

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 4122 of 2025

**Subhadeep Chakraborty
Vs.
The State of West Bengal & Anr.**

For the petitioners : Mr. Jayanta Narayan Chatterjee,
Ms. Ameena Kabir
Mr. Nirmalya Dutta
Ms. Moumita Pandit,
Mr. R. Banerjee

For the opposite party No.2 : Mr. Soumya Basu Roy Chowdhury
Mr. Sarbananda Sanyal
Mr. Saikat Gayen

For the State : Mr. Joydeep Roy
Ms. Snigdha Saha

Heard on : 21.04.2026

Judgment on : 04.05.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The subject matter of the instant application revolves around the prayer made by the petitioner for quashing of proceeding arising out of

Burdwan P.S. Case no. 237/2025 presently pending before learned Judicial Magistrate 5th Court Burdwan (East).

2. A Matrimonial discord is going on between the petitioner and the complainant and as such a criminal proceeding and another proceeding under the protection of Women From Domestic Vिलence Act are pending in Burdwan Court. A male child begotten from the marital tie, is now aged about 6 years. The petitioner herein has initiated a proceeding under section 25 of the Guardians and Wards Act, 1890 wherein he also filed an application for interim visitation before District Judge, Burdwan, which was allowed by an order of court on 18.09.2024. In terms of said order, visitation of child by father/petitioner was fixed on 01.03.2025 at court premises, where both the parties and their child were present.

3. It is stated in the instant FIR that at around 2 P.M. on that day i.e. 01.03.2025, when the petitioner/father was talking to the child at the court veranda, the child expressed that he is feeling sleepy but on hearing the same, petitioner /father got furious with the child and he dragged down the child through the stair case and tried to take him out of the court premises to the nearby Town School gate. Complainant ran after him, when the petitioner assaulted the child with a tennis ball. Police submitted charge-sheet against petitioner after completion of investigation under section 126(2)/115(2)/352 of BNS 2023.

4. Complainant/opposite party No.2 made an application two days thereafter on 03.03.2025 before the District Judge at Purba Burdwan, informing the aforesaid incident and prayed before the court to suspend the visitation right of the petitioner. Learned District Judge subsequently passed

an order on 24.06.2025 in the proceeding, filed under the Guardian and Wards Act, being Case no. 27 of 2024 and thereby suspended the visitation right of the petitioner. On the next day the instant FIR was lodged by the mother/opposite party.

5. Being aggrieved by the aforesaid criminal proceeding, learned counsel for the petitioner, Mr. Jayanta Narayan Chatterjee submits that the contents of the aforesaid application dated 03.03.2025, filed before District Judge at Purba Burdwan and the contents of the FIR dated 04.03.2025 over the self-same incident are different in material particulars. The statements recorded during investigation are only that of the father of the Opposite Party No.2 and her aforesaid lawyer who filed the application before the District Court for suspension of visitation on 03.03.2025, which were given to the police on 04.03.2025. Both are interested witnesses whose statements cannot be relied upon. The father of the Opposite party no.2 was not even present at the scene of the alleged incident. Similarly, the statement of concerned lawyer is also biased and fabricated because there is too much disparity in the application before the learned District Judge with that of the FIR.

6. Mr. Chatterjee further argued that the complainant/wife has filed numerous cases against the petitioner out of revenge and she does not want that her son would interact with the father/petitioner and has devised this fake story and has suspended the visitation right of the petitioner. The allegations made in the complaint are false and vindictive and is a glaring example of malicious prosecution. It is unimaginable that the petitioner who is a loving father and craves to meet his son on every visit and looks forward

to it, would assault his son. It is the defacto complainant who does not want to allow the father son bond to grow.

7. He further submits that the petitioner has been severely prejudiced by the initiation and continuation of the instant proceeding, which has caused immense harassment, loss of dignity, sabotage of self esteem, eroding of human value and severe humiliation and therefore, further continuation of the impugned proceeding shall be mere abuse of the process of the court. He further pointed out the fact that there is delay of three days in filing of the FIR by the complainant. This is because there was no injury upon the minor child and the defacto complainant took time to conspire and formulate the case against the petitioner. The ingredients of the sections charged with, have not been met at all and the contents of the charge sheet as having committed the offences alleged therein, are also devoid of substantial proof. Therefore, he prayed for dismissal of the instant proceeding.

8. Learned counsel appearing on behalf of the state placed the Case diary.

9. Learned counsel appearing on behalf of the OP no. 2/complainant submits that in this application he has annexed an injury report of Bardhaman Medical College and Hospital, whereby the petitioner's name has been disclosed as assailant. Moreover the medical officer who issued injury report has been cited as an witness in the charge sheet. He further argued that such document issued by a Government Hospital and endorsed by a Government Medical Officer is a document under section 74(1) (iii) of the Indian Evidence Act and as such it attracts much higher credential

being a public document. Moreover the treating doctor has endorsed the document and as such there is a presumption of legitimate action attached with the document calling for presumption under illustration (e) of section 119 of BSA.

