

**IN THE HIGH COURT AT CALCUTTA**

**Criminal Revisional Jurisdiction**

**Present: - Hon'ble Mr. Justice Subhendu Samanta.**

**C.R.R. No. – 3685 of 2017**

**IN THE MATTER OF**

**Bharati Tamang**

**Vs**

**Central Bureau of Investigation & Anr.**

**With**

**CRR 50 of 2018**

**IN THE MATTER OF**

**Central Bureau of Investigation & Anr.**

**Vs.**

**Sh. Bimal Gurung @ Daju**

**For the Petitioner In  
CRR 3685 of 2017**

**: Mr. Kaushik Gupta, Adv.,  
Mr. Arnab Mukherjee, Adv.  
Ms. Shreyasi Manna Adv.**

**For the CBI**

**: Mr. Anirban Mitra**

**For the Opposite party**

**: Mr. Sayan De, Adv.,  
Mr. Kaustn Shome, Adv.,  
Mr. Rimik Chakraborty, Adv.,  
Mr. Sayan Kanjilal Adv.**

**Reserved On**

**: 02.05.2024**

**Judgment on**

**: 13.06.2024**

**Subhendu Samanta, J.**

1. Both the criminal revisions are preferred against order dated 17<sup>th</sup> August 2017 passed by the Learned Chief Judge

City Sessions Court Calcutta in SC Case No. 128 of 2013 arising out of Sadar Darjeeling PS Case No. 89 of 2010 also arising out of CBI Case No. RC 1(S/20111 KOL) corresponding to GR Case No. 148 of 2010 u/s 147/148/149/427/506/302 read with Section 34/120B of IPC.

2. The brief fact of the case is that One Madan Tamang, a political leader of Darjeeling and the then president of All India Gorkha League (would be referred as AIGL hereinafter), a Political Party in Darjeeling was murdered in brought day light at Darjeeling Mall on 21.05.2010. One Laxman Pradhan lodged Fir with the OC Darjeeling PS on a same day alleging inter alia name of 13 persons to be involved in the conduct of murder of Bimal Gurung of belonging to Gorkha JanaMukti Morcha (hereinafter would be referred as G.J.M.M) headed by its president Bimal Gurung alias Daju. On the basis of such FIR Sadar Darjeeling Police Station Case No. 89 of 2010 u/s 147/148/149/427/506/302 read with Section 34 and 120B of IPC. corresponding to GR Case No. 148 of 2010 was registered in the court of Learned Chief Judicial Magistrate, Darjeeling. Initially the investigation was handed over to one S.I Rabin Thapa subsequently, CID West Bengal took up the investigation. After completion of investigation CID submitted a charge sheet against 30 accused persons except Bimal Gurung, thereafter the wife of the deceased, Bharati Tamang filed a writ petition being No. 20843(W) of 2010 before this court inter alia seeking directions for transferring investigation of the criminal

case from the State Police and CID West Bengal to CBI. On 26.11.2010 the Government of West Bengal by virtue of the of the order of this court, handed over the investigation of this case to CBI. The CBI thus registered RC Case No. 1/(s)/2011/SCB.

3. The CBI upon completion of further investigation submitted charge sheet No. 4 of 2011 u/s 147/148/149/427/506/302/120B of IPC before the Learned Chief Judicial Magistrate Darjeeling on 20/8/2011 against all the 30 accused persons who were already charge sheeted by the CID and with one new person namely Dipen Malay The wife of the deceased namely Bharati Tamang, had approached the Hon'ble Supreme Court vide WP (Cr) No. 159 of 2012 challenging purporting investigation conducted by the CBI and prayed for re-investigation by keeping in abeyance the trial particularly and for further investigation by NIA or any other Central Agency.

4. The Hon'ble Apex Court on 08.10.2013 passed the Judgement and issued a specific direction to transfer the Sessions case from Darjeeling to the Principle District and Sessions Judge, Calcutta. However the investigation was directed to be continued by the CBI and the trial of the case was kept in abeyance until the CBI concludes its further investigation and submits its comprehensive report before the Transferee Court. The Hon'ble Apex Court also directed the

Transferee Court to commence the trial after the comprehensive final report being filed by the CBI.

