

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 418 of 2016

**Jayanta Biswas
Vs.
State of West Bengal & anr.**

For the petitioners : Mr. Sourav Chatterjee
Mr. Soumya Nag

For the State : Mr. Rudradipta nandy
Mr. Anand Keshari

Heard on : 28.07.2025

Judgment on : 25.09.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioner herein being the accused has challenged the order dated 21st January, 2016 passed by learned Additional Sessions Judge, 3rd Court Krishnanagore, whereby and where under his prayer for discharge in connection with Kotwali P.S. case no. 1282 of 2012, under section 306/120B/34 of the Indian Penal Code (IPC) was rejected.

2. The petitioners contention is that the petitioner's mother namely Jayashree Biswas and the mother of the deceased namely Minakshi Biswas had formed a partnership firm by a registered deed of partnership, dated 23.05.1995 to deal with Liquefied Petroleum Gas (LPG) as a distributor of Indian Oil Corporation Limited. At that point of time the family of the petitioner and the family of the deceased were close and friendly with each other. According to petitioner the dispute arose subsequently over the business relationship, which resulted into commencement of a series of criminal proceedings at the behest of the family of the deceased, whose father was at the relevant point of time a sitting Minister and was holding highly influential position.

3. Learned counsel for the petitioner, Mr. Chatterjee submits that by a letter dated 26.12.2012, the petitioner's mother wrote to the mother of the deceased and sought for accounts of the partnership firm and also requested the mother of the deceased to refrain from conducting the business of the firm in a manner prejudicial to the interest of the petitioner's mother. His further contention is at the behest of opposite party no.2 herein (who is the secretary to the said father of the deceased) Kotwali P.S. Case no. 1061 of 2012 under section 381 of IPC was started against one Rabindra Nath Rudra, alleging theft of LPG cylinders and he was arrested and was subsequently enlarged on bail on 22.11.2022.

4. Meanwhile another criminal case over the self same allegation of theft of LPG cylinders was lodged by opposite party no.2 against the present petitioner, said Rabindra Nath Rudra and one Dilip Dutta (father of co-

accused Riya Dutta) being kotwali P.S. case no.1138 of 2012 under section 406/420/120B of the IPC.

5. Mr. Chatterjee submits that the petitioner herein was granted anticipatory bail by this High court, in the said proceeding arriving at an opinion that the disputes essentially arose in respect of the partnership firm and therefore custodial interrogation was not required. His further contention is thereafter three more criminal cases were registered including the present proceeding, namely Kotwali P.S. Case No.1255 of 2012 dated 16.12.2012 under section 384/34 of the IPC, Kotwali P.S. case no. 238/2013 dated 04.03.2013 under section 406/420 IPC and the present one which was initiated under section 306/34 IPC.

6. The petitioner in one of the cases being kotwali P.S. case no. 1148 of 2012 had approached before this High Court for quashing the proceeding and while disposing the said application being CRR 4126 of 2012, this High Court arrived at a conclusion that for free and fair investigation, which is part of dispensation of the criminal justice, all the aforesaid five criminal cases were transferred for investigation to the Criminal Investigation Department (CID).

7. Being aggrieved by the instant proceeding, being kotwali P.S. 1282 of 2012, under section 306/120B/34 of the IPC, Mr. Chatterjee on behalf of the petitioner further argued that opposite party no.2 who is the secretary of the Hon'ble Minister lodged the instant complaint on 24.12.2012 over an alleged incident of suicide of the son of the Minister, which took place on 29.09.2012, i.e. after more than three months of the alleged suicide. The petitioner herein preferred an application for anticipatory bail before this

Court being CRM No. 465 of 2013 and upon hearing, this High Court granted anticipatory bail to the petitioner observing that on perusal of the materials collected during investigation, it is found that none of the witnesses so far examined, supports the case of the defacto complainant that on the same night sometimes before the incident, there was hot altercation and exchange of words over mobile phone between the deceased and the accused persons. On the other hand going through the suicidal note, the Bench found that the victim has not implicated anybody for causing his death and the allegation against the petitioner are based on mere suspicion and assumption.

