

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 1497 of 2023
Ramesh Sharan Rai & Ors.

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Milon Mukherjee, Sr. Adv.,
Mr. Rana Mukerjee, Adv.,
Mr. Ayan Bhattacharjee, Adv.,
Mr. Arik Banerjee, Adv.,
Mr. Meghajit Mukherjee, Adv.,
Mr. Aditya Ratan Tiwary, Adv.,
Ms. Priyanka Sarma, Adv.,

For the Defacto Complainant:

Mr. Ratnako Banerjee, Sr. Adv.,
Mr. Sabyasachi Banerjee, Adv.,
Mr. Jishnu Chowdhury, Adv.,
Mr. Aritra Basu, Adv.,
Mr. Anirban Dutta, Adv.,
Mr. Abhishek Jain, Adv.,
Mr. Binoy Kr. Jain, Adv.

With

CRR 1675 of 2023
Sanjay Kumar Mishra

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Debasis Roy, Adv.,
Mr. Sandipan Ganguly, Adv.,
Mr. Ayan Bhattacharjee, Adv.,
Mr. Aditya Ratan Tiwary, Adv.,
Mr. Ramendu Agarwal, Adv.

For the Defacto Complainant:

Mr. Ratnako Banerjee, Sr. Adv.,
Mr. Sabyasachi Banerjee, Adv.,
Mr. Jishnu Chowdhury, Adv.,

Mr. Aritra Basu, Adv.,
Mr. Anirban Dutta, Adv.,
Mr. Abhishek Jain, Adv.,
Mr. Binoy Kr. Jain, Adv.

Heard on: 17 May, 2023.

Judgment on: 19 June, 2023.

BIBEK CHAUDHURI, J. : –

1. Both the revisions have been filed under Section 482 of the Code of Criminal Procedure for quashing of the proceedings of GR Case No.209 of 2023 arising out Hare Street P.S Case No.52 dated February 22, 2023 under Sections 120B/406/465/467/468/471/420 of the IPC pending before the Chief Metropolitan Magistrate, Calcutta. Therefore both the revisions were heard together and this Court proposes to disposed of both the revisions by the following composite judgment.

2. Palogix Infrastructure Private Limited ("Palogix") was admitted into Corporate Insolvency Resolution Process (CIRP) under the provisions of Insolvency and Bankruptcy Code, 2016 pursuant to an order of the National Company Law Tribunal (NCLT) dated 16.05.2017. Sanjay Kumar Mishra was chosen as the successful resolution applicant and an order dated 12.02.2018 was passed by the NCLT at Kolkata approving the resolution plan submitted by him. Mr. Mishra was appointed as the managing director of GCL Logistics Terminal LLP. This limited liability partnership resulted from a Memorandum of Understanding (MOU) executed between Palogix and Sanjay Kumar Mishra and Godavari Commodities Limited. Godavari Commodities Limited holds 100 equity

shares in Palogix. The LLP was constituted between the parties with ownership ratio of 1:99 where 1% was of Sanjay Kumar Mishra without any investment and GCL LLP became the majority shareholder in Palogix to the extent of 73.25%. Mr. Ranjan Kumar was appointed as the director of GCL LLP on 20.08.2018.

3. Sanjay Kumar Mishra, along with Ramesh Saran Rai, Vishal Rai and Shweta Rai, who are minority shareholders of Palogix, created a resolution dated 01.02.2022 and appointed one Mr. Atul Paliwal as the director of Palogix. It is contended by the opposing party that Mr. Mishra tried to part with the possession of Durgapur Freight Terminal belonging to Palogix in favour of one Durgapur Freight Terminal Private Limited (**DFTL**) which is a company run by one Ajay Malviya, an associate of Ramesh Saran Rai. An agreement was entered by Palogix for transfer of license to carry on freight terminal business upon DPTL by virtue of a MOU dated 05.01.2017 which was cancelled by an agreement dated 31.12.2018. It is contended that the accused persons have been diverting revenue receivable by Palogix to various third party entities in order to cause wrongful loss and this was brought to the notice of Coke Oven Police Station, Durgapur, on 13.10.2022.

4. On 27.01.2023, GCL LLP gave a notice for convening an extraordinary general meeting (EGM) of the company on 20.02.2023. It is contended that the opposite party tried to upload relevant documents for the appointment of directors Kamal Singh Bhutoria and Sham Prem Rajka, when the system showed an "error" message. This is when opposite

party No.2, one Mr. Deepak Joshi, who is the nominee director of GCL Logistics, came to learn that the accused person had fraudulently uploaded a resignation letter dated 18.02.2023 and uploaded Form DIR 12 to the Registrar of Companies, Kolkata and a purported board resolution dated 18.02.2023 in order to oust him from the company.

