

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 504 of 2022

Biswadeep Chakraborty

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Ayan Bhattacharjee, Adv.,
 Mr. Aniruddha Bhattacharya, Adv.,
 Mr. T. Kakrania, Adv.

For the State:- Mrs. Anasuya Sinha, Adv.,
 Mr. Pinak Kumar Mitra, Adv.

For the Defacto complainant :
 Mr. Sambhu Nath Ray, Adv.,
 Ms. Amrita Tewari, Adv.,
 Ms. Rubina Aktar, Adv.

Heard on: 2 August, 2022.

Judgment on: 2 August, 2022.

BIBEK CHAUDHURI, J. : –

1. An order dated 31st December, 2021 passed by learned Additional Chief Judicial Magistrate at Bidhannagar, North 24 Parganas in G.R Case No.219 of 2018 arising out of North Bidhannagar P.S Case No.46 of 2018 thereby framing charge against the petitioner under Sections 420/506 of the IPC is assailed in the instant revision.

2. At the instance of the accused (hereafter described as the petitioner) of the said G.R Case No.219 of 2018.

3. Before dealing with the bone of contention which resulted in assailing the order passed by the learned Magistrate dated 31st December, 2021, it is necessary to keep on record the following facts briefly.

4. The predecessor-in-interest of one Sujit Kumar Bakshi was the long term lessee in respect of a rent free land situated in Block DA, Sector 1, Salt Lake City within North Bidhannagar Police Station. On the death of the original lessee, his widow, namely Suchitra Bakshi, since deceased and their son Sujit Bakshi became the joint lessee in respect of the said plot of land. The original lessee constructed a building over the said land with a garage space. The garage space was given on rent in favour of one Pradip Ranjan Chakraborty, the sole proprietor of M/s Atlast Communication. On or about 3rd May, 2014 the above named joint lessees executed a development agreement with the petitioner for construction of second floors on the roof of the building situated at plot No.117 in Block DA, Salt Lake. On execution of agreement the joint lessees took a sum of Rs.5 lakhs. The said agreement dated 5th May, 2014 executed by and between the petitioner and the above named joint lessees was frustrated when it was found that the existing structure of the building would not bear the load of additional structure proposed to be constructed thereon. Subsequently, a development agreement was executed by and between the parties on 28th November, 2014 permitting the petitioner to construct a four storied building on the said amount. In the said agreement it was agreed that the lessees would get a sum of Rs.70 lakhs and one floor in the proposed newly built building. The lessees would hand over the

possession of the existing building in favour of the petitioner/developer. The developer would arrange for an alternative accommodation for the lessees in the same locality. The lessees would take step to evict the tenants who were in possession of the garage of the said building in order to handover the vacant possession of the said plot of land. As on this date, it is the case of the petitioner that the petitioner constructed a four storied building on the said plot of land, but entire construction cannot be completed as the lessees failed to evict the tenant from the garage of the said building. The petitioner therefore could not obtain completion certificate of the said building as well as “construction power electricity connection” from WBSEDCL. It is contended by the petitioner that though in the agreement dated 28th November, 2014 it was stipulated that the construction of the building on the said plot of land would have to be completed within 18 months from the date of execution of the agreement, the petitioner could not complete the construction as per plan as the lessees failed to perform their obligation contained in the said agreement delivering vacant possession of the garage space.

5. It is alleged by the petitioner that in spite of failure on the part of the lessees to deliver possession of the vacant space of garage in the said plot of land, the opposite parties filed an application under Article 226 of the Constitution which was registered as WP No.6747(W) of 2018 alleging, inter alia, that the petitioner made construction of the building in deviation of the plan sanctioned by Bidhannagar Municipal Corporation. A report was call for from Bidhannagar Municipal Corporation at the time

of hearing of the Writ Petition and on due consideration of such report, a Coordinate Bench of this Court was pleased to dismiss the said writ petition. It is further alleged by the petitioner that till date he has paid a sum of Rs.20 lakhs in favour of the lessees. In the mean time, the plan sanctioned by Bidhannagar Municipality stood expired with effect from 5th January, 2018. As per the relevant clause of the said development agreement dated 28th November, 2014, the petitioner approached this Court for settlement of the dispute by arbitration and appointment of an arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 which was registered as A.P No.683 of 2019. A Coordinate Bench of this Court appointed one Mr. Kallal Basu, Advocate as an arbitrator for settlement of the dispute between the parties.

