IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

CRR 2817 of 2025
CRAN 1 of 2025
Koustav Bagchi
Vs.
The State of West Bengal & Anr.

Before: The Hon'ble Justice Apurba Sinha Ray

For the Petitioner	:	Mr. Rajdeep Mazumder, Sr. Adv., Mr. Moyukh Mukherjee, Adv. Mr. Samrat Mondal, Adv.
For the State	:	Mr. Debasish Roy, Ld. P.P. Mr. Rudradipta Nandy, Ld. APP
CAV On	:	25.09.2025
Judgment On	:	31.10.2025

Apurba Sinha Ray, J. :-

1. The scope of this revisional application involves a short and fine question of law relating to section 199(2) of Cr.P.C. corresponding to Section 222(2) Bharatiya Nagarik Suraksha Sanhita 2023 (BNSS 2023 in short).

2. The brief fact, relevant for the purpose of this application, is that an Author wrote a book which was first published in the year 2015 stating, inter alia, that the current Hon'ble Chief Minister of the State of West Bengal

married one person clandestinely along with some other alleged details of personal private life of Hon'ble Chief Minister prior to her assuming the post of Chief Minister. In the said book this alleged marriage and alleged relationship were depicted as undisclosed facts of personal life of Hon'ble Chief Minister and seemingly the author wanted to make it public that the claim of the Hon'ble Chief Minister that she is an unmarried lady is untrue and further her alleged relationship does not match with her claim of honesty and personal integrity and, according to the author, the people should know those undisclosed facts of personal life of Hon'ble Chief Minister. However, the author disclosed that on 30/04/2012 he wrote a letter to Hon'ble Chief Minister (giving her designation as Chairperson of All India Trinamool Congress Party). The contents of the said letter are, in essence, asking some information directly from the Chairperson of the Trinamool Congress Party, being the Chief Minister of State of West Bengal. The questions, relevant for the purpose of this revisional application, are two in numbers:

First, *"Did Shri Ghosh attend your oath-taking ceremony at Rajbhaban on 20/05/ 2011. If yes, in what capacity?"*

Secondly, *"Was he present beforehand in the Chief Minister's official chamber in Writers' Buildings when you reached their (there) [emphasis added] in people's procession from Rajbhaban? Who and how this was organised?"*

3. Be it mentioned here that the said book was not banned nor its publication was restricted by any government order.

4. The present applicant, being an Advocate and politician, uploaded some pages of the said book containing the letter dated 30/04/2012 in social media platforms and also allegedly made comments touching the personal life of Hon'ble Chief Minister in several television networks. The Public Prosecutor, City Sessions Court, Calcutta filed the relevant complaint case for commission of offences punishable under section 356(2) of Bharatiya Nyaya Sanhita 2023 (BNS 2023 in short) availing the privilege of the Minister as per section 222(2) BNSS 2023 after obtaining statutory sanction in this regard.

5. The learned Chief Judge, as aforesaid, after giving opportunity of hearing to the applicant as per proviso to section 223 BNSS, 2023 took cognizance of the offence punishable under section 356(2) of BNS 2023 and ordered for issuance of summons.

6. Senior Advocate Mr. Mazumder has repeatedly argued, even in his written argument, essentially on three aspects of the matter. **First,** the book was published long ago by the author himself and the said book was not banned nor its publication was restricted by any government order. **Secondly,** the applicant herein merely posted the copy of the page of the book containing the letter dated 30/04/2012 in the social media and therefore he is not liable for the offence punishable under section 356(2) of

BNSS 2023, particularly when the author was not charged for defamation and when the said book is available in open market. **Third and most importantly,** assuming and not admitting Mr. Mazumder argued that even if there were defamatory statements against the Hon'ble Chief Minister, she being the victim could have initiated the action for defamation, but initiation of the relevant proceedings at the instance of the Public Prosecutor is beyond the scope of Section 222(2) BNSS 2023 particularly when the defamatory statements are not in connection with the conduct of the Hon'ble Chief Minister in discharge of her public functions.

