

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 4638 OF 2023

RIYA RAY@ ROY & ANR.

VS

THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Shibaji Kumar Das, Adv.

Ms. Deblina De, Adv.

For the State : Ms. Sreyashee Biswas, Adv.

Mr. Soumya Basu Roy Chowdhury. Adv.

For the Opposite

Party No. 2 : Mr. Dipta Dipak Banerjee, Adv.

Mr. Ashok Pandey, Adv.

Last heard on : 17.12.2025

Judgement on : 30.01.2026

Uploaded on : 30.01.2026

CHAITALI CHATTERJEE DAS:-

1. This is an application under Section 482, read with Section 401 of the Code of Criminal Procedure, 1973 filed by the petitioner for quashing of First Information report in connection with G.R no. 2753 of 2023 arising out of

Srerampore Police Station case no. 506 of 2023, dated 1st November, 2023 under Section 447/504/323/379/354B/506/307/34 of the Indian Penal Code 1860, presently pending in the Court of the learned Additional Chief Judicial Magistrate, Srerampore, District-Hooghly.

2. The case of the petitioner in a nutshell is that on 22nd June, 2023, the petitioner no. 1 had lodged a written complaint to the Serampore Police Station being Srerampore Police Station case no. 276 of 2023 against Pradeep Shah, Rana, Ghosh Chowdhury and Pallab Das, presently pending before the court of learned Additional Chief Judicial Magistrate, Serampore, alleging inter alia that on 18th June, 2023 at about 3:25 PM when she was coming out of her apartment, the accused persons obstructed her way and outraged her modesty and on raising protest, she was pushed and abused with dirty and filthy languages. On her shouting, her mother came downstairs for her rescue and also protested, and then she was also abused verbally and attempted to be assaulted. The petitioner further alleges that the main aim of the accused persons is to drive her and her family members out of the flat as two insecure women staying in the said flat and a request was made to the police authorities to ensure that they lived in the same flat without any obstruction.

3. As a counter blast to the said complaint the opposite party no.2, being the wife of Pallab Das lodged this complaint alleging that on 18 June 2023, at about 10:30 AM, an incident occurred over the issue of giving lock and key in the main gate of that residential flat for safety and security of the main gate but the present petitioner demanded the main gate should remain open all the time. It was also alleged that on 18th June, 2023. the present petitioners opened the main gate without caring for safety and security of all other

residents and their request was not considered, hence they became furious and started using filthy languages towards her and her family members, and assaulted her with fist and blows, Lathi, iron rod, and kicked her on her abdomen and also tried to kill her by surrounding her neck with an orna. It was also alleged that the de facto complainant almost lost sense for some time could not breathe and the present petitioner snatched her earring and gold bangle weighing approximately ₹30,000 and also snatched away ₹10,000 from her with a threatening to murder her. Moreover the de-facto complainant was assaulted on the score that she wanted to ensure the safety and security of the flat by keeping the main gate under lock and key. She reported the matter to Sheoraphuli TOP and due to assault and illness, there was delay in filing the complaint.

4. The learned Advocate representing the petitioner would submit that this complaint is a result of lodging a complaint by the present petitioner against the husband of Opposite Party no. 2 with an ulterior motive. There is an unexplained delay of three months in lodging of this complaint under section 156(3) of Cr.P.C in respect of the date of incident over which the present petitioner had lodged the complaint. It is lodged only in order to wreaking vengeance against the present petitioner making false allegations under Section 354B IPC against the petitioners when it is not maintainable against the petitioners who are female persons. The other allegations also do not have any legs to stand on. Reliance has been put upon the case of **State of Haryana versus Bhajanlal**¹ where the parameters were given when the power under Section 482 can be exercised and the instant complaint clearly

¹ 1992 supp (1) SCC 335

fails to satisfy any materials to substantiate the charges levelled against the accused persons .That apart the charges under Section 506 is non-cognizable offence and therefore the police cannot investigate without permission of the learned Magistrate. Hence the complaint is liable to be quashed.

5. The learned prosecution submits that from the case diary, nothing can be found to substantiate that there was any ingredient to attract Section 447. However, the I.O. seized a torn salwar and since the charge-sheet has been submitted they must face the trial.

6. The learned Advocate representing the Opposite Party no. 2 on the other hand submits that the GD was made on 18 June 2023, so on the date of the incident an intimation was given to the police. But the Complaint of 2/76 of 2023 was lodged prior to intimation given on 18 June 2023 by the complainant. So the point taken as a counterblast does not arise. It is a settled law that the court must be cautious while dealing with contradictions which can be done before the Trial Court. The learned advocate relied upon the decision reported in **Punith Beriwal**², 2019 SCR volume 5 page 876 where it has held that the power of quashing of a complaint /FIR should be exercised sparingly with circumspection and while exercising this power this court must believe the averments and allegations in the complaint to be true and correct.

