IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 3760 of 2014

Goutam Paul @ Goutam Kumar Paul
-Vs-
The State of West Bengal & Anr.

For the Petitioner	: Mr. Sekhar Kumar Basu Mr. Soubhik Mitter
For the State	: Mr. Binay Panda Mr. Subham Bhakat
Heard on	: 27.09.2023, 13.12.2023.
Judgment on	: 18.12.2023

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by petitioner for quashing the proceedings being G.R. Case No. 311/2007 arising out of Bowbazar Police Station Case No. 49 dated 12.02.2007 under Sections 467/ 468/ 471/ 420/ 511 of the Indian Penal Code pending before the Court of the Learned Judicial Magistrate, 3rd Court, Calcutta and setting aside the order dated 11.09.2014 passed by the Learned Judicial Magistrate, 3rd Court, Calcutta whereby rejected the petitioner's prayer for discharge in connection with G.R. Case No. 311/2007 arising out of Bowbazar Police Station Case

No. 49 dated 12.02.2007 under Sections 467/468/471/420/511 of the Indian Penal Code.

2. The petitioner had been a businessman dealing in manufacture and wholesale trade of *'bidi'* tobacco and allied products through his partnership firm 'Radhashyam Tirthabashi Paul'. The petitioner had been arraigned as an accused person on the basis of a complaint lodged by the opposite party no. 2 and registered by Bowbazar Police Station on 12.02.2007, which, inter alia, alleged that:-

   The 71st Bangabhumi Super Draw of West Bengal State Lotteries was held on 05.02.2006. The ticket bearing no. D 223378 won the 1st Prize worth Rs.10,00,000/- (Ten Lakhs). The department received claims from two persons for the above mentioned prize. The claimants were (i) Goutam Paul @ Goutam Kumar Paul (petitioner) who submitted ticket no. D 223378 on 01.03.2006 vide receipt no. 8226 and (ii) Smt. Jyotsna Singh, C/o Swapan Singh, Shyambandh, Kali Mandir, Hirapur, Burnpur- 713325, Burdwan who also submitted ticket no. D 223378 on 10.02.2006 vide receipt no. 8218.

   As both the tickets had the same number and in view of the multiple claims the tickets were sent to Central Forensic Science Laboratory, Directorate of Forensic Science, Ministry of Home Affairs, Govt. Of India, 30, Gorachand Road, Kolkata-700014 vide memo no. 209 DSL dated 06.04.2006. Central Forensic Science Laboratory by its report no. CFSL(K)/EE/06(WB)-277 dated 31.08.2006 stated that the lottery ticket no. D 223378 marked Q2 had been genuine. It was opined by the Central Forensic Science Laboratory that ticket marked Q1 was not genuine.

Consequently it had been alleged that the petitioner had submitted a fraudulent claim for the 1st prize of 71st Bangabhumi Super Draw with a tampered ticket.

3. The petitioner stated on the basis of the said complaint Bowbazar Police Station Case No. 49 dated 12.02.2007 under Sections 467/468/471/420/511 of the Indian Penal Code had been registered against the petitioner.

4. The petitioner stated that after completion of investigation the Investigating Agency submitted its report in final form, vide Charge-sheet No. 123/2010 dated 13.07.2010, inter alia, alleging commission of offences punishable under Sections 467/468/471/420/511 of the Indian Penal Code against the petitioner. The Learned Chief Metropolitan Magistrate upon receipt of the said charge-sheet took cognizance of the same and the proceeding was transferred to the Court of the Learned Metropolitan Magistrate, 3rd Court, Calcutta for trial.

5. Subsequently, the petitioner preferred an application under Section 239 of the Code before the Court of the Learned Magistrate therein praying for discharge from the instant case.

6. The Learned Magistrate by an order dated 11.09.2014 rejected the prayer for discharge made on behalf of the petitioner in connection with the instant proceeding and further fixed 19.12.2014 as the next date of framing of charges in connection with the instant case.
7. The petitioner stated in the instant case, at the time of praying for discharge, the defence on it part pointed it out before the Learned Magistrate that the petitioner was a bona fide purchaser of the said ticket alleged to be forged.
8. The petitioner stated that the ticket, alleged to be a forged one, had a rubber stamp of a shop named and styled as Ma Tara Lottery Agency, Bus Stand, Siliguri. However, no investigation was conducted in this aspect. The statement of the witnesses did not reveal the denial of the existence of the aforesaid lottery shop.
9. The petitioner stated that in the instant case prosecution has relied on a letter purportedly written by one Goutam Kumar Saha therein stating that Tara Lottery Agency was not his agent and he never sold any ticket of 71st Bangabhumi Super to the said agency. In the said letter it was further stated that no further particulars of Tara Lottery Agency could be provided. It was evident from a cursory reading of the letter that nowhere the said letter denies the very existence of any agent by the name of Tara Lottery Agency. Absence of material, cannot establish the guilt of the petitioner, whereby the prosecution case is likely to fail if put on trial.