7. Let us examine the provisions of Section 222 BNSS 2023 for convenience:

> **"Section 222 Prosecution for defamation**. *(1) No Court shall take cognizance of an offence punishable under Section 356 of the Bharatiya Nyaya Sanhita, 2023 except upon a complaint made by some person aggrieved by the offence:*
>
> *Provided that where such person is a child, or is of unsound mind or is having intellectual disability or is from sickness or infirmity unable to make a complaint, or is a women who, according to the local customs and manners, ought not to be compelled to appear in public,*

some other person may, with the leave of the Court, make a complaint on his or her behalf.

(2) Notwithstanding anything contained in this Sanhita, when any offence falling under Chapter 356 of the Bharatiya Nyaya Sanhita, 2023 is alleged to have been committed against a person who, at the time of such commission, is the President of India, the Vice-President of India, the Governor of a State, the Administrator of a Union territory or a Minister of the Union or of a State or of a Union territory, or any other public servant employed in connection with the affairs of the Union or of a State in respect of his conduct in the discharge of his public functions, a Court of Session may take cognizance of such offence, without the case being committed to it, upon a complaint in writing made by the Public Prosecutor.

(3) Every complaint referred to in sub-section (2) shall set forth the facts which constitute the offence alleged, the nature of such offence and such other particulars as are reasonably sufficient to give notice to the accused of the offence alleged to have been committed by him.

(4) No complaint under sub-section (2) shall be made by the Public Prosecutor except with the previous sanction—

(a) of the State Government,—

(i) in the case of a person who is or has been the Governor of that State or a Minister of that Government;

(ii) in the case of any other public servant employed in connection with the affairs of the State;

(b) of the Central Government, in any other case.

(5) No Court of Session shall take cognizance of an offence under sub-section (2) unless the complaint is made within six months from the date on which the offence is alleged to have been committed.

(6) Nothing in this section shall affect the right of the person against whom the offence is alleged to have been committed, to make a complaint in respect of that offence before a Magistrate having jurisdiction or the power of such

Magistrate to take cognizance of the offence upon such complaint."

8. Mr. Mazumder has relied upon several judicial decisions in support of his contention.

State of Haryana and others vs. Bhajan Lal and others [1992 Supp. (1) Supreme Court Cases 335] and K.K. Mishra vs. State of Madhya Pradesh and another [(2018) 6 Supreme Court Cases 676].

9. Mr. Roy, learned Public Prosecutor, on the other hand, submits that at the time of taking cognizance the learned trial court should not hold a mini trial. The court should act on the basis of prima facie materials available on record. In this case after taking into consideration the materials on record and also after giving an opportunity of hearing to the present applicant as per section 223 BNSS 2023, the summons were directed to be issued upon him. Though the applicant claims to be a dignified and young advocate of this court, his *mens rea* to malign the Hon'ble Chief Minister of the State is clear and palpable. The conduct of the applicant prima facie shows that he has the habit of maligning one of the heads of the State. According to him, there is no provision in the Code of Criminal procedure for discharge of an accused involved with a summons case. In this regard, Mr. Roy has relied upon the judicial decision reported in ***(2004) 7 SCC 338 [Adalat Prasad Vs. Rooplal Jindal and others].*** He has also drawn the attention of this court to the judicial decision reported in ***2025 SCC Online SC 1221 [Kushal Kumar Agarwal vs. Directorate of Enforcement]*** in support of

his contention that hearing given to the accused in terms of the proviso to sub-section (1) of section 223 of the BNSS will be confined to the question whether a case is made out on the basis of the complaint and hence, only the complaint and the documents produced along with the complaint can be considered at the time of hearing.

10. However, the learned Chief Judge, City Sessions Court, Calcutta by his order dated 18/06/2025 directed issuance of summons upon him without entertaining the applicant's written prayer for dismissal of the complaint on the grounds, inter alia, that apparently there are materials against the applicant for issuance of summons and the issue that the defamatory statements do not relate to the official duties of the Hon'ble Chief Minister cannot be adjudicated at the nascent stage of the proceedings particularly when such statements have direct references to the office of the Hon'ble Chief Minister at Writers' Buildings.

Court's View:

11. After taking into consideration the rival contentions of the parties and the judicial decisions submitted on their behalf, I find that after the decision of Adalat Prasad (supra), it has become settled that although the proposed accused cannot file application for dismissal of the complaint ignoring the scheme of the Code of Criminal Procedure/ BNSS, he can file an application for quashing under section 482 of Cr.P.C corresponding to section 528 BNSS in appropriate cases. Accordingly, on that score the present petition is maintainable.

