

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3464 of 2019

**Koushik Bhattacharya & Ors.
Vs.
State of West Bengal & Anr.**

For the Petitioners : Mr. Arkaprabho Roy,
Mr. Aniruddha Lahiri

For the OP No.2 : Mr. Arun Kumar Maiti,
Mrs. Kaberi Sengupta Mohanty
Mr. R.R. Mohanty
Ms. Pramita Banerjee,
Ms. P. Chowdhury,
Ms. R. Mazumder

For the State : Mr. Debasish Roy, Ld.P.P.,
Ms. Faria Hossain, Ld. App.
Mr. Anand Keshari

Heard on : 17.03.2026

Judgment on : 30.03.2026

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners herein have prayed for quashing of the proceeding being G.R Case No. 2167 of 2019 presently pending before Learned Additional Chief Judicial Magistrate, Sealdah. The Opposite Party No.2 (in short O.P no. 2) herein stated that the petitioners herein and other two labours were effecting some works ostensibly for cutting grass and dressing of the common open ground on the complex of the petitioner. The complainant alleged that they were engaged themselves with the work, without the consent of the administrator. After getting such information the complainant went to the spot and demanded permission letter in support of their activities, but the petitioners allegedly abused de facto complainant with defamatory words and suddenly became violent and started assaulting him with fist and blows and had threatened him with dire consequences. On the basis of said complaint, Maniktala P.S Case No. 269 dated 19.08.2019, under Section 341/323/506/1014 of the Indian Penal Code was started against the petitioners.

2. Being aggrieved by the aforesaid proceeding learned counsel for the petitioner submits that on 10th August, 2019, the members of the Housing Society had arranged to clean the weeds and grass from the lawn. At that time the O.P No. 2, who is not the member of the Society and had nothing to say about the affairs of the Society tried to prevent those persons who were cleaning the lawn and threatened them and also manhandled them. The lady members of the Housing Society were also abused by the O.P No. 2. The other members were also physically assaulted. Much prior to the instant

FIR, the Petitioner No. 4, herein as complainant on the self-same date of occurrence, had lodged Maniktala P.S Case no. 259/19 dated 10.08.2019, under section 341/323/506 of the Indian Penal Code against the O.P No. 2 herein.

3. The instant F.I.R has been lodged 9 (nine) days after the incident whereas the aforesaid complaint of the petitioner no. 4 herein in connection with the self-same incident was registered on the same day, which clearly shows that the instant proceeding is nothing but counterblast. Furthermore written complaint does not contain any allegation that the petitioner voluntarily obstructed the O.P no. 2, so as to prevent him from proceeding in any direction, in which he has a right to proceed. Thus, no ingredient of section 339 of the I.P.C can be found in the written complaint, making the registration of the F.I.R wrong. Be it mentioned that wrongful restraint in the only cognizable offence, among the alleged offences. No specific allegation has been levelled against any of the petitioners in the written complaint or any statement recorded Under Section 161 of Cr. P.C and therefore, all the allegations are made in a vague, general and omnibus manner. O.P no. 2 also failed to produce any medical document to substantiate the allegation. In the Charge-sheet the role played by each accused in the crime has not been separately and clearly mentioned. In this context the petitioner has relied upon the judgement of **Sharif Ahmed Vs. State of U.P, 2024 S.C.C online SC 726** and another Judgment of this Court passed in **Hasin Jahan Vs. State of W.B., (C.R.R no. 766 of 2022)**. He further submits that mere allegation of threatening to kill does not constitute offence under section 506 of the I.P.C.

4. Mr. Arun Kumar Maity Ld. Counsel appearing on behalf of O.P no. 2 argued that though the petitioner No. 4 placed one medical report showing his injuries but those documents were not relied by the prosecution. The police after completion of investigation has filed charge-sheet which prime facie discloses offence against the petitioners. It is in the factual backdrop of the case, which ultimately generated in lodging the complaint, in respect of the incident, happened on particular day and the delay in lodging F.I.R has been explained. Though the petitioner has lodged complaint alleging offence of assault against the O.P no. 2 herein but that does not mean that the instant proceeding is the counterblast of the said proceeding. The injury sustained by the O.P no. 2 may be simple but still it attracts Section 323 of the I.P.C. Therefore, the allegation Under Section 323/506/114 of I.P.C had been prima facie made out during investigation and it does not call for interference by the High Court. If the inherent power is exercised in this case for quashing of the proceeding, there will be gross abuse of the process of the court. Therefore, he prayed for dismissal of the instant Application.

Decision

5. Upon consideration of submissions made on behalf of the parties, it appears that over an incident dated 10.08.2019 allegedly took place around 11 a.m., petitioner no. 4 herein as complainant lodged an FIR against opposite party no.2/complainant herein namely Sujoy Biswas, which was registered as Manick Tala P.S. Case no. 259 dated 10.08.2019, under section 341/323/506 IPC, with the allegation that said Sujoy Biswas wrongfully restrained the complainant Amal Bose (petitioner no.4 herein)

and others and physically assaulted then by fist and blows and thereafter threatened with dire consequences at 202 Manick Tala Main Road, Kol-54

6. In the Instant FIR lodged by aforesaid Sujoy against aforesaid Amal Bose and Ors. being Manick Tala P.S. Case no. 269 dated 19.08.2019, under section 341 /323/506/114 IPC also pertains to the allegation that on the same day i.e. on 10.08.2019 at 12 hrs, FIR named accused persons/petitioners herein being aided and abated with each other, wrongfully restrained complainant Sujoy and had physically assaulted him by fist and blows and also threatened with dire consequences at 202 Manick Tala Main Road, Flat no. 14, Kol-54.

