

## **Vishal Kumar Mallick @ Vishal Mallick & Anr Vs State Of West Bengal & Ors**

**Court:** Calcutta High Court (Appellate Side)

**Date of Decision:** Jan. 20, 2025

**Acts Referred:** Constitution of India, 1950 " Article 226

Code of Criminal Procedure, 1973 " Section 161, 482

Indian Penal Code, 1860 " Section 21, 114, 323, 324, 332, 341, 353, 427

Prevention of Damage to Public Property Act, 1984 " Section 3

**Hon'ble Judges:** Suvra Ghosh, J

**Bench:** Single Bench

**Advocate:** Rhiddiman Mukherjee, Rowsan Jha, Anasuya Sinha, Diksha Ghosh

**Final Decision:** Allowed

### **Judgement**

Suvra Ghosh, J

1. The petitioners have sought quashing of proceedings of G.R. Case no. 427 of 2024 pending before the Learned Additional Chief Judicial Magistrate,

Sealdah, South (24) Parganas.

2. Learned counsel for the petitioners has submitted that the FIR was lodged by the private opposite party in his personal capacity though he has used

his official seal in the complaint which is not permissible. Though charge sheet has been submitted against the petitioners under sections

341/332/353/323/324/427/114 of the Indian Penal Code read with section 3 of The PDPP Act, the seizure list witnesses have not been made

witnesses in the charge sheet. The witnesses examined under section 161 of the Code of Criminal Procedure in course of investigation are employees

of the private opposite party and have supported his cause for obvious reasons. The injury reports do not make out an offence under section 323/324

of the Indian Penal Code. No specific overt act has been attributed to each of the petitioners. False and frivolous allegations have been thrust upon the

petitioners only to wreck vengeance against them as a counterblast to the complaint lodged by the petitioners against the private opposite party and

others. Petitioners no. 1 to 4 were granted bail by the learned Trial Court with an observation that the complainant/private opposite party cannot be

termed as a public servant in terms of section 21 of the Indian Penal Code. Over and above all, the charge sheet does not reflect the crime committed

by each accused and what is the material evidence available in the file.

3. Learned counsel has placed reliance in the authorities in Sharif Ahmed and Another v/s. State of Uttar Pradesh and Another reported in 2024

Supreme Court Cases OnLine SC 726 and Mahmood Ali and Others v/s. State of Uttar Pradesh and Others reported in 2023 INSC 684 in support of

his contention.

4. The private opposite party has not been represented despite service of notice.

5. Referring to the case diary, learned counsel for the State has submitted that vengeance is a double-edged sword which cuts both ways and chances

of the alleged attack upon the private opposite party due to such vengeance cannot be ruled out. Statement of witnesses examined under section 161

of the Code of Criminal Procedure makes out some case against the petitioners and the entire charge sheet cannot be brushed aside merely on the

ground that the complaint may have been lodged to wreck vengeance against the petitioners.

6. The Hon'ble Supreme Court, in the authority in Renu Kumari v/s. Sanjay Kumar and Others reported in (2008) 12 Supreme Court Cases 346

has observed that the powers of the High Court under section 482 of the Code are very wide and the very plenitude of the power requires great

caution in its exercise. The court must be careful to see that its decision, in exercise of this power, is based on sound principles. The inherent power

should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima

facie decision in a case where the entire facts are incomplete and hazy. The allegations of malafides against the informant are of no consequence and

cannot by themselves be the basis for quashing the proceedings.

7. In a subsequent judgment in Mahmood Ali and Others (supra), the Hon'ble Court has observed that "whenever an accused comes before

the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article

226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or

vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with

care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking

personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would

ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence.

Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether

the necessary ingredients to constitute the alleged offence are disclosed or not. 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.

8. In the case in hand, it appears that there was strained relation between the petitioner and the private opposite party on account of several acts of

the opposite party which the petitioners and other local people did not approve of.

9. Several allegations have been made by the private opposite party against the petitioners in the FIR. In course of investigation, only employees of the

burial ground in respect of which the private opposite party is the Sub-Registrar have been examined under section 161 of the Code of Criminal

Procedure. The said witnesses being subordinate to the private opposite party, have spoken in support of his case for obvious reasons. Only one

brown coloured broken plastic chair, two damaged tele-communication devices and one broken padlock were recovered from the place of occurrence.

The two seizure witnesses who signed on the seizure list have not been made witnesses in the charge sheet. The injury reports have not found support

in the material on record. The doctors who appear to have examined the private opposite party have also not been made witnesses in the charge

sheet. Their statement under section 161 of the Code has not been recorded. Though the words "and others" appear after the names of five

charge sheeted witnesses, no other name has found place therein. It is also pertinent to mention that the private opposite party not being a public

servant, penal sections 332/353 cannot be invoked against the petitioners.

10. The charge sheet is a precis of the contents of the FIR and nothing further. In the words of the Hon'ble Supreme Court in Sharif Ahmed and

Another (supra), the investigating officer must make clear and complete entries of all 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. Statements under section 161

of the Code and related documents have to be enclosed with the list of witnesses. 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.

11. In the present case, the charge sheet is silent with regard to the specific overt act attributable to each of the petitioners/accused persons. Besides

the statement “considering the collected evidence, statement of witnesses, seizure list, M/C of the complainant and other victim a prima facie case

has been established against all the aforesaid accused persons, nothing further is demonstrated in the charge sheet as to how the investigating

officer arrived at such conclusion and also, the role of each of the petitioners, if any, in the offence alleged.

12. In the said backdrop, this Court is of the view that the charge sheet does not disclose commission of any of the offences alleged and allowing the

proceeding to continue shall amount to abuse of the process of the Court.

13. Accordingly, C.R.R. 2759 of 2024 is allowed.

14. The proceedings being G.R. Case no. 427/2024 pending before the Learned Additional Chief Judicial Magistrate, Sealdah, South (24) Parganas be

quashed.

15. The petitioners be set at liberty at once and discharged from their bail bonds.

16. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

17. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.