12. However, there is no quarrel on the issue that the Public Prosecutor can file an application under Section 222(2) of BNSS for defamatory statement made by a person against a public functionary, mentioned in the said sub-section, only when such statement relates to the conduct of the public functionary in the discharge of his public function, subject to receipt of sanction from the appropriate government. So far as this case is concerned, the allegations of undisclosed marriage of Hon'ble Chief Minister along with deeply personal matters are, no doubt, matters of Hon'ble Chief Minister's personal life and she is the best person as an individual to take appropriate action according to her individual wish, and the Public Prosecutor's role is insignificant to such personal individual matters of Hon'ble Chief Minister. But, after depicting the concerned person as the husband of her undisclosed alleged marriage along with some deeply personal matters, the author sought for information from her as to whether such person was present in the Chief Minister's Office or whether such person was present at the time of her oath taking ceremony as Chief Minister in Bidhan Sabha (State Assembly).

13. The term 'conduct' has been defined in various ways. It means 'personal behaviour, whether by action or inaction, verbal or non-verbal; the manner in which a person behaves' [Black's Law Dictionary, 11 Edition by Bryan A. Garner, Thomson Reuters, 2019], 'to behave in a particular way, especially in a public or formal situation, or to organize the way in which you live in a particular way' [Cambridge Dictionary]. The Oxford Compact Dictionary & Thesaurus defines the term 'conduct' as actions, attitude, behaviour,

demeanour etc. To show that there was a deep and intimate alleged relationship between the concerned person and her, with some 'innuendos', the author referred to the behaviour and demeanour of the Hon'ble Chief Minister during oath taking ceremony where the concerned person was allowed to be present presumably on her nod and not only that , the author was very much sure about the presence of the said person in her office chamber in Writers' Buildings on 20/05/2011 which, according to the author's estimation, could not have been possible unless permitted by the Hon'ble Chief Minister. Neither the term 'public function' nor its nature nor its degree has been defined anywhere in the Code. Therefore, broadly speaking, each and every second of Hon'ble Chief Minister's presence in her chamber is for the discharge of her official duties, and to prove that while she was in her office she was acting beyond her official duties, is upon the person who claims so. Therefore, any meeting with any person in her office chamber is deemed to have been arranged for official purpose unless the contrary is proved. Who will prove that it was for unofficial purpose or beyond the scope of the official or public functions as envisaged in Section 222(2) of BNSS, 2023? In my considered view, it is the author of the book or the person who reproduced the contents of the relevant book to prove such an allegation. Therefore, to ascertain the scope of the official duty or public function in relation to the factual matrix of the instant case, the appropriate evidence is to be looked into.

14. Another important point has been taken by Mr. Mazumder is that the applicant did not author the book but he merely reproduced the pages of the

said book which allegedly contained some defamatory remarks against the Hon'ble Chief Minister. Moreover, the said book was not banned by any Government order, and therefore, such publication by the applicant cannot be said to be illegal. The question is whether reproduction of a defamatory statement attracts similar punishment or not. There are several old as well as recent judicial pronouncements on this point.

15. In **Kaikhusuru Naroji Kabraji Vs. Jehangir Byramji Murzban (1890) ILR 14 BOM 532**, the defendant was the editor of a newspaper and had reprinted in his paper an article libelling the plaintiff which was copied from another newspaper. The defendant endeavoured to guard himself against the consequences of this publication by commenting on the article and observing that it was evidently untrue. It, however, appeared that the defendant for years past had been writing of the plaintiff in opprobrious terms and calling him by offensive names. It was therefore held that, upon reading the article as a whole and in its natural sense, and taking it in connection with the previous articles appearing in the defendant's newspaper with reference to the plaintiff, it was itself defamatory of the plaintiff, and that the defendant was liable. [See also : Alexander's Indian Case Law on Torts, 5th Edn 1910 by John William Orr; Calcutta Thaker Spink & Co.)

