

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

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3935 of 2011

Biswambhar Bose

-Vs-

The State of West Bengal and Anr.

For the Petitioner	: Mr. Arnab Chatterjee Ms. Ankusha Ghosh
For the State	: Ms. Faria Hossain Mr. Anand Keshari
Judgment on	: 09.06.2026

Ananya Bandyopadhyay, J.:-

1. The revisional application has been instituted by the petitioner seeking quashing of the entire criminal proceeding arising out of G.R. Case No.2601 of 2010 pending before the Learned Judicial Magistrate, 1st Court, Barrackpore, emanating from Dum Dum Police Station Case No.286 dated 30.07.2010 registered under Sections 143, 186 and 506 of the Indian Penal Code. Challenge has also been directed against every consequential order passed therein, including the order dated 09.09.2010 whereby cognizance was taken of the aforesaid offences.
2. The foundation of the prosecution, as delineated in the written complaint lodged by the opposite party no.2 before the Officer-in-Charge, Dum Dum

Police Station on 30.07.2010, was that on 29.07.2010 at about 5:00 p.m. the complainant, accompanied by members of an inspecting team functioning under the Directorate of Rationing, Food and Supplies Department, Government of West Bengal, visited Fair Price Shop No.315 for examination of account books and verification of stock position relating to food grains and other commodities. According to the complaint, during continuation of the inspection at about 6:45 p.m., the petitioner along with approximately thirty-five others allegedly entered the premises, interfered with the inspection process, behaved discourteously with the inspecting officials and, by reason of such conduct, induced the proprietor of the shop, namely Sankar Lal Sadhukhan, to cease cooperation with the inspecting team, compelling the officials to leave the premises with considerable difficulty.

3. Acting upon the said complaint, Dum Dum Police Station Case No.286 dated 30.07.2010 was registered under Sections 143, 186 and 506 of the Indian Penal Code against the petitioner, Sankar Lal Sadhukhan and thirty-five other persons. The petitioner has pointed out that on 07.08.2010 the named accused persons, including the petitioner, surrendered before the Learned Additional Chief Judicial Magistrate, Barrackpore and were enlarged on bail on the very same day.
4. The petitioner has further stated that upon completion of investigation, the investigating agency submitted Charge Sheet No.188 dated 15.08.2010 under Sections 143, 186 and 506 of the Indian Penal Code, though ultimately only two persons, including the petitioner, were sent up for trial.

On the basis of the said police report, the Learned Additional Chief Judicial Magistrate, Barrackpore, by order dated 09.09.2010, took cognizance of the offences under Sections 143, 186 and 506 of the Indian Penal Code against the petitioner and another accused. Subsequently, on 13.04.2011, copies were supplied to the accused persons and the matter stood transferred to the Court of the Learned Judicial Magistrate, 1st Court, Barrackpore for disposal.

5. Assailing the continuation of the prosecution, the petitioner has contended that even if the allegations contained in the charge sheet are accepted in their entirety, the same fail to disclose the essential ingredients of the offences alleged. It has been argued that the materials collected during investigation do not furnish any legally admissible foundation capable of establishing participation of the petitioner in the commission of the alleged offences and, therefore, the order taking cognizance suffers from a serious legal infirmity.
6. A substantial plank of the challenge rests upon the allegation under Section 143 of the Indian Penal Code. The petitioner has submitted that the offence of unlawful assembly necessarily postulates the presence of five or more persons constituting the assembly. Yet, after investigation, the charge sheet was filed only against two accused persons, including the petitioner. According to the petitioner, once the investigating agency itself confined the prosecution to two individuals, invocation of Section 143 of the Indian Penal Code lost its statutory foundation and continuation of such accusation became legally untenable.

7. The petitioner has also urged that the conclusion recorded in the charge sheet regarding alleged obstruction to the public officials was founded upon assumptions and speculative inferences rather than upon concrete evidentiary material. Mere suspicion, conjecture or inferential reasoning, it has been argued, cannot furnish the basis for a criminal prosecution nor can such material justify exercise of jurisdiction under Section 190(1)(b) of the Code of Criminal Procedure.
8. A further and more fundamental challenge has been directed against the allegation under Section 186 of the Indian Penal Code. The petitioner has submitted that cognizance of an offence punishable under Section 186 of the Indian Penal Code is circumscribed by the statutory mandate embodied in Section 195(1)(a) of the Code of Criminal Procedure. The provision requires a complaint in writing by the concerned public servant or by another public servant to whom such officer is administratively subordinate. According to the petitioner, compliance with this statutory precondition constitutes the very basis upon which jurisdiction to take cognizance may be exercised.
9. The petitioner has maintained that the prosecution sought to circumvent the legislative command contained in Section 195(1)(a) Code of Criminal Procedure by resorting to a police report and charge sheet. Such a course, according to the petitioner, strikes at the root of jurisdiction and cannot be salvaged by recourse to Section 465 of the Code of Criminal Procedure. It has, therefore, been contended that the Learned Magistrate travelled beyond the limits of jurisdiction while taking cognizance of the offence punishable

under Section 186 Indian Penal Code despite the express statutory bar governing such cognizance.

