that the driver specifically targeted the dog. But no other direct physical evidence has been cited to corroborate the belief.

3. He further argued that the offence under section 428 and 429 of the IPC are based on the concept of “mischief” as defined in section 425 IPC, which requires a wrongful or intentional destruction or diminution of public property. But public property in its statutory sense does not extend to a stray animal as it is neither owned nor controlled by any government authority or institution.

4. Furthermore FIR itself states that the car allegedly driven by the petitioner moved at a slow speed, through the L-Shaped blind corner at Olaibibitala Lane. Slow movement is inherently at odds with an intent to harm as any deliberate attempt to kill an animal would more likely involve higher speed or overt aggression. The absence of any motive or acceleration belies the theory of the intentional cruelty. In the present circumstances the dog’s presence in a blind spot and the slow maneuver by the driver, points more toward an unfortunate accident than criminal design. Accusations of intentional killing lost substantial credibility, when there is no conclusive proof showing of a fatal outcome. Lacking post incident evidence of death or injury casts serious doubt on the charge under section 429 IPC.

5. Mr. Mukherjee also argued that Section 11 (1) (a) of the Prevention of Cruelty to Animals Act requires proof that the accused caused unnecessary pain or suffering with intention or knowledge. In the instant case the complaint itself indicates a slow moving car that encountered the dog at an

L-shaped bent, which suggests an accident rather than a deliberate plan to cause harm. If the dog merely failed to move away due to age or infirmity that is an unfortunate event but hardly indicative of cruelty or ill will. From the FIR and subsequent deposition, it is clear that the petitioner resides approximately 20 meters from the alleged spot. Therefore, the statement that the car had no business other than to kill the dog as alleged is untenable. This also undermines any claim of maliciously “*arrived only to kill the animal*” pointing instead to a normal commute.

6. He additionally argued, since the complaint acknowledges that the car moved slowly, which typically would afford an animal time to move or flee and if the dog failed to do so, due to old age or proper reflexes that does not translate into a willful act on the driver’s part to crush the animal. Without any forensic or physical evidence linking the petitioner to the dog’s demise, the entire case stands on speculative ground and calls for immediate quashing. A mere accident without *mens rea* cannot be stretched into an act of offence under section 428/429 IPC. Any claim of cruelty upon animal would demand at some demonstration of unnecessary pain inflicted with purpose and therefore present allegations do not also fulfil the ingredients of the penal section invoked under the Act of 1960 and therefore further continuance of the impugned proceeding would be mere abuse of the process of the court.

7. Learned counsel for the State Mr. Ray placed a copy of Case Diary and opposed the petitioner’s prayer for quashing the impugned proceeding.

Decision

8. The crux of the allegations made in the FIR are as follows:-

(a) A stray dog was run over by a car which was driving by the petitioner.

(b) At the time of the accident said vehicle came at a slow pace at the place of occurrence.

(c) The said Car was not basically heading anywhere but had reached the place of incidence, only to kill the animal/dog.

(d) Moving of the said car at slow pace is indicative of *mens rea* of the petitioner that he reached at the spot with the vehicle at a slow pace targeting the animal.

9. After completion of investigation police submitted charge sheet against the petitioner herein under section 428/429 of IPC and section 11 (1) (a) of the Prevention of Cruelty to Animals Act 1960.

10. During investigation police recorded statement of two witnesses under section 161 Cr.P.C. as appearing from Case Diary namely Dr. Anirban Chatterjee and Mr. Suvadip Bose. They have stated that the car in question desperately knocked down the animal and they believe that the driver/petitioner targeted the dog. Furthermore the witnesses have stated before the police that the dog died instantly though no formal proof such as photographic evidence, veterinarian's certificate or any official record has been produced in the charge sheet about the exact aftermath of the incident.

11. Learned Counsel for the petitioner strenuously argued that as gleaned from the charge sheet and accompanying records, the prosecution's main plank is that the petitioner deliberately knocked down the stray dog. However, as per FIR the car was moving at a slow pace and in the absence of direct photographic or medical evidence of the dog's death and also in the

absence of no previously known motive to harm animal, it is doubtful whether the essential ingredients of the alleged offences are established.

12. Section 428 IPC contemplates mischief by killing or maiming an animal of a particular value, while section 429 IPC deals with mischief by killing or maiming specific animals or animals of higher value. A bare reading of section 428 and 429 IPC makes it clear that the essential ingredients of both the offences is mischief, which necessarily requires

(a) intention to cause destruction in the property.

(b) knowledge to cause wrongful loss or damage to the public or to any person.