8. Mr. Chatterjee further submits that even after the transfer of investigation of the aforesaid five cases to the CID, West Bengal by this Court, the petitioner and his mother continued to be implicated in more criminal cases one after another and finding no alternative, the petitioner and his mother approached this High Court by filing a writ petition under Article 226 of the Constitution of India, being WP No. 15206(w) of 2013. While disposing the said writ application, this High Court ordered that the police authorities will not arrest the petitioners or either of them in connection with the cases already lodged or further complaints of similar nature, that may be lodged without the previous permission of the appropriate criminal Court and the investigation in connection with all the matters should be completed and appropriate report be filed before the concerned criminal Court within a period of ten weeks from date.

9. Thereafter upon conclusion of the investigation, the investigating authority i.e. CID, West Bengal filed a final report in the instant proceeding

dated 04.07.2013, declaring the present case is a '*mistake of fact*'. In the said final report the investigating agency namely CID recorded that in the admission certificate of deceased it was noted that patient was conscious, alert and the alleged cause of accident is patient put himself to fire because of some rift with his father. It was further noted in the final report that both suicidal notes of the deceased and the seized khata of deceased containing his hand writing were sent to handwriting expert who opined that the handwriting in the khata and the handwritings in suicidal notes were written by same person and in the suicidal note the deceased wrote that no one is responsible for causing his death. During investigation it was further revealed that the petitioner/accused Jayanta Biswas did not introduce the deceased with Riya Dutta as alleged in the complaint. Considering all these accused persons including petitioner herein was not charge-sheeted.

10. Thereafter, being aggrieved by the final report the opposite party no.2/complainant filed a protest (naraji) petition and prayed for further investigation. It is alleged by an order dated 22.01.2014, the learned CJM mechanically and without application of his judicial mind, directed further investigation, which was challenged by the petitioner herein before this High Court in CRR 1942 of 2014, wherein this High Court directed for exchange of affidavits. However, during pendency of aforesaid CRR 1942 of 2014, the CID filed a charge sheet after examining four purported witnesses in terms of section 164 of the Code, under the above mentioned sections namely 306/120B/34 of the IPC, against the petitioner and two others and the Court below took cognizance thereon.

11. With the filing of the charge sheet as the CRR 1942 of 2014 became infructuous, the petitioner preferred fresh application under section 482 of the Code seeking quashing of the entire proceeding which was numbered as CRR 3887 of 2014 and later on said Revisional Application was disposed of as withdrawn and liberty was granted to the petitioner to agitate all the points taken in CRR 3887 of 2014 before the trial Court.

12. Pursuant to such liberty granted by this High Court, the petitioner preferred an application for discharge invoking section 227 of the Code of Criminal Procedure (Cr.P.C.) but learned trial Judge rejected the said prayer by the impugned order .

13. Mr. Chatterjee in support of his prayer for quashing the proceeding strenuously argued that the Final Report dated 04.07.2013 makes it clear that no case under section 306/34 has been made out against the petitioner and the investigating agency had verified the hand writing of the deceased appearing in the suicidal note along with admitted signature of the deceased. He further argued that three months delay in lodging FIR has not been explained. He further argued that the further investigation report is a mechanical work and product of complete non application of mind on the part of the investigating agency. In fact the said charge sheet was filed by the investigating agency as an empty formality for carrying out the learned magistrate's direction for further investigation and learned court below while adjudicating the application for discharge ought to have meticulously looked into the materials on record, before rejecting such application for discharge. In fact the second final report does not disclose any substantive additional material from what was available in the first final report dated 04.07.2013

except recording of statement of four witnesses under section 164 of the Cr.P.C. which manifestly demonstrate as an afterthought of the witnesses, upon which the investigating agency and the court has placed reliance.

14. In fact the Court below, failed to consider that no case under section 306/120B/34 of the Indian Penal Code has been made out against the present petitioner and as such there is nothing that points out the culpability of the petitioner. Therefore, continuance of the impugned proceeding qua the petitioner shall amount to an abuse of the process of the court and it is expedient in the interest of justice that the impugned proceeding including the order dated 21st January, 2016 be set aside.

