

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 2001 of 2022

**Forida Begum
Vs.
The State of West Bengal & Ors.**

**For the petitioners : Mr. Bhagwat Chowdhury, Adv.,
Sk. Toslim Ali, Adv.,
Ms. Saba Parween, Adv.**

**For the State : Mr. Tanmay Kumar Ghosh, Adv.,
Mr. Mirza Firoj Ahmed Begg, Adv.**

**Heard &
Judgement on : 24.06.2022.**

Bibek Chaudhuri, J.

This is an application under Section 401 read with Section 482 of the Code of Criminal Procedure filed by the petitioner being the daughter of one Fazlur Rahaman, since deceased, challenging legality, validity and propriety of the order dated 9th June, 2022 passed by the Judicial Magistrate, Amta thereby rejecting the prayer of the

petitioner for police investigation under Section 156 (3) of the Code of Criminal Procedure.

On perusal of the materials-on-record this Court is of the view that the instant criminal revision can be disposed of here and now with the assistance of the Learned Advocate for the State. Mr. Tanmay Kumar Ghosh, Learned Public Prosecutor-in-Charge is requested to assist the Court. Appointment of Mr. Tanmoy Ghosh be regularized.

It is the case of the petitioner that her father, Fazlur Rahaman died on 7th April, 1984 leaving behind her and her brothers as legal heirs and successors in respect of his property. Long after his death, the accused persons created a purported deed of sale on 12th March, 2019 allegedly executed by one Sk. Ismail and Fazlur Rahaman, since deceased in favour of them and by such way the accused persons illegally got some property of the petitioner transferred in their name fraudulently, dishonestly and by making forgery. The deed dated 12th March, 2019 is a forged document. It could not be executed by Fazlur Rahaman as he died on 7th April, 1984.

The petitioner made a complaint before the jurisdictional Police Station for registering a case against the accused persons but Police did not take any action. A copy of the complaint was also sent to the

Superintendent of Police of the District but no action was also taken by him. Then the petitioner filed an application stating the entire fact before the Learned Additional Chief Judicial Magistrate at Amta which was registered as M.P. Case No. C 10 of 2022 praying for sending the said application under Section 156(3) of the Code of Criminal Procedure for treating the same as FIR and start investigation of the case.

The Learned Judicial Magistrate, Amta passed an order on 9th June, 2022 over the said application filed by the petitioner refusing the prayer of the petitioner to send the said application under Section 156(3) of the Code of Criminal Procedure and treated the same as a complaint under Section 190 of the Code of Criminal Procedure. Then he fixed a date for examination of the complainant and other witnesses under Section 200 of the Code of Criminal Procedure on 2nd September, 2022.

It is submitted by the Learned Advocate for the petitioner that the instant case cannot be proved only by the complainant and the witnesses. Relevant documents are required to be seized from the local Sub-Registry office, the original deed of sale dated 12th March, 2019 under the possession of the accused persons is also required to be seized. Therefore, without police investigation the case cannot be

proved. Thus, it is submitted by the Learned Advocate for the petitioner that the impugned order is bad in law and accordingly, it should be set aside.

Having heard the Learned Advocate for the petitioner and the Learned Public Prosecutor-in-Charge and on careful perusal of the impugned order this Court likes to record that it is within the domain of the jurisdiction of the Learned Magistrate as to whether a petition ought to be sent under Section 156(3) of the Code of Criminal Procedure or such petition can be taken as a petition of complaint under Section 190 of the Code of Criminal Procedure and the Court would proceed under Section 200 of the Code of Criminal Procedure or not. Therefore, this order cannot be said to be passed beyond the jurisdiction of the Learned Magistrate.

However, I am not unmindful to note that for the purpose of proving the charge against the accused persons the concerned volume in which the purported deed of sale is recorded and the original deed of sale and other documents are required to be seized.

Under such circumstances, the Learned Magistrate is directed to obtain an enquiry report from the police authority under Section 202 of the Code of Criminal Procedure before issuance of process against the accused persons. The Police authority may be directed to make

necessary enquiry with regard to the execution of the deed of sale in question and custody of the deed etc. and submit a report before the Learned Additional Chief Judicial Magistrate, Amta.

With the above direction, the instant criminal revision is **disposed of** on contest.

There shall be no order as to costs.

(Bibek Chaudhuri, J.)

Srimanta, A.R.(Ct.)