

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

CRR 1329 of 2018

IA No. CRAN 1 of 2024 (Old No: CRAN 2570 of 2018)

Indranil Bhattacharjee

Vs.

The State of West Bengal & Anr.

With

CRR 4187 of 2017

Sujata Dutta

Vs.

State of West Bengal & Ors.

For the petitioner in CRR 4187 :Mr. Tapas Dutta, Adv.
of 2017 & opposite party no. 2 Mr. Mrityunjoy Halder. Adv.
in CRR 1329 of 2018

For the petitioner in CRR 1329 :Mr. Sourav Chatterjee, Adv.
Of 2018 Mr. Souvik Nandy, Adv.
Mr. Soumya Nag, Adv.

For the State in CRR 4187 of :Mr. Binoy Kumar Panda, Adv.,
2017 Mr. Subham Kanti Bhakat, Adv.

Heard On : : 22.08.2023,01.09.2023,
26.09.2023, 07.12.2023,
07.12.2023, 11.12.2023,
21.12.2023, 25.01.2024,
01.03.2024, 01.05.2024,
13.05.2024, 21.05.2024,
24.06.2024

Judgment On :19.07.2024

Bibhas Ranjan De, J. :

1. The instant revision application has been preferred with a prayer for quashment of the proceedings in connection with A.C No. 2707 of 2017 pending before the Court of Ld. Judicial Magistrate, 6th Court, Alipore under Sections 466/468/474 of the Indian Penal Code (for IPC) against the petitioner wherein process has been issued against him.

Brief Facts:-

2. The impugned proceeding arose out of an issue in the premises holding No. 73, Raja Ram Mohan Roy Road, Kolkata-700041 under Borough No. XIII. Kolkata Municipal Corporation (for short K.M.C) issued a building plan being No. 2012130355 dated 05-10- 2012 and, thereafter, the said plan

was revised. In the building plan, area of car parking was mentioned to be 25.250 sq. mtr. whereas in actual measurement it was found to be 23.65 sq. mtr. To that effect a certificate dated 17-04- 2016 issued by a Licensed Building Surveyor (for short LBS) of KMC was relied upon. As per Minutes of Meeting dated 06-04-2011 of KMC, similarly, height of the ground level was to be raised up to 300 mm. Whereas building plan was issued allowing ground height of 450 mm, contravening the decision of the said minutes. It was further decided in the said meeting that exclusion of FAR should be granted on the basis of 25 sq. mtr. per covered parking (mandatory requirement) for ground floor, whereas for giving the benefit of exclusion of FAR to the promoter, the said building plan was issued enhancing the actual area from 23.65 sq. mtr. to 25.250 sq. mtr. and it was not the mistake or omission but it was done knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine and thereby the petitioner claimed his title over 25.250 sq. mtr. instead of 23.65 sq. mtr. by virtue of the said building plan and allegedly the petitioner executed a deed

of conveyance dated 14-02-2014 and issued the possession letter dated 12-02-2014 and thereby he committed fraud and forgery against the opposite party no. 2. When the opposite party no. 2 complained about the same to the concerned police station but no FIR was registered but subsequently the same was converted and treated as complaint case. After examination of complainant and other available witnesses present, summon was issued u/s. 466/468/474 IPC upon the accused/petitioner herein. Thereafter, the petitioner surrendered and enlarged on bail. Being aggrieved by and dissatisfied with the impugned proceeding the petitioner has preferred the instant revision application invoking jurisdiction under Section 482 of the Code of Criminal Procedure (for short Cr.P.C).

- 3.** The prayer for speedy disposal of the proceeding in connection with that instant case which is pending before the Court of Ld. Judicial Magistrate, 6th Court, Alipore has been made by the petitioner in connection with CRR 4187 of 2017.
- 4.** Both this revision applications are taken up together for disposal via this common judgement.