15. Learned Counsel appearing on behalf of the State argued that the inmates of the house initially could not ascertain the cause of the suicide and for which the delay in lodging FIR was occasioned. But a few days after the incident they discovered a packet containing some dust of herbs, barks and leaves of plant at room of the deceased, which raised suspicion in the mind of the family members of the deceased. Thereafter it was learnt from the friends of the deceased that the petitioner Jayanta Biswas introduced the deceased with co-accused Riya Dutta and at his behest they became close and intimate and taking the advantage of their relationship the petitioner and the father of Riya Dutta disposed of huge gas cylinders illegally. Having learnt about such illegal disposal of gas cylinders, the deceased raised protest and resisted them. On the date of the incident at night, in presence of the friends of the deceased, phone calls received by deceased from accused Riya Dutta and there was a hot altercation over phone between the accused persons and the deceased, when the accused

persons instigated and abetted the victim to commit suicide. The said accused persons used to obtain huge money from the deceased under threat and on the date of the incident, the accused Jayanta Biswas/petitioner herein also fed the deceased, cooked meat which he brought from his house.

16. Mr. Nandy on behalf of the state further argued that during investigation it came in to light that the deceased had developed a love affair with the FIR named accused Riya Dutta and they used to keep in touch with each other over phone which has been reflected in the CDR (Call Details Record) of the mobile phones of the accused and the deceased. On the night of the occurrence, prior to the commission of suicide by the deceased, there was conversation between deceased and Riya and prior to the incident the deceased wrote a suicidal note mentioning that no one is responsible for his death.

17. Mr. Nandy further argued that during further investigation, the witnesses who made statement before the magistrate disclosed that on the day before the commission of suicide by the deceased accused Jayanta picked up a quarrel with the deceased and instigated him for committing suicide. It has been further disclosed by the said witnesses during further investigation that the petitioner threatened deceased to malign the clean image of his parents by circulating illicit affair of the deceased with co-accused Riya Dutta, if their cooking gas business be not transferred to petitioner's name by his parents and the statement makers were the eye witnesses of the said incident of threatening. Accordingly Mr. Nandy submits, if the prayer is allowed it would be too early to come to a

conclusion without trial that the petitioner had no role in the alleged offence and as such he prayed for dismissal of the present application.

18. I have considered submissions made by both the parties.

19. On careful perusal of the FIR, in respect of which first final report was submitted stating the case as 'mistake of facts', it appears that the allegations levelled therein is that the petitioner/accused Jayanta Biswas taking the advantage of the blind faith on him by Smt. Minakshi Biswas and Ujjal Biswas cheated them and mis appropriated a huge amount of sale proceeds of the cooking gas cylinder in open market in clandestine manner and when their son Sayan Biswas @ Babai (deceased) raised protest for such illegal activities, petitioner made him target and tried to create pressure upon him by using accused Riya Dutta who was introduced with the deceased by the petitioner herein. It was further alleged in the said FIR that on the night of occurrence i.e. prior to the commission of suicide by the deceased there was hot altercation between the deceased, and the accused Riya Dutta, Dilip Dutta and Jayanta Biswas over phone and at that time the said accused persons instigated the deceased to commit suicide and they also threatened that unless he commits suicide, they would close their cooking gas business and for which the victim committed suicide by setting fire in his body.

20. It further appears from the impugned order by which the trial court rejected the petitioners prayer for discharge is mainly on the ground that the other witnesses with this case have implicated the petitioner regarding his involvement in the commission of the suicide by the deceased. The relevant portion of the order impugned may be reproduced below:-

“it is true that the suicidal note of the deceased does not mention any allegations against this accused person, but except the dying declaration, there are prima facie allegations against him by other witnesses of this case regarding his involvement in the commission of suicide by the deceased.

So it is not legally wise to think that as there is no dying declaration against accused Jayanta Biswa, he has to be discharged without trial of this case though the prosecution witnesses have made sufficient allegations against him behind his involvement in the said offence.

So considering the entire prosecution allegations against this accused person, according to the case diary and other materials on record, I hold that trial is necessary to consider as to whether the said allegations are true or false and there is no technical legal defect in the prosecution allegations and the case is maintainable legally against this accused persons and there is no cogent materials on record except the ground of enmity as alleged by this accused, to hold that there is no prima facie allegations against this accused person to proceed with the trial and I also hold that without trial this accused person cannot be discharged from this case.

