

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

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 4428 of 2022

**Suman Ray @ Suman Roy
-Vs-
State of West Bengal & Anr.**

For the Petitioner : Mr. Ranojoy Chatterjee
Mr. Tamal Singha Roy

For the State : Mr. Rudradipta Nandy
Ms. Sonali Das

Hearing concluded on : 20.05.2025

Judgment on : 23.05.2025

UDAY KUMAR, J.: –

1. This revisional application, filed under Section 482 of the Code of Criminal Procedure, 1973 ('Cr.P.C.'), seeks to quash the criminal proceedings in G.R. Case No. 4333 of 2022 under Section 289/34 of the Indian Penal Code, 1860 ('IPC'), are currently pending before the Court of learned Additional Chief Judicial Magistrate, 2nd Court, at Baruipur. This case originated from Sonarpur P.S. Case No. 719 of 2022, dated June 26, 2022, and the subsequent charge-sheet no. 892 of 2022, dated August 31, 2022.
2. The heart of this dispute lies in a written complaint, dated June 26, 2022, submitted by opposite party no. 2, Sri Dipan Banerjee, to the Inspector-in-Charge of Sonarpur Police Station. This complaint subsequently became a formal First Information Report (FIR).

3. The complainant alleged that on June 26, 2022, around 5:00 p.m., while he was on the roof of his residential building, Deeshari Megacity, Block 14, he was suddenly attacked by 10 to 12 pet dogs. This alleged attack caused him to lose balance, fall, and sustain injuries. He specifically averred that these pet dogs were not properly chained and roamed freely, thereby creating a perilous environment and posing a significant threat to human life. Consequently, he lodged the FIR against the dogs' named owners: the petitioner, Suman Roy, and his sister, Sramana Ray, both residents of Flat No. 14/7C within the same housing complex.
4. Following the FIR, the Investigating Officer ('I.O.') conducted an investigation, which culminated in the filing of the aforementioned charge-sheet under Section 289/34 IPC against the petitioner and his sister.
5. The petitioner surrendered before the learned Additional Chief Judicial Magistrate, Baruipur, on September 30, 2022, and was subsequently released on bail. The case was then transferred to the learned Additional Chief Judicial Magistrate, 2nd Court at Baruipur.
6. Mr. Ranojoy Chatterjee, learned counsel for the petitioner, vehemently contended that the allegations against his client are entirely false and fabricated. He emphasized that the petitioner owns only one pet dog, directly contradicting the complainant's assertion of an attack by "10 to 12 pet dogs." This significant discrepancy, he urged, fundamentally undermines the prosecution's narrative.
7. The cornerstone of Mr. Chatterjee's argument is the absence of any discernible injury to opposite party no. 2. He highlighted the notation "No obvious external injury seen" in the injury report dated June 26, 2022, issued

by Dr. Nupur Mukherjee of Sonarpur Rural Hospital. While the doctor advised X-rays of the complainant's right wrist and left shoulder due to subjective pain complaints, Mr. Chatterjee stressed that no such X-ray report was ever produced, either during the investigation or before the Court. This glaring omission, he submitted, indicates a lack of credible injury, a fact he deemed essential for an offence under Section 289 IPC, particularly as the provision contemplates "probable danger of death of human or grievous hurt."

8. Another key part of his submission concerned the lack of *mens rea* necessary for an offence under Section 289 IPC. Mr. Chatterjee meticulously analysed Section 289 IPC, arguing that the essential 'mental element' is conspicuously absent from the record. Section 289 IPC penalizes "whoever knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life or any probable danger of grievous hurt from such animal." He contended that there is no material to show the petitioner knowingly or negligently omitted to take precautions, especially given the disputed ownership of multiple dogs. Without a discernible mental state, he asserted, the proceedings cannot be sustained.
9. The learned counsel also assailed the investigation's quality, terming it "botched." He cited several alleged investigative failures: the lack of CCTV footage seizure from the complex, the failure to collect documentary or photographic evidence proving the petitioner's ownership of multiple dogs, the failure to take the dogs into custody for victim identification, the absence of specific dog descriptions in the complaint or witness statements, and the alleged lack of direct eyewitnesses, with all evidence being 'hearsay' from the

victim. These failures, he argued, cumulatively demonstrate a lack of prima facie material against the petitioner, leading to the conclusion that the investigation was an "eyewash" conducted with an "oblique motive" to merely "oblige the alleged victim."

