

**IN THE COURT OF CHIEF JUDICIAL MAGISTRATE,
ALIPORE, SOUTH 24 PARGANAS**

Present : Smt. Moumita Ray (JO CODE WB00990),
Chief Judicial Magistrate,
Alipore, South 24 Parganas

CGR Case No. - 537 of 2025
CIS No. - GR - 141 of 2026
CNR No. - WBSP05-000212-2026
TR No. - 30 of 2026

STATE

.....Prosecution

V/s.

(1) Naimed Hussain.

(2) Md. Imran @ Md. Imran Azam Alvi

.....Accused persons

Under Section 126(2)/118(1)/352/54 of Bharatiya Nyaya
Sanhita

Date of delivery of Judgment : 12.03.2026

J U D G E M E N T

The instant case is u/s. 126(2)/118(1)/352/54 of Bharatiya Nyaya Sanhita. This case was initiated on the basis of the written complaint lodged by de-facto complainant Jawed Anwar.

The brief fact of the case as alleged by the complainant in his written complaint is that on 16.02.2025 at about 18:59 hrs., at KFC, Mominpore, Kolkata – 44, Diamond Harbour Road – 700027, the accused persons abused one of the staff members of the said KFC Counter and on being protested, the accused persons wrongfully restrained the complainant and assaulted him by means of fists and blows and some hard object on his head and back, due to which the complainant sustained injuries on her person. Hence, this case.

On the basis of complaint so lodged Ekbalpore PS Case No. 69 dt. 17.02.2025 u/s. 126(2)/118(1)/352/54 of Bharatiya Nyaya Sanhita was started and after proper investigation, charge-sheet was

submitted against the accused persons u/s. 126(2)/118(1)/352/54 of Bharatiya Nyaya Sanhita.

On perusal of the entire materials the court framed charge against the accused persons u/s. 126(2)/118(1)/352/54 of Bharatiya Nyaya Sanhita. Substance of accusation was read over and explained to the accused persons to which they pleaded 'Not Guilty' and claimed to be tried. Hence this trial.

Trial was held, de-facto complainant was examined by the prosecution in support of its case, thereafter accused were examined u/s. 351 of Bharatiya Nagarik Suraksha Sanhita and they pleaded their innocence all through. They also declined to adduce any evidence. The defence case as I find from the trend of cross-examination is that they have denied the material allegations of the de-facto complainant.

Argument was done at length.

In order to bring home the guilt of the accused u/s. 126(2)/118(1)/352/54 of Bharatiya Nyaya Sanhita, the Prosecution banked on the evidence of the following list of witnesses & got the following document exhibited.

Witnesses adduced by the prosecution

<u>Sl no.</u>	<u>Name of witness</u>
1	Jawed Anwar

Documents relied upon by the prosecution

<u>Ex no.</u>	<u>Document</u>
1	Signature of PW-1 on written complaint

The defence neither did adduce any evidence nor did exhibit any document on its behalf.

Points for Consideration

Are the accused guilty of the offence punishable u/s. 126(2)/118(1)/352/54 of Bharatiya Nyaya Sanhita?

Decisions With Reasons

Now, I am to analyze, assess and to take into account of the total evidence and materials on record to decide the case properly.

Ld. PP during the course of argument submitted that the case of the prosecution has been proved in toto. According to the Ld. PP, the accused were directly involved in the commission of the alleged crime and as such they should be given appropriate punishment.

On the contrary, Ld. Counsel appearing for the accused has advanced argument in support of acquittal of the accused from the alleged charge. It is submitted that the case against accused is totally false and fabricated and the accused have been implicated falsely. According to the Ld. Counsel the accused are entitled to be acquitted from the alleged charge.