13. In absence of *mens rea* the offence of mischief under section 428 or 429 IPC cannot be made out. On the other hand in the case of section 11 (1) (a) of the Act of 1960, for which punishment prescribed is fine upto fifty rupees (in case of a first offence) the essential ingredients for applicability of the said section stipulates that prosecution must generally show that the accused intentionally or deliberately beats, kicks , tortures , overdrives, overloads or otherwise treats an animal cruelly, so as to subject the animal to unnecessary pain or suffering. In such case also *mens rea* i.e. intent or conscious cruelty is core requirement.

14. Therefore, offence under section 428/429 of the IPC or section 11(1) (a) of the Act of 1960 could be made out only in those cases where there is deliberate attempt by an accused committing mischief, which requires an animus to do something. In the FIR or in the statements recorded during investigation by the prosecution nowhere it has been stated or alleged demonstrating any particular grudge on the part of the petitioner to kill the

stray dog. The entire allegation is confined to the fact that the car of the petitioner hit the stray dog and as a result of which it died and it is also not the allegation that the petitioner has intended to cause wrongful loss or damage or likely to cause harm to the deceased or the State.

15. In order to constitute an offence either under section 428/429 IPC or under section 11(1) (a) of the Act of 1960, it is not sufficient to say that in order to cause the incident, accused made the pace of the vehicle slow and thereby committed offence of targeted killing. The prosecution if failed to collect evidence during investigation that the accused who was driving the vehicle had any grudge against the complainant or against the deceased or had required intention or knowledge in causing the accident, it is difficult to bring home the aforesaid charges against the accused person. In short section 429 IPC necessitate three things (i) intention or knowledge of likelihood to cause wrongful loss or damage to the public or any person (ii) causing the destruction of some property or any change in it or in its situation and (iii) such change must destroy or diminish the property mentioned in the section itself.

16. In *Arjun Singh Vs. the state of Rajasthan* , reported in **AIR 1958 Raj 347** it was held by a coordinate Bench of Rajasthan High Court that in order to prove mischief it is necessary for the prosecution to establish that the accused had an intention or knowledge likelihood to cause wrongful loss or damages to the public or to any person. It was further observed that if an animal is killed accidentally, whatever may the responsibility of the accused is to compensate its owner for the loss of property caused to him in a civil

court but it cannot be said with any justification that he committed a criminal offence under section 429 IPC.

17. Therefore in order to come within the definition of “mischief” under section 425 IPC, it requires a wrongful or intentional destruction or diminution of property in the context of the Prevention of Damage to Public Property Act, 1984 (in short PDPP Act) or to any person. If such mischief is directed against ‘*public property*’ it is enumerated in section 2 (b) of the said Act namely “property” owned or controlled by the Central Government, State government, local authorities or corporations or institutions substantially funded by governmental bodies. Public property in this statutory sense may not extend to a stray animal as it is neither owned nor controlled by any government authority or institution. A stray dog by its very nature falls outside the boundary of “public property”. Furthermore a stray dog is also not owned by an individual. Therefore, if the allegation is mischief under section 428/429 IPC and if it read with PDPP Act it cannot be sustained against an individual who is alleged to have harm a stray animal, because the object of the alleged mischief i.e. the stray dog does not qualify the term “*public property*” nor owner of such property can be any particular person.

18. In ***Pratap G. Vs. State of Karnataka*** (criminal petition No. 1133 of 2019, decided on 21.10.2022) the Court emphasized that in the absence of motive and acceleration belies the theory of intentional cruelty. In the present circumstances, the slow maneuver by the driver points more towards an unfortunate accident than criminal design. Furthermore the apparent contradiction in the FIR and the statement of alleged eye-witnesses also does not make the allegation trust worthy. While the FIR case is “the

vehicle came at a slow pace from other side of the road”, the statement of two witnesses is vehicle desperately came to the spot and knocked down the animal.

19. Though it has been alleged in the FIR and also by the witnesses about ‘targeting’ the dog to kill but such allegation of alleged targeting is not substantiated by any objective evidence like acceleration, abrupt steering or malicious intent. In fact the slow speed otherwise underscores a lack of animus as well as allegation of desperate driving. The seized items do not carry any tangible proof that the dog in question died. Learned court below while took cognizance did not take into consideration the difference between negligence and intention/knowledge as required under section 429 IPC. Admittedly the dog was a stray dog and as I have stated above that there was no owner of stray dog and also was not the ‘property’ which could be subjected to the offence of section 429 IPC. Section 429 provides mischief by killing poisoning, maiming or rendering useless any elephant, camel, horse, mule, buffalo, bull, cow or ox whatever may be value or any other animal of the value of Rs. 50/-. Or upwards but such property should be public property or property to any person.