- 10.** He also highlighted the time lag between the alleged incident (5:00 p.m.) and the medical examination (10:10 p.m.), suggesting that any serious injury would have warranted immediate and documented attention.
- 11.** Consolidating these arguments, Mr. Chatterjee submitted that the entire criminal proceeding constitutes a blatant abuse of the process of law, initiated without justifiable grounds, and aimed solely at harassing and humiliating the petitioner. He therefore prayed for the summary quashing of the proceedings.
- 12.** In rebuttal, Mr. Rudradipta Nandy, the learned Public Prosecutor for the State, referred to the statement of witness Nitesh Bansal. He emphasized that prima facie sufficient materials were indeed collected by the I.O. during the investigation. The I.O.'s satisfaction with these materials, leading to the charge-sheet against the petitioner, strongly indicates against premature quashing.
- 13.** He strenuously argued that this case involves disputed questions of fact, which cannot be adjudicated in a revisional application under Section 482 Cr.P.C. Such factual controversies, he contended, necessitate a full-fledged trial where evidence can be recorded and the truth ascertained through cross-examination and proper appreciation of evidence. He therefore prayed for the dismissal of this revisional application and a direction for the learned Trial Judge to proceed with the case in accordance with law.

- 14.** Relying on settled legal principles, Mr. Nandy reiterated that the inherent powers under Section 482 Cr.P.C. must be exercised with extreme caution and only in rare and exceptional circumstances. The allegations disclose the commission of a cognizable offence, thus not falling within the narrow confines of such exceptions on their face value. He therefore sought dismissal of the revisional application and a clear direction for the learned Trial Judge to proceed with the trial.
- 15.** I have meticulously considered the rival submissions advanced by the learned advocates and carefully perused the materials on record, including the FIR, injury report, charge-sheet, and the grounds articulated in the Memorandum of Application.
- 16.** The pivotal question in this revisional application is :-
- Whether the criminal proceeding initiated against the petitioner, based on Opposite Party No. 2's complaint, constitutes an abuse of the Court's process, thereby warranting the invocation of the extraordinary inherent powers under Section 482 Cr.P.C?*
- 17.** The undisputed factual matrix reveals the alleged incident occurred around 5:00 p.m. on the roof of the complainant's residential building. The complaint alleges an "attack" by "unchained and freely roaming" dogs, resulting in the complainant falling and sustaining injuries. The core of the complaint centred on the alleged negligence of the pet owners in controlling their animals, thereby posing a "probable danger to human life or any probable of grievous hurt," which falls squarely within Section 289 IPC.
- 18.** Section 289 of the Indian Penal Code, 1860, states: "289. Negligent conduct with respect to animal —Whoever knowingly or negligently omits to take

such order with any animal in his possession as is sufficient to guard against any probable danger to human life, or any probable danger of grievous hurt from such animal, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

19. The essential ingredients are:

- (a) knowingly or negligently omitting to take sufficient order with an animal, and
- (b) such omission being sufficient to guard against probable danger to human life or grievous hurt.

20. The complaint alleges a "sudden attack" by "10-12 pet dogs" roaming "without chain," leading to injury. This prima facie points towards a negligent omission by the owners to control their animals, creating potential danger. Furthermore, the charge-sheet invokes Section 34, implying a common intention between Suman Roy and Smt. Sramana Roy, which would require evidence demonstrating their joint responsibility for the dogs and their collective failure to control them.

21. This Section unequivocally imposes a duty on the owner or possessor of an animal to take adequate measures to prevent any probable danger to human life or grievous hurt from such animal. The potential gravity of a dog attack on a human, capable of causing serious injury or even posing a threat to life, cannot be overstated. Therefore, a pet owner is undeniably duty-bound to exercise a certain degree of care and take sufficient steps to prevent their pet from causing harm. The provision specifically uses "knowingly or negligently

omits," emphasizing either actual knowledge of the animal's harmful propensity or a lack of due care in its management.