5. Accordingly the entire case record was transferred to the Court of Learned Chief Judge City Sessions Court, Calcutta and the case was renumbered as sessions case No. 128 of 2013. Subsequently the CBI filed a comprehensive report by way of a supplementary charge sheet vide CS No. 9 of 2015 dated 29.05.2015 against 23 new accused persons including the OP to the case i.e. Bimal Gurung for committing offence punishable u/s 120B read with Section 150/506/302 of IPC. Learned Chief Judge City Sessions Court had taken the cognizance against all the accused persons including Bimal Gurung. Bimal Gurung surrendered before the Learned Chief Judge, City Sessions Court and enlarged on bail by the strength of an order for anticipatory bail of Co-ordinate Bench of this court vide CRM 5221 of 2015. Bimal Gurung and other accused persons filed applications for discharge before the Learned Chief Judge City Sessions Court Calcutta; the said petition was heard by the Learned Chief Judge, and by passing the impugned order dated 17.08.2017 the Learned Chief Judge City Sessions Court Calcutta discharge Bimal Gurung from the case and further proceeded to farming the charge against all remaining accused persons.

6. Being aggrieved by and dissatisfied with the said order the instant Criminal Revision has been preferred by CBI as well

as Bharati Tamang, wife of the deceased Madan Tamang by two separate revisional applications.

7. Hence both the revisions are heard conjointly.

8. Learned Advocate appearing on behalf of the Bharati Tamang submitted as follows:-

CBI Submitted charge sheet as per direction of Hon'ble Supreme Court of India against 48 accused persons including Bimal Gurung. The all accused persons and Bimal Gurung filed separate applications for discharge u/s 227 of the Code of Criminal Procedure. Though there are huge materials on records indicated that there are sufficient grounds for framing charge against the accused persons but the Learned Chief Judge discharged only Bimal Gurung from the case and directed for framing all charge against 47 accused persons. He further submits that the statement of witnesses revealed that on Bimal Gurung is standing at the same footing alike the rest 47 accused persons. He further submits that Bimal Gurung was named by the witnesses and said statement revealed how Bimal Gurung entered into conspiracy with other accused and it was instrumental in executing the murder of the victim. He again submitted that the statement of witnesses given rise to grave suspicion against Bimal Gurung which is sufficient to sent him to face the trial. He again submits that the impugned order passed by the Learned Chief Judge, is not a speaking order and it is not passed upon sufficient and cogent reason. During the argument, Learned Advocate, appearing on behalf

of Bharati Tamang pointed out the statement of witnesses to show that all of them stated the name of Bimal Gurung and his involvement in the alleged offence. He finally submits that there is no materials to segregate Bimal Gurung from the rest 47 accused persons who were sent up for trial. He prayed for setting aside the impugned order.

9. Mr. Maitra Learned Advocate appearing on behalf of CBI Submits that

***It is very strange that despite of equal complicity of the two accused person i. e. Bimal Gurung and Roshan Giri, the Learned Trial Court decided to frame charges and discharge Bimal Gurung.***

***That the statement of witnesses recorded under Section 164 of Code of Criminal Procedure, 1973 of Prem Tamang, Mohan Sharma, Tribhuvan Rai, Binod Gurung, Mina Subbha and further statements of Laxman Tamang, Amal Lama, Samir Nangchuk, Palden Lama, CR Rai, CK Subba, Shiv Kumar Pradhan, Prem Bomjan, RB Ray, clearly stated the guilt of the accused and the conspiracy held by Bimal Gurung and political leader i.e. Binay Tamang, Harka Bhadur Chetri, Ramesh Alley, Pradip Pradhan, Roshan Giri, Asha Gurung for committing murder of Madan Tamang.***

***It is significant to mention here that not only they conspired but they murdered Madan Tamang and ransacked Madan Tamang's house and Madan Tamang was murdered by stabbing by Dinesh Subba @ Kalia at his neck, here the contradiction regarding fire arms does not hold good.***

***Mr. Mitra further argued that the petitioner states that during investigation, several witnesses were examined. Mrs. Bharati Tamang (PW-2) stated that several scheduled public meetings of Akhila Bharatiya Gorkha League (ABGL) could not be held as Gorkha Jana Mukti Morcha (GJMM) purposefully called strike or forcibly prevented the function. Apart from above, accused Bimal Gurung and other were continuously threatening her husband both in the press and public meeting. In a meeting at Chandraman Dhura, this accused had openly said that he will kill all the opposition leaders. The above version of***