5. As a result, the opposite party no.2 had lodged a written complaint before Hare Police Station which led to the registration of a FIR being Hare Street Police Station Case No.52 dated 22/2/2023 under Sections 120B/406/465/467/468/471/420 of the Indian Penal Code, 1860.

Therefore, this instant revision petition has been filed for setting aside the above-mentioned FIR, which was lodged on the basis of a written complaint by Mr. Deepak Joshi.

6. M. Milon Mukherjee, learned Senior Counsel on behalf of the accused/petitioners submits at the outset that the opposite party no.2 does not have any locus standi to file the complaint against the petitioners, nor does the Hare Street have any jurisdiction to register FIR on the basis of written complaint submitted by the respondent No.2. It is submitted by Mr. Mukherjee that the registered office of Palogix Infrastructure Pvt. Ltd. is at 86 B/2 Gajraj Complex within P.S Topsia. But the complaint was filed at Hare Street P.S by respondent no.2 who was appointed as a nominee director of Palogix by Godavari Logistic Terminal LLP on the strength of its being the majority share holder of Palogix. Jurisdiction of Hare Street P.S was assumed on the plea that Godavari has its registered office at Netaji Subhas Road under the Hare

Street P.S. However, no part of cause of action arose within the jurisdiction of Hare Street P.S. The dispute between the parties relates to an allegation of mismanagement and oppression by the respondent no.2 in the management and day to day business and affairs of the Company. Therefore, very institution of FIR by Hare Street P.S is without jurisdiction, so, is the criminal proceeding against the petitioners.

7. It is further submitted by Mr. Mukherjee that the petitioners are not even the FIR named accused persons. They are minority share holders of the Company. It is also submitted by Mr. Mukherjee that the respondent no.2 had resigned from the directorship of the Company on 18th February, 2023. Though the respondent no.2 has used the seal of the Company, he has no right and authority to use the said seal in the petition of complaint. Mr. Mukherjee refers to an application filed by the petitioners against respondent no.2 and the Company before the National Company Law Tribunal (NCLT) alleging mismanagement and oppression against Respondent no.2 and the said proceeding is pending. Moreover, Palogix underwent Corporate Insolvency Resolution Process (CIRP) in 2017 and the FIR no.1 accused was declared as successful Resolution applicant. The respondent no.2 had no authority to convene any extraordinary general meeting of the Company on 20th February, 2023. No notice of such perported meeting was served upon the petitioners. The respondent no.2 had no share in the Company. As he acted against the interest of the Company, the petitioners were compelled to file an application under Sections 241,242 and 244 of the Companies Act.

8. Mr. Mukerjee next takes me to the order dated 3rd April, 2023 passed by the learned Chief Metropolitan Magistrate, Calcutta wherein I.O's prayer for issuance of search warrant was allowed but the prayer for issuance of warrant of arrest against the petitioners was rejected. On 6th April, 2023, prayer of the I.O for issuance of warrant of arrest against accused Sanjay Mishra was allowed by the learned CMM, Calcutta.

9. Mr. Debasis Ray, learned Advocate on behalf of Accused Sanjay Mishra in CRR 1675 of 2023 has adopted the argument advanced by Mr. Mukherjee on behalf of the petitioners in CRR no.1497 of 2023. Mr. Ray also draws my attention to the DIR Form no.12 dated 18th February, 2023 and signature of respondent no.2 thereon. He also refers to the signature of respondent no.2 on the DIR 12 and the written compliant to apprise that both the signatures were made by one and the same person. Therefore, prima facie it is found on comparison of signatures in bare eye that the signatures were made by the respondent no.2. Therefore, allegation against the petitioners is false, concocted and baseless. On the basis of such allegation no criminal liability can be attributed to the petitions.

10. Mr. Ratnako Banerjee, learned Senior Counsel on behalf of the respondent no.2 submits that in order to appreciate the present dispute background of the differences between the parties is required to be borne in mind. Mr. Banerjee submits that Godavari Commodities Ltd. holds 75% share of Palogix while others, including the petitioners have 25% share. As majority shareholder, Godavari is entitled to appoint proportionate

number of directors of Palogix. The respondent no.2 was nominated as a director of Palogix by GCL. Upon service of notice, the respondent no.2 convened OGM of Palogix in the office premises of GCL. The petitioners did not attend the said meeting. However, in the said meeting one Kamal Singh Bhutoria was appointed as the director of the respondent no.1/Company. After the meeting, when respondent no.2 tried to upload the resolution of the meeting dated 20th February, 2023, he came to know that the accused persons creating forged documents removed respondent no.2 from his post as director of respondent no.1/Company.