- 22.** The petitioner's counsel has significantly relied on the injury report dated June 26, 2022, which noted "No obvious external injury seen." While crucial, the entire report and its context must be considered. It also records the complainant's subjective complaints of wrist and shoulder pain, prompting the doctor to advise X-rays. The subsequent absence of any X-ray report, either submitted to the I.O. or produced in Court, is an evidentiary gap. Although the prosecution would need to address this during trial, it does not, at this preliminary stage, entirely negate the occurrence of the attack or the possibility of non-visible internal harm or trauma.
- 23.** Moreover, Section 44 IPC broadly defines "injury" as "any harm whatever illegally caused to any person in body, mind, reputation or property." A fall, even without lacerations or fractures, can cause contusions, sprains, or soft tissue damage, which may not be externally obvious but still constitute 'harm'.
- 24.** Furthermore, Section 289 IPC references "probable danger to human life, or any probable danger of grievous hurt," implying that the potential for harm from an owner's negligence is a relevant factor, not solely the actual infliction of grievous hurt. The exact nature and extent of the injury, and its correlation with the alleged dog attack, are disputed questions of fact demanding a thorough examination of evidence during trial. This Court, at the quashing stage, cannot assume the role of a fact-finding authority.
- 25.** Section 289 IPC punishes "negligent omission." The term "negligently" is vital here. Unlike offences requiring specific intent (e.g., Section 300 IPC for

murder), Section 289 IPC can be attracted by a mere lack of due care or foresight. The complaint alleges that the dogs were "not properly chained and roaming freely," directly imputing negligence to the owner. Whether the petitioner indeed owns the implicated dogs (or multiple dogs) and whether his actions (or inactions) constitute legal negligence are, again, disputed questions of fact. The *mens rea* of negligence is typically inferred from surrounding circumstances and the accused's conduct. As reiterated by the Supreme Court in cases like *State of Maharashtra v. Sayyed Hasan*, (2018) 2 SCC 358, the existence of *mens rea*, where it forms an ingredient of an offence, is often a factual inference from evidence and cannot be presumed absent at the quashing stage merely based on a denial.

- 26.** The petitioner's defence rests on several factual disputes, such as the number of dogs, their ownership, the petitioner's presence, the extent of injury, and the complaint's veracity. While the charge-sheet asserts the dogs belong to the accused, the quashing application highlights the absence of documentary proof (e.g., municipal registration, veterinary records, purchase receipts) or photographic evidence. The prosecution must eventually prove ownership during trial. However, at this stage, if the complainant and witnesses allege ownership, it may be deemed sufficient for *prima facie* consideration. The I.O. states that "from the fact and evidences it could be learnt that *prima facie* charge has been well established against the FIR named accused persons," suggesting some form of evidence (e.g., witness statements identifying the dogs as belonging to the accused, or the dogs being habitually seen at their flat). The Court would need to examine the 161

Cr.P.C. statements of witnesses annexed to the charge-sheet to confirm if they specifically identify the accused as owners.

- 27.** The petitioner claims ownership of only one dog, contradicting the complainant's allegation of 10-12 dogs. The very fact of the attack, dog identification, and the petitioner's alleged negligence are all highly contentious. The I.O.'s report, despite the petitioner's claims of a "botched" investigation, indicates that statements from available witnesses (like Nitesh Bansal) were recorded and formed the basis for concluding a prima facie case.
- 28.** The law is firmly settled: where disputed questions of fact exist, the High Court, when exercising its inherent powers under Section 482 Cr.P.C., should not embark upon an inquiry to resolve them. Such matters fall exclusively within the domain of the Trial Court, which is equipped to take evidence, allow cross-examination, and assess the credibility of witnesses and documents.
- 29.** The Supreme Court, in *Gian Singh v. State of Punjab*, (2012) 10 SCC 303, reiterated that the inherent power is not to be utilized for appreciating evidence or delving into factual disputes that can only be properly determined by the Trial Court.
- 30.** Arguments regarding the non-seizure of CCTV footage, lack of photographic evidence, or improper dog identification procedures are all valid defences the petitioner may raise during trial to discredit the prosecution's case. While these point to potential investigative flaws, they do not automatically lead to quashing if other material prima facie suggests an offence. An investigation

being "botched" is a matter to be tested during trial where the accused can highlight these lapses.

