



IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 1757 OF 2018

MAHADEB DAS @ MANADEV DAS

VS

THE STATE OF WEST BENGAL & ANR.

For the Petitioner : **Mr. Sabir Ahmed, Adv.**
Mr. Dhiman Banerjee, Adv.
Mr. Dilawar Azad, Adv.

For the Opposite

Party No. 2 : **Ms. Rita Sinha, Adv.**
Ms. Tapati Samanta, Adv.
Mr. Arindam Ghosh, Adv.

Last heard on : **09.02.2026**

Judgement on : **09.02.2026**

Uploaded on : **09.02.2026**

CHAITALI CHATTERJEE DAS, J. :-

1. This application filed under Section 482 of the Code of Criminal Procedure, 1973 against the judgement and order dated June 13, 2018 passed by the learned Additional Sessions Judge, 3rd Court, East Medinipur affirming, the judgement and order passed by learned Judicial Magistrate 3rd Court Tamluk on March 29, 2017 where by convicting the petitioner under Section 323 of the



Indian penal code and sentencing him to suffer imprisonment for six months and to pay a fine of ₹1000 and in default to suffer further simple imprisonment for one month.

Fact of the case

2. On the basis of a complaint filed by the present Opposite Party no. 2 alleging assault over Opposite Party no. 2 by the petitioner on 22nd February, 2005, the Enquiry Officer after obtaining permission under Section 155 of the Code of Criminal Procedure from the learned Court started investigation and also examined the witnesses and collected the injury report and submitted N.C.R under Section 323 of the Indian Penal Code, 1860. After receiving summons, the petitioner appeared and pleaded, not guilty and claimed to be tried.
3. The prosecution in order to bring home, the charges adduced 6 witnesses and also exhibited no. of documents, including indoor treatment sheet, injury report, permission letter dated 8.6.2005. The petitioner did not produce any defence evidence and his specific defence was that of false implication. The learned trial court passed the order of conviction on the basis of evidence of the victim and hence filed this revisional application for setting aside such judgement and order of conviction.

Submission

4. The learned Advocate appearing on behalf of the petitioner states that the learned court failed to appreciate that the medical report is fabricated and has been engineered only with intent to support the prosecution case. The order specifically manifest that two medical reports were found and the injury register was called, but prosecution did not produce the injury report.



Intentionally denying the right of cross-examination on the point of two medical report. It is further submitted that the prosecution failed to establish that that the alleged incident happened on the relevant day and time at all since no independent witness present on that spot were examined when the place of occurrence is mentioned as in front of Registry Office and a large number of people assembled. The further point taken by the learned advocate that from the evidence it is apparent that a letter dated 23.2.05 of Nirbed Roy was received by the I.O which clearly manifest that it was engineered at the instigation of such influential person. That apart P.W. 1 mentioned about the time of incident at 1.00 to 1.30 p.m. but the NCR viz Ext 2 revealed the time at 12.30 p.m. and GD lodged at 1.30 p.m. The counsel for appellants further contended that the impugned judgments of the Courts suffer from legal as well as factual infirmities and the findings therein are perverse and are to be set-aside and the appellants are liable to be acquitted.

5. The learned Advocate representing Opposite Party No. 2 *per contra* vehemently raises objection and argued the act was done voluntarily since the petitioner/accused himself admitted that he went there to raise objection regarding stamp related issues at the Registry office in order to stop nefarious activities, and he was tried to be restrained by the accused hence the *mens rea* is well founded. Both the trial court as well as the Appellate Court passed the order against the petitioner holding him guilty for the commission of offence hence no such ground could be established to maintain this revisional application .There is no perversity in the judgement and order of conviction passed by the Learned Magistrate or by the learned appellate court while



affirming the judgement of the Trial Court. Hence this criminal revisional application is filed only in order to delay and drag the proceeding.

Analysis

6. Heard the submissions. It is the settled law that the power of the High Court under Section 482 Cr.P.C is wide enough but to be exercised sparingly and in exceptional cases where there is gross abuse of the process of law. This revisional application has been filed against a judgement of affirmation of the sentence imposed by the Learned Trial Court.
7. Both the Courts below have concurrently held that the minor discrepancies in the deposition of prosecution witnesses does not demolish/destroy the consistent depositions of PW-1, PW-2, P.W 3, and PW-5. The same is actually supplementary and not in derogation of the evidence of other prosecution witnesses. The alleged incident happened on 22.2,2005 at about 12.30 hrs when the complainant Utpal Das was assaulted by the petitioner Mahadev Das in front of the A.D.S.R Office, Tamluk .The case of the prosecution find corroboration in the evidence of P.W 2 who happens to be the friend of the petitioner as well as from the medical evidences. It was contended by learned counsel for the appellant that the prosecution failed to examine any independent witnesses in the present case and that the witness happens to be his friend.
8. This Court in a number of cases has had the opportunity to consider the said aspect of related/interested/partisan witnesses and the credibility of such witnesses. This Court is conscious of the well-settled principle that just because the witnesses are related/interested/partisan witnesses, their testimonies cannot be disregarded, however, it is also true that when the