10. The petitioner has additionally argued that an offence under Section 186 Indian Penal Code contemplates a deliberate and overt act of resistance or obstruction to a public servant in discharge of public functions. The materials collected during investigation, according to the petitioner, do not reveal any specific act attributable to him that could satisfy the statutory ingredients of voluntary obstruction. Absence of such material, it is submitted, renders the accusation legally deficient.
11. Finally, the petitioner has asserted that the record is devoid of any material establishing a nexus between him and the alleged acts constituting the offences. The charge sheet, according to the petitioner, proceeds upon broad allegations bereft of evidentiary support and fails to disclose circumstances from which criminal liability could legitimately be inferred. On these premises, the petitioner seeks quashing of the criminal proceeding, the charge sheet, the order taking cognizance and all consequential steps taken pursuant thereto, contending that continuation of the prosecution would amount to a misuse of the criminal process and a departure from settled principles governing criminal jurisprudence.
12. The Learned Advocate appearing for the petitioner argued, at the threshold, that the allegation under Section 143 of the Indian Penal Code stood deprived of its statutory basis. The prosecution case itself proceeded on the assertion that the petitioner had acted in concert with a large assemblage of

persons. Yet, after completion of investigation, the investigating agency chose to submit charge-sheet only against two individuals, namely the petitioner and one other accused. Since the offence of unlawful assembly derives its existence from the participation of not less than five persons as contemplated under Section 141 of the Indian Penal Code, the filing of charge-sheet against only two persons, without identification of any additional participants constituting the alleged assembly, dismantled the very premise upon which the accusation under Section 143 rested. According to the petitioner, continuance of the prosecution on such a charge represented a legal incongruity warranting intervention of the Court.

13. The Learned Advocate for the petitioner further contended that the allegation of obstruction to the officials of the Food and Supplies Department had been founded upon assumptions rather than demonstrable facts. The charge-sheet, according to the petitioner, merely recorded inferential conclusions regarding interference with official duties without disclosing any concrete material capable of establishing the commission of an offence. It was submitted that conjectural reasoning cannot furnish the juridical basis for a criminal prosecution and that the Learned Magistrate committed a legal error in taking cognizance on the strength of a police report lacking factual particulars capable of constituting the alleged offences.

14. The challenge to the charge under Section 186 of the Indian Penal Code was articulated with particular emphasis. Learned counsel submitted that prosecution for obstruction of a public servant in discharge of public

functions could commence only in the manner prescribed under Section 195(1)(a) of the Code of Criminal Procedure. The statutory mandate requires a written complaint by the concerned public servant or by another public servant to whom he is administratively subordinate. Such requirement, it was argued, constitutes a jurisdictional precondition and not a procedural formality capable of subsequent rectification.

15. Proceeding on that premise, it was urged that recourse to a police report could not substitute the complaint contemplated by Section 195(1)(a) Code of Criminal Procedure. Absence of such complaint, according to the petitioner, struck at the very authority of the Court to assume cognizance of the offence under Section 186 Indian Penal Code. The defect, it was submitted, penetrated the root of jurisdiction and could not be neutralised by reference to Section 465 of the Code of Criminal Procedure. Consequently, the order taking cognizance under Section 186 Indian Penal Code was portrayed as one rendered in disregard of an express legislative prohibition.
16. It was also maintained that an accusation under Section 186 Indian Penal Code demands proof of a deliberate and discernible act of resistance or obstruction. Mere presence at the scene or generalized allegations of interference would not satisfy the statutory ingredients. The materials collected during investigation, according to the petitioner, did not reveal any overt act attributable to him which could constitute voluntary obstruction of a public servant in discharge of official duty.

