

**IN THE CIRCUIT BENCH OF CALCUTTA HIGH COURT AT JALPAIGURI  
CRIMINAL REVISIONAL JURISDICTON**

**PRESENT: The Hon'ble Justice Subhasis Dasgupta.**

**C.R.R. NO. 47 OF 2019**

**Sri Prasenjit Das  
Versus  
Koushik Das & Anr.**

**For The petitioner : Mr. Deborshi Dhar, Advocate.  
Mr. Sanjib Das, Advocate.**

**For the opposite party No.1 : Mr. Arijit Ghosh, Advocate.  
Mrs. Swarnali Sengupta, Advocate.**

**For the State : Mr. Aditi Shankar Chakraborty, Ld. A.PP.  
Mr. Sourav Ganguly, Advocate.**

**Judgment : 23.07.2019**

**Subhasis Dasgupta:-**

This is an application for quashing of proceeding in connection with the Madarihat Police Station Case No.39 of 2019 dated 15<sup>th</sup> May, 2019 corresponding to G.R. No. 837 of 2019 now pending before the learned Additional Chief Judicial Magistrate, Alipurduar, under Section 323/325/506 of the Indian Penal Code.

Learned advocate for the petitioner disputing with number of the vehicle belonging to de-facto complainant submitted that since the number of vehicle, said to be under care of de-facto complainant, shown in the FIR, was relatable to a motorcycle, as distinct, and separate from four wheeler, the entire

prosecution story was doubtful, and the proceeding should not have been allowed to be continued any more, and quashed accordingly.

It was further submitted by the learned advocate for the petitioner that since the complainant had no occasion to be present at the scene of crime taking two wheeler with him, relatable to the number, conspicuously shown in the FIR, there arose no occasion for the accused/petitioner to commit any alleged assault upon the de-facto complainant, and thereby rendering the story, as developed in the FIR, to be highly improbable one.

It was also submitted by the learned advocate for the petitioner that the entire prosecution case suffered from falsity, and purposefully developed a counter against Madarihat Police Station, District\_ Alipurduar case no.40/19 dated 15.05.2019 under Sections 341/325/506 of the I.P.C, lodged at the instance of the wife of the petitioner, alleging commission of assault by the private opposite party no.1/ de-facto complainant of this case upon the petitioner, being husband of the F.I.R. maker, Chumki Das.

Learned advocate for the opposite party No.1(de-facto complainant) controverting the submission of petitioner submitted that the point raised in support of the prayer for quashing was not at all significant and patent one, as there had been some typographical error or inadvertent mistake in furnishing the number of vehicle, said to be under the care of de-facto complainant at the relevant point of time, and in view of such typographical error or inadvertent mistake with respect to the number of vehicle of de-facto complainant, the

prayer for quashing was not encouraging one, and as such the same should be refused.

Learned Additional Public Prosecutor representing the State/O.P submitted that investigation had not yet been completed and the point now raised, could be well taken up if there be any at all, at the time of conducting the trial, and since misdescription of vehicle being the principal point, targeted to be used in support of prayer for quashing, the court ought not to grant quashing only on such ground, when there were other materials lying under the zone of consideration for prosecution.

Seminal point to be addressed by this Court is whether in the given set of facts, quashing can be made permissible or not.

Before addressing the issue, mentioning of some salient facts may be of useful assistance. Both petitioner and the de-facto complainant in this case are drivers by profession. They took their respective vehicle to Jaldapara Tourist Lodge on the alleged date of accident driving their own vehicle, and got their respective vehicle, parked at the parking lot. Because of previous acquaintance of de-facto complainant with petitioner, petitioner was allowed to take rear seat in the vehicle of de-facto complainant for gossiping purpose, and ultimately de-facto complainant left his vehicle putting petitioner in charge of his vehicle in order to purchase beetle from a nearby shop. After returning to vehicle, de-facto complainant found with his utter surprise that some accessories of vehicle, kept at the rear seat of the vehicle, went missing. De-facto complainant

challenged the same, when petitioner subjected the de-facto complainant to assault with use of weapon mentioned in the F.I.R causing injury to him.

The prayer for quashing basically is targeted for misdiscription of vehicle of de-facto complainant with reference to the nature of the vehicle being used by the injured F.I.R. maker at the time of alleged commission of offence.

Since document, obtained from Regional Transport Authority, specifically involved a two wheeler bearing the number, as shown in the F.I.R describing the same to be under the care of the de-facto complainant, as driver thereof, the prosecution case was sought to be declared as highly improbable, because the specific case of the prosecution is that the de-facto complainant/victim had been to the place of occurrence taking his four wheeler, which he kept the same parked at the parking lot, near to Jaldapara Tourist Lodge. Since there is apparent contradiction with reference to nature of vehicle being used by the de-facto complainant, there left least scope for the de-facto complainant to become victim of assault as alleged, and the entire prosecution story was argued to be a concocted version, developed in order to put up a defence against a case, already lodged by the wife of petitioner making the de-facto complainant as principal accused therein for alleged assault upon petitioner.

Both the de-facto complainant and the accused person are in same profession. There is said to be a business competition between the parties, as conspicuously revealed from the F.I.R, lodged by the wife of the petitioner alleging commission of assault upon petitioner by private opposite party no.1. In both the cases, the outcome of investigation has not yet been furnished. The

prosecution story, made out in this case, is not purely dependent upon the number of the vehicle, being shown in the F.I.R, and the nature of the vehicle involved therein, because there are other materials, inclusive of the statement of witnesses, examined by the Investigating Officer, and the Medical Examination Report of the victim. The prosecution having thus rested its case not only upon the nature of the vehicle being under the care of the de-facto complainant at the relevant point of time, as sought to be targeted, while seeking quashing of the proceeding, it would be too immature one to allow the quashing merely relying upon the misdiscription of vehicle without considering other materials, if any, collected during the course of investigation.

Whether it is a counter version purposefully developed or not, can only be determined with the collection of evidence, if adduced during the trial of both the cases, if any charge-sheet is submitted in both the cases.

When it is the definite stand of the private opposite party no.1 that there was an unintentional typographical error or mistake in mentioning the number of vehicle, in the F.I.R, the prayer for quashment relying upon the information, furnished by the Regional Transport Authority, would not be sufficient enough at this stage without looking into the other materials, if any, collected during the course of investigation. Since the prosecution case has been going through the stage of investigation, the Court is of the view that petitioner is not remediless at the moment, because enough opportunities are still left open for the petitioner to raise such points taking support of the materials, to be supplied to petitioner, if any charge-sheet is submitted in this case at all.

Upon consideration of the rival submissions, raised by the parties to this case, the Court is of the view that without entering into the evidence, it would not be appropriate to quash the proceeding at this stage, when the principal point being raised by the petitioner is an outcome of unintentional mistake, occurred due to typographical error or inadvertent mistake or omission on the part of the de-facto complainant/private opposite party, while furnishing the number of vehicle in F.I.R.

The criminal revisional application is, thus, devoid of any merits and as such stands dismissed.

The prayer for quashing is rejected accordingly.

Liberty is however, is given to petitioner to raise all such points, now raised, at the time of consideration of charge or plea, if there be any, and if any such points raised, that shall be duly addressed to by the learned court below by giving a decision in accordance with law, providing sufficient opportunities to either of the parties to this case without granting unnecessary adjournments, unless it is unavoidable.

With this observation/direction, this revisional application stands disposed of.

Urgent Photostat certified copy of this order, if applied for, be given to the appearing parties as expeditiously as possible on an usual undertaking.

**(Subhasis Dasgupta, J.)**