16. In the case of **Arvind Kejriwal Vs. State & Anr. reported in 2024 SCC OnLine Del 719** the Hon'ble Court observed that the retweeting or reposting defamatory content, without any disclaimer as to whether the person so retweeting agrees or disagrees or has verified the content so posted or not,

and as to whether he projected to the world at large, who care to follow him, that he believes the content to be true so shared, a person would be republishing the original defamatory content which has the potential of lowering the moral or intellectual character or credit of a person. Thus, the background of the petitioner, being a Chief Minister, necessitates an acknowledgment of the inherent sense of responsibility that comes with such a significant political role. When a public figure, particularly one with a political standing, tweets or retweets a defamatory post, the stakes and repercussions escalate given the broader implications on society. The audience, therefore, becomes the citizenry at large, whose opinions and decisions may be influenced by the information they consume, including defamatory statements published on social media.

17. In Ruchi Kalra & Ors. Vs. Slowform Media & Ors. reported in 2025 SCC Del 1894 the factual matrix is that the co-founder of unicorn startup OFB Tech Pvt. Ltd., filed a defamation suit against the online magazine *The Morning Context*, owned by Slowform Media Pvt. Ltd, seeking removal of an article published on May 17 2023, titled "The work culture OfBusiness doesn't like to talk about". The article was hyperlinked in a follow-up piece published on October 7 2024, titled "OfBusiness co-founders and management allegedly assaulted an employee, says FIR."

The Hon'ble Court held that whether or not hyperlinking to defamatory content constitutes republication depends on the context. If the hyperlink serves to expand the reach of the defamatory content - if it repeats, endorses, or emphasises its defamatory aspects - then it can indeed be

considered a form of republication. However, there existed a need for a case-by-case assessment, that carefully balanced the competing interests of freedom of speech and the laws of defamation.

Highlighting how *The Morning Context* had embedded the hyperlinks, their strategic positioning within the article, and the linguistic cues employed to direct the reader's attention towards them, the court said these pointed to a "concerted effort to sustain and propagate an alleged defamatory narrative against the plaintiff."

18. In **Stern Vs. Piper reported in [1996] 3 All ER 385** of England and Well Scot of Appeal Civil Division, decided on 21st May, 1996 the Hon'ble Court has dealt with the law relating to repetition rule in defamation law which prohibits a defendant from defending a libel claim by merely repeating defamatory statements made by others even if the original author is left. The court held that the repetition of all allegations made in a court affidavit cannot constitute a valid defence to the libel claim considering the factual matrix of the case.

19. In **Amber Quiry Vs. Yohan Tangra [2023: BHC-OS:4321; DECIDED ON 05.06.2023] REPORTED IN 2023 SCC OnLine Bom 1093** the Hon'ble Bombay High Court has also held that every repetition and each publisher is answerable for his act to the same extent as if the original publication is made by him. Mere fact that the defamatory statement might have been made in a pleading or affidavit filed in the courts of the judicial proceedings

but such repetition of defamatory statements cannot be defended on the said ground.

20. From the above it is transpired that republication of defamatory imputations makes the person liable in the same manner like the original author. Every re-publication of such material gives rise to a new cause of action and therefore, even no action is taken when the same was originally published, the same cannot be a ground for the subsequent publisher, who does it on his own peril, to avoid the rigours of law, and, therefore, he is under a legal duty to justify his action.

21. There is another material legal issue/point which should not be lost sight of us. The applicant repeatedly harps on the point that as the original book is not banned till date by any government order or circular, and as the said book is readily available in the market, his republication of such statements cannot be actionable at the instance of the Public Prosecutor. There is a legal embargo for the applicant in this regard. The relevant book was produced by Mr. Mazumder during hearing of this revisional application, and on consent of the learned Public Prosecutor the same was taken on record and was kept under a sealed cover. In the very second page of the book, it is specifically written that *no part of the said book can be printed, published, sold or distributed without permission from the author .* When the issue of reproduction from an original book is involved, the direction/ wish/ intention of the author for use of his works should be respected and should be taken into consideration by the Court. When the author, in his wisdom, has expressly made an embargo for republication of

his works without his permission, nobody can reproduce the same without permission from the author or the person who holds the copyright over the book. Apparently, no material is placed before the court showing such permission was obtained by the applicant before publication of the letter dated 30/04/2012.