17. Attention was invited to the chronology of events. The alleged occurrence, according to the prosecution itself, took place on 29.07.2010 between approximately 5:00 p.m. and 6:45 p.m. The formal First Information Report recorded that the distance between the place of occurrence and the police station was merely 1.5 kilometres. Despite such proximity, the FIR came to be registered only on 30.07.2010 at about 7:30 p.m., more than twenty-four hours after the alleged incident. The prosecution offered no explanation whatsoever for this delay. Learned counsel submitted that such unexplained lapse assumed significance while assessing the authenticity and spontaneity of the allegations.
18. Reiterating the challenge to the charge under Section 143 Indian Penal Code, the petitioner submitted that the prosecution had failed to establish the existence of an unlawful assembly comprising five or more persons. The charge-sheet identified only two accused persons and remained silent regarding the identity of any additional members of the alleged assembly. In the absence of foundational facts satisfying the statutory threshold prescribed under Section 141 Indian Penal Code, the charge under Section 143, according to the petitioner, stood divested of legal support.
19. With regard to Section 186 Indian Penal Code, the petitioner submitted that the offence was not capable of being pursued through ordinary police machinery in disregard of the specific embargo contained in Section 195(1)(a)(i) Code of Criminal Procedure. Since no written complaint by the concerned public servant or superior authority had been placed on record,

initiation of criminal proceedings solely on the basis of a police report was asserted to be legally defective and incapable of sustaining the prosecution.

20. The accusation under Section 506 Indian Penal Code was also subjected to detailed criticism. Learned counsel submitted that neither the written complaint nor the charge-sheet disclosed the essential constituents of criminal intimidation. No specific threat was attributed to the petitioner. No statement revealed the precise words allegedly spoken. No material indicated that any expression was uttered with the intention of causing alarm to the complainant. Equally absent was any allegation suggesting that the complainant was placed under fear or compelled to alter his conduct by reason of the alleged threat. It was argued that casual expressions, heated exchanges, or discourteous language, divorced from the intention and consequence contemplated under Section 503 Indian Penal Code, cannot mature into an offence punishable under Section 506 Indian Penal Code.

21. The petitioner further placed reliance upon personal and equitable considerations. It was submitted that he was approximately sixty-nine years of age and was suffering from cancer. The criminal proceeding, originating in the year 2010, had remained pending for nearly fifteen years. The Learned Counsel informed the Court that at an earlier stage of hearing the prosecution itself disclosed that the original case records could not be traced. Such circumstances, viewed cumulatively, were cited as factors accentuating the oppressive nature of the continuation of the prosecution.

22. In support of the plea founded upon prolonged pendency, reliance was placed upon the decision of the Hon'ble Supreme Court in *Common Cause, A Registered Society v. Union of India & Others*, reported in (1996) 4 SCC 33, particularly paragraph 4 thereof, wherein emphasis was laid upon the constitutional imperative of expeditious criminal justice and the adverse consequences flowing from inordinate delay.
23. On the strength of the aforesaid factual and legal considerations, the Learned advocate for the petitioner prayed for quashing of the entire criminal prosecution being G.R. Case No.2601 of 2010 pending before the Learned Judicial Magistrate, 1st Court, Barrackpore, North 24-Parganas, arising out of Dum Dum Police Station Case No.286 of 2010 dated 30.07.2010, together with all consequential proceedings emanating therefrom.
24. The Learned Advocate representing the State submitted at the nascent stage the revisional application must not be allowed.
25. The revisional application invites examination of the legality of the criminal proceeding arising out of Dum Dum Police Station Case No.286 dated 30.07.2010, culminating in G.R. Case No.2601 of 2010 pending before the Learned Judicial Magistrate, 1st Court, Barrackpore. The petitioner seeks annulment of the prosecution instituted under Sections 143, 186 and 506 of the Indian Penal Code, together with the order dated 09.09.2010 by which cognizance was taken upon submission of Charge Sheet No.188 dated 15.08.2010.

26. The prosecution traces its genesis to a written complaint lodged by an officer attached to the Directorate of Rationing, Food and Supplies Department alleging that during an inspection of Fair Price Shop No.315 on 29.07.2010, the petitioner and several others entered the premises, interfered with the inspection process, behaved discourteously with the inspecting team and thereby impeded discharge of official duties. Investigation thereafter culminated in submission of charge-sheet against only two persons, namely the petitioner and another accused.
27. At the forefront stands the accusation under Section 143 of the Indian Penal Code. The statutory mandate governing unlawful assembly predicates an assembly must consist of five or more persons sharing one of the common objects enumerated in Section 141 Indian Penal Code. Membership of such assembly constitutes the offence punishable under Section 143 Indian Penal Code.
28. The complaint originally referred to the presence of numerous persons. Yet the investigating agency, after scrutiny of the materials, elected to prosecute only two individuals. The charge-sheet neither identifies nor attributes any role to the remaining alleged participants. No material has been placed before the Court demonstrating the existence of five or more persons whose participation could satisfy the statutory threshold.
29. A criminal charge cannot subsist upon a numerical deficiency which strikes at the very foundation of the offence. Once the prosecution itself confines the accusation to two persons, the essential element required for constituting an

unlawful assembly disappears from the record. The accusation under Section 143 Indian Penal Code consequently loses its juridical basis.