10. The petitioner stated that the statement of one Sudhangshu Biswas as recorded under Section 161 of the Code during the course of investigation would clearly reveal about existence of retail lottery ticket sellers in and around Siliguri Bus Stand area. As per the said statement a list of such sellers was to be furnished by the Sudhangshu Biswas, which however was never provided during the course of investigation. Therefore, it cannot be said that the entire existence of Ma Tara Lottery Agency was fake and/or fabricated.

11. The present proceeding is vexatious and harassive in nature and has been instituted at the behest of a malicious complaint. The allegations when taken in their entirety do not disclose the commission of any offence by the petitioners at all. Mere bald allegations cannot constitute an offence under Sections 467/468/471 or 420 of the Indian Penal Code.

12. The petitioner stated that Section 511 of the Indian Penal Code attempt to commit an offence. In order to attract the rigour of Section 511 of the Penal Code, prosecution has to prima facie establish that the offence which was alleged to have been committed was authored by the petitioner. In absence of any material thereby linking the petitioner to the crime, prosecution cannot take advantage of Section 511 of the Penal Code. In the instant case, the charge-sheet and/or the accompanying documents do not even remotely suggest of commission of any criminal act by the accused person and in absence of such vital material no proceeding is maintainable.

13. The petitioner stated that framing of charge against the accused person is a serious matter. Charges in a criminal trial cannot be framed as a matter of choice. It is not only that the FIR has to disclose commission of a cognizable offence prima facie, but the materials collected during investigation and as reflected in the charge-sheet has to bring out the complicity of the accused persons with regard to the crime so alleged to have been committed. A suspicion, which must be of a grave nature has to be disclosed in the charge-sheet in order to enable the Court to frame charges. The Learned Magistrate has to examine the nature of allegations made in the charge-sheet and also look into the accompanying documents and cull out therefrom the complicity of the accused person against whom such charges are to be framed. The Learned Magistrate in the instant case mechanically and without application of mind rejected the prayer for discharge of the petitioner prejudicial to his interests.

14. A careful scrutiny of the charge-sheet shall not disclose anything to prima facie indicate that any offence with regard to forgery of any document and/or cheating and/or even attempt to commit the same at the behest of the petitioner at any point of time.

15. The petitioner stated that when the petitioner had enquired about the manner then the Deputy Director, State Lotteries, Government of West Bengal had informed the petitioner vide Memo No. 185/DSL dated 28.03.2006 that the matter had been sent for forensic examination as there

was multiple claims in respect of the said ticket. Such conduct of the parties clearly establish that the petitioner was a bona fide purchaser of the lottery ticket who had only pursued his claim and presently had become a victim of circumstances.

16. The Learned Advocate for the petitioner submitted that:-

    i. Rejection of the prayer for discharge and subsequent framing of charge are judicial acts whereby a Learned Court is required to scrutinize the materials placed before it and thereafter being satisfied with regard to the complicity of the person so arraigned as an accused, decides to proceed with the trial by framing charges. A mechanical approach in rejecting the prayer for discharge and framing of charges does not satisfy the judicial need and mere signature on the dotted lines indicating that prayer for discharge is rejected as all contentions advanced can only be decided in course of a trial is a travesty of justice. In the instant case, the Learned Magistrate without applying his mind to the fact situation of the case in the most erroneous manner has rejected the prayer for discharge of the petitioner. Such order of rejecting the prayer for discharge is non-est in the eye of law and is liable to be set aside.

    ii. The allegations when taken in entirety do not disclose the commission of any offence by the petitioner at all. Mere bald allegations cannot constitute the offences as alleged and no useful purpose will be served by allowing the impugned proceedings to continue any further. The facts and circumstances narrated hereinbefore clearly indicate that the allegations are wholly false and are the product of an after thought and as such the entire proceeding is liable to be quashed.

iii. The charge-sheet and the accompanying documents if appreciated in it proper perspective would clearly reveal that the petitioner purchased the lottery ticket only and no criminality qua forgery of the same can be attributed to him. The Learned Magistrate by failing to consider this vital aspect in its proper perspective has committed a grave error in law and as such the order dated 11.09.2014 is liable to be set aside on this score alone.

