

**CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
Criminal Revisional Jurisdiction
Appellate Side**

**Present:
The Hon'ble Justice Rai Chattopadhyay**

**CRR 169 of 2023
With
CRAN 5 of 2024**

**Sanchayita Ghosh & Ors.
Vs.
The State of West Bengal & Anr.**

For the Petitioner No. 1	:	Mr. Sayan De. (through V.C)
For the Petitioner No. 2 & 3	:	Dr. Navin Barik, : Ms. Esha Acharya
For the State	:	Mr. Aditi Shankar Chakraborty, Ld. APP : Mr. Aniruddha Biswas.
For the O.P. 2	:	Mr. Sandip Mondal

**Heard on : 10/09/2024
Judgment on : 13/09/2024**

Rai Chattopadhyay, J.

1. The petitioners have prayed for quashing of the proceedings in GR Case No. 1675 of 2022, now pending before the Ld. Additional Chief Judicial Magistrate at Siliguri. The same is in connection with the FIR filed by the opposite party No.2, being registered as Siliguri Police Station Case No. 364/2022 dated 14/04/2022 under section 420,465,467,468,471 and 120B of the Indian Penal Code.
2. From the FIR, the following inter alia have revealed; that the complainant/opposite party No.2 and the petitioner No. 1 are the directors of

the company namely Jalpaiguri Food Products Private Limited (herein after referred to as 'the said company'). The complainant states that since from the first phase of COVID pandemic, he has become seriously ill and busy with his treatment, since thereafter. That he has very recently gathered knowledge of having been removed from directorship of the said company. That on further query, he has been made aware about a letter of "Resignation for Directorship", dated November 25, 2021, having been prepared under his signature and submitted.

3. The complainant's allegations are regarding his signature being forged in the said letter by the petitioner No. 1, in collusion with some other share holders of the said company, that is the other petitioners in these cases. The complainant has further stated that the document containing the forged signature has been utilised by the accused persons to furnish false information and statement before various authorities, including banking and financial institutions related to the said company and has also been utilised for withdrawal of the fund from there and siphoning of money, illegally with ulterior motive and for unlawful gain. The complainant has alleged that the petitioners in these cases have forged his signature to manufacture the document of "Resignation for Directorship", dated November 25, 2021 of him and have withdrawn a huge amount of money from the financial institutions. Thus, the offence of cheating has been committed by the present petitioners, the complainant has alleged.
4. Pursuant to an order of the High Court dated April 12, 2022, in WPA No. 768 of 2022, the complainant has lodged the said FIR. Police has completed investigation of the case and submitted charge sheet on December 25, 2022.

5. Mr. De has appeared (through video conference) for the petitioner No. 1, whereas Dr. Barik has represented the other petitioners. Mr. Biswas has represented the State in this case.
6. Petitioner's argument is based on the grounds that the allegations made in the said FIR do not constitute any offence as alleged against the petitioners. Also that the FIR or other materials in the case, does not contain any ingredient of the offence as alleged against the petitioners, at least prima facie, which may necessitate the petitioners to be sent to face the rigours of a criminal trial. It has also been submitted that the complainant alone being a shareholder of a very nominal percentage of the same, in comparison to the joint holding of the other shareholders in the said company, his allegations regarding the petitioners having forged his signature and thereby falsely representing his resignation for any ulterior motive and unlawful gain, is only improbable.
7. Mr. De would ventilate the aspect that the complainant holds 21,000 shares of the said company. He would say further that the petitioner No. 1 (in CRR No.169 of 2023), also holds similar number of shares in the said company. Therefore, to remove the complainant from the directorship of the company, the petitioners would not have required to undertake any unlawful means like forging signature of the complainant, but by only consensus of opinion amongst the other shareholders, excepting the complainant, all of them could have comfortably removed the complainant from the directorship of the company. On this score, Mr. De would say, that the allegations levelled against the petitioners are only illusory and improbable.
8. He would further ventilate the alleged procedural irregularity and latches in the investigation, that the procedure of collecting specimen signature for the purpose of examination by the hand writing expert, has not been proper.