7. Therefore, reading at a glance of the two FIRs and its respective narration about alleged occurrence, it appears that they are almost same. The only material difference is while the aforesaid first FIR being no. 259 lodged by petitioner no. 4 herein against opposite party no.2, records time of occurrence as 11 a.m., but the instant FIR being no. 269 records the time of occurrence as 12 hrs. The other materials facts which is required to be noted is that the aforesaid first FIR was lodged by petitioner no. 4 herein on the date of alleged occurrence i.e. on 10.08.2019, while the instant FIR was lodged 9 days after the alleged occurrence on 19.03.2019., without having any proper explanation for delay.

8. I have gone through case diary of both the aforesaid FIRs, where after completion of investigation police submitted charge sheet in both the cases against respective accused person/persons under section 341/323/506 of the IPC. In the above mentioned first FIR being no. 259 dated 10.08.2019, police during investigation collected medical report dated 10.08.2019, which

discloses the name of opposite party no.2 herein, Sujoy Biswas as assailant, who according to 'history of assault' as recorded by Medical Officer, assaulted petitioner no.4 herein on 10.08.2019 at about 11 a.m. by means of punching on face and for which he was suffering emasculation pain and swelling over left cheekbone. Said medical document has been seized by police on proper seizure list on 14.08.2019. Furthermore during investigation of said earlier proceeding, police recorded the statement of witnesses under section 161 Cr.P.C. corroborating FIR story.

9. Now on perusal of materials available in the case diary, in connection with the instant proceeding, being case no. 269, it appears that though police has submitted charge sheet under section 341/323/506/114 against all the petitioners herein but the only incriminating material against the petitioners/accused persons available in the case diary is recording of statement of two witnesses under section 161 Cr.P.C. who are wife and son of one Arup Biswas, who stated, that all accused persons/petitioners herein encircled complainant and slapped him and had abused him with filthy languages. No specific overtact has been alleged against any of the petitioners and the statements are omnibus in nature. The charge sheet submitted against the petitioners on 18.11.2019 in the instant case also failed to disclose which particular offence was committed by which accused and what exact role played by each of them at the time of commission of offence. In the charge sheet the name of said two persons who have made statements under section 161 of Cr.P.C. as stated above and one Tanmoy Adhikary, the IO of the case, have been cited as witness. Therefore, even if said witnesses adduce evidence before the court in terms of their statements

made during investigation, there is hardly any chance of conviction of the petitioners.

10. In *Sharif Ahmed and another Vs. State of U.P. and another* (supra), the Supreme Court had made specific direction upon the investigating officers that they must make clear and complete all the columns in the charge sheet, so that the court can clearly understand which crime has been committed by which accused and what is the material evidence available on the file. The role played by the accused in the crime should be separately and clearly mentioned in the charge sheet for each of the accused persons, which is conspicuously absent in the instant charge sheet.

11. In the above mentioned facts and circumstances of the case it appears that only cognizable offence alleged against the petitioners is wrongful confinement under section 341 IPC. In order to constitute an offence under section 341 of IPC the ingredients of the offence are:

(a) Accused obstructed a person;

(b) He did it voluntarily;

(c) It prevented such person from proceeding in certain direction in which he had the right to proceed.

12. In the statements recorded under section 161, it does not disclose that the petitioner has restrained the complainant Sujoy Biswas from proceeding in certain direction in which he had the right to proceed nor it is the allegation that the petitioners have obstructed him. The materials available in the case diary, which were collected during investigation, also does not disclose offence under section 323 or 506 against any particular petitioner. The statements recorded under section 161 Cr.P.C. are non-

specific and general and omnibus in nature. Said statements discloses that all the petitioners encircled victim and slapped him. When no specific and distinct allegation has been made against either of the petitioners and when none of the petitioners have been attributed any specific role, in furtherance of the general allegations made against them, it simply leads to a situation wherein one fails to ascertain the role played by each petitioners, in furtherance of the alleged offence. The omnibus allegation does not warrant for criminal prosecution. Thus from the general conspectus of the various sections under which the petitioners are being charge sheeted show that the same are not made out, even prima facie from the materials placed before me.

13. In ***Inder Mohan Goswami and Another Vs. State of Uttaranchal and ors***, reported in ***(2007) 12 SCC 1***, the Apex Court had made it clear that the courts must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurize the accused.

14. Therefore on perusal of FIR, the final report under section 173 of the Code and all other documents accompanying it, I am satisfied that no case is made out against any of the petitioners and the pendency of the instant proceeding against them, before the Magistrate is an abuse of process of court. On perusal of the materials and even if they are taken at their face value and as correct in their entirety, I am unable to persuade myself to hold that the contents of the FIR discloses any cognizable offence against any of the petitioners.

15. CRR 3464 of 2019 is allowed.

16. The impugned proceeding being Manick Tala P.S. case no. 269 dated 19.08.2019 corresponding to GR Case no. 2167 of 2019 presently pending before learned ACJM, Sealdah is hereby quashed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)