01.05.2024
<u>Sl. No.: 32</u>
Court No.30
BM

CRR 4429 of 2022

Sayed Darain Ahsan @ Darain
Vs.
The State of West Bengal & Ors.

For the Petitioner :	Mr. Phiroze Edulji, Ms. Priyanka Bhattacharya.
For the State :	Mr. Debasish Ray, Ld. P.P, Mr. Sandip Chakraborty.

1. Learned counsel for the petitioner submits written notes of argument.

2. Heard the learned counsel for the petitioner and the learned Public Prosecutor.

3. The present revision has been preferred praying for quashing of the proceeding being Garden Reach Police Station Case No.179/22 dated 09.11.2022 under Sections 465/466/471 of the Indian Penal Code which originated from the General Diary Reference Entry No.607 dated 09.11.2022 lodged before the Garden Reach Police Station and now pending before the learned Court of Chief Judicial Magistrate, South 24 Parganas at Alipore.

4. The proceeding in the present case is based on a document (allegedly forged) being a GD Entry No.1129 dated 15.06.2022 which is part of a writ petition being No.WPA 23388 of 2022.

5. The proceeding in the present case has been initiated alleging forgery of the said document (G.D. Entry No. 1129 dated 15.06.2022).

6. The State has placed the case diary wherein it appears that the **charge sheet in the present case has been submitted.**

7. It also appears from the brief facts of the case in the charge sheet, that during investigation the specimen hand writing of the petitioner herein was collected in presence of a Magistrate as per Section 311A of the Cr.P.C.

8. The allegation of the prosecution is that the said General Diary is forged and **a copy** of the said General Diary Entry has been placed before this court, which is also part of the case diary.

9. **The following relevant facts as noted in the charge sheet is reproduced herein:-**

> *"Based on facts derived during investigation, it is evident that a forged and manufactured entry of the General Diary of Garden Reach P.S. being No. 1129 dated 16/06/2022 was crafted by the accused Sayed Darain Ahsan and was used by him as genuine in the Writ Petition before the Hon'ble High Court, Calcutta knowing fully well that such entry / annexure is a forged one.* ***However, in the absence of primary document, opinion of the handwriting expert could not be obtained and the authorship couldn't be established.***
>
> *Based on evidence collected, both oral and documentary, prima facie a case u/s 420/466/468/471 IPC is well established against accused Sayed Darain Ahsan and as such after taking permission from the superiors filing charge sheet against him u/s 420/466/468/471 IPC for judicial findings. Accused Sayed Darain Ahsan is on C.B till 29/12/2023."*

10. **From the statement in the charge sheet, it appears that though the specimen hand writing of the petitioner was collected, the hand writing expert's report could not be obtained in the absence of primary document (the alleged**

forged GD entry) and as such the authorship could not be established.

11. The State has also produced a copy of the **actual** G.D. entry stating that the same proves that the copy of G.D. Entry relied upon by the writ petition **is a forged one.**

12. In the present case, the total case is based on the allegation that the said primary document i.e. the General Diary Entry no. 1129 dated 15.06.2022 used in WPA No. 17015 of 2022 is a forged and manufactured entry.

13. It appears that the principal document on which the total proceeding in this case is based, was not seized by the investigating agency and thus it was not produced for examination by hand writing expert. But in spite of the primary document being not in the possession of the investigating agency or part of the case diary, the investigating officer has filed a charge sheet against the petitioner finding a prima facie case under Sections 420/466/468 and 471 of the Indian Penal Code, without even a handwriting expert's report, in support.

14. In ***Mahmood Ali & Ors. vs State of U.P. & Ors., in Criminal Appeal No. 2341 of 2023, on August 08, 2023,*** the Supreme Court has held:-

> *"**11.** The entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of **State of Haryana v. Bhajan Lal,** AIR 1992 SC 604. The parameters are:-*
> *"(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.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR 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.

(3) 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.

(4) 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.

(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.

(7) 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."

