

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

CRR 2663 of 2022

(Assigned)

Anil Kumar & Ors.

Vs.

State of West Bengal & Anr.

For the petitioners :	Mr. Sandipan Ganguly, Sr. Adv., Mr. Somopriyo Chowdhury, Ms. Manaswita Mukherjee, Mr. Dipayan Dan.
For the Opposite Party No. 2:	Mr. Debajyoti Deb, Ms. Somdyuti Parekh.
For the State :	Mr. Rudradipta Nandy, Ld. APP., Ms. Sonali Das.
Heard On :	27.09.2023,12.10.2023,30.11.2023, 12.12.2023,05.01.2024,08.01.2024, 09.01.2024,16.01.2024,30.01.2024, 26.02.2024,13.03.2024,20.03.2024, 26.04.2024,17.05.2024,10.06.2024, 19.06.2024
Judgment On :	25.06.2024

Bibhas Ranjan De, J. :

1. Challenge in this revision application is the quashing of the proceeding in connection with Hare Street Police Station Case No. 87 of 2022 dated 13.04.2022 under Sections 120B/420/467/468/469/471/379 of the Indian Penal Code (hereinafter referred to as IPC) corresponding to G.R. Case No. 399/2022 presently pending before the Court of Chief Metropolitan Magistrate (for short CMM) Calcutta.

Brief facts :

2. The allegation made in the written complaint under Section 156(3) Cr.P.C. made by the Opposite Party No. 2 herein is to the effect that the petitioners herein hatched a criminal conspiracy and on the virtue of being directors of the company, CAIS Engineering Services Pvt. Ltd. in collusion with others removed the Opposite Party No. 2 herein from the Directorship of the Company with effect from 29th May, 2021 by forging the digital signature of the O.P.2/complainant on the “DIR 12” form. In addition to that, all the shares of the Company were transferred for the wrongful gain of the petitioners and subsequent gainful loss of the Opposite Party No. 2. Moreso, petitioner no. 1 also committed theft of seal and license documents from the office of the Company. Thereby, petitioners have wrongfully cheated the opposite party no. 2 herein and have committed certain offences alleged.

3. The aforesaid complaint was forwarded by the Ld. CMM Calcutta to the Hare Street Police Station for registration of FIR and investigation. As a sequel, Hare Street Police Station Case No. 87/2022 was registered and investigation was started.

Arguments advanced :

4. Ld. Senior Counsel Mr. Sandipan Ganguly appearing on behalf of the petitioner has mainly canvassed his argument on the following points :
 - The allegation made in the FIR does not disclose commission of any offence as the allegation of forged digital signature in form “DIR 12” resulting in removal of opposite party no. 2 from the Directorship of the Company does not have any leg to stand as form “DIR 12” does not require the signature of the Opposite Party No. 2 at all.
 - In support of his contention regarding non-possibility of forgery in digital signature, Mr. Ganguly has relied on the guidelines enacted by the Government of India in the year 2019 which requires mandatory verifications of video, mobile, EKYC, biometrics which makes it impossible to forge anybody’s digital signature.

- In addition to that, Mr. Ganguly has contended that the impugned proceeding was initiated at the behest of the opposite party no. 2 as a counter blast to Hare Street Police Station Case No. 219 of 2021 which was initiated against him and his wife for mis-appropriation of CAIS Company.
- Before parting with Mr. Ganguly has highlighted the attempt made by the Opposite Party No. 2 to change his allegation of forgery of digital signature in form “DIR 12” to form “MGT 7” for the first time during hearing of the instant application which according to him is a separate cause of action altogether having no bearing with the contents of the complaint on the basis of which the impugned proceeding was initiated.

5. In support of his contention Mr. Ganguly has relied on the following cases

- ***Eicher Tractor Ltd. & Ors. Vs. Harihar Singh & Anr.*** reported in ***(2008) 16 SCC 763.***
- ***M.N. Ojha & Ors. V. Alok Kumar Srivastav & Anr.*** reported in ***(2009) 9 SCC 682.***
- ***Mahmood Ali & Ors. Vs. State of U.P. & Ors.*** reported in ***2023 SCC OnLine SC 950.***

6. Per contra, Ld. Counsel Mr. Debajyoti Deb appearing on behalf of the Opposite Party No. 2 has argued that there was an inadvertent mistake on part of the opposite party no. 2 in

putting form “DIR 12” instead of form “MGT 7” which by no means affects veracity of the contents of the complaint.