***PW-2 was also corroborated by Shiva Kr. Pradhan (PW-20) & Shri Prem Bomjon (PW-21).***

***Mr. Mitra further argued that the petitioner states that Shri Samir Wangchuk Bhutia (PW-39) stated that in the first week of April, 2010, he was called by Nicol Tamang over phone saying that Daju (Bimal Gurung) wanted to seek him at Salbari and when he visited Salbari, he overheard Nicol telling Bimal Gurung that they should get rid of Madan Tamang. This witness further stated that the moment Nicol saw him he changed the topic. Baburam Tamang (PW-40) stated that the party workers do whatever is directed by Bimal Gurung and the women's wing does what is told by Asha Gurung. Mr Mitra furthw aspnew***

***Mr. Mitra further argued that the petitioner states that Prem Tamang, Mohan Sharma (PW-13), Binod Gurung (PW-14), & Tribhuvan Rai (PW-12) in their statements recorded u/s 164 CrPC stated that about 10-12 days before the incident of murder, Bimal Gurung threatened at the meeting in Chandraman Dhura that he would kill all the opposition leaders.***

***That the petitioner states that Charges have been framed against one such accused persons, whose roles are also more or less similar to the accused. It is pertinent to mention that the Ld. Judge at the time of framing of charges against accused Sushma Rai held that for the purpose of framing charge, the prima facie involvement of the accused Sushma Rai is enough and the same stands established.***

***Mr. Mitre further argued that the petitioner submits that the Learned Trial Judge failed to appreciate the materials produced by the prosecution establishing the prima facie involvement of the accused Bimal Gurung including the conversation between the Bimal Gurung and Roshan Giri.***

Mr. Maitra further submits that the rules of all accused persons including the Bimal Gurung are more or less similar all the accused persons in furtherance to a conspiracy with each other committed brutal murder to Madan Tamang in the bright day light. The Learned Chief Judge, had committed error to discharge Bimal Gurung from the case the impugned order

is illegal in the eye of law and the same is required to be set aside.

10. Mr. Maitra cited some decisions in support of his contention they are as follows:

The judgments relied by the Opposite Parties are as follows:-

**1) 1979 (3) SCC 4 Union of India  
Versus  
Prafulla Kumar Samal**

**2) 2002 (2) SCC 135  
Dilwar Babu Kuramee**

**Versus  
State of Maharashtra**

**3) 2010 (9) SCC 368  
Sajjan Kumar  
Versus  
Central Bureau of Investigation**

**4) 2015 (2) SCC 417  
State though Inp. Of Police  
Versus  
A Arun Kumar**

11. Learned Advocate appearing on behalf of the Bimal Gurung submits that the impugned Order passed by the Learned Chief Judge, City Sessions Court, suffers no illegality or impropriety. The impugned order is a reasoned order and it cannot be set aside. The Learned Chief Judge had taken note of



the evidences on record as submitted with the charge sheet and found justification to discharge Bimal Gurung from the case as there is no sufficient materials for framing charge against Bimal Gurung. Learned Advocate for Bimal Gurung has demonstrated the entire facts and reason of disputes between GJMM and ABGL). The fact demonstrated by the Learned Advocate is as follows :

***A) That the opposite party is the President of a registered political party namely Gorkha Jana Mukti Morcha since its formation in the year 2007. After three years of agitation for a demand of State of Gorkhaland led by Gorkha Jana Mukti Morcha, the Gorkha Jana Mukti Morcha reached an agreement with the State Government to form a semi-autonomous body to administer the Darjeeling hills. A Tripartite Memorandum of Agreement for GTA (Gorkha Territorial Administration) was signed on 18th July 2011 at Pintail Village near Siliguri in the presence of Union Home Minister, West Bengal Chief Minister and Gorkha Janmukti Morcha leaders. A bill for the creation of GTA (Gorkha Territorial Administration) was passed in the West Bengal Legislative Assembly on 2nd September 2011. The Hon'ble President of India Pratibha Patil gave her assent to the GTA (Gorkha Territorial Administration) Bill of West Bengal on 7th March 2012. The Government of West Bengal issued a gazette notification for the GTA (Gorkha Territorial Administration) Act on 14th March 2012. Subsequent thereto an election of GTA was held on 29th July 2012 and Gorkha Jana Mukti Morcha participated in the said election. Their candidates including the Opposite Party won from all the constituencies. The opposite party was elected as the Chief Executive of the Gorkha Territorial Administration. He had been holding the said office till 23rd June, 2017 when he tendered his resignation.***

12. He submits that the investigation was conducted in this case by three agencies namely,

I) By Darjeeling Police

II) CID of West Bengal

III) CBI.