11. It is also submitted by Mr. Banerjee that the learned Senior Counsel on behalf of the petitioners tries to portray the instant case as a dispute under the Companies Act and the offence is triable by Special Courts under Section 436 of the Companies Act, but the dispute is essentially and purely criminal in nature where the petitioners indulged in forgery to falsely remove the respondent no.2.

12. Having heard the learned Advocates for the parties and on perusal of the materials on record, the issue involved in the instant revision is as to whether the criminal proceeding instituted against the petitioners is liable to be quashed under Section 482 of the Cr.P.C.

13. With extensive scope and ramification, inherent powers under Section 482 of the Criminal Procedure Code include the power to stop any criminal case pending before any court subordinate to the High Court. Depending on the specifics of a case, these powers may be used to secure the ends of justice, prevent abuse of any court's process, and issue any

orders as may be necessary to give effect to any order under the Code. The court can always take note of any injustice and stop a criminal proceeding by using its authority under Section 482 of the Criminal Procedure Code. No other clause of the Code restricts or limits their capabilities. Such natural powers should only be used sparingly and with caution. In **State of Haryana v. Bhajan Lal (1992 Supp.(1) SCC 335)**, a two-Judges Bench of the Supreme Court of India considered in detail the provisions of Section 482 and the power of the High Court to quash criminal proceedings or FIR. The Supreme Court summarized the legal position by laying the following guidelines to be followed by the High Courts in the exercise of their inherent powers to quash a criminal complaint:

- (a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*
- (b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*
- (c) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;*

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

14. The position of the Supreme Court has been re-affirmed by the Supreme Court in the judgment of **Dr. Monica Kumar v. The State of Uttar Pradesh (2008) 8 SCC 781**. Applying the guidelines to the facts of the matter at hand, it is the opinion of this Court that the criminal proceeding should not be nipped in bud and quashed.

15. Mr. Deepak Joshi, the nominee director of GCL Logistic Terminal LLP, in the complaint to the Officer-in-Charge of Hare Street Police Station dated 21st February 2023, against Mr. Sanjay Kumar Mishra alleges that GLC Logistics Terminal LLP gave a notice dated 27th January,

2023 for convening the Extra-Ordinary General Meeting of the said company on 20th February, 2023 in terms of Section 100(4) of the Companies Act, 2013. The said meeting was held on 20th February, 2023 at 1:00 p.m. In the Extra-Ordinary General Meeting, the names of two persons were passed to be appointed as the Directors of the Company. Subsequently, the results of the said meeting were also forwarded to the necessary authorities. It is alleged in the complaint that as Mr. Deepak Joshi was trying to upload the details and outcome of the Extra-Ordinary General Meeting dated 20th February 2023, on the portal of the Ministry of Corporate Affairs, he could not upload the same as the system showed an error message *“Form DIR-12 is already pending for approval against the CIN U45201WB2007PTC162847”*. While submitting the hard copy with the Registrar of Companies, upon enquiring with the Help Desk and the Registrar of Companies, he came to know that a Form DIR-12 had been uploaded showing Mr. Deepak Joshi’s resignation from the said company on 18th February, 2023 by virtue of an alleged letter of resignation dated 18th February, 2023. He alleges that a Board Resolution of the same date i.e 18th February, 2023 along with Form DIR-12, was also passed. He alleges that he did not receive any notice of any Board Meeting of 18th February, 2023. Moreover, he alleges that his signature on the resignation letter was forged as he had never signed such document. He alleges that a fraudulent letter had been uploaded by the accused Sanjay Kumar Mishra and Tarun Saini on 18th, February, 2023. It also came to light that the form had been submitted on the basis of a Resolution of the company that

had been circulated by the said Mr. Sanjay Kumar Mishra and the said Mr. Atul Paliwal. He also alleges that he has been impersonated and his e-mail id has been illegally and unauthorizedly accessed by the said persons, and on 18.02.2023, they had also changed the password so that their offence may not be detected.