7. By refuting the claim of Mr. Ganguly regarding the possibility of forgery in digital signature Mr. Deb has ascertained that it is possible to tamper with the digital signature of an individual relying on a case of ***Maneklal Manushkhhai Pvt. Ltd. Vs. Ajay Hari Nath Singh*** reported in ***2015 SCC OnLine Bombay 5571***.
8. Before parting with Mr. Deb has emphasized on the observation of the Hon’ble Apex Court regarding the fact that while examining an FIR, the Court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR. Judicial process should not interfere at the stage of investigation save in exceptional cases.
9. In support of his contention Mr. Deb has also taken assistance of a couple of cases which stand as follows -
 - ***Rajesh Bajaj Vs. State NCT of Delhi & Ors.*** reported in ***(1993) 3 SCC 259***.
 - ***Tilly Gifford Vs. Michael Floyd Eshwar & Anr.*** reported in ***(2018) 11 SCC 205***.
 - ***Central Bureau of Investigation (CBI) & Anr. Vs. Thommandru Hannah Vijayalakshmi @ T.H. Vijayalakshmi & Anr.*** reported in ***(2021) AIR SC 3041***.

Analysis :

10. Before delving into the merit of the case it would be pertinent to discuss the ratio of the cases relied on behalf of the parties. In **Mahmood Ali** (Supra) the Hon'ble Apex Court held that in order to exercise jurisdiction under Section 482 of Cr.P.C. to get the FIR quashed essentially on the ground that such proceeding are manifestly frivolous or vexatious or instituted with the ulterior motive of wreaking vengeance, in such cases the Court owes a duty to look into the FIR with care and a little more closely.
11. In **Eicher Tractor** (Supra) as well as **M. N. Ojha** (Supra) the Hon'ble Apex Court observed that criminal proceedings initiated by complainant as a counter blast to the proceedings initiated against him is not permissible in law and continuance of such proceedings would be an abuse of process of Court.
12. Now coming to the cases relied on behalf of the opposite party no. 2, the ratio enumerated in those cases, in my view, has no semblance with the subject matter of the instant case.
13. Now let me come to the issue of possibility of forgery in digital signature raised by Mr. Deb. He has supported his claim by taking assistance of a case of **Maneklal Manushkhbhai** (Supra). That judgment given by the Bombay High Court was passed in 2013 which is a period prior to enactment of **Digital Signature Guidelines of 2019** enacted by the Government of India. The said guidelines has issued various mandatory verifications already mentioned above which has made it

impossible to tamper with anybody's digital signature. So, I am not at all agreeable with Mr. Deb that in present time of advanced stages of verifications it is possible to forge any person's digital signature.

14. Now coming to the contention of Mr. Deb regarding mistake in using of form "DIR 12" instead of form "MGT 7" even if I accept it as a mistake and put form "MGT 7" in the complaint instead of form "DIR 12" the rest of the contents of the complaints become unoperational and infructuous as the genesis of the instant case revolves around the removal of the opposite party no. 2 from the directorship of the Company by using his forged digital signature. Even if I put form "MGT 7" in place of form "DIR 12" in the complaint then the main allegation of the FIR does not match with the rest of the contents contained therein. As a result, I am sorry to subscribe with the view of Mr. Deb that change in usage of form "MGT 7" in place of form "DIR 12" will not affect the maintainability of the impugned proceeding.

15. As a result, the impugned proceeding under challenge in this revision application is not maintainable and continuance of such proceedings will be an abuse of process of Court.

16. In the aforesaid view of the matter the revision application stands allowed and the impugned proceeding being No. Hare Street Police Station Case No. 87 of 2022 corresponding to G.R. Case No. 399/2022 stands quashed.

17. Connected applications, if there be any, stand disposed of accordingly.
18. All parties to this revision application shall act on the server copy of this order downloaded from the official website of this Court.
19. 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.]