7. It is further argued that in the case of **Md. Allauddin Khan vs State of Bihar**³ the High Court quashed the complaint which was set aside holding that the allegations made out in the complaint were not considered whether the same prima facie make out the offences and quashed the same on the

² 2025 INSC 582

³ 2019) 5 S.C.R 876

ground of pendency of a civil dispute between the parties. That apart in the case of ***State of Haryana versus Bhajanlal (Supra)*** the parameters were given when the power under Section 482 Cr.P,C can be quashed.

8. The further point raised by the learned Advocate of the Opposite Party no.2, that as per Section 8 of the Indian Penal Code, 'he' is derivative and is used for the male or female and hence the charge under Section 354B is very well maintainable against the petitioners but whether the prosecution is able to prove the same can be determined at the time of trial. Hence, prayed for dismissal of this criminal revision application.

Analysis

9. Heard the submissions. In course of hearing the attention of this court was drawn to the fact that a criminal revisional application was filed under Section 482, read with Section 401, praying for quashing .On December1, 2023, and on 12th December 2023, the said revisional application was taken up for hearing by the Coordinate bench when a direction was given to the investigating agency to continue with the investigation of Sri Rampur Police Station case No.506 of 2023, but directed not to take coercive steps against the present petitioners till 31 March 2024. During pendency of such revisional application, the investigating authority on conclusion of investigation submitted the charge sheet, arraigned them as an accused in respect of the offences committed under Section 447/504/354B/506/34 of the Indian Penal Code.

10. The present revisional is filed in connection with the complaint filed by the wife of one Pallav Das, against the present petitioners in respect of an incident occurred on June 18, 2023 at about 10:30 AM. The complaint has been filed

under Section 156(3) Cr.P.C before the Court of ACJM Srerampore on October 18, 2023, that is after four months from the alleged date of incident. The genesis of the said complaint rests on the issue of putting lock and key to the main gate of the residential building, where the parties are the residents of their respective flats. According to the complaint, all the flat members have their own extra key and the main gate is put under lock and key, that is for safety and security of all but the petitioners intend to keep the main gate opened which was not accepted by the other members, and because of their illegal and wrongful act, there are incidents of theft happened on several times in the building. On 18th of June 2023, at about 10:30 A.M, the petitioners opened the main gate without adhering to the request of the complainant and suddenly they became furious used filthy languages towards the complainant and her family members, and also assaulted with fist and blows, lathi and iron Road and kicked at the complainant's abdomen also made attempt to kill the complainant. The further allegation of theft of ₹30,000 from the complainant as well as snatching away. 10,000 from her body are also levelled against the petitioners who are the mother and daughter.

11. The fact of the Case unfolds that the petitioners lodged the complaint on June 22, 2023, which has been registered as FIR no. 276 of 2023 against the husband of the de-facto complainant in respect of an incident occurred at 3:25 P.M. The allegation levelled against the husband of the complainant, along with some other persons about outraging modesty of the petitioner no 1 while moving out from the flat and on raising protest, use filthy languages and pushing her. Not only that they also verbally abused her aged mother and also attempted to physically assault her who are residing there for last 30 years

and after the flat was constructed in the year 2019, they are residing as owner, but the other members are interested to throw them out taking advantage of their situation.

12. On this factual backdrop at the outset, the point raised by the learned advocate of the petitioner regarding non-compliance of the mandatory provision of filing the complaint under 156 (3) Cr.P.C is taken for consideration. In the decision of ***Babu Venkatesh and others versus State of Karnataka***⁴ it was held that as prerequisite s for entertaining an application under Section 156(3) Cr.P.C there has to be applications under Section 154(1) and 154 (3) Cr.P.C. In this case in the petition of complaint nowhere it is mentioned that before lodging this written complaint, there was any compliance of Section 154(1) or 154 (3) Cr.P.C and no document to that extent is also annexed with the petition. Admittedly, the Learned Court while taking cognizance totally failed to consider the law lay down by the Hon'ble Supreme Court in this regard. The written complaint itself disclosed that the date of incident was on June 18, 2023 which means approximately four months prior to lodging of this written complaint and as an explanation; the complainant took the plea of sustaining pain all over the body because of assault and illness for filing this complaint. That apart she mentioned about reporting the matter to the Sheoraphuli TOP and an assurance given to her that a case would be started, but as no case started, she filed such written complaint. No date is mentioned as to when such reporting was made or any number of GD entry was also mentioned in the written complaint. Therefore,

⁴ 2022.) 5 ACC 639

primarily the complaint is devoid of the mandatory requirement of filing the written complaint under Section 156(3) Cr.P.C.

