

**In the Court of Metropolitan Magistrate 4th Court, Calcutta**  
**PRESENT: SK JAFAR ALI, (WBJS), J.O. Code No. WB/01347**

**GR. No. 2107/2014**  
**GRS 2107/2014**

**Order Dated 04.09.2023**

Today is fixed for passing order in respect of petition u/s 239 of Cr.P.C dated 10.04.2023 as filed by the accused.

The accused is present.

Accordingly, the record is taken up for passing order.

Perused the instant petition. Considered.

On perusal, it is found from the same that in the statement dated 07.09.2014 and 10.09.2014 there is no name of the accused and the medical report filed by the prosecution shows no name of the accused and so there is no ingredients to frame charge u/s 354D/326 of IPC against the accused. He prayed for an order of discharge from this case.

At the time of hearing the Ld. Advocate of the accused contended that in para No. 15 of charge sheet it is mentioned that the defacto complainant was brought to SSKM Hospital and then to SANA Nursing Home on 07.09.2014. He further contended that the statement of defacto complaint namely Ayesha Arshad dated 07.09.2014 shows that the alleged incident was taken place due to her own negligence as she was wearing a big helmet and so, she could not make the control and the accident was done and she sustained injuries. He further contended that the report of SSKM shows that there is no name of the accused. He further contended that the defacto complainant on 10.05.2014 stated something else and on the same date the FIR was lodged upon false allegations against the accused. He further contended that how it is possible that two statements made by the alleged victim differently on 07.09.2014 and 10.09.2014. He further contended that in the charge sheet none of the doctors of SANA Nurshing Home has been enlisted as witness therein it means that the investigation was done only up to SSKM Hospital. He further contended that how it is possible that the alleged victim was referred to SSKM Hospital by the Police without any FIR or G.D.E. He further contended that there are no ingredients of section 326 IPC as the alleged victim on 07.09.2014 admitted that she faced an accident due to her own negligence. He further contended that there are also no ingredients of section 354D of IPC. He further contended that there is statement u/s 164 of Cr.P.C of the alleged victim but the name of the Ld. Magistrate is not mentioned in charge sheet as witness. He further contended that there must be two FIRs and if so, it is not sustainable. He referred the case of **T.T. Anthony -Vs- State of Kerala**. He further contended that the accused has been falsely entangled in the instant case and he prayed for discharge of the accused.

On the contrary, the Ld. APP submitted that it is understood as well as in various judgments the Hon'ble Supreme Court had held that in case of offence against

a woman it is common that the FIR is being lodged with delay due to the trauma the woman suffered. She further contended that in the instant case the entire facts of lodging delay complaint are mentioned in the statement dated 10.09.2014 which was treated as an FIR. She further contended that the victim sustained fracture injuries and she had mentioned everything in her statement dated 10.09.2014 to the effect that while she was driving her vehicle she was kicked with the left leg of the accused and the victim sustained injuries on her left foot and got stitches therein and there is bruise injury over her left knee and right elbow. She further contended that she had also made statement u/s 164 of Cr.P.C before the Ld. Magistrate and the same shows that there are ingredients to frame charge against the accused. She prayed for rejection of instant petition.

This court has perused & considered the case law as referred by the Ld. Advocate of the accused in the case of **T.T. Anthony v. State of Kerala** as reported in **MANU/SC/0365/2001: (2001) 6 SCC 181**, wherein the facts relating to lodging of two FIRs but this court is of the view that the same is not applicable in the instant case as there is nothing in the instant record to that effect and this court is of the further view that only submissions of the Ld. Advocate of the accused is not enough to substantiate his allegations without any document/proof to the effect that there are two FIRs regarding the same incident.

On perusal of the materials as available in the record, this court finds that the statement of the defacto complainant u/s 164 Cr.P.C as well as her statement dated 10.09.2014 which was treated as FIR, this court is of the view that there are incriminating materials against the accused and therefore, there is no chance of discharge of the accused as it is a subject matter of trial which cannot be decided at this stage. It is understood that there is possibility of lodging delay FIR in case there is allegation of sexual abuse/stocking etc. However, the fate of two different statements made on 07.09.2014 and 10.09.2014 are the subject matter of trial and cannot be decided at this stage when the later statement is disclosing everything including the reason as to why she made her statement on 07.09.2014 in that manner.

Having considered the provision of section 239 of Cr.P.C, this court is of the view that at this stage this court is to see the police record and the documents sent u/s 173 of Cr.P.C. This court is also of the view that an accused may be discharged from a criminal case under Section 239 of CrPC only **when the charge is groundless** and the scope under Section 239 is much narrower than the scope under Section 227 of CrPC which the Ld. Sessions Courts are having.

Therefore, having considered the facts of this case, materials in the record including the Charge sheet as well as the statements of the alleged victim namely, Ayesha Arshad, this court is of the considered view that the charge sheet as submitted against the accused person is not groundless rather there is prima facie case to be

proceeded against the accused as well and the allegations are subject matter of trial which cannot be decided at this stage.

Accordingly, the instant petition of the accused person is **rejected** for the reasons as mentioned above.

In terms of the decision of **Hon'ble Calcutta High Court** decided on 31.03.2023 in connection with **CRR No. 19 of 2012** in the case of **Gopa Sastri -Vs- The State of West Bengal and another**, the record is taken up for framing up for charge.

A prima facie case u/s. 354D/326 of IPC has been well made out against the accused person.

This court framed charge against the accused person u/s. 354D/326 of IPC and the formal charge was reduced into writing in a separate manuscript charge form and kept with the record. The charge was read over and explained to the accused person in vernacular to which he pleaded not guilty by saying "Ami Nirdosh" and claimed to be tried.

As per the submission of the Ld. APP, let the summons be issued upon CSW1.

Call for the Alamat, if any.

Issue summons accordingly.

BC - II to comply.

To **18.10.2023** for evidence of CSW 1

D/C by me.

Sd/-  
M.M. 4<sup>th</sup> Court, Kolkata.

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