Therefore, according to Mr. De the result of handwriting examination by the expert cannot be relied on in this case as a vital corroborative piece of evidence. He has stated that the present case may be a civil nature of dispute relating to the shareholding in the company, between the parties and cannot be cloaked under a criminal proceeding against the petitioners. He would further say that any allegation of cheating should also bear with it, the consequences there of being enjoyed by the alleged offenders, which is absent in case of the present complaint against the petitioners. Thus, according to him, the materials available in this case, would not constitute a prima facie case against the petitioners, to send them for trial. On this Mr. De would rely on a judgment of the Supreme Court reported in **(2021) 14 SCC 626 [Randheer Singh vs. State of Uttar Pradesh & Others]**.

9. Dr. Barik who has represented the petitioners would submit that the complaint would not disclose commission of any offence against the petitioners, as alleged. That the dishonest intention on the part of the present petitioners, in order to deceive the complainant, is not made out, even by accepting all the averments in the written complaint on their face value and in their entirety, he says. Therefore, he says further that, continuation of the criminal proceeding against the petitioner, would be an abuse of the process of court.
10. He would elaborate further that the offence of fraud as alleged against the petitioners would not appear to have been substantiated with sufficient materials as regards deceit as well as injury to the person deceived. Unless the same, an offence of cheating and fraud cannot be said to have been constituted against the petitioners. On this he would rely on a decision of the Supreme Court reported in **(2009) 8 SCC 751 [Mohammed Ibrahim and Others vs. State of Bihar and Others]**. He would elaborate that neither the

FIR, nor the charge sheet submitted by police in this case, has shown any wrongful loss having been occurred to the complainant, due to the alleged acts, nor any wrongful gain, being achieved by the petitioners as a consequence of the alleged offence committed by them. Thus, the offence has not been brought on record against the petitioners, for which they can be made to face the trial. He would further say that the charge sheet is only a replica of the complaint and cannot be acted upon due to the latches as above. To substantiate the argument as above, he has referred to a judgment of the Supreme Court reported in **2024 SCC Online SC 1680 [Vishal Noble Singh vs. State of Uttar Pradesh and Another]**.

11. The other limb of argument of Dr. Barik is regarding non-acceptability of the opinion of the handwriting expert, as collected during investigation in this case. He says, that the law is well settled that expert opinion must always be received with great caution and more so in case of the opinion of a handwriting expert. That, without substantial corroboration that would not be acceptable in evidence. Here he adopts what has been submitted by Mr. De that the procedure in this case for collecting specimen signature for comparison and opinion of hand writing expert has not been proper and in due compliance with the settled principles of law. Thus he would raise questions as to if the opinion of hand writing expert as collected during investigation may be relied to consider it a fit case to send for trial. On this Dr. Barik has relied on the judgment of Supreme Court reported in **(1977) 2 SCC 210 [Magan Behari Lal vs. The State of Punjab]**. He would rely on the principles as have been laid down by the Supreme Court, to interfere by exercising power under section 482 of the Cr.P.C. as to a criminal proceeding in the case of **A. M. Mohan vs. State represented by SHO and Another [2024 SCC Online SC 339]**. He would submit that the Court, therein, has deprecated the practice to avoid civil remedy in a business related dispute and

give that a shape of a criminal offence. Also that the abuse of process caused by the FIR stands aggravated If the FIR has taken the form of a charge sheet after investigation. He says that the Court has the unfetter power to prevent any abuse of the process. He says further that the present proceedings against the petitioners may be quashed in exercise of that power of the Court. A judgment of this Court reported in **2015 SCC Online Cal 5051 [Raj Shekhar Agrawal vs. State of West Bengal]** has also been referred to by Dr. Barik, during his arguments.

12. Mr. Mondal who is representing the opposite party, has strongly resisted the contentions and prayer of the petitioners. He would rely overwhelmingly on the principles laid down in the case of **State of Haryana & Others vs. Bhajanlal and Others [1992 Supp (1) SCC 335]** and say that the materials available so far in this case constitute a strong prima facie case against the petitioners, so far as the offence alleged against them. Also that the allegations levelled against them would make out a cognizable case against them. These being the necessary elements as per the settled law, for satisfaction of the Court before exercise of the extraordinary power under section 482 of the Code of Criminal Procedure to consider quashing of the case against the petitioners, the same would not be available in the present case, he submits. The other limb of his submission is that the Court is to consider and be satisfied if the materials on record so far has prima facie made out a offence as alleged against the petitioners. If so, as it is in the present case, there would not be any scope for interference by this Court into the ensuing trial of the case. To buttress this argument he would mention a judgment reported in **(2019) 6 SCC 107 [Mohd, Allauddin Khan vs. State of Bihar and Others]**.