13. The opposite party no. 2 recorded her statement under Section 164 of Cr.P.C on 7 November 2023 that is long after almost 5 months from the date of incident. It could be gathered from pleadings of the parties that initially the petitioners were the owner of the property and later the building was constructed and as an owner, they were was handed over the flat in which they are residing . The age of the petitioner no.2 is about 60 years and she is a patient of various ailments and it is difficult to accept the physical assault by her to any person with iron rod. No injury report can be found after such severe injury.

14. The petitioner no. 1 is aged about 29 years and is a service holder. The de-facto complainant also alleged about assault or use of criminal force to her with intent to disrobe by the present petitioners who are also female persons. According to the learned advocate of the Opposite Party no. 2 in Section 8 of the Indian penal code, the pronoun and its derivatives are used of any person whether male or female is mentioned of the provision. Therefore, Section 354B is equally applicable against female for assault or use of criminal forces to woman with intent to disrobe.

Section 354 B of the Indian penal code reads as follows;

354B. Any man who assholes or uses criminal forces to any woman or habits, such act with the intention of disrobing or compiling her to be naked, shall be punished with imprisonment of either description for a term which shall not be less than three years, but which may extent to 7 years, and shall also be liable to fine.

The essential ingredients to attract such offence are that the accused assaulted or used criminal force to a woman. He did it intentionally for disrobing or compelling that woman to be naked. In this provision, the term was mentioned as 'any man'. In the BNS in section 76, this word 'Any Man' has been replaced with "whoever" thereby creating liability of any person, irrespective of their gender. BNS has come into effect on from 1 July 2024 that is long after the lodging of the complaint and therefore Section 354B of IPC was applicable only against a man. Therefore, the submission of the learned Advocate of Opposite Party no. 2 cannot be accepted.

15. The ultimate object of justice is to find out the truth and to punish the guilty and to protect the innocent. It is time and reiterated by the Hon'ble apex court that to find out the truth is a herculean task. In the case of **Indira Mohan Goswami and another versus State of Uttaranchal and others**⁵. the Apex Court comprehensively examined the legal position regarding use of exercise of power under Section 482 Cr.PC. It was held that the powers under Section 482 Cr.PC is too wide and have to be exercised, sparingly, carefully and with great caution and only when such exercise is justified by the tests mentioned in the provision itself. In the case of abuse of the process leading to injustice when brought to the notice of the court, then the court would be justified in preventing injustice by invoking such in power in absence of specific provisions of the statute.

⁵ (2007) 12 SCC 1

16. In the case of **State of Haryana versus Bhajanlal (Supra)** the parameters were given in which situations the power under Section 482 of Cr.P.C can be used which are 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.

In the instant case the possibility of lodging the complaint maliciously with an ulterior motive cannot be ruled out.

Conclusion

17. on close scrutiny of the case diary and going through the statement therefore recorded by the witnesses in course of investigation coupled with the statement recorded under Section 164 of Cr.P.C by the de-facto complainant, the nature of allegations levelled apparently are found to be an exaggerated version in respect of a trivial issue of putting lock and key on the main gate. The factum of lodging of complaint with serious issues by the present de-facto complainant prior to this complaint without delay is not disputed and the investigation has been culminated to filing of the charge-sheet. Hence the possibility of false implication of the present petitioners appears to be more convincing. Prima facie on perusal of the case diary and the materials on record no material evidence can be found in order to substantiate the allegations levelled against the present petitioners. The absence of injury and

non-recovery of the iron rod also fails to substantiate the version of the de-facto Complainant assailed in the written complaint. The serious inconsistencies found in the statement recorded under Section 164 by the de-facto complainant, the content of the written complaint about the description of the incident prima facie dilute the authenticity of the case made out by the complainant. In addition to that the prolong delay in lodging the complaint without giving any plausible explanation and without complying the mandatory requirement of Section 156(3) Cr.PC compelled this Court to arrive at a conclusion that if the proceeding pending before the learned court is allowed to be continued, it would be gross abuse of the process of law. Hence, the said proceeding is liable to be quashed.

18. Hence, this criminal revision application stands allowed.

19. The proceeding pending before the learned court of magistrate is here by quashed.

20. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)