iv. If the materials which can connect an accused person to the crime as alleged are significantly absent in the charge-sheet and its accompanying documents as to what role was played by the petitioner in the alleged commission of the crime or even in the attempt thereof, no proceeding can be launched against the person so sought to be tried as an accused person in a criminal trial.

v. The allegations in the charge-sheet and its accompanying documents do not disclose as to how and in what manner the petitioner committed any forgery or cheating of any property or even knowingly attempted to commit such offence as alleged.

vi. The ticket, alleged to be a forged one, had a rubber stamp on a shop named and styled as Ma Tara Lottery Agency, Bus Stand, Siliguri. However, no investigation was conducted with regard to this aspect also. The statement of the witnesses if read in their proper perspective would indicate that nowhere it has been alleged by the prosecution that no such lottery shop existed. It is trite law that in a case involving forgery, prosecution has to bring forth unimpeachable material/evidence in order to establish the complicity of the accused person. Without any material being available (qua author of the crime as alleged), there is not even an outside chance for the prosecution to prove its case and as such no useful purpose will be served by continuing the proceedings any further than the stage it has already reached.

vii. In the instant case prosecution has relied on a letter purportedly written by one Goutam Kumar Saha therein stating that Tara Lottery Agency was/is not his agent and he never sold any ticket of 71st Bangabhumi Super to the said agency. In the said letter it was further stated that no further particulars of Tara Lottery Agency could be provided. It is evident from a cursory reading of the letter that nowhere the said letter denies the very existence of any agent by the name of Tara Lottery Agency and hence by no stretch of imagination it can be said that the petitioner is criminally liable in anyway. Absence of any material, thereby unfailingly pointing a finger of guilt towards the petitioner, deals a severe blow to the basic substratum of the prosecution case, which is likely to fail if put on trial. Under such circumstances the entire proceeding is liable to be quashed against the petitioner.

viii. The statement of one Sudhangshu Biswas as recorded under Section 161 of the Code during the course of investigation would clearly reveal about existence of retail lottery ticket sellers in and around Siliguri Bus Stand area. As per the said statement a list of such sellers was to be furnished by the Sudhangshu Biswas, which however, was never done in course of the investigation. This being a crucial lacuna in the prosecution case, it cannot be said that the entire existence of Ma Tara Lottery Agency was fake and/or fabricated.

ix. The continuation of the instant proceeding any further than the stage it has already reached will be a gross abuse of the process of the Court inasmuch as from the fact narrated hereinabove it is crystal clear that the present proceeding is vexatious and harassive in nature and has been instituted at the behest of a malicious complainant. The allegations when taken in their entirety do not disclose the commission of any offence by the petitioner at all. Mere bald allegations cannot constitute an offence under Sections 467/468/471 or 420 of the Indian Penal Code and no useful purpose will be served by allowing the impugned proceedings to continue any further. The petitioner further stated that the facts and circumstances narrated hereinbefore clearly indicate that the allegations are wholly false and are the product of an afterthought and as such the entire proceeding is liable to be quashed.

x. Section 511 of the Indian Penal Code attempt to commit an offence. In order to attract the rigour of Section 511 of the Penal Code prosecution has to prima facie establish that the offence which is alleged to have been committed was authorized by the petitioner. In absence of any material thereby linking the petitioner to the crime, prosecution cannot take advantage of Section 511 of the Penal Code. In the instant case there is not even a whisper in the charge-sheet and/or accompanying documents which can even remotely suggest of commission of any criminal act by the accused person and in absence of such vital material no proceeding is maintainable.

xi. Framing of charge against the accused person is a serious matter. Charges in a criminal trial cannot be framed as a matter of course. It is not only that the FIR has to disclose commission of a cognizable offence prima facie, but the materials collected during investigation and as reflected in the charge-sheet has to specially bring out the complicity of the accused person with regard to the crime so alleged to have been committed. A suspicion, which must be of a grave nature has to be disclosed in the charge-sheet in order to enable the Court to frame charges. The order of the Magistrate rejecting the prayer for discharge of the accused person must reflect that he has applied his mind to the facts of the case and the law applicable thereto. The Learned Magistrate has to examine the nature of allegations made in the charge-sheet and also look into the accompanying documents and cull out therefrom the complicity of the accused person against whom such charges are to be framed. It is not that the Learned Magistrate is a silent spectator at the time of framing charges but on the contrary the Learned Magistrate has to carefully scrutinize the charge-sheet and the accompanying documents and find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by the accused. The Learned Magistrate in the instant case mechanically and without application of mind rejected the prayer for discharge of the petitioner and the same is serving to be highly prejudicial for him.