We are of the view that the case of the present appellants falls within the parameters Nos. 1, 5 and 7 reply of ***Bhajan Lal (supra).***

12. *At this stage, we would like to observe something important. Whenever an accused 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. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the*

FIR/complaint is very well drafted with all the necessary pleadings. ***The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. 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. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.*** *Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.*

13. *In* ***State of Andhra Pradesh v. Golconda Linga Swamy,*** *(2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence.* ***Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR.*** *The Court held:-*

"5. …Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. ***When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether***

> ***any offence is made out even if the allegations are accepted in toto.***
>
> *6. In* ***R.P. Kapur v. State of Punjab,*** *AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)*
>
> *(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;*
>
> *(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;*
>
> ***(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.***
>
> ***7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge.*** *Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....”*
>
> *(Emphasis supplied)”*

15. In ***Mohammad Wajid & Anr. vs State of U.P. & Ors., in Criminal Appeal No. 2340 of 2023 (arising out of SLP (Crl.) No. 10656 of 2022), decided on 8 August, 2023,*** the Supreme Court held:-

*"**30.** At this stage, we would like to observe something important. Whenever an accused 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. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. 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. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.*

***31.** In **State of Andhra Pradesh v. Golconda Linga Swamy,** (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:-*

"5. …Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power

to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. ***When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.***

6. In ***R.P. Kapur v. State of Punjab,*** *AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)*

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) ***where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.***

7. ***In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge.*** *Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed* *over to an accused to short-circuit a prosecution and bring about its sudden death.....”*

(Emphasis supplied)

16. In the present case a scanned copy of the forged G.D. Entry, allegedly used in WPA 17015 of 2022 (at page 105) is reproduced herein:-


Ref:- Garden Reach PS
G.D.E No - 1129
Dt - 15/6/2022.

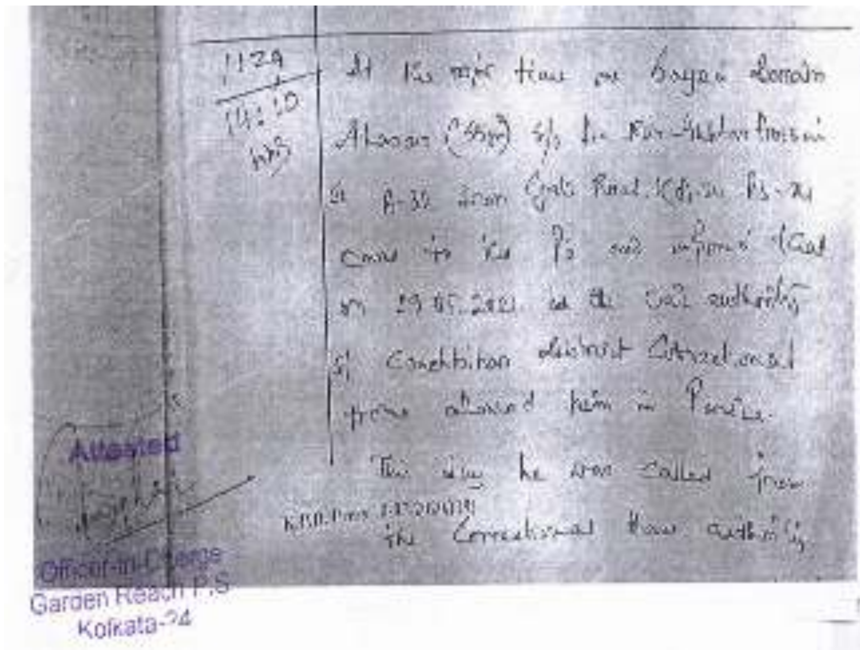
GARDEN REACH P.S. KOLKATA

During the period of Parole
no complaint has been
received against the person
Sayed Doraiz Shoaib
at this PS. No adverse
Report obtained against him.

15/06/2022

17. This entry is dated 15.06.2022. There is no G.D. Entry No. 1129 on this date in the Garden Reach P.S. General Diary register.