16. To quash the FIR against the accused, this Court would have to examine if the facts of the case come under any of the exceptions given in **State of Haryana v. Bhajan Lal (1992 Supp.(1) SCC 335)**. Firstly, the allegation made in the FIR makes out a prima facie case of forgery under S. 468 of the IPC, as Mr. Deepak Joshi alleges that not only was his signature forged in the resignation letter, but also his password had been changed. He had been impersonated by the accused as well as his e-mail id had been illegally and unauthorizedly accessed by the said accused. Therefore, taken at face value, the allegations made in the FIR do qualify as an offence under S.468 and S.471 of the IPC.

17. Secondly, the crimes under S. 468 and S.471, as alleged by Mr. Deepak Joshi, are cognizable offences and vide an order dated 6th April, 2023, the prayer of the I.O for issuance of the warrant of arrest against the accused Mr. Sanjay Mishra was allowed by the learned Chief Metropolitan Magistrate, Calcutta. When criminal investigation was set in motion, it is not desirable to quash a proceeding on the allegation that in DIR 12, the defacto complainant had put his signature and it was not forged. When the investigating authority has the scientific technicalities to examine admitted and purported signature of a person, it is not desirable

for the court to take the duty of physically compare the signatures of the defacto complainant.

18. Thirdly, the allegations are neither absurd nor inherently improbable. There are suitable grounds for proceeding with the investigation as there are reasons for doubts because Mr. Joshi could not upload the minutes of the EGM held on 20th February, 2023 as this resignation letter, as well as Form DIR 12, was uploaded, which was confirmed by the Registrar of Companies. Moreover, there is no express legal bar for the issuance and continuation of the proceedings, which would compel this court to quash the proceedings.

19. Lastly, this Court has no reason to believe that this criminal proceeding is manifestly attended with mala fide or that the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and to spite him due to private and personal grudge. In **Sanapareddy Maheedhar and Another vs State of Andhra Pradesh : AIR 2008 SC 787**, which dealt with a similar issue of quashing a proceeding under S. 478 of the CrPC, the apex court opined that:

“If the allegations contained in the FIR or complaint discloses commission of some crime, then the High Court must keep its hands off and allow the investigating agency to complete the investigation without any fetter and also refrain from passing order which may impede the trial. The High Court should not go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of the FIR or the complainant. The

High Court must also refrain from making imaginary journey in the realm of possible harassment which may be caused to the petitioner on account of investigation of the FIR or complaint. Such a course will result in miscarriage of justice and would encourage those accused of committing crimes to repeat the same. However, if the High Court is satisfied that the complaint does not disclose commission of any offence or prosecution is barred by limitation or that the proceedings of criminal case would result in failure of justice, then it may exercise inherent power under Section 482 Cr.P.C.”

This accused in this present case could not prove any mala fide intention. Still, even if they did, this Court would not have been compelled to go into the merits and demerits of the allegations simply because the petitioner alleges malus animus against the author of the FIR or the complainant, and use it as a reason to quash the FIR.

20. In **Som Mittal v Government of Karnataka AIR 2008 SC 1126**, the Supreme Court while deciding on whether to quash a proceeding under S.482 of Cr.P.C, in paragraph 19 opined that:

“We may observe here that despite this Court’s consistently held in catena of decisions that inherent power of the High Court should not be exercised according to whims and caprice and it has to be exercised sparingly, with circumspection and in the rarest of rare cases, we often come across the High Court exercising the inherent power under Section 482 of the Code of Criminal Procedure in a routine

manner at its whims and caprice setting at naught the cognizance taken and the FIR lodged at the threshold committing grave miscarriage of justice. While it is true that so long as the inherent power of Section 482 is in the Statute Book, exercise of such power is not impermissible but it must be noted that such power has to be exercised sparingly with circumspection and in the rarest of rare cases, the sole aim of which is to secure the ends of justice. The power under Section 482 is not intended to scuttle justice at the threshold.”

The matter at hand is not a rare case that justifies the Court's interference at the investigation stage. The allegation in the FIR makes out a prima facie case against the accused, and for this reason, the FIR registered in the Hare Street Police Station Case No.52 dated 22/2/2023 under Sections 120B/406/465/467/468/471/420 of the Indian Penal Code, 1860 should not be quashed.

21. In view of the above discussion, I do not find any reason to interfere with the investigational process of the investigating agency in the instant case. Criminal proceeding shall continue.

22. Accordingly, the instant revision is dismissed on contest. There shall, however, be no order as to cost.

23. With this, the instant petition is disposed of.

(Bibek Chaudhuri, J.)