- 31.** The argument that the injury report does not show "grievous hurt" or that the victim did not obtain an X-ray is a strong defence point. Section 289 IPC speaks of "probable danger of grievous hurt," not necessarily actual grievous hurt. However, the injury's nature (simple vs. grievous) significantly impacts the offence's gravity and potential punishment. The time gap between the incident and examination is also a valid point for trial regarding the severity and cause of injury.
- 32.** The petitioner claims all evidence is hearsay. The police report mentions examining "available witnesses and recorded their statement under Section 161 Cr.P.C." The court would need to consider whether these witness statements provide direct evidence of the attack or ownership, or merely recount what the victim told them. If indeed there are no direct eyewitnesses to the attack itself, and only the victim's account, this weakens the prosecution's case but might not be sufficient for quashing at this stage if the victim's statement is deemed credible.
- 33.** Allegations of a "concocted case", "oblique motive" an "eyewash investigation," or an "abuse of process" are a serious accusation require strong evidence. Merely making such an allegation is insufficient. The court would look for tangible evidence of such malice within the prosecution's own material. The fact that the complainant is "himself in this force" (as alleged by the petitioner) could be a factor to consider for bias, but not a conclusive ground for quashing unless clear abuse of power is demonstrated. For this Court to quash a proceeding on such grounds, it must be satisfied that the

allegations are so inherently improbable, absurd, or maliciously motivated that no conviction could possibly be sustained.

- 34.** The police report clearly states that the accused did not appear, a factor the police considered in deciding to file a charge-sheet and seek summons.
- 35.** The Court's primary task is to determine if the material on record (FIR, complainant's statement, witness statements under 161 Cr.P.C., injury report) prima facie establishes an offence under Section 289/34 IPC. The petitioner's arguments primarily constitute strong defences that must be proven during trial through cross-examination of prosecution witnesses and presentation of defence evidence.
- 36.** While the medical report notes "No obvious external injury," the initial complaint alleges an "attack" by "unchained" dogs leading to a "fall" and "injury." If proven, these specific acts could indeed constitute negligence and probable danger as contemplated by Section 289 IPC. The I.O.'s filing of a charge-sheet, based on their assessment of prima facie evidence, implies sufficient grounds to proceed. Unless the allegations are so palpably false or frivolous that no prudent person could reasonably conclude there are sufficient grounds for proceeding, the criminal process should not be stifled at its inception. The allegations, though disputed, do not, at this stage, appear so inherently absurd or improbable as to suggest a clear abuse of process.
- 37.** In essence, the petitioner's entire argument aims to pre-empt the Trial Court's assessment of evidence and credibility. This case exemplifies where disputed questions of fact necessitate a full-fledged trial. The charge-sheet has been filed, implying that the Investigating Agency found sufficient

material to prosecute the petitioner. It is for the Trial Court to weigh the evidence, including the injury report, the absence of X-ray reports, the witness statements, and any defence presented by the petitioner, to reach a reasoned conclusion.

- 38.** In the present case, while the injury report does not show "obvious external injury," the complaint itself alleges an "attack" by dogs, leading to a "fall" and "injury." Even if the injury was not externally obvious, being attacked by 10-12 dogs and falling on a roof could potentially lead to internal injuries, non-visible bruises, or psychological trauma. Furthermore, the complaint highlights a broader concern regarding the practice of keeping "many dogs...unchained on the roof of a housing," which, if true, could indeed pose a "threat to human life," regardless of immediate physical injury. Section 289 emphasizes "negligent conduct with respect to animal" and the "probable danger" it may cause, not necessarily the actual manifestation of a grievous injury at the initial stage.
- 39.** The witness statement of Nitesh Bansal, referred to by the learned counsel for the opposite party, suggests the I.O. collected material sufficient to form a prima facie opinion, leading to the charge-sheet. While the petitioner asserts owning only one dog, the complaint mentions 10-12 dogs and attributes ownership to both the petitioner and his sister. This is a clear factual dispute beyond the limited scope of a revisional application. Whether the petitioner was negligent in controlling his animal(s), whether the alleged attack occurred as described, or if the number of dogs is exaggerated, are all questions of fact that can only be properly adjudicated after the prosecution leads its evidence and the defence has an opportunity to rebut it during trial.