13. This case is at a stage, when after submission of charge sheet by the police, the trial thereof is about to begin. Before proceeding any further let us

understand the scope, extent and limits of the power of the Court, while exercising under section 482 of the Cr.P.C. The statute would provide as follows:

“482. Saving of inherent powers of High Court.

- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.”

14. The classic precedential authority would be the verdict of the Supreme Court, in the case of **Bhajanlal (supra)**, relevant portion of which may also be quoted, as follows :

“ 102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (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.”

15. There are profusion of precedential authorities since thereafter, promulgating each time the law which is now well settled as regards quashing of a FIR and when a case would be considered to be an abuse of the process of Court, if sent for trial. The allegations made in the FIR or complaint should make out a *prima facie* case against the accused person and disclose a cognizable offence justifying investigation and trial therefor. Contrarily, if uncontroverted allegation, made in the FIR or complaint and the evidence collected in support of the same do not disclose commission of any offence or make out a case against the accused, the investigation of the trial on the basis of the said complaint would not be justified. The allegations if appears to be so absurd and inherently improbable on the basis of which no prudent person can ever reach to a conclusion regarding sufficiency of ground for proceeding against the accused, proceeding even thereafter would not be justifiable and maintainable. Also that an FIR or complaint which is malicious and only to wreak vengeance against the accused, is to be quashed by a Court.

16. For an offence under section 420 IPC to constitute, ingredients thereof as mentioned in section 415 of the Code are required to be *prima facie* on record, to justify trial of that case. Any act or omission to deceive and cause damage or likely to cause damage to a person would be an act of cheating. Similarly for an offence to be said to have been committed under section 465 of the

Code, forgery has to be prima facie shown to have been committed, in terms of section 463 of the Code. In reference to this case, it may be said that any material prima facie showing the false signature of the complainant having been made in a document with intent to cause damage or injury to the complainant or cause him to part with his property would suffice for the Court to find that the accused persons are to be committed to trial. Similar is with regard to the other provisions of law, which have been alleged against the petitioners.

17. The opposite parties have at this stage heavily relied on the report of the hand writing expert, collected during investigation, which corroborates the allegation of forgery and manufacturing of the signature of the complainant. The Court finds the same not to be any misplaced reliance, at least at this stage of the proceedings. As discussed earlier, if the FIR and other materials prima facie disclose relating to commission of cognizable offence by the accused person, there would not be any escaping from facing the trial by them.

18. An elaborate argument has been made on behalf of the petitioners as discussed at length above, as to how the ingredients of offence may not be proved in the petitioner's case. The Court, however, finds that to be more suitable at the stage of trial than now, when the Court is considering if it would be justified in exercising its extraordinary, plenary power under section 482 of the Cr.P.C and to prevent any abuse of the process of Court, to quash the proceeding against the petitioners or not. In view of the hand writing expert's report and other materials in case diary as on record so far, this Court is of the opinion that the alleged offence by the petitioners are never any absurd or inherently improbable. Certain judgments have been relied on by the petitioners to submit that the materials on record would not suggest about

any completed offence, in so far as, those would not elaborate about what unlawful loss, the complainant might have suffered as a consequence of the offence as alleged. However, since after loss of directorship of the said company, no one can ignore to acknowledge his loss of salary as a director of the company, which *prima facie* is an unlawful loss for him, consequent to the commission of the offence, by the petitioners, as alleged. The petitioners have put forth about a proceeding pending before the Company Law Board and non-maintainability of the instant criminal case in view of the same. However the Court finds the two, unrelated and distinct. The only test applicable in this case is whether the allegations disclose a criminal offence or not. The answer would be in positive, as a result of the discussions made above.

19. Thus, the Court does not find it to be a suitable case for exercise of its inherent and extraordinary power under section 482 of the Code of Criminal Procedure. On the contrary, the materials on record emphasises that the accused persons should be committed to the trial, immediately, for the ends of justice.

20. CD be returned immediately.

21. Hence, CRR 169 of 2023 is dismissed. Connected application CRAN 5 of 2023 is disposed of.

22. The urgent Photostat certified copy of this order, if applied for, be given to the parties upon compliance of all formalities.

(Rai Chattopadhyay, J.)