On perusal of the record it transpires that the de-facto complainant has been examined as prosecution witness. It appears from the deposition of the de-facto complainant/ PW 1 that though he has identified the accused on dock, yet he has failed to recollect anything about the alleged incident. He also failed to recollect the contents of his written complaint on the basis of which this instant case has been started. His evidence as regards the charge is very omnibus in nature. Thus, the prosecution, had, failed to state anything which can be said to bear parity with the written complaint. There are lots of variance and discrepancies. No any further evidence came on record. The IO and the doctor did not turn up. No independent witness turned up. No medical document got exhibited. As such, the prosecution has failed to bring the primary material on record to bring home the charge against the accused under the sections under which it has been framed. No substantive evidence has come on record from the mouth of prosecution witness where from it can be construed that the charge so framed against the accused has been fully satisfied by the prosecuting agency. The prosecution evidence was closed as the Ld PP had submitted on leg that the prosecution would not be able to adduce further evidence and the prosecution evidence might be closed. The evidence of the prosecution was closed taking into account the submission of the Ld PP as also the fact that several opportunities had been given to the prosecution to bring witnesses to which it miserably failed. No specific evidence is there to satisfy the ingredients of section 126(2)/118(1)/352/54 of Bharatiya Nyaya Sanhita and/or there is no

clear-cut specific evidence u/s. 126(2)/118(1)/352/54 of Bharatiya Nyaya Sanhita. To satisfy the ingredients of the section the primary thing that has to be satisfied has not been done by the prosecution. Only suspicion cannot take place of proof. Except there being existence of suspicion, there is no rational, acceptable, cogent and reliable evidence on record where from it can be construed that there was any offence done by the accused. If that be so then the prosecution itself has given a death blow to its own case. There is no cogent evidence on record that the accused committed the alleged offence. That specific evidence is very much lacking in the prosecution case. Again it is required to be mentioned here that mere suspicion cannot take place of proof and to prove a case it is the duty of the prosecution to prove its case beyond all the shadows of doubt. Practically the witness who turned up said nothing to support the prosecution case so far as the charge so framed in this case.

It is the prosecution who by not adducing any further evidence despite being given the scope to do so by the court, has negated its entire case. Practically except there remaining suspicion about the commission of offence by the accused there remains nothing on record which can incriminate and/or book the accused under the section under which charge has been framed here in this case. Nothing on record is there which can bring home the charge against the accused.

In absence of all these, I find no merit in the case of the prosecution which can book the accused.

Despite being given several opportunities the prosecution failed to substantiate its case by giving proper cogent and reliable evidence. Failure on the part of the prosecution in this regard negates the case of the prosecution. Practically the prosecution case has got no basis to stand up.

I therefore, hold that the essential ingredients to connect the accused with the offence punishable u/s. 126(2)/118(1)/352/54 of Bharatiya Nyaya Sanhita are very much absent in the present case. The prosecution has failed to adduce anything which incriminates the accused in this case. Resultantly the accused are entitled to be

acquitted of the charge so framed against them u/s. 126(2)/118(1)/352/54 of Bharatiya Nyaya Sanhita.

All the points are thus answered in the negative.

In the result prosecution case fails and the accused merit acquittal.

Hence, it is,

O R D E R E D

that the accused persons namely, (1) Naimed Hussain and (2) Md. Imran @ Md. Imran Azam Alvi are found not guilty of the charge so framed against them u/s. 126(2)/118(1)/352/54 of Bharatiya Nyaya Sanhita and be acquitted u/s. 271(1) of Bharatiya Nagarik Suraksha Sanhita.

The accused are on Court bail. Bail bond shall remain in force for the next six months as per the mandate of Section 437A of Cr.P.C.

The judgment is delivered in open Court. Let necessary noting be made in the germane register.

Let the soft copy of the judgment be uploaded in the CIS within 48 hours from this day as per Rule 186 A of Cr.R.O. of the Hon'ble High Court, Calcutta.

D/c by me;

Chief Judicial Magistrate,
Alipore, South 24 Parganas

Moumita Ray
Chief Judicial Magistrate,
Alipore, South 24 Parganas
JO CODE WB00990

Addendum

The victim/Complainant has a right to prefer an appeal under the proviso to section 372 of the Code of Criminal Procedure and if necessary victim is entitled to avail free legal assistance through Legal Services Authorities concerned to prefer & prosecute such appeal.

Let a pdf copy of this judgment be forwarded to the District Magistrate, Alipore, South 24 Parganas & Secretary, DLSA, Alipore, South 24 Parganas for due intimation to the victim as defined under section 2 (wa) of the Code of Criminal Procedure.

BC-I and BC-II to comply.

Moumita Ray
Chief Judicial Magistrate,
Alipore, South 24 Parganas
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