18. The copy of the actual G.D. Entry No. 1129 dated of 16.06.2022 of Garden Reach P.S. in the case diary is as follows:-

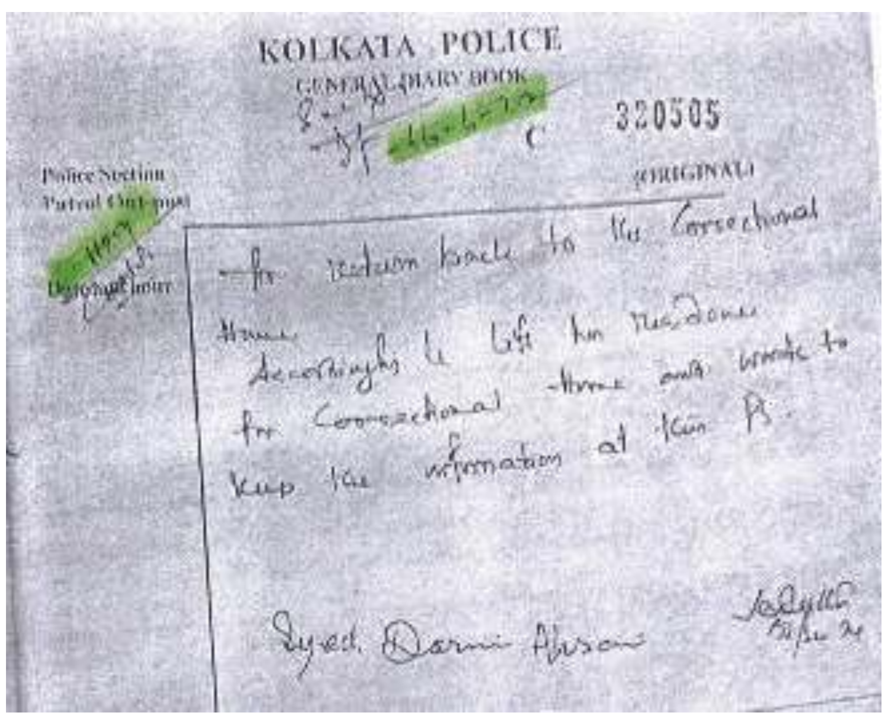


1129
14:10 hrs

At the noted time one Sayed Darain Ahsan (35yrs) s/o Lt. Mir Akhtar Hossain of B-32 Iron Gate Road Kol-24 PS-Ry came to the PS and informed that on 29.05.2021 as the said authority of Conchbiton District Correctional Home allowed him in Parole.

This day he was called from the Correctional Home authority

Attested
Officer-in-Charge
Garden Reach P.S
Kolkata-24



KOLKATA POLICE
GENERAL DIARY BOOK
320505
(ORIGINAL)
Police Section
Patrol Out-post

for return back to the Correctional Home. Accordingly he left his residence and went to for Correctional Home and to keep the information at the PS.

Syed Darain Ahsan

19. The entry bears the signature of the petitioner and that of the recording officer.

20. The said documents are totally contrary to each other.

21. Section 465 of I.P.C., lays down:-

*"**465. Punishment for forgery.—**Whoever commits forgery shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.*

***Ingredients of offence.-** The essential ingredients of the offence under sec. 465 are as follows:-*
(1) The accused prepared a false document or electronic record;
(2) He did it with false meaning of written instrument for the purpose of fraud or deceit.
(3) The document or electronic record was prepared dishonestly or fraudulently.
(4) He did it with the intention of causing wrongful gain to someone and wrongful loss to another."

22. From the materials on record including the case diary, it prima facie appears that the document (forged G.D. Entry) used by the petitioner in WPA 17015 of 2022 at Page 105 is prima facie a false document, as discussed earlier in this judgment. The ingredients required to constitute the said offence is prima facie on record.