22. Therefore it is very difficult to dismiss the relevant complaint at the threshold of the trial court without considering the evidence of the parties.

23. The factual matrix of the judicial decision of **K.K. Mishra (supra)** reveals that the close relatives of the then Hon'ble Chief Minister of State of Madhya Pradesh allegedly made phone calls to several accused of education scam, or the accused made statements that 19 candidates who got the job of Transport Inspectors belonged to the place of wife of the then Hon'ble Chief Minister of State of Madhya Pradesh etc., Hon'ble Apex Court held that such statements do not have direct nexus with the Hon'ble Chief Minister's public function. But in the case in hand shows that the lewd allegation was made directly involving the Hon'ble Chief Minister while she was in her official chamber for discharging public functions without ascertaining the purpose of the alleged visit of the concerned person in her chamber at writers' Buildings. Therefore, production of evidence is essential in this case.

24. Be it mentioned, in the decision of **K.K. Mishra (supra),** the Hon'ble Apex Court had the opportunity to go through the evidence of the concerned Public Prosecutor who lodged the complaint under section 199(2) of Cr.P.C. The Hon'ble Court has dwelt upon the duties and position of the Public

Prosecutor lodging the complaint as aforesaid, very vividly. The relevant paragraphs may be reproduced below:-

> *"14. There is yet another dimension to the case. In Subramanian Swamy v. Union of India reported in (2016) 7 SCC 221 one of the grounds on which the challenge to the constitutional validity of Sections 499 and 500 IPC was sustained by this Court was the understanding that Sections 199(2) and 199(4) Cr.P.C. provide an inbuilt safeguard which require the Public Prosecutor to scan and be satisfied with the materials on the basis of which a complaint for defamation is to be filed by him acting as the Public Prosecutor. In this regard, and earlier decision of this court in Bairam Muralidhar v. State of A.P. reported in (2014) 10 SCC 380 while dealing with Section 321 Cr.P.C. (i.e. withdrawal from prosecution) was considered by this Court and it was held as follows: (Subramanian Swamy v. Union of India reported in (2016) 7 SCC 221, SCC 349, Para 203)*
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> *"203.....It is ordinarily expected that the Public Prosecutor has a duty to scan the materials on the basis of which a complaint for*

defamation is to be filed. He has a duty towards the court. This court in Bairam Muralidhar V. State of A.P. while deliberating on Section 321 Cr.P.C. has opined that the Public Prosecutor cannot act like a post office on behalf of the State Government. He is required to act in good faith, peruse the materials on record and form an independent opinion. It further observed that he cannot remain oblivious to his lawful obligations under the Code and is required to constantly remember his duty to the court as well as his duty to the collective. While filing cases under Sections 499 and 500 IPC, he is expected to maintain that independence and not act as a machine." (emphasis supplied)

15. In the proceedings before the learned trial court, the Public Prosecutor who had presented the complaint under Section 199(2) Cr.P.C. was cross-examined on behalf of the appellant-accused. From the relevant extract of the cross-examination of the Public Prosecutor, which is quoted below, it is clear to us that the Public Prosecutor had admitted the absence of any scrutiny by him of the materials on which the

prosecution is sought to be launched. In fact, the Public Prosecutor had gone to the extent of admitting that he had filed the complaint against the appellant-accused on the orders of the State Government. The relevant extract of the cross-examination of the Public Prosecutor is as under:-

…7-3-2015

"47. It is correct to say that I have not given any proposal in capacity of Public Prosecutor to the Government that I want to file a complaint against Shri K.K. Mishra in connection with giving defamatory statement. It is correct to say that I have filed the present case in the official capacity of Public Prosecutor. It is correct to say that I have not filed the present complaint on behalf of the Government (volunteered to say) that I have filed the above case being a Public Prosecutor. It is correct to say that on the order of the Government, I have filed the complaint. If the Government had not directed me, then, I would not have filed a complaint as a Public Prosecutor.

*48-49 * * **

50. Before receiving the permission, I have not seen any document and did not consider whether complaint has to be filed or not. It is correct to say that I have not submitted any document in connection with this fact that Jagdish Devda was a Minister in the Government of Madhya Pradesh and Shri Shivraj Singh Chouhan was positioned as the Hon'ble Chief Minister of Government of Madhya Pradesh on the date of Press Conference (voluntarily state that the accused himself, while addressing Shri Shivraj Singh Chouhan as chief Minister, has made all the allegations.