Arguments Advanced:-**With respect to CRR 1329 of 2018:-**

5. Ld. Counsel, Mr. Sourav Chattejee, appearing on behalf of the petitioner has mainly contended that the entire dispute by and between the parties at best relates to a dispute which is purely civil in nature and no criminal proceeding should be allowed to proceed further in connection with the instant case.
6. Mr. Chatterjee has further argued that the facts and circumstances of the instant case make it amply clear that the opposite party no. 2 has instituted this proceeding in order to create pressure upon the developer to deliver the other car parking space in favour of her for which they do not have any right, title and interest.
7. Mr. Chatterjee has also pleaded that the impugned order dated 06.01.2018 passed by the Ld. Judicial Magistrate, has no legs to stand as the preliminary evidence adduced by the opposite party no. 2 along with the petition of compliant is bereft of material particulars so as to prima facie make out any case against the petitioner.

8. Before parting with, Mr. Chatterjee has contended that neither the Ld. Additional Chief Judicial Magistrate, Alipore while passing the order dated 22.08.2017 wherein the instant case was converted to a complaint case nor the Ld. Judicial Magistrate, 6th Court, Alipore while passing the impugned order dated 06.01.2018 assigned any reasons for disbelieving preliminary enquiry report dated 22.08.2017 submitted by the police the personnel attached to Haridevpur police station. As a sequel, Mr. Chatterjee has tried to impress this Court that the petitioner cannot be entangled in any criminal prosecution for the offences alleged in connection with the instant case.

9. In order to substantiate his claim, Mr. Chatterjee has relied on some cases which stands as follows:-

- ***Haji Iqbal alias Bala through S.P.O.A vs. State of Uttar Pradesh & Ors.*** reported in **2023 SCC OnLine SC 946**
- ***Haji Iqbal alias Bala through S.P.O.A vs. State of Uttar Pradesh & Ors.*** reported in **2023 SCC OnLine SC 948**
- ***State of Haryana & Ors. vs. Bhajan Lal & Ors.*** reported in **1992 Supp (1) SCC 335**

- ***Vineet Kumar Goel vs State of Uttar Pradesh and Anr*** reported in **2017 (13) SCC 369**
- ***Ahmad Ali Quarashi & Anr vs. State of Uttar Pradesh and Anr*** reported in **2020 (13) SCC 435**
- ***Raj Kumar Mondal vs. State of West Bengal*** reported in **2021 SCC OnLine Cal 2069**

10. Per contra, Ld. Counsel, Mr. Tapas Dutta, appearing on behalf of the opposite party no. 2 has mainly contended that if merely a Civil Suit is pending or there is prima facie civil dispute, it does not absolve the accused from criminal proceeding. In a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the complainant that itself cannot be a ground to quash a criminal proceeding. It is a settled proposition of law that both civil and criminal proceedings can run concurrently.

11. While exercising jurisdiction under Section 482 of the Cr.P.C the real test for the High Court is to assess whether the allegation made in the complaint discloses a cognizable offence or not. If the complaint prima facie discloses commission of

the same then the High Court should not interfere by exercising extra ordinary power as there is hardly any scope to assess credibility of the allegation made in the complaint.

12. Before parting with, Mr. Dutta has argued that the High Court should not generally exercise power under Section 482 of the Cr.P.C. after order of taking cognizance and issuance of process against the accused is being given by the Court below.

13. In order to substantiate his argument, Mr. Dutta relied on a following cases:-

- ***Rakhi Mishra vs. State of Bihar*** reported in **(2017) 16 SCC 772**
- ***Vijayander Kumar & Ors. vs. State of Rajasthan & Anr.*** reported in **(2014) 3 SCC 389**
- ***Mahant Abhey Dass vs. Gurdial Singh & Ors reported in AIR (1971) SC 834***
- ***Syed Askari Hadi Ali Augustine Imam & anr. vs. State (Delhi Administration) & Anr. reported in (2009) 5 SCC 528***

14. Ld. Counsel, Mr. Rana Mukherjee, appearing on behalf of the State has supported the impugned order passed by the Ld.

Judicial Magistrate, and stated that there is sufficient evidence in order to establish a prima facie case against the petitioner herein and has sternly rejected the prayer of the petitioner for quashment of the impugned proceeding at this stage.