20. Now so far as applicability of section 11(1) (a) of the Act of 1960 is concerned, it also requires to prove that the accused caused unnecessary pain or suffering with intention or knowledge. In the instant case, the FIR itself indicates a slow moving car that encountered the dog at Olaibibitala Lane which suggests an accident rather than a deliberate plan to cause harm. The allegation that the car was not basically heading any where does not find any leg to stand as the petitioner’s residence is few meters away

from the place of occurrence. It also contradicts the complainants assertion that the sole purpose of the car's arrival at the spot was to kill the dog. The petitioner also resides at 3A/11/1 Olaibibitala Lane which is stated to be not far away from the alleged spot and therefore the statement that the car had no business there is untenable, as a person heading home has reason to drive through that lane. Infact the allegations "*that basically the car was not heading anywhere*", is contradictory to the reality as the petitioner's own residence is on the same road and under same police station and it also undermines any claim of *mens rea* i.e. '*arrived there just to kill the dog*'. The official seizure does not document anything about the dogs body by any veterinary examination. The prosecution has not furnished material proof to confirm the alleged death or the dog's ultimate fate. Omission to incorporate such material evidence also undermines the authority of the claim that the dog was killed by the petitioner and died instantly. without having any forensic or physical evidence. The entire case stands on speculative ground based on alleged CCTV footage. This is also because investigating agency has not demonstrated any pressing reason or motive that induced the petitioner to harm a stray animal. No pre-existing grudge or dispute is on record which renders the allegation of cruelty under the Act of 1960, purely conjectural. It is well settled that a mere accident without *mens rea* cannot be stretched into an offence under section 429/428 IPC. Similarly the claim of cruelty under the Act of 1960 demands at least some demonstration of unnecessary pain inflicted with purpose. There is no evidence showing dogs alleged injury or even its death has not been conclusively proved.

21. Apart from that the alleged incident occurred on 04.12.2022. The written complaint was lodged only on 30.12.2022 i.e. after a delay of nearly 26 days without any explanation whatsoever. Such inordinate and unexplained delay also creates a serious doubt on the veracity, genuineness and *bonafides* of the complaint. Such unexplained delay in lodging FIR /complaint is a material factor which strikes at the root of the prosecution case and renders the allegation unreliable.

22. In the instant case, I am constrained to say that the allegation of *mens rea* on the part of the petitioner is not at all demonstrated and the incident can at best be an unfortunate road accident, involving a stray animal, since there exists no material to show that the petitioner deliberately or knowingly caused the alleged death of the animal. Even the FIR do not allege rash or negligent driving by the petitioner with intent to harm the deceased stray dog nor there is any allegation of repeated hitting. Mere involvement of a vehicle in an accident ipso facto does not satisfy section 11 (1) (a) of the Act of 1960. It is no answer to say that *mens rea* i.e. guilty mind, being an issue of fact can only be adjudicated during trial, when the prosecution do not have anything to show even *prima facie* about criminal motive of committing alleged offence by the petitioner.

23. It is not the case of the prosecution that the petitioner had any enmity with the deceased stray dog. Hence I failed to find any animus which can be set to be in existence in the petitioner/accused to cause the death of said stray animal. It is no more *res integra* that in order to constitute offence of mischief mere knowing that there is likely to cause accident is not sufficient to attract the alleged offences but there has to be an intent to cause

wrongful loss or damage. The same not having been established *ex facie*, I am of the considered opinion that no offence under section 428 or section 429 of IPC or section 11(1)(a) of the Act of 1960 can be set to be made specially when a *mens rea*, animus or intention has not been established during investigation.

24. Section 482 of the Code envisages three circumstances under which the inherent jurisdiction may be exercised namely *(i) to give effect to an order under the Code (ii) to prevent abuse of the process of court and (iii) to otherwise secure the ends of justice*. It is no doubt true that inherent jurisdiction under section 482 though wide but has to be exercised sparingly or carefully and with caution and only when such exercise is justified by the aforesaid tests specifically laid down in the section itself. It is to be exercised *ex debito justitiae* to do real substantial justice for the administration of which alone courts exists. Authority under this section exists to the Court for advancement of justice. If any attempt is made to abuse the process of the court so as to produce injustice, the Court has power to prevent abuse.

25. From the aforesaid discussion and also considering the materials available in the record I find that it would be an abuse of process of court where criminal proceeding has been initiated to give a colour of criminality to an accidental incident and which lacks essential ingredients of the alleged offence and materials collected during investigation also clearly suggest that conviction at the end of trial is bleak..

26. In view of above **CRR 1499 of 2025** is allowed.

27. The impugned proceeding GR Case No. 7201 of 2022 presently pending being before learned CJM Howrah, is hereby quashed.

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

(DR. AJOY KUMAR MUKHERJEE, J.)