51. It is correct to say that before filing the complaint, I have not given any legal notice to the accused in connection with this fact that whether objections were raised against the Hon'ble Chief Minister in Press Conference or not."

(emphasis supplied)

16. *The testimony of the Public Prosecutor in his cross-examination effectively demonstrates that*

the wholesome requirement spelt out by Sections 199(2) and 199(4) CrPC, as expounded by this Court in Subramanian Swamy v. Union of India (2016) 7 SCC 221, has not been complied with in the present case. A Public Prosecutor filing a complaint under Section 199(2) CrPC without due satisfaction that the materials/allegations in complaint discloses an offence against an authority or against a public functionary which adversely affects the interests of the State would be abhorrent to the principles on the basis of which the special provision under Sections 199(2) and 199(4) CrPC has been structured as held by this Court in P.C. Joshi v. State of U.P. AIR 1961 SC 387 and Subramanian Swamy v. Union of India (2016) 7 SCC 221.

17. The Public Prosecutor in terms of the statutory scheme under the Criminal Procedure Code plays an important role. He is supposed to be an independent person and apply his mind to the materials placed before him. As held in Bairam Muralidhar v. State of A.P. (2014) 10 SCC 380: (SCC p. 392, para 18)

> *"18.... He cannot remain oblivious to his lawful obligations under the Code. He is required to constantly remember his duty to the court as well as his duty to the collective."*
>
> *18. In the present case, the press meet was convened by the appellant on 21-6-2014. The Government accorded sanction to the Public Prosecutor to file complaint under Section 500 IPC against the appellant on 24-6-2014. As seen from the records, the complaint was filed by the Public Prosecutor against the appellant on the very same day i.e. 24-6-2014. The haste with which the complaint was filed prima facie indicates that the Public Prosecutor may not have applied his mind to the materials placed before him as held in Bairam Muralidhar case. We, therefore, without hesitation, take the view that the complaint is not maintainable on the very face of it and would deserve our interference."*

25. From the above it is clear that the role of the learned Public Prosecutor is significant and the court should know whether he has applied his mind or not in terms of the law settled by the Hon'ble Apex Court in various judicial decisions as discussed in K.K. Mishra (supra) in this regard.

26. In **Bhajan Lal's case (Supra)** it has been held that the FIR can be quashed under section 482 Cr.P.C if there is an express legal bar engrafted in the provisions of Code or in the concerned Act for initiation of an FIR/complaint provided there are efficacious remedies for redressal of such complaint or FIR.

27. In the case in hand, the initiation of complaint as aforesaid by the learned Public Prosecutor is not barred. Such lodging of complaint under section 222(2) Cr.P.C at the instance of the learned Public prosecutor is allowed subject to fulfilment of certain conditions. Without scrutiny of the relevant evidence, it cannot be said at this initial stage that the cognizance taken by the learned Chief Judge, City Sessions Court, Kolkata is bad in law. It is alleged that there are at least two prior cases initiated by two different private persons on the self-same ground. Needless to mention, the question whether such private persons in their personal capacity can file defamation suit or criminal proceedings on the allegation that Hon'ble Chief Minister has been defamed, can be appropriately decided in the appropriate legal forum, but so far as the present case is concerned it is apposite to mention that the concerned Public Prosecutor has a statutory right to file appropriate proceedings if the Minister of a State etc. is defamed in relation to his conduct in discharge of his public function.

28. In view of the above discussion, I do not find any infirmity or irregularity in the impugned order passed by the learned Chief Judge, City Sessions Court, Calcutta which calls for any interference from this Court. The order dated 18/06/2025 of the learned Chief Judge, City Sessions Court, Calcutta

is hereby affirmed. However, I make it clear that any observation made in this case is only for the purpose of disposal of this revisional application and is, thus, tentative.

29. The CRR 2817 of 2025 is dismissed on contest. No order as to costs. CRAN 1 of 2025 is also disposed of. Interim order, if any, stands vacated. The relevant Book that was submitted by the learned counsel for the revisionist be returned.

30. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

(APURBA SINHA RAY, J.)