23. Section 466 of IPC, lays down:-

*"**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.*

***Ingredients of offence.-**The essential ingredients of the offence under sec. 466 are as follows:-*
(1) The accused forged a document or electronic record;
(2) The document or electronic record was one of the descriptions specified in the section, namely, ... 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 of specific certificate or document or electronic record 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."

24. Section 468 of IPC, lays down:-

*"**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 description for a term which may extend to seven years, and shall also be liable to fine.*

***Ingredients of offence.-** The essential ingredients of the offence under sec. 468 are as follows:-*
(1) There should be a forgery in respect of the document or electronic record in question.
(2) The intention of the forgery should be that the forged document or electronic record is to be used for the purpose of cheating.
(3) There should be forgery with particular intent."

25. Here though 'forgery' as defined has not been prima facie shown, in the charge sheet due to absence of the primary document, the use of the said document has been prima facie shown.

26. Section 471 of IPC, lays down:-

"471. Using as genuine a forged document or electronic record.—*Whoever fraudulently or dishonestly uses as genuine any document or electronic record which he knows or has reason to believe to be a forged document or electronic record, shall be punished in the same manner as if he had forged such document or electronic record."*

27. In respect of absence of the forged document, the Supreme Court in ***Rama Sankar v State 1972 SCC (Cr) 153,*** held:-

"It cannot be laid down as a proposition of law that in the absence of the forged document the court can in no case hold the offence of forgery to be established, but to claim such a finding from court in the absence of the document said to be forged, the evidence must be free from all reasonable doubt."

28. In the present case, it appears from the said charge sheet that the investigating agency has submitted the charge sheet on the **presumption that the petitioner had knowledge that the G.D. was vague.**

One of the essential ingredients of sec. 471 is the knowledge or reasonable belief on the part of the person using the document that it is a forged one – 1981 Cr LJ 1301. But the mere fact that the accused was found to be in possession of a forged document would not justify a conclusion, in the absence of any other material that he knew or had reason to believe that the document was forged - AIR 1963 SC 822: (1963)1 Cr LJ 809.

29. In ***Shri Sukhbir Singh Badal vs Balwant Singh Khera and Ors., in Criminal Appeal No. 1116 of 2023 (@ SLP (Crl.) No. 7872 of 2021), decided on April 28, 2023,*** the Supreme Court held:-

> *"**5.8** Therefore, as per Section 463, "whoever makes any false documents, 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 property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed", he is said to have committed the offence of forgery. Making a false document is defined under Section 464 IPC. Therefore, for the offence of forgery, there must be making of a false document with intent to cause damage or injury to the public or to any person. Therefore, making the false documents is sine qua non. Identical question came to be considered by this Court in the case of **Mohammed Ibrahim & Ors. (supra).** While interpreting Sections 464 and 471 IPC and other relevant provisions of IPC, in paragraphs 13 and 14, it is observed and held as under:*
> *"**13.** The condition precedent for an offence under Sections 467 and 471 is forgery. The condition precedent for forgery is making a false document (or*

false electronic record or part thereof). This case does not relate to any false electronic record. Therefore, the question is whether the first accused, in executing and registering the two sale deeds purporting to sell a property (even if it is assumed that it did not belong to him), can be said to have made and executed false documents, in collusion with the other accused.

14. *An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:*

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, 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."

30. **In a case of this nature, it is just and proper that the matter is decided by way of a trial on adducing relevant evidence and interference by this Court at this stage, would clearly be an abuse of the process of law.**

31. Thus there being a prima facie case in respect of the offences alleged, against the petitioner herein, the trial Court shall accordingly proceed towards trial in accordance with law.

32. **CRR 4429 of 2022 is thus dismissed.**

33. All applications connected thereto stand disposed of.

34. Interim order, if any, stands vacated.

35. Let a copy of the order be sent to the learned trial court for compliance.

36. Urgent Xerox certified copies of this order, if applied for, shall be supplied to the learned counsel for the parties as expeditiously as possible, in compliance of usual formalities.

(Shampa Dutt (Paul), J.)