10. He further argued that it is trite law that it is the quality, not quantity which matters most in a trial under section 134 of the Indian Evidence Act. If the petitioner has any doubt about the quality of the documentary as well as oral evidence gathered during investigation, he has a better option to rebut the same during trial by way of rigorous cross examination. However the petitioner cannot pray that the Criminal Revisional Court acts as a mini trial court by challenging the veracity of evidence gathered during investigation. To prove the injury report false and/or to prove charge sheet witness no.3 as a partition witness, the defence needs to cross examine them during evidence but this cannot stand as a ground for quashing of the proceeding. In this context he also relied upon the judgment passed in ***Koppiseti Subbharao Vs. State of AP*** reported in **(2009) 12 SCC 331**.

11. He further argued that admittedly the accused petitioner did not get any custody right. He only got visitation right within designated place i.e. court room. This order by no way enables him to take away the child beyond the court room. When the accused took the child away, the complainant tried to bring him back to the designated place i.e. court room. Furthermore the allegation made by the petitioner that CSW 3/advocate Priyanka Sarkar is an interested witness is not correct, since a person can be called as interested witness, if he gains something material but here CSW 3 will neither gain something material, if the petitioner is convicted nor will lose

something if he is acquitted. Therefore, the OP No.2 prays for dismissal of the instant criminal Revisional Application and also prayed for a direction upon the Court below to expedite the trial and to conclude the same within a stipulated period.

Decision

12. In the complaint the defacto complainant being the mother of the child alleged that on 01.03.2025 she took her son to court for the purpose of visiting his father under court's order. The meeting of the father and child was going on in the Varanda, outside the court room at about 2 p.m. After a while the child started saying that he was feeling sleepy. On hearing this the accused petitioner got annoyed and caught hold of their son and started dragging the child down the stairs and outside the court towards the Town School gate and tried to take him away. Seeing this, complainant tried to stop the petitioner from taking away the child. At that time the petitioner threw a tennis ball with force at his son and hurt him in the lower abdomen. When opposite party no.2 complainant objected to the petitioner's behaviour, he abused her and also pushed her due to which she fell down. A Crowd gathered at the spot, when the petitioner went away from the spot. The child was feeling unwell and for which complainant took her to Burdwan Hospital and a CT Scan was done by medical Officer.

13. In her application for closing of visitation right before learned District Judge, she stated that on 01.03.2025 the petitioner brought some toys which includes a tennis ball. The petitioner herein/respondent tried to flee away with the child and the opposite party herein somehow restrained him.

When the child refused to take the tennis ball from the petitioner, he had thrown it to the child which hit his abdomen and thereafter he started dragging the child. At that time nature of hurt could not be understood. Infact petitioner tried to drag the child with force holding one hand and the complainant herein also tried to drag the child holding another hand because of which the child suffered severe pain. Thereafter the child complained about his abdominal pain and was treated at Burdwan Hospital.

14. During investigation the investigating agency recorded the statement of *de facto* complainant's father who stated that on 01.03.2025 at about 2 p.m. when his daughter/complainant brought his grandson in the court, then his son in law had forcibly taken his grandson and when his daughter raised alarm petitioner abused her and also physically assaulted her and his grandson. Due to such assault his grandson suffered injury. The trial courts lawyer appearing on behalf of opposite party herein also made statement before the police during investigation and stated that on 01.03.2025, in front of Burdwan Town School, trouble arose between the petitioner and *de facto* complainant, when petitioner assaulted his son and abused her and also the child of the petitioner. The son of the petitioner suffered injury and thereafter he was treated at the Burdwan Hospital. No other statement was recorded during investigation. Burdwan Medical college and Hospital issued a certificate which discloses that nature of injury is simple but in the column under "short history of the case", it has been recorded by the concerned medical officer that "*As per statement of mother physical assault by the petitioner.*"

15. Therefore on reading the contents of FIR, contents of Application in support of prayer for stopping visitation right, prepared by CSW3 and filed by complainant with that of statement made by witnesses during investigation and the “History of injury” as noted by Medical officer, there appears to be contradictions on material point over self same incident.

16. The petitioner in this case has been roped under section 126(2)/115 (2) and 352 of the BNS. Section 126 (2) of the BNS deals with the punishment of wrongful restraint. In order to constitute an offence of wrongful restraint the prosecution is required to prove that accused obstructed voluntarily and prevented the victim from proceeding in any direction which the victim has every right to proceed in that direction.