Accordingly the prayer of accused Jayanta Biswas praying for discharging him from this case is rejected.

21. It further appears from the statement of four witnesses recorded by Magistrate under section 164 of Cr.P.C. and which statements comprised of almost same version of four witnesses, recorded on the same date, it demonstrates that on 28.09.2022 when they were passing through the house of Minister Ujjal Biswas, they heard hue and cry and entering in the house they have heard that the petitioner Jayanta Biswas was threatening the deceased by saying that he had introduced accused Riya with him and they were allowed to make free mixing and if he (deceased) does not arrange for making transfer of the LPG Cylinder business in their favour, then they will kill him and will malign his (deceased) parents.

22. Therefore, the aforesaid statements recorded under section 164 Cr.P.C., on the same day i.e. on 16.07.2014 and which was recorded after almost two years of the incident of suicide, do not materially add any new substance for the court below to take cognizance upon the offence under section 306/34 IPC against the present petitioner. The court below failed to consider that a series of cases have been initiated by the same defacto

complainant against the petitioner and in the instant case, on the basis of self same allegation a final report has already been filed disclosing that the petitioner herein neither had any involvement of introducing the deceased with co accused Riya Dutta nor did the petitioner had any role to play in connection with the offence of abetment to commit suicide.

23. In **Sajjan Kumar's Case** reported in **(2010) 9 SCC 368** the Apex Court have clearly culled out principles as regards scope of section 227 and 228 of the code and it was observed in para 21 is as follows:-

Exercise of jurisdiction under Sections 227 and 228 CrPC

21. *On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

24. Let me now apply the principles enunciated above to the present case in order to find out whether or not the court below was legally justified in rejecting the petitioners prayer for discharge. In the instant case the post mortem report indicates that the deceased committed suicide. The investigation also reveals that the suicide notes which discloses that no one is responsible for causing victim's death, was written by deceased in his own handwriting. Now even if the prosecution case is taken to be true as revealed during further investigation on the basis of self same statement of four witnesses recorded under section 164 Cr.P.C., by which it is alleged that on 28.09.2012 i.e. one day before the date of occurrence when the said witnesses were passing through the house of the father of the deceased they had heard that the petitioner is threatening the deceased that he introduced accused Riya with the deceased and unless he makes arrangement to transfer the LPG cylinder business in their favour then the petitioner would disclose about the free mixing of the deceased with accused Riya and for which his parents would not be able to show face in public and he will also have no other alternative but to commit suicide, does not amount to abatement.

25. There is nothing to say that the cruelty or harassment or threat or pressure allegedly meted out to the deceased, one day before committing suicide had laid him with no other alternative but to put an end to his life. In fact there is no material to show direct or indirect acts of incitement to the commission of suicide. Mere evasive allegation made by four alleged witnesses in similar version either before police or before Magistrate that on previous date of the incident, they have heard that the petitioner had

threatened the deceased about licking some unknown story, which if licked will create an embarrassed situation for the deceased and his parents, has no proximate relationship, which can lead or compel the victim to commit suicide and based on which conviction under section 306 of IPC is not possible. Even if the prosecution case as revealed during further investigation is taken to be true, it cannot be said that the petitioner by his conduct had created a situation for the deceased, with no other option but to commit suicide.

26. It is well settled that when section 306 IPC is read with section 107 of IPC, in order to commit offence of abetment of suicide there must be :-

- (i) direct or indirect instigation
- (ii) In close proximity to the commission of suicide
- (iii) Clear mens rea to abet the commission of suicide

27. In the instant case the prosecution during further investigation has miserably failed to collect any evidence to substantiate the allegation of abetment of suicide against the petitioner or that the petitioner has played any active role or any positive or direct act to instigate or aid the deceased, in committing suicide