The case was investigated thrice by the separate above mentioned investigating agency but they did not find the involvement of the Bimal Gurung in this case. Finally the CBI conducted a further investigation and submitted a supplementary charge sheet wherein the name of Bimal Gurung transpired. He further submits that the statement of witnesses as recorded by the CBI are copy of each other. The statement cannot substantiated the direct involvement of Bimal Gurung in the alleged offence; the ingredients of offence u/s 120B IPC is very much missing in this case. He finally submits that the law relating to discharge u/s 227 of IPC has been clearly observed by the Hon'ble Apex Court in several judgments. Learned Chief Judge City Sessions Court by adopting the said principles had discharged Bimal Gurung from the case. He further submitted that the instant criminal revision applications are devoid of merit and liable to be dismissed.

13. In support of his contention Ld. Advocate for Bimal Gurung cited the decisions as follows.

**i) Dilawar Balu kurane Vs. State of Maharashtra (2002) 2 SCC 135**

**ii) Union of India Vs. Prafulla Kumar Samal & Anr. (1979) 3 SCC 4**

**iii) Sajjan Kumar Vs. CBI (2010) 9 SCC 368**

**iv) State Through Inspector Of Police Vs. A. Arun Verma & Anr. (2015) 2 SCC 417**

14 After Completion of agreement CBI and petitioner Bharati Tamang filed separate written notes of argument.

15. Heard the Learned Advocates perused the materials in the charge sheet including the statement of available witnesses recorded u/s 161 Cr.P.C.. Perused the impugned order wherein Bimal Gurung was discharged.

16. It appears that the Learned Chief Judge concern Heard all applications of accused persons u/s 227 of Cr.P.C. and passed a conjoined order. The portion of the order supporting Bimal Gurung is as follows:

***In respect of accused, Bimal Gurung, it had been argued that the accused was charge sheeted, mainly because he is the founding president of GJMM and the allegation against him are vague allegations, of no evidentiary value. It is a fact that the accused Bimal Gurung, even though named in the FIR, is merely an accused by way of conjecture. All the evidences leading against him with regard to his involvement in the offence, is by way of conjecture and therefore it is of no evidentiary value. In the absence of any direct evidence or circumstances engulfing the accused with the offence deceased Madan Tamang, there remains no evidence compelling him to face trial. In this of murder of the regard the principle espoused in the Arun Kumar and another in Criminal Appeal No. 2602 of 2014 passed on 17.12.2014, states that the evidence which the prosecution proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence then there will be no sufficient ground of proceeding with the trial. Hence, when there is no evidence, apart from the conjectural evidence, forthcoming from the prosecution side and in view of the above principle there would be no evidence worth taking the accused to trial. Under the circumstance the accused Bimal Gurung, is liable to be discharged from this case.***

17. On perusing the statement of witnesses it appears that the witness CS witnesses No. 2, CS witness No. 20 and CS

witness No. 21 stated to the police that due to forcible prevention by GJMM, AIGL could not held meeting. It is also alleged by the witness that Bimal Gurung and other accused persons continuously threatened Madan Tamang in the press and public meeting; they also stated that in a meeting Chandraman Dhura, Bimal Gurung openly said that he will kill al the opposition Leaders.

18. CSW 39 as well as CSW 40 also stated about the specific fact of conspiracy in first 2 of April 2010 conducted by Bimal Gurung along with other party members of GJMM.

19. CSW No. 12, 13 and 14 in their statement recorded u/s 164 Cr.P.C. stated about the alleged conspiracy conducted by Bimal Gurung along with other party member of GJMM (accused persons).

20. I have perused the materials in the charge sheet wherein the CDR of the accused persons were collected by the CBI during the course of investigation.

21. Learned Advocate for Bimal Gurung submits that CBI has collected the call details of telephone Nos. of accused person regarding their conversation at the relevant point of time of alleged murder, but CBI could not collect a single call details record of Bimal Gurung. Bimal Gurung never used telephone. Thus the materials of CDR cannot connect Bimal Gurung with the alleged offence.