Ratio of the cases relied on behalf of the parties:-

15. From careful scrutiny of the cases relied on behalf of Mr. Chatterjee following ratios have come up for consideration which can be summarized as follows for brevity of discussion:-

- Inherent power given to the High Court under Section 482 of Cr.P.C is with the purpose and object of advancement of justice. In case the process of Court is tried to be abused by any person the Court has to thwart that attempt at the very threshold.
- If the Court is satisfied that the criminal proceeding initiated by the complainant is with an ulterior motive due to private and personal grudge then that proceeding is liable to be quashed.
- If the petitioner comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under

Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely.

- In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines in order to exercise jurisdiction under Section 482 of the Cr.P.C.

16. Per contra, Mr. Dutta has also relied on some cases mentioned above in order to swing the attention of this Court in his favour. After careful perusal of the referred cases the following ratios have been highlighted which are as follows:-

- At the stage of cognizance and summoning the Ld. Magistrate is required to apply his judicial mind only with a view to ascertain whether a prima facie case is made out for summoning the accused persons. At this stage, the

Magistrate is not required to consider the defence version nor he is required to evaluate the merits of the materials or evidence of the complainant, because the Magistrate must not undertake the exercise to find out at this stage whether the materials would lead to conviction or not.

- A given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may also be available to the complainant that itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint discloses a cognizable offence or not.
- It is settled proposition of law that a civil proceeding as also a criminal proceeding may proceed simultaneously. Cognizance in a criminal proceeding can be taken by the Criminal Court upon arriving at the satisfaction that there exists a prima facie case.
- If the allegation made in the complaint prima facie suggests that there can be a slightest possibility that the accused might have committed the offence alleged then he must

stand trial and no order of quashment should be given while adjudicating matters of similar nomenclature.

Analysis:-

- 17.** From the facts delineated in the petition of complaint under Section 156(3) of Cr.P.C, it is found that building plan dated 05.10.2012 issued by the KMC was further revised by the KMC with regard to Car parking space. It was alleged that in the revised plan car parking space was shown as 25.250 sq.mtr. whereas actual measurement shows 23.65 sq.mtr. The earlier building plan was revised by the KMC with regard to ground height as well. In contravention of minutes of meeting dated 06.04.2011 of KMC.
- 18.** Therefore, the complaint was lodged alleging a deviation in sanction plan issued by the KMC and also in contravention with the minutes of meeting of KMC held on 06.04.2011.
- 19.** Now this Court comes to the issue whether the allegations made in the complaint attract the offence under Sections 466/468/474 of the IPC. Now, it would be convenient to reproduce the penal provision as follows:-

“ 466. Forgery of record of Court or of public register, etc.—

Whoever forges a document or an electronic record, purporting to be a record or proceeding of or in a Court of Justice, or a register of birth, baptism, marriage or burial, or a register kept by a public servant as such, or a certificate or document purporting to be made by a public servant in his official capacity, or an authority to institute or defend a suit, or to take any proceedings therein, or to confess judgment, or a power of attorney, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

Explanation.—For the purposes of this section, “register” includes any list, data or record of any entries maintained in the electronic form as defined in clause (r) of sub-section (1) of section 2 of the Information Technology Act, 2000.

468. Forgery for purpose of cheating.—

Whoever commits forgery, intending that the document or electronic record forged shall be used for the purpose of cheating, shall be punished with imprisonment of either de-scription for a term which may extend to seven years, and shall also be liable to fine.

474. Having possession of document described in section 466 or 467, knowing it to be forged and intending to use it as genuine.—

Whoever has in his possession any document or electronic record, knowing the same to be forged and intending that the same shall fraudulently or dishonestly be used as genuine, shall, if the document

or electronic record is one of the description mentioned in section 466 of this Code, be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine; and if the document is one of the description mentioned in section 467, shall be punished with imprisonment for life, or with imprisonment of either description, for a term which may extend to seven years, and shall also be liable to fine.”

20. Forgery as codified in the IPC lays down following essential elements in order to constitute the said offence which are as follows:-

- The making of a false document or part of it.
- Such making should be with such intention as is specified in the Section viz. to cause damage or infringe the public/ any person or to support any claim or title or to cause any person to part with property or to cause any person to or to cause any person to enter into an express or implied contract or to commit fraud or that fraud may be committed.