xii. The Learned Magistrate in the most mechanical manner has rejected the prayer for discharge of the petitioners and has clearly failed to apply his judicial mind, inasmuch as the allegations as levelled in the charge-sheet and its accompanying documents do not disclose commission of any offence as alleged. Even after a careful scrutiny the charge-sheet does not disclose anything to prima facie indicate that any offence with regard to forgery of any document and/or cheating and/or even attempt to commit the same at the behest of the petitioner at any point of time. In absence of such vital fact which can only constitute the offence as alleged, the order of the Learned Magistrate is wholly without jurisdiction and is liable to be set aside.

xiii. The order dated 11.09.2014 is otherwise bad in law and is liable to be set aside.

xiv. Continuation of the impugned proceeding is vexatious, false and fabricated and is liable to be quashed.

17. The Learned Advocate for the State submitted that the charge-sheet in the instant proceeding has been submitted establishing prima facie involvement of the petitioner in the alleged offence and the Learned Trial Court has rightly rejected the prayer for discharge of the petitioner and the trial shall be allowed to continue.

18. In the case of ***Sheila Sebastian Vs. R. Jawaharaj and Anr.***[1], the Hon'ble Supreme Court held as follows:

> *"**17.** At this juncture, it is pertinent to have a look at the definition of "forgery" and the precedents on this aspect.*
>
> > *"**463. Forgery.—**Whoever makes any false documents [or false electronic record] or part of a document [or electronic record], with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with*

[1] (2018) 7 SCC 581

> *property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery."*

18. *It would also be necessary to understand the scope of Section 464 IPC in this context:*

> *"**464. Making a false document.—**A person is said to make a false document or false electronic record—*
>
> *First.—Who dishonestly or fraudulently—*
>
> *(a) makes, signs, seals or executes a document or part of a document;*
>
> *(b) makes or transmits any electronic record or part of any electronic record;*
>
> *(c) affixes any electronic signature on any electronic record;*
>
> *(d) makes any mark denoting the execution of a document or the authenticity of the electronic signature,*

with the intention of causing it to be believed that such document or part of a document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or

Secondly.—Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or

Thirdly.—Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

Explanation 1.—A man's signature of his own name may amount to forgery.

Explanation 2.—The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery.

Explanation 3.—For the purposes of this section, the expression "affixing electronic signature" shall have the meaning assigned to it in clause (d) of sub-section (1) of Section 2 of the Information Technology Act, 2000.

19. *A close scrutiny of the aforesaid provisions makes it clear that, Section 463 defines the offence of forgery, while Section 464 substantiates the same by providing an answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under Section 463 IPC. Therefore, we can safely deduce that Section 464 defines one of the ingredients of forgery i.e. making of a false document. Further, Section 465 provides punishment for the commission of the offence of forgery. In order to sustain a conviction under Section 465, first it has to be proved that forgery was committed under Section 463, implying that ingredients under Section 464 should also be satisfied. Therefore unless and until ingredients under Section 463 are satisfied a person cannot be convicted under Section 465 by solely relying on the ingredients of Section 464, as the offence of forgery would remain incomplete.*

20. *The key to unfold the present dispute lies in understanding Explanation 2 as given in Section 464 IPC. As Collin, J., puts it precisely in Dickins v. Gill [Dickins v. Gill, (1896) 2 QB 310 (DC)] , a case dealing with the possession and making of fictitious stamp wherein he stated that "to make", in itself involves conscious act on the part of the maker. Therefore, an offence of forgery cannot lie against a person who has not created it or signed it.*

21. *It is observed in Mohd. Ibrahim v. State of Bihar [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] that: (SCC p. 756, para 14)*

"14. … a person is said to have made a "false document", if

(i) he made or executed a document claiming to be someone else or authorised by someone else; or

(ii) he altered or tampered a document; or

(iii) he obtained a document by practising deception, or from a person not in control of his senses."

22. *In Mohd. Ibrahim [Mohd. Ibrahim v. State of Bihar, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] , this Court had the occasion to examine forgery of a document purporting to be a valuable security (Section 467 IPC) and using of forged document as genuine (Section 471 IPC). While considering the basic ingredients of both the offences, this Court observed that to attract the offence of forgery as defined under Section 463 IPC depends upon creation of a document as defined under Section 464 IPC. It is further observed that mere execution of a sale deed by claiming that property being sold was executant's property, did not amount to commission of offences punishable under Sections 467 and 471 IPC even if title of property did not vest in the executant.*

23. The Court in *Mohd. Ibrahim* [*Mohd. Ibrahim* v. *State of Bihar*, (2009) 8 SCC 751 : (2009) 3 SCC (Cri) 929] observed that: (SCC p. 757, paras 16-17)