22. The Hon'ble Apex Court in **Dilawar Balu kurane (Supra)** discussed about the weigh of evidences required to be looked into by a court u/s 227 Cr.P.C. as follows:

**12. Now the next question is whether a prima facie case has been made out against the appellant. In exercising powers under Section 227 of the Code of Criminal Procedure, the settled position of law is that the Judge while considering the question of framing the charges under the said section has the c undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out; where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained the court will be fully justified in framing a charge and proceeding with the trial; by and large if two views are equally possible and the Judge is satisfied that the evidence produced before him while giving rise to some suspicion but not grave suspicion against the accused, he will be fully justified to discharge the accused, and in exercising jurisdiction under Section 227 of the Code of Criminal Procedure, the Judge cannot act merely as a post office or a mouthpiece of the prosecution, but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before e the court but should not make a roving enquiry into the pros and cons of the matter**

and weigh the evidence as if he was conducting a trial (see **Union of India v. Prafulla Kumar Samal**).

13. As stated earlier, neither the Special Judge nor the High Court considered the materials on record while framing charge and there was no application of mind and the Special Judge merely acted as a post office. All f the materials produced by the prosecution against the accused were duly considered by the High Court while disposing of the writ petition filed by the appellant. In coming to the conclusion that the prosecution case rests upon flimsy foundation and it is quite possible that the chances of a conviction are bleak, the High Court recorded as follows:

"Without in any way prejudging the issue I must say that the vital 9 content of the prosecution case seems somewhat amazing. An association of students provides money to an examinee to get his marks increased. This is said to have been done and the answer-books attached. The first information report is given some seven days after this incident. Information of the offence is conveyed to a police station and yet investigation by the ACB is taken up as late as March 1987. Nothing incriminating has been found with the petitioner.

14. We have perused the records and we agree with the above views expressed by the High Court. We find that in the alleged trap no police agency was involved; the FIR was lodged after seven days; no incriminating articles were found in the possession of the accused and statements of witnesses were recorded by the police after ten months of the occurrence. We are, therefore, of the opinion that not to speak of grave suspicion against the accused, in fact the prosecution has not been able to throw any suspicion. We, therefore, hold that no prima facie case was made against the appellant.

23. In **Prafulla Kumar Samal (supra)** the Hon'ble Apex Court has discussed about the grave suspicion at the stage of deciding an application u/s 227 of Cr.P.C. as follows:

**Section 227 of the Code runs thus:**

*If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*

*The words 'not sufficient ground for proceeding against the accused' clearly show that the Judge is not a mere post office to frame the charge at the behest of the prosecution, but has to exercise his judicial mind to the facts of the case in order to determine whether a case for trial has been made out by the prosecution. In assessing this fact, it is not necessary for the court*

24. In the case of **Sajjan kumar (Supra)**. The Hon'ble Apex Court in following the observation in **Dilwar Balu Kurane (Supra)** and **Prafulla Kumar Samal (Supra)** has held that

*19. It is clear that at the initial stage, if there is a strong suspicion which leads the court to think that there is ground for presuming that the accused has committed an offence, then it is not open to the court to say that there is no sufficient ground for proceeding against the accused. The presumption of the guilt of the accused which is to be drawn at the initial stage is only for the purpose of deciding prima facie whether the court should proceed with the trial or not. If the evidence which the prosecution proposes to adduce proves the guilt of the accused even if fully accepted before it is challenged in cross- examination or rebutted by the defence evidence, if any, cannot show that the accused committed the offence, then there will be no sufficient ground for proceeding with the trial.*

*20. A Magistrate enquiring into a case under Section 209 CrPC is not to act as a mere post office and has to come to a conclusion whether the case before him is fit for commitment of the accused to the Court of Session. He is entitled to sift and weigh the materials on record, but only for seeing whether there is sufficient evidence for commitment, and not whether there is sufficient evidence for conviction. If there is no prima facie evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused, on the other hand, if there is some evidence on which the conviction may reasonably be based, he must commit the case. It is also clear that in exercising jurisdiction under Section 227 CrPC, the Magistrate should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.*

*22. With the above principles, if we discuss the statements of PW 1, PW 2 and PW 10 as well as of PW 8, it cannot be presumed that there is no case at all to proceed. However, we are conscious of the fact that the very same witnesses did not whisper a word about the involvement of the appellants at the earliest point of time.*

25. In **A.Arun Kumar (Supra)** the Hon'ble Apex Court has also follow the observation of **Dilawar Balu kurane** and **Sajjan Kumar** has held that