- 40.** The argument regarding the absence of 'mental element' is premature. Negligence, under Section 289 IPC, is a matter of proof. Whether the petitioner "knowingly or negligently omitted to take such order" with his animal(s) to guard against probable danger is a finding that can only be reached after a thorough examination of evidence. The concept of "negligence" implies a failure to exercise the care a reasonably prudent person would in similar circumstances. Whether such a standard was breached by the petitioner is a matter of evidence.
- 41.** Solely relying on the absence of "obvious external injury" in the initial medical report to quash the entire proceeding would be an erroneous exercise of jurisdiction. The alleged attack, if proven, coupled with the assertion of unchained dogs posing a threat, could still establish a prima facie case under Section 289 IPC, even if the resultant injury was minor or not immediately apparent. The core of the offence under Section 289 IPC is "negligent conduct with respect to animal" and the "probable danger" it may cause, not necessarily the actual manifestation of a grievous injury at the initial stage.
- 42.** This Court is mindful of the principles established by the Hon'ble Supreme Court in *Bhajan Lal* (supra), which delineate the circumstances for exercising inherent powers under Section 482 Cr.P.C. The present case does not fall into categories where allegations are so absurd or inherently improbable that no prudent person could reasonably conclude there are sufficient grounds for proceeding against the accused. Conversely, if proven, the allegations could constitute an offence under Section 289 IPC.

- 43.** The power under Section 482 Cr.P.C. is extraordinary and should be exercised sparingly and with great caution. As reiterated by the Hon'ble Supreme Court in *Hira Lal Hari Lal Bhagwati v. CBI*, (2003) 5 SCC 257, among other cases, this inherent power prevents abuse of any Court's process or otherwise secures the ends of justice. It is not an appellate or revisional power and should not be used to re-appreciate evidence or conduct a mini-trial at the threshold.
- 44.** Therefore, in my considered opinion, this case involves several disputed questions of fact that can only be effectively resolved by the learned Trial Court after recording evidence from both sides. Quashing the proceedings at this juncture would amount to stifling a legitimate prosecution based on contentious factual claims. The Trial Court is the appropriate forum to delve into the nuances of the evidence, assess witness credibility, and determine the allegations' veracity.
- 45.** In view of the detailed analysis above, and in adherence to the well-established judicial precedents governing the exercise of inherent powers under Section 482 Cr.P.C., I find no compelling reason or exceptional circumstance to warrant the quashing of the ongoing criminal proceedings initiated against the petitioner, based on opposite party no. 2's complaint. The allegations, as they stand, coupled with the investigation that led to the charge-sheet, do disclose a prima facie case for the alleged offences, thereby necessitating a full-fledged trial for proper adjudication.
- 46.** Accordingly, the revisional application, C.R.R. No. 4428 of 2022, is hereby dismissed.

- 47.** The learned Additional Chief Judicial Magistrate, 2nd Court at Baruipur, South 24 Parganas, is directed to proceed with the trial of G.R. Case No. 4333 of 2022 expeditiously and conclude it in accordance with law, without being influenced by any observations made herein, which are strictly confined to the disposal of this revisional application.
- 48.** All connected applications, if any, are also disposed of.
- 49.** There is no order as to the cost.
- 50.** Interim order/ orders, if any, granted earlier, stand vacated.
- 51.** An urgent photostat certified copy of this judgment, if applied for, shall be provided to the parties as expeditiously as possible upon compliance with the necessary formalities.

(Uday Kumar, J.)