"16. … There is a fundamental difference between a person executing a sale deed claiming that the property conveyed is his property, and a person executing a sale deed by impersonating the owner or falsely claiming to be authorised or empowered by the owner, to execute the deed on owner's behalf. When a person executes a document conveying a property describing it as his, there are two possibilities. The first is that he bona fide believes that the property actually belongs to him. The second is that he may be dishonestly or fraudulently claiming it to be his even though he knows that it is not his property. But to fall under first category of "false documents", it is not sufficient that a document has been made or executed dishonestly or fraudulently. There is a further requirement that it should have been made with the intention of causing it to be believed that such document was made or executed by, or by the authority of a person, by whom or by whose authority he knows that it was not made or executed.

17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted."

24. *In Mir Nagvi Askari v. CBI [Mir Nagvi Askari v. CBI, (2009) 15 SCC 643 : (2010) 2 SCC (Cri) 718] , this Court, after analysing the facts of that case, came to observe as follows: (SCC p. 687, para 164)*

"164. A person is said to make a false document or record if he satisfies one of the three conditions as noticed hereinbefore and provided for under the said section. The first condition being that the document has been falsified with the intention of causing it to be believed that such document has been made by a person, by whom the person falsifying the document knows that it was not made. Clearly the documents in question in the present case, even if it be assumed to have been made dishonestly or fraudulently, had not been made with the intention of causing it to be believed that they were made by or under the authority of someone else. The second criteria of the section deals with a case where a person without lawful authority alters a document after it has been made. There has been no allegation of alteration of the voucher in question after they have been made. Therefore, in our opinion the second criteria of the said section is also not applicable to the present case. The third and final condition of

Section 464 deals with a document, signed by a person who due to his mental capacity does not know the contents of the documents which were made i.e. because of intoxication or unsoundness of mind, etc. Such is also not the case before us. Indisputably therefore the accused before us could not have been convicted with the making of a false document."

25. *Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.*

26. *The definition of "false document" is a part of the definition of "forgery". Both must be read together. "Forgery" and "fraud" are essentially matters of evidence which could be proved as a fact by direct evidence or by inferences drawn from proved facts. In the case in hand, there is no finding recorded by the trial court that the respondents have made any false document or part of the document/record to execute mortgage deed under the guise of that "false document". Hence, neither Respondent 1 nor Respondent 2 can be held as makers of the forged documents. It is the imposter who can be said to have made the false document by committing forgery. In such an event the trial court as well as the appellate court misguided themselves by convicting the accused. Therefore, the High Court has rightly acquitted the accused based on the settled legal position and we find no reason to interfere with the same."*

19. The materials on the case diary along with the contents of the charge-sheet did not specifically mention the role of the petitioner in committing forgery. The investigation has been completed. There is no further scope to venture into further investigation. The Expert opinion denoted the lottery ticket submitted by the petitioner to be forged and tampered. However, the prosecution could not produce any plausible document or any witnesses to describe the role of the petitioner in forging the documents. The

Investigating Officer stated the forgery to have been fructified through conspiracy and/or connivance with unknown person as the initial burden of proof of forgery as alleged has to be discharged by the prosecution itself.

20. The prosecution during the course of investigation failed to trace out such unknown persons forming the racket. The petitioner pragmatically cannot form a racket in isolation, seclusion or in exclusion neither can he unilaterally represent a racket or a conglomerate of unknown persons.

21. Mere assumptions that the petitioner after knowing the number of the prize winning lottery illegally manufactured the same are vague and absurd.

22. In view of the above discussions, the proceedings being G.R. Case No. 311/2007 arising out of Bowbazar Police Station Case No. 49 dated 12.02.2007 under Sections 467/ 468/ 471/ 420/ 511 of the Indian Penal Code pending before the Court of the Learned Judicial Magistrate, 3rd Court, Calcutta and setting aside the order dated 11.09.2014 passed by the Learned Judicial Magistrate, 3rd Court, Calcutta whereby rejected the petitioner's prayer for discharge in connection with G.R. Case No. 311/2007 arising out of Bowbazar Police Station Case No. 49 dated 12.02.2007 under Sections 467/468/471/420/511 of the Indian Penal Code is quashed.

23. Under such circumstances, the instant criminal revisional application being CRR 3760 of 2014 is allowed.

24. Accordingly, CRR 3760 of 2014 stands disposed of.

25. There is no order as to cost.

26. Case Diary to be returned forthwith.

27. Let the copy of this judgment be sent to the Learned Trial Court as well the police station concerned for necessary information and compliance.

28. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)