

(2019) 07 CAL CK 0034

In the Calcutta High Court

Case No : Criminal Revision (CRR) No. 3679 Of 2016

Arpita Guin

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 10-07-2019

Acts Referred:

Indian Penal Code, 1860 — Section 308, 323, 326, 341, 506
Code Of Criminal Procedure, 1973 — Section 154(1), 154(3), 156(3)

Citation : (2019) 07 CAL CK 0034

Hon'ble Judges : Shivakant Prasad, J

Bench : Single Bench

Advocate : Sabir Ahmed, Biswajit Hazra, Sunit Kumar Roy, Sayanti Santra

Final Decision : Disposed Off

Judgement

Shivakant Prasad, J

The petitioner has assailed the proceedings in G.R. Case No. 35 of 2012 in connection with Kankortola Police Station Case No. 16 of 2012 dated

25.01.2012 under Sections 323/326/506/308 of the Indian Penal Code in which case the Investigating Officer submitted final report on completion of

the investigation.

Background facts leading to the instant application is that the petitioner an assistant teacher of Barhra High School, District-Birbhum, was illegally and

arbitrarily disturbed by the school authority by not allowing her to work smoothly and properly and not giving permission to acquire higher qualification

and even not regularizing her study leave and no arrangement made to avail her own provident fund facility. Her salary was withheld without any

reason.

The petitioner was residing in the locality of the school alone, so she applied for general transfer but no cooperation was extended to her by the school

authority. So she approached the Honâ??ble Court and pursuant to an order of the Honâ??ble Court, the West Bengal Central School Service

Commission recommended her name for transfer to a school at Dum Dum, North 24 Parganas by issuing appointment letter in her favour but till date

school authority did not issue release order deliberately in spite of her repeated prayer. During pendency of the litigation in the High Court, school

authority frequently disturbed the petitioner in her normal work and on protest threat held out with the consequences and for that she lodged several

complaints to all the authorities.

It is submitted that a large number of guardians of the said school as well as the Secretary, President and other members of the Managing Committee

lodged a detail complaint for an unlawful activities of the Teacher-in-charge who was also the Upo-Prodhan of Barhra Gram Panchayat where the

school is situated. Since he is a politically influential person, nobody took any steps. Immediately, after the said complaint was lodged, Anisur

Rahaman, a local school teacher was murdered on 28.5.2011. Teacher-in-charge being the accused, was arrested and detained in the custody for

about one month in connection with Khayrasole P.S. Case No. 42/2012 dated 29.5.2012 but he got released on bail and joined duty as usual but no

proceeding was started against him. As the petitioner had lodged complaint to different authority against Teacher-in-charge of the school, one

Kanchan Adhikari tried to lower down the prestige and dignity of the petitioner in the society and on 18th November, 2011 when she was performing

her duty in the school, some people of the locality politically influenced and motivated by the Teacher-in-charge assaulted her in the school premises in

presence of all the teaching and non-teaching staff and threatened with the consequences. The petitioner rushed to the Police Station and lodged a

specific complaint at about 12.45 at noon, but the duty Officer deliberately waited till 1.00 P.M. and then registered the complaint as GDE No. 557 of

2011 dated 18.11.2011. It is alleged that the Duty Officer contacted with the school authority and subsequently lodged a false complaint against the

petitioner. On the basis of the said complaint no P.S. Case was registered but surprisingly on 25th January, 2012 one Sk. Fazle Karim lodged a false

complaint against her before the learned Judicial Magistrate, alleging, inter alia, that on 18.11.2011 after completion of the first period, at 11.30 A.M.,

the petitioner had assaulted the ward, namely, Asif Akram outside the classroom causing injury as a result he returned to his house and told entire

incident to his parents and he was taken to Barhra Health Centre for treatment but he was instructed to go to Suri for his necessary treatment. The

complainant returned to Barhra High School and met the Teacher-in-charge and as per his instruction he went to a doctor at Suri for treatment and a

GDE No. 555 dated 18.11.2011 was registered on the basis of alleged written complaint.