witnesses are related/interested their testimonies have to be scrutinized with greater care and circumspection. The credibility of the evidence of P.W. 2 being a friend of the complainant cannot be discarded when otherwise his evidence could not be demolished.

9. From the testimony of the witnesses it transpires that the accused/petitioner was the law clerk of the A.D.S.R and the complainant went there as he came to know about false deed .He found the sub-register absent and while returning the alleged incident assault took place.

10. P.W.3,5 and 6 are the three doctors who examined the complainant after the incident. Out of them P.W. 3 Dr. Alok Shee on examination prescribed medicine and he proved the Indoor medical papers of the Tamluk Hospital where he was posted as M.O. The evidence of P.W. 5 Dr. Mom Bhattacharya is of no use since she did not examine the patient. P.W. 6 Dr. Amit Chakraborty further corroborated that he examined the complainant on 22.2.2005 who came with a complaint of neck pain and abrasion .The injury report was proved before the Court which manifest presence of the complaint before the doctor on the relevant day and time and on examination it was found ,abrasion over left elbow ,tiny abrasion over face ,right side ,abrasion over right ring finger ,reeling in head and neck stiffened cannot move.

11. Before the doctor, the patient stated about the physical assault by his brother (cousin) Mahadev Das, as a revenge of complaining against his unlawful activity (stamp tampering). The patient was examined by the doctor on 22.2.2005 at 3:15 P.M. P.W. 4 S.I Gouranga Sarkar further collaborated that on 22.2.2005, he received one complaint from the complainant and on the basis of the same he lodged a G.D.E being 1195 dated 22.5.05 . He also



obtained the necessary permission for the investigation and such letter of permission dated 8.6.2005 was also proved. The minor differences in recording or typing out the time of incident in the evidence and the written complaint do not nullify the case of the complainant when otherwise proved by way of medical evidence.

12. Therefore, Prima facie the ocular evidence is proved by the medical evidence and no materials are found which could have provoked or instigated the present petitioner for committing an offence, so the act was purely voluntary.

13. In terms of Section 39 of Indian Penal Code, *a person is said to cause an effect 'voluntarily' when he causes it by means whereby he intended to cause it, or by means, which, at the time of employing those means, he knew, or had reason to believe to be likely to cause it*. The present petitioner during his examination under Section 313 only denied the allegation against him and not adduced any evidence in support of his contention.

14. Therefore, nothing could be found for which it can be said that the judgement of the learned Appellate Court affirming the judgement of the learned Court of Magistrate are perverse or any gross carriage of justice has been done for which any interference is necessary. It is pertinent to mention here that the learned magistrate passed the order of conviction and the sentence was of one year simple imprisonment, which was subsequently reduced by the learned Appellate court to 6 months. Therefore the order of conviction is sustained.

Conclusion

15. It is now noteworthy to say the incident happened way back in the year 2005, and this revisional application was pending since 2018. In the



meantime, 20 years passed since the date of incident. Considering the period of sentence imposed, which is of six months and without having any further criminal antecedent this court is of the view that the benefit of Section 360 Cr.P.C should be provided to the accused/petitioner.

- 16.** In the light of above observation the order of conviction is maintained but the sentence is modified .Instead of sending the accused to jail /correctional home the accused is given the benefit of Section 360 Cr.P.C and is directed to pay an amount to the tune of Rs. 10.000/-two sureties each of Rs. 5000/- along with his personal Bond before the District Probationer officer concerned and also an undertaking to that effect that he shall maintain peace and good behaviour during the period of 6months from today .Such bonds to be filed within one months . He is further directed to pay an amount of Rs. 30,000/- as compensation to the petitioner to be paid within 1month and to submit the report to the learned Trial Court in default he will have to suffer sentence for a period of 1 month.
- 17.** Hence this Criminal Revisional application stands dismissed with the above observation.
- 18.** Department is directed to forward a copy of the judgement along with the T.C.R to the concerned court for necessary compliance.
- 19.** Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]