17. Similarly in order to constitute offence of voluntarily causing hurt the essential ingredients are as follows:-

- (i)** Accused voluntarily caused bodily pain to the victim
- (ii)** The accused did so with the intention of causing hurt or with the knowledge that he would thereby cause hurt to the victim.

18. Section 352 of the BNS deals with intentional insult with intent to provoke breach of peace and punishment thereof, which appears to be completely lacking in the present context. Now in order to constitute above offences *mens rea* is the essential ingredient. It is trite law that for the offences alleged, there must be a clear intention or knowledge attributable to the accused to cause harm. In the present case neither in the FIR nor in the charge sheet, I find any material suggesting any deliberate intention on the part of the petitioner to cause injury to his own minor child, for whom he had come to court after getting an order of visitation in his favour from the

court. The entire allegation even if accepted in toto, at best suggests a momentary reaction during an emotionally charged visitation, which by no stretch of imagination can be equated with the requisite criminal intent. Therefore the basic ingredients of the offence including criminal intention are absent. Moreover, it appears that the entire prosecution case rests solely on the statement of interested witnesses.

19. As stated above, the statements recorded under section 161 of Cr.P.C. are only of the father of the defacto complainant, who was admittedly not present at the place of alleged incident and the other one is the statement of her advocate who admittedly had appeared in the proceeding on behalf of complainant and thereby pleaded in support of an application with a prayer to stop visitation, just on the previous date of lodging complaint. No other independent witness has come forward to support the prosecution case, despite the fact that the alleged incident took place on a working day within the court premises. Such absence of independent corroboration, weakens the prosecution case, specially when the charge sheet says that investigating officer requested the opposite party no. 2 to furnish additional witnesses in support of her allegation but she categorically stated that she had no further witness to produce. Such conduct of complainant clearly demonstrates that prosecution has failed to secure any independent or corroborating evidence despite having opportunity to do the same. This also renders the prosecution case doubtful and as of now the entire prosecution case is based solely on two interested witnesses which are not even corroborative.

20. Apart from that, even if the allegations are taken at their face value and accepted in its entirety, the same do not disclose the essential

ingredients of the offences alleged. There is no material to indicate any intention on the part of the petitioner to cause harm to his own minor child nor is there any specific overt act, which may attract the penal provisions like intentional causing of hurt or wrongful restraint. The allegations made by the complainant in different places are not only contradictory but also vague, omnibus and devoid of particulars necessary to constitute cognizable offence.

21. The alleged incident took place on 1st March, 2025 whereas the FIR was lodged on 04.03.2025 and the delay of three days in lodging the FIR has not been satisfactorily explained and there are reasons to believe that the complainant had taken sufficient time to deliberate and embellish the story before setting the criminal law in motion.

22. In ***Bhajanlal Vs. State of Haryana*** the supreme Court cited some of the instances where prosecution is liable to be quashed invoking the court's jurisdiction under section 482 Cr.P.C. Para 102 of the said judgment runs as follows:-

- (a) 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;*
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. 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;*
- (c) where the uncontroverted allegations made in the FIR 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;*
- (d) 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 a Magistrate as contemplated under Section 155(2) of the Code;*

- (e) 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;*
- (f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party;*
- (g) 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.*

23. In the instant case the inherent improbability of the prosecution story strengthens being wholly unnatural and against human conduct that a father, during a court sanctioned visitation, would deliberately assault his own minor child. Such allegations on the face of it are absurd and do not inspire confidence and attracts clause (1), (5) and (7) of para 102 of ***Bhajanlal's Case*** (Supra). The statement of two witnesses i.e. father of the opposite party no.2 and the lawyer who filed the application before the district court for suspension of visitation on 03.03.2025 can also hardly inspire any confidence.

24. In ***Hazi Iqbal Md. Vs. State of UP and other*** reported in **(2024) 15 SCC 776**, it was held by the Apex court that when quashing is sought essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wrecking vengeance, then in such circumstances the court has a duty to look into the FIR with care and a little more closely because, once the complainant decides to proceed against the accused with an ulterior motive for wrecking personal vengeance etc., then he would ensure that the FIR is very well drafted with the

necessary pleadings. It is well settled that the implications by way of general omnibus and frivolous allegation, if left unchecked, would not only result in misuse of the process of law but a criminal trial leading to an eventual acquittal would inflict severe scars upon the accused and such an exercise ought to be discouraged.

25. In the circumstances as stated above, I am of the considered view that no useful purpose is likely to be served by allowing criminal prosecution against the petitioner to continue, based on the aforesaid charge sheet as the ingredients of the offences are clearly absent in the present case. Therefore, further continuance of the impugned proceeding would be mere abuse of the process of the court.

26. In view of above **CRR 4122 of 2025** is allowed.

27. The impugned proceeding being Burdwan P.S. Case no. 237/2025 presently pending before learned Judicial Magistrate 5th Court Burdwan (East) 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.)