**10. In our considered view, the material on record discloses grave suspicion against the respondents and the Special Court was right in framing charges against the respondents. We must also observe that the High Court was not justified in stating that Section 15 of the PC Act could not be invoked in the present case. Since the duty drawback was not actually availed, the prosecution had rightly alleged that there was an attempt to commit offence under the relevant clauses of Section 13(1) of the PC Act. It is not the requirement of law that in order to charge an accused under Section 15 of the PC Act he must also be charged either under Section 13(1)(c) or 13(1)(d) of the PC Act. The assessment of the High Court in that behalf is not correct.**

**11. In our view the instant case calls for interference by this Court. We, therefore, set aside the judgment and order<sup>1</sup> passed by the High Court and restore the order of the Special Court. The respondents thus continue to stand charged and must consequently face the trial. However, it must be recorded that this Court has considered the matter only from the standpoint whether the respondents be discharged or not and we shall not be taken to have expressed any opinion on merits. The matter shall and must be dealt with purely on merits by the court concerned.**

26. In considering the entire facts and materials in the case it appears to me that all the available witnesses has stated the name of accused persons in the similar fashion as they have stated the name of Bimal Gurung. The allegation of criminal conspiracy alleged to have been committed by the all accused persons including Bimal Gurung to commit the murder of Madan Tamang. I could not find any justifications how the Learned Chief Judge, City Sessions Court has segregated Bimal Gurung from other accused persons where all the allegations are similar in nature against Bimal Gurung as well as other accused persons. It is argued on behalf of Bimal Gurung that CBI could not collect CDR of Bimal Gurung

which they collect in respect of other accused persons. The allegation of criminal conspiracy defined u/s 120B IPC against any accused may not directly invite ingredients which can be seen but the said ingredients can very well be revealed during the course of trial from the version of the PWS. Though CBI could not collect the CDR of Bimal Gurung that does not mean that Bimal Gurung being a leader to (GJMM) did not have directed the other party members (Accused persons) to hatch up a criminal conspiracy.

27. Before entering into the deep in this matter let me consider the provisions of law enumerated u/s 227 Cr.P.C.

**227. Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is no sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.**

28. In the case of **Sajjan Kumar (supra)** the Hon'ble Apex Court has held that when allegations in the CS given rise to suspicion only, the trial judge is empowered to discharge accused; at the stage, he is not to see whether trial will end in conviction or acquittal. It is also specific directives of Hon'ble Apex Court that if there is grave suspicion against the accused, he cannot be discharged but required to be sent up for trial. In this present case following the observations of Hon'ble Apex Court (**Supra**) it appears to me that the ingredients of offence punishable u/s 120B IPC read with other sections of IPC clearly invite grave suspicion against the accused Bimal

Gurung. Learned Chief Judge City Sessions Court has committed error by separating / segregating Bimal Gurung from other accused person. The value evidences are similar to that all the other accused persons and Bimal Gurung; merely not collecting CDR of Bimal Gurung cannot itself exonerate him from the direct allegation of criminal conspiracy. It is quite impermissible to discharge an accused from a criminal case where his name is directly stated by the available witnesses regarding his involvement in the alleged offence. Bimal Gurung was cited as a leader of other Accused Persons. Thus complicity against Bimal Gurung has been sufficiently established at this Stage. Some CS witnesses disclosed the conduct and public remarks of Bimal Gurung regarding the threatening to the victim, the rest CS witnesses disclosed some facts and meeting of Bimal Gurung with the other accused persons for commission of alleged offences. Thus at this juncture how far the charge of conspiracy against Bimar Gurung would be proved in trial, cannot be ascertained at the stage u/s 227 Cr.P.C. but it can very well observed that there are grave suspicion against Bimal Gurung in this case.

29. Considering the entire materials I am of a view that the instant criminal revisions got merit and they are required to be allowed.

30. The alleged portion of the impugned order passed by the Learned Chief Judge, City Sessions Court through which he discharged Bimal Gurung from this case is hereby set aside.

The charge of this case is required to be framed against Bimal Gurung with other accused persons. Learned Trial Judge is to proceed with this case according to the law and as per direction of Hon'ble Apex Court.

31. Both the CRRs are allowed and disposed of according to the above observations.

32. Connected applications if pending, are also disposed of.

33. Parties to act upon the server copy and urgent certified copy of the judgment be received from the concerned Dept. on usual terms and conditions.

**(Subhendu Samanta, J.)**