21. Section 466 of IPC deals with the forgery of record of Court or public registers or document purporting to be made

by a public servant in his official capacity. But, in this case allegations relate to deviation in sanction plan.

22. To establish an offence under **Section 468 of IPC**, the prosecution must prove the following essential elements:

- The document or electronic record is forged;
- The accused forged the document or electronic record;
- The accused forged the document or electronic record intending that the forged document would be used for the purpose of cheating.

23. In order to attract offence under Section 474 of the IPC the following components are required:-

- The document or electronic record is a forged one;
- The accused was in possession of it;
- The accused knew it to be forged; and
- The accused intended to use it as genuine

24. After analysis of the pertinent provisions and certain enactments, the intention of the legislature has to be properly scrutinized and applied in order to adjudicate the case at hand justly. So, from the depiction of the concept of 'Forgery' in the penal code, it is sine qua-non to forge a document. But,

from careful perusal of the tone and tenor of the written complaint made by the opposite party no. 2 herein, there is no specific allegation made by the opposite party no. 2 against the petitioner that he himself has forged the document. Rather, the allegation is that he has in collusion with some KMC Officials partied with larger conspiracy and has fabricated the document for personal gain.

25. So, it cannot be said that the petitioner himself has forged the document which is absolutely essential in order to attract offences which have been alleged against the petitioner.

26. Moreover, from the contents of the complaint there is no clear averment regarding which document has exactly been forged or fabricated. There is no prima facie specific evidence to show which particular document has been fraudulently prepared. Cause, all the documents relied on behalf of the opposite party no. 2 with regard to his claim that the actual area of car parking is 25.250sq. mtr. instead of 23.65 sq. mtr. and also the ground height of 450 mm instead of actual height of 300 mm is based on the Building Plan and Minutes of the Meeting which are solely prepared by K.M.C. Therefore, the

exact role of the petitioners, in my opinion, is not at all clear in order to prosecute him for the offences alleged as the allegations against the petitioner are absurd and inherently improbable on the basis of which no proceeding can be entertained further.

27. Alternatively, even in the case of any dispute relating to deviation, it can only be dealt with in accordance with the terms of Section 619A & Section 620 of the K.M.C Act and there is a specific bar engrafted in the said provision which makes it clear that Court cannot take cognizance of those cases unless the Municipal Commissioner or any person authorized by him by general or special order lodges that complaint.

28. But, in the case at hand no such complaint has been made by the K.M.C. Commissioner or any authorized person to that effect. So, this Court has no scope to entertain this lis.

29. Lastly, it is admitted that the issue at hand has already been assailed before different platforms of the Consumer Forum ranging from District Forum to State Consumer Forum

to National Consumer Forum and the outcome of the same is still pending.

30. Moreover, in common parlance deviation from a site plan typically doesn't directly lead to criminal prosecution. However, it can have legal consequences, such as violating zoning regulations or building codes. These violations may result in fines, penalties, or orders to correct the deviation.

31. In view of the aforesaid discussion, I think the factual matrix of the case is fit for application of parameters No. 1,5,6 laid down in the celebrated judgement of **Bhajan Lal** (supra). The Parameters No. 1,5,6, are as follows:-

“ (1) 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.

(5) 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.

(6) 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.”

32. As a sequel, this Court finds no other alternative but to quash the Criminal Proceeding in connection with A.C No. 2707 of 2017 pending before the Court of Ld. Judicial Magistrate, 6th Court, Alipore against the petitioner.

33. As a result the Revision Application being no. CRR 1329 of 2018 stands allowed.

With respect to CRR 4187 of 2017:-

34. Pursuant to the decisions in CRR 1329 of 2018, question of speedy disposal of the proceeding in connection with A.C No. 2707 of 2017 does not arise.

35. Thus, the revision application being no. CRR 4187 of 2017 stands dismissed on the virtue of being infructuous.

36. Interim order, if there be any, stands vacated.

- 37.** Connected applications, if there be any, stand disposed of accordingly.
- 38.** All parties to this revision application shall act on the server copy of this order downloaded from the official website of this Court.
- 39.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]