6. That on 2nd April, 2018 Suchitra Bakshi, since deceased had lodged a First Information Report with the Officer-in-Charge of North Bidhannagar Police Station against the petitioner alleging, inter alia, commission of offence by the petitioner punishable under Sections 420/406/506/120B of the IPC. On the basis of the said complaint, police registered North Bidhannagar Police Station Case No.46 of 2018 dated 2nd April, 2018. On completion of investigation police Submitted charge-sheet against the petitioner under Sections 420/506 of the IPC.

7. By invoking Section 482 of the Code of Criminal Procedure the informant, namely Suchitra Bakshi, since deceased filed a revisional application before this Court which was registered as CRR No.1424 of 2019 seeking expeditious disposal of the aforesaid criminal revision was

disposed of directing the learned trial Magistrate to conclude the proceeding within three months from the date of communication of the order. On the other hand, the petitioner also filed a criminal revision being CRR No.3109 of 2019 praying for quashing of the said proceeding on the grounds that the lessees failed to perform their obligation arising out of contract dated 28th November, 2014. Secondly, the dispute between the parties is under consideration of the learned arbitrator appointed by this Court and the criminal proceeding is not maintainable against the petitioner. The said writ petition was disposed of giving liberty to the petitioner to agitate the points canvassed in the revisional application at the stage of Section 239 of the Code of Criminal Procedure.

8. The petitioner accordingly filed an application under Section 239 of the Cr.P.C praying for his discharge. By passing the impugned order the learned Magistrate rejected the application filed by the petitioner under Section 239 of the Cr.P.C and framed charged against the accused. In the instant revision the petitioner has challenged legality and validity of the said order dated 31st December, 2021 passed by the learned Additional Chief Judicial Magistrate at Bidhannagar.

9. At this stage, it is necessary to narrate the allegation made out by the said Suchitra Bakshi, one of the lessees, since deceased in her FIR dated 2nd April, 2018 addressed to the Officer-in-Charge, Bidhannagar North Police Station.

10. In her FIR she alleged that the petitioner had approached her that he would construct a four storied building at Premises No.DA 117, in joint

venture. In return the defacto complainant would get a sum of Rs.70 lakhs from the petitioner and one newly constructed floor in the said premises. The informant agreed to such proposal and accordingly two agreements were executed between them on 29th April, 2014 and in the month of January, 2015. The petitioner also made arrangement of a rented accommodation for the informant on condition that the petitioner would pay monthly rent of such accommodation. However, after some time the petitioner stopped payment of rent and therefore the landlord of the said tenanted premises delivered the informant to deliver vacant possession of the tenanted premises. The informant informed the matter to the petitioner but he abused her with filthy language and also threatened her with dire consequences. The informant was compelled to take shelter at premises No.26 S.K Deb Road, 5 By Lane, Lake Town. The informant also came to know that the petitioner constructed a four storied building at plot No.117, DA Block, Salt Lake City and took advance from intending purchaser to sale out four independent flats in contravention of the agreement executed by and between them. It was alleged by the informant that the petitioner fraudulently and dishonestly induced the petitioner to deliver possession of premises No.DA117, Salt Lake City in order to cause damage to the informant's property.

11. Indisputably, police submitted charge-sheet against the petitioner. It is already recorded that the petitioner approached this Court praying for quashment of the charge-sheet filed against him by filing CRR No.3109 of 2019. As per the direction passed by a Coordinate Bench in

this Court while disposing of CRR No.3109 of 2019, the petitioner was given liberty to raise his grievances at the time of consideration of charge by filing an application under Section 239 of the Cr.P.C. The petitioner filed such application but it was turned down by the learned Magistrate and charge was framed against the petitioner under Sections 420/506 of the IPC.