30. The allegation under Section 186 Indian Penal Code presents a more formidable obstacle to the prosecution.
31. Section 195(1)(a)(i) of the Code of Criminal Procedure embodies a legislative safeguard of considerable significance. Cognizance of an offence punishable under Section 186 Indian Penal Code may be taken only upon a complaint in writing by the concerned public servant or by another public servant to whom he is administratively subordinate. The provision does not merely regulate procedure; it prescribes the very source from which jurisdiction to take cognizance must emanate.
32. The prosecution in the present matter proceeded through registration of an FIR, police investigation and submission of a police report under Section 173 Code of Criminal Procedure. The record does not reveal any complaint presented before the Magistrate in the manner contemplated by Section 195(1)(a)(i) Code of Criminal Procedure.
33. Principally where a statute prescribes a particular mode for assumption of jurisdiction, recourse to an alternative route remains impermissible. The legislative command contained in Section 195 Code of Criminal Procedure cannot be diluted by a police report, regardless of the evidentiary material gathered during investigation.
34. The order taking cognizance under Section 186 Indian Penal Code, therefore, stands deprived of statutory support. Continuation of the prosecution for the

said offence would amount to perpetuation of a proceeding initiated in derogation of an express legislative mandate.

35. Even on the factual plane, the materials collected during investigation fail to disclose any distinct overt act attributable to the petitioner constituting voluntary obstruction of a public servant in discharge of public functions. The allegations remain generalized and bereft of particulars demonstrating resistance, restraint or obstruction within the meaning of Section 186 Indian Penal Code. The accusation under Section 506 Indian Penal Code fares no better.
36. Criminal intimidation postulates a threat intended to cause alarm to the person threatened or to induce conduct which the law does not require. Mere use of harsh language, expressions uttered during a heated exchange or allegations lacking particulars do not satisfy the ingredients of the offence.
37. Neither the written complaint nor the charge-sheet specifies the precise words allegedly spoken by the petitioner. No material indicates the nature of the threat. No circumstance reveals that the complainant was placed under apprehension or altered his conduct on account of any intimidation. The prosecution narrative remains conspicuously silent regarding the fundamental ingredients of the offence.
38. A criminal court cannot be invited to conduct a trial in search of ingredients which are absent from the foundational materials themselves. The accusation under Section 506 Indian Penal Code, therefore, rests upon a factual foundation far too fragile to sustain criminal prosecution.

39. The alleged occurrence took place on 29.07.2010. The First Information Report came to be registered more than twenty-four hours thereafter, despite the admitted proximity of the place of occurrence to the police station. The record discloses no explanation accounting for such delay. Though delay by itself may not prove fatal in every prosecution, absence of any explanation assumes significance where the allegations are themselves lacking in specificity.
40. The Court cannot remain oblivious to the passage of time. Nearly fifteen years have elapsed since institution of the prosecution. The petitioner is an elderly individual stated to be suffering from serious illness. The prosecution itself has indicated that the original case records were found missing at one stage. Such circumstances further diminish the possibility of a meaningful adjudicatory exercise.
41. The power of quashing is exercised sparingly. Yet where the allegations, even if accepted at their highest, fail to disclose the essential ingredients of the offences alleged, where cognizance is taken in disregard of a statutory embargo, and where the foundational materials do not reveal a prima facie case warranting continuation of criminal proceedings, intervention becomes a judicial necessity rather than a matter of discretion.
42. The cumulative effect of the deficiencies noted above leaves the prosecution devoid of legal sustainability. The accusation under Section 143 Indian Penal Code collapses for want of the statutory requirement relating to the composition of an unlawful assembly. The proceeding under Section 186

Indian Penal Code suffers from a jurisdictional defect arising from non-compliance with Section 195(1)(a)(i) Code of Criminal Procedure. The allegation under Section 506 Indian Penal Code lacks the factual constituents necessary to constitute criminal intimidation. Continuation of the prosecution in such circumstances would advance neither the administration of justice nor the legitimate purposes of criminal law.

43. Accordingly, the revisional application succeeds.

44. The criminal proceeding being G.R. Case No.2601 of 2010 pending before the Learned Judicial Magistrate, 1st Court, Barrackpore, arising out of Dum Dum Police Station Case No.286 dated 30.07.2010 under Sections 143, 186 and 506 of the Indian Penal Code, together with the charge-sheet, the order dated 09.09.2010 taking cognizance and all consequential proceedings emanating therefrom, stands quashed.

45. In view of the above discussions, the instant revisional application being CRR 3935 of 2011 is allowed.

46. Accordingly, CRR 3935 of 2011 stands disposed of.

47. There is no order as to costs.

48. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.

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

(Ananya Bandyopadhyay, J.)