Learned counsel for the petitioner submitted that the sequence of facts alleged in the complaint dated 25.1.2012 will reveal that one has to travel at

least 100 kilometers from the place of incident to reach at Kankartola Police Station as it will take three hours journey but the said complaint was

recorded at the said Police Station before 1 P.M. as such there is a gap of 1 Hr. 15 minutes which is next to impossible. This fact is evident from the

copy of the track record of distance travelled by the complainant before lodging the complaint. It is also to be noted that the injury report shows that

the alleged incident of assault took place at 11.00 A.M. but the complaint dated 25.01.2012 shows that the alleged incident took place after 11.30

A.M. in which it has been alleged that complainant had been to Barhra Health Centre and the victim boy was treated by Nakrakonda Block Primary

Health Centre (BPHC) but the complaint dated 25.01.2012 is completely different from the said statement. The learned Judicial Magistrate, Dubrajpur

directed the concerned P.S. to treat the complaint dated 25.01.2012 as FIR on the basis of which Kankartola Police Station Case No. 16 of 2012

dated 25.01.2012 under Sections 323/326/506/308 of the Indian Penal Code was started and on completion of the investigation final report on

29.02.2012 was submitted. In the said final report a Naraji petition was filed before the learned Court and reinvestigation was ordered. Then a charge

sheet vide charge sheet no. 80/12 was submitted. The learned Magistrate has failed to appreciate the circumstances while taking cognizance of the

offences alleged against the present petitioner because the complaint is with preplanned conspiracy.

Accordingly, the petitioner has sought to quash the proceeding. It would appear from the order dated 11.4.2019 that as per the submission of the

learned Advocate for the defacto complainant, the G.D. No. 557 of 2011 dated 18.11.2011 was at 4.00 hrs. whereas the petitioner accused claimed

that G.D. No. 557 was at 1.00 P.M., accordingly, Investigating Officer was directed to collect and produce those G.D. book on the next date fixed but

the I.O. of the case on the subsequent dated on 01.5.2019 reported that the G.D. books were retained at the old building and some old documents

containing said G.D.E books were damaged by white ants. The report of the I.O. was not accepted as truth. So this Court gave further direction to

trace out the G.D.E books because there was least scope of the same being damaged or eaten by the white ants. On 28th May, 2019 when the matter

came up for hearing the Officer-in-charge Kankortola P.S., Birbhum submitted his report that he had collected the G.D. book in Xerox in respect of

the said G.D. No. 555 dated 18.11.2011 from the office of the C.I. Dubrajpur on the next date fixed 11.6.2019. In compliance of the Courts order, the

Officer-in-charge Kankortola P.S. was personally present with report dated 1st May, 2019 with similar report that the said G.D.E books were

damaged by white ants without tracing G.D.E books. This Court took a very serious note of the fact that G.D.E books were not properly preserved by

the local Police. There is, indeed, a doubt created for not having produced the G.D.E books to ascertain the allegation as made by the petitioner that

her complaint was earlier in point of time. So, adverse presumption arose in respect of the initiation of the case as against the petitioner given the

background of facts discussed above.

That apart, it would reveal that the case was started on the basis of a petition under Section 156(3) Cr.P.C. for investigation.

Such investigation was ordered without any preliminary inquiry into the allegation and without compliance of Section 154(1) and Section 154(3) of the Cr.P.C.

Having considered the facts scenario of the case, I am of the view that investigation against the petitioner appears to have been conducted

motivatedly as is evident from the investigation report as a sequence to facts alleged in the petition dated 25.01.2012 that it is not possible to travel all

the way from the place of occurrence to lodge a complaint the concerned Police Station after travelling a distance of nearly 1 hours 15 minutes.

Accordingly, the proceedings being Kankortola Police Station Case No. 16 of 2012

under Sections 323/326/506/308 of Indian Penal Code under reference and the charge sheet No. 80/2012 dated 17.10.2012 under Sections 341/323 IPC are hereby quashed. Consequently, the revisional application being CRR No. 3679 of 2016 is disposed of.

Urgent certified photocopy of this Order, if applied for, be supplied to the parties upon compliance with all requisite formalities.