12. It is pertinent to mention that the informant Suchitra Bakshi, since deceased was made opposite party NO.2 in the instant revision. As a result of death of the informant/opposite party No.2 she personally could not contest the instant revision. However, her son Sujit Kr. Bakshi has been contesting the instant revision by filing affidavit-in-opposition. The said Sujit Kr. Bakshi is charge-sheeted witness No.2. he has not been impleaded as opposite party in the instant revision. He has also not filed any application before this Court praying for contesting the instant revision on behalf of the defacto complainant, since deceased. Without obtaining any leave of the court, said Sujit Kr. Bakshi filed affidavit-in-opposition. The affidavit-in-opposition filed by the above named Sujit Kr. Bakshi being charge-sheeted witness No.2 cannot be taken into consideration on behalf of the opposite party No.2, since deceased without the leave of the court. Therefore, I am not in a position to consider the affidavit-in-opposition filed by the said Sujit Kr. Bakshi.

13. By filing the supplementary affidavit, the petitioner has annexed a copy of the statement of defence filed by the said Sujit Kr. Bakshi in the aforesaid arbitration proceeding.

14. It is submitted by the learned Advocate for the petitioner that the entire dispute between the parties arose for non-performance of obligation arising out the development agreement dated 28th November, 2014 by the lessees of premises in question. The learned Advocate for the petitioner further submits that the informant alleged in her FIR that he dishonestly and fraudulently induced the informant and her son being the joint lessees to deliver vacant possession of the Premises No.DA117 for construction of a four storied building. On the contrary, it is found from the development agreement, the execution of which admitted by the lessees that on the basis of such development agreement the opposite party No.2, since deceased and her son, charge-sheeted witness No.2, delivered vacant possession of the Premises No.DA117.

15. Learned Advocate for the petitioner further submits that the petitioner himself made arrangement for rented accommodation of the informant and her family members and he paid rent in favour of the landlord by bank transfer in respect of the said tenanted premises which was occupied by the informant, since deceased and her family members by money transfer and also by directly making payment of money equivalent to rent amount in favour of the informant, since deceased. The opposite party No.2 and her son never took any step for delivering up vacant possession of the garage space which was occupied by one Pradip Ranjan Chakraborty, though it was agreed by and between the parties that the lessees would deliver vacant possession of the entire premises No.DA117. The petitioner was under obligation to complete construction

of the building within 18 months from the date of execution of the agreement. He substantially constructed the said building, but for failure on the part of the lessees to deliver vacant possession of garage space, entire construction could not be completed. The petitioner was under obligation to provide alternative accommodation in favour of the informant during the period for which possession of Premises No.DA117 was handed over to the petitioner. If for the failure of the lessees the petitioner failed to complete the construction and obtain clearance certificate from Bidhannagar Municipal Corporation, the petitioner cannot be prosecuted under Section 420/506 of the IPC. The learned Magistrate failed to consider the objection made by the petitioner in his petition under Section 239 of the Cr.P.C.

16. Though, the learned Advocate for Sujit Kr. Bakshi appeared and made his submission, I am not inclined to record such submission made on behalf of the Sujit Kr. Bakshi who has not been arraigned as opposite party in the instant revision.

17. Learned P.P-in-Charge, submits that at the time of framing of charge the trial court has to merely see whether the commission of offence can be a possibility under the facts and circumstances of the case and the documents filed with the police report or not. It is submitted by him that charge can be framed when a reasonable suspicion exists against the accused in favour of commission of offence charged. At the time of framing of charge, the trial court cannot consider as to whether the evidences collected against the petitioner will irresistibly appointing at

guilt of the petitioner. The learned Magistrate in his order dated 31st December, 2021 consider petitioner's objection under Section 239 of the Cr.P.C and on a detailed discussion the trial court framed charge against the petitioner under Section 420/506 of the IPC. Subsequently, date was fixed for evidence. At this stage the impugned order cannot be set aside by a process of roving inquiry.

18. In **State of Rajasthan vs. Ashok Kr. Kashyap** reported in **(2021) SCC Online SC 314**, the Hon'ble Supreme held that at the stage of framing of charge and/or considering the discharge application, a mini trial is not permissible. In *Eshar Singh vs. State of A.P* reported in (2004) 11 SCC 585, it was observed by the Hon'ble Supreme Court that framing of charge is a manifestation of the principle of fair trial, by giving sufficient notice along with all particulars to the accused being charged so as to enable him to prepare his defence.