28. In ***Ramesh Kumar Vs. State of Chattisgarh*** reported in **AIR 2001 SC 3837**, the court held that to satisfy the requirement of instigation though it is not necessary that actual words must be used to that effect or what constitutes instigation must necessarily and specifically be suggestive of the consequence but still a reasonable certainty to incite the consequence must be capable of being spelt out. In the instant case, even from the materials available during further investigation there is nothing to show that

the petitioner by his act or omission or by a continued course of conduct created such circumstances that the deceased was left with no other option except to commit suicide, in which case an instigation may be inferred, specially in the context of the suicide note written by the victim in his own handwriting that no one is responsible for his death. Even if it is taken to be true that call details record in between the deceased and the accused persons was detected during investigation but in the absence of transcription of such call details, whatever suspicion might have been raised by the prosecution in support of instigation, that cannot be called as grave suspicion in the absence of clear transcription of the said conversation. In **Sajjan Kumar's Case** (supra) it was held that the materials placed before the court must disclose grave suspicion against the accused and if it is not properly explained the court would be justified in framing charge and to proceed with the trial.

29. In the instant case even if all the materials collected during further investigation including the charge sheet and the statement of the witnesses recorded under section 164 Cr.P.C. are taken to be correct there is not an iota of evidence against the petitioner and even if the alleged acts of hot altercation and threat to the deceased by the petitioner are taken to be true, they are too remote and indirect to constitute the offence under section 306 IPC and the allegation against the petitioner is also not of such a nature that the deceased was left with no alternative but to commit the unfortunate act of committing suicide. Even if it is accepted that the petitioner threatened the deceased for transferring the alleged LPG business in his favour failing which, he would aware all concerned about his free mixing with Co-accused

Riya, it does not rise to the level of direct or indirect instigation of abetting suicide nor the alleged threat that in case of non-compliance of the their order, they are going to create such circumstances which will compel the deceased to commit suicide, does not gain in the status of abetment. Their needs to be a positive act that creates an environment where the deceased is pushed to an edge in order to sustain the charge of section 306 IPC.

30. In ***Hazi Iqbal Bala @ Vs. State of U.P. and others*** reported in **2023 SCC Online SC 946** the court clearly held in para 15

“15..... In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.”

31. Further in ***Sajjan Kumar’s case*** (supra) the Supreme Court clearly held that the court cannot act merely as a post office or a mouth piece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the document produced before the court, any basic informatics though at this stage he is not supposed to make a roving enquiry as if he is conducting a trial.

32. Therefore, on examining the matter in detail, including the absence of explanation of delayed FIR, the materials collected during the investigation which led the CID to file final report stating mistake of fact, the undisputed suicide note written by the deceased, the materials collected during further investigation, the background of business animosity between the parties,

lodging multiple FIR attracting the issue of wreaking vengeance out of private and personal grudge and other facts and circumstances, compel me to come to a conclusion that permitting further continuance of the instant proceeding by the court below would amount to forcing a person to stand trial, even when the overwhelming materials point to his innocence.

33. In ***Vishnu Kumar Sukla Vs. State of U.P.*** reported in **(2023) 15 SCC 502** the court held that protection against vexus and unwanted prosecution and from being unnecessarily dragged through trial by melting a criminal proceeding into oblivient either through quashing an FIR/complaint or by allowing an appeal against an order rejecting discharge or by any other legally permissible route as the circumstances may be, in the deserving cases, is the duty cast upon the High Court. In ***Bhajanlal's case*** reported in **1992 (sup) 1 SCC 335**, it was observed by the Apex Court that judicial process is a solemn proceeding, which cannot be allowed to be converted into an instrument of oppression or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with *malafide* and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of his jurisdiction.

34. In view of above I have no other option but to conclude that the impugned order dated 21.01.2016 is perverse in view of the fact that the order is not based on the materials placed on record and while court below rejected the prayer of the petitioner he has acted mechanically and has acted like a post office and as such the order is not sustainable in the eye of law. Therefore, the order dated 21.01.2016 is hereby quashed. The petitioner Jayanta Biswas is hereby discharged from the criminal proceeding

being Kotwali P.S. Case no. 1282 of 2012 dated 24.12.2012 under section 306/120B/34 IPC being SC no. 32(8) 2015, presently pending before ADJ, 3rd Court Krishnanagore Nadia

35. CRR 418 of 2016 is therefore allowed.

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.)