19. In **Asian Resurfacing of Road Agency Pvt. Ltd. vs. CBI** reported in **(2018) 16 SCC 299**, the Hon'ble Supreme Court held in paragraph 37 is hereunder:

“37. Thus, we declare the law to be that order framing charge is not purely an interlocutory order nor a final order. Jurisdiction of the High Court is not barred irrespective of the label of a petition, be it under Sections 397 or 482 Cr.P.C or Article 227 of the Constitution. However, the said jurisdiction is to be exercised consistent with the legislative policy to ensure expeditious disposal of a trial without the same being in any manner hampered. Thus considered, the challenge to an order of charge should be entertained in a rarest of rare

case only to correct a patent error of jurisdiction and not to reappreciate the matter. Even where such challenge is entertained and stay is granted, the matter must be decided on day-to-day basis so that stay does not operate for an unduly long period. Though no mandatory time-limit may be fixed, the decision may not exceed two-three months normally. If it remains pending longer, duration of stay should not exceed six months, unless extension is granted by a specific speaking order, as already indicated. Mandate of speedy justice applies to the PC Act cases as well as other cases where at trial stage proceedings are stayed by the higher court i.e. the High Court or a court below the High Court, as the case may be. In all pending matters before the High Courts or other courts relating to the PC Act or all other civil or criminal cases, where stay of proceedings in a pending trial is operating, stay will automatically lapse after six months from today unless extended by a speaking order on the above parameters. Same course may also be adopted by civil and criminal appellate/Revisional Courts under the jurisdiction of the High Courts. The trial courts may, on expiry of the above period, resume the proceedings without waiting for any other intimation unless express order extending stay is produced.”

20. Similar view is expressed in a recent decision by the Hon’ble Supreme Court in Sanjay Kr. Rai vs. State of U.P reported in **(2021) SCC Online SC 367**.

21. In the **State of Rajasthan vs. Ashok Kumar Kashyap (Criminal Appeal No.407 of 2021)** the scope of revisional jurisdiction against an order of framing of charge fails for consideration before the Hon’ble

Supreme Court. In paragraph 11 of the said judgment, it was held by the Hon'ble Supreme Court as hereunder:-

“11... Having considered the reasoning given by the High Court and the grounds which are weighed with the High Court while discharging the accused, we are of the opinion that the High Court has exceeded in its jurisdiction in exercise of the revisional jurisdiction and has acted beyond the scope of Section 227/239 Cr.P.C. While discharging the accused, the High Court has gone into the merits of the case and has considered whether on the basis of the material on record, the accused is likely to be convicted or not. For the aforesaid, the High Court has considered in detail the transcript of the conversation between the complainant and the accused which exercise at this stage to consider the discharge application and/or framing of the charge is not permissible at all. As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. After considering the material on record including the transcript of the conversation between the complainant and the accused, the learned Special Judge having found that there is a prima facie case of the alleged offence under Section 7 of the P.C Act, framed the charge against the accused for the said offence. The High Court materially erred in negating the exercise of considering the transcript in detail and in considering whether on the basis of the material on record the accused is likely to be convicted for the offence under Section 7 of the PC Act or not. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible. At this stage, it is to be noted that even as per Section 7 of the PC Act, even an attempt constitutes an offence. Therefore, the High Court has erred and/or exceeded in virtually holding a mini trial at the stage of discharge application.”

22. Coming to the instant case, it is ascertained from the impugned dated 31st December, 2021 that the learned Magistrate on due consideration of the charge-sheet and the documents filed by the Investigating Officer along with the charge-sheet came to the conclusion that there is sufficient ground and/or reasonable suspicion against the accused for framing charge under Sections 420/506 of the IPC. The learned Magistrate was of the opinion that the plea taken by the accused/petitioner that he had actually arranged for the alternative accommodation of informant and her family members and there was no dishonest or fraudulent deception to induce the lessees to hand over the possession of the property in question cannot be taken into consideration at the time of framing of charge.

23. Placing reliance upon the materials on record and the principle laid down by the Hon'ble Supreme Court narrated hereinabove, I do not find any merit in the instant revision. Therefore, the instant revision is dismissed on contest.

24. It is made clear that this Court has not entered into the merits of the case and the same is required to be considered at the time of trial. This Court dismisses the instant revision as the defence on merits is not to be considered at the stage of framing of charge and/or at the stage of discharge application even under Section 482 of the Cr.P.C.

(Bibek Chaudhuri, J.)