IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 524 of 2017

Shri Bhaskar Ghosh.
Vs.
The State of West Bengal & Anr.

For the petitioners	:	Mr. Ayan Basu Mr. A.S. Chatterjee Mr. G. Dinda Mr. Sumit Routh
For the opposite party No. 2	:	Mr. Avik Ghatak Ms. Arfeen Begum
For the state	:	Ms. Anasuya Sinha, Ld. APP Mr. Bidyut Kumar Roy Ms. Trisha Rakshit
Heard on	:	01.09.2025
Judgment on	:	26.11.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioners herein filed the instant application praying for quashing of proceeding being GR Case no. 727 of 2014 arising out of New Market Police Case no. 108 of 2014 under sections 424/406/423/409/417/420/466/471/170B of the Indian Penal Code which is presently pending before learned Chief Judicial Magistrate Court, Calcutta.

2. The complainant case in brief is that complainants company had purchased 3 cottah 8 chitakh in premises no. 25 B Belvedere Road, Kol-27 on 06.03.2012 and they also purchased 1 cottah 17 chittakh and 17 sq.ft. and 2 cottah 10 chittakh 33 Sq.ft. in premise no. 25A Belvedere Road on 12.02.2012. When the complainant made an application to Kolkata Municipal Corporation (in short KMC) for issuance of pending bills in respect of Assessee no. 11-074-08-0027-9 for mutation, he was informed that the premises no. 25A Belvedere Road having aforesaid Assessee number has been cancelled and the same has been converted to 33B Biplabi Kanai Lal Bhattacharjee Sarani. Having doubted with the activity of the KMC, the petitioner filed several RTI applications and he was supplied few documents including the order sheet passed by the petitioners in cancellation of aforesaid Assessee no. and fake site plan which was submitted by M/S Crystals Private Ltd. (in short M/S crystals) to the KMC.

3. Upon perusal of the documents supplied to him under RTI Act, the complainant realized that the petitioners are the author of the note sheet of case no. P/074/29/OCT-5627 in connection with the aforesaid cancellation order. The petitioner no.1 being the then Chief Manager (Revenue) of KMC and petitioner no.2 being the then Assessor Collector (South) of KMC passed the order cancelling the aforesaid Assessee no. and ordered separation of premises no.25A Belvedere Road thereby allowed the mutation application of M/S crystals, ignoring the fact that on bare perusal of the deed of sale dated 26.05.2006 along with the site plan annexed to the said deed made it clear that the property purchased by M/S crystals was land locked and hence no mutation and/or separation in favour of them could have been granted by the petitioners herein. It also further disclosed that the said M/S Crystals submitted a fake site plan which was not part of the deed of sale dated 20.06.2006, whereby said M/S Crystals claimed part of the premises and thereby they illegally and fraudulently claiming the eastern portion of premises no. 25 A Belvedere Road kol-27 and the petitioners herein knowingly on the basis of fake site plan passed the order, thereby cancelled the aforesaid Assessee no. and ordered separation of premises no.25A Belvedere Road without considering the original site plan, annexed to the said deed of sale, thereby they have caused wrongful loss to the complainant.

4. Being aggrieved by the aforesaid proceeding petitioners contention is that on 25.06.2006 M/S Crystals purchased a land measuring 4 cottah 15 chittakh 3 sq.ft. together with western portion of two storied old building with structure of 2000 sq.ft. and open courtyard including passage on the west of the building connecting Belvedere Road, being western portion of 25 A Belvedere Road vide registered deed of conveyance. After such purchase M/S crystals on 29.10.2010 applied for mutation and separation for their purchased, portion along with purchase deed, separation plan and all other relevant documents. Thereafter on 13.04.2012 the application for mutation and separation was granted and approved by KMC authority and premises no. allotted was 25A Belvedere Road. The eastern portion which had no mean of access to Belvedere Road as per separation plan submitted by M/S crystals and also as per report given by inspector concerned, it was renumbered as 33 B Biplabi Kanai Lal Bhattachrjee Sarani.

5. It is further case of the petitioner that on 25.04.2012 and 20.06.2012 intimation was given to the recorded owner Shri Tapan Kiran Biswas by Assistant Assessee Collector(South) that remaining portion is renumbered as 33B Bacher Road (which thereafter renamed as Biplabi Kanai Lal Bhattachrjee Sarani), but no objection was received from Shri Biswas

6. He further contended that on 12.03.2014 FIR was lodged by one Gravity Vinimoy Pvt. Ltd. represented by the same director Suresh Agarwal against various persons including present petitioners Mrs. Rakhi Gangully and Shri Bhaskar Ghosh who happened to be the higher officials of KMC. On 04.06.2015 said Gravity Vinimoy Pvt. Ltd. had filed a writ petition being WP No. 500 of 2014 before the Hon'ble Single Bench of this High Court but that writ petition was dismissed due to non submission of affidavit by the petitioner. On 25.08.2015, said Gravity Vinimoy Pvt. Ltd. preferred an appeal before the Hon'ble Division Bench of High Court for restoration of said writ petition which was allowed on payment of cost of Rs. 5000/- to KMC. But thereafter what happened is not known to the petitioners.

7. However, from the FIR it appears that Gravity Vinimoy Pvt. Ltd. had purchased the remaining portion of 25A Belvedere Road (now 33 B Biplabi Kanai Lal Bhattacharjee Sarani) on 14.12.2012 but they did not apply for mutation at that time. On 02.05.2013 intimation given by Assistant Assessor Collector (South) to Gravity Vinimoy Pvt. Ltd that remaining portion of 25 A Belvedere is renumbered as 33 B Biplabi Kanai Lal Bhattacharjee Sarani. Thereafter on 05.04.2014 intimation given by

Assessor Collector to the Director of Gravity Vinimoy Pvt. Ltd. and there is no illegality in allowing mutation and separation to M/S Crystals. Petitioner's further contention is that when the separation of M/S Crystals was approved, neither the registered owner nor Gravity Vinimoy Pvt. Ltd. informed the KMC that other portion was also sold out/purchased. Thereafter on 14.08.2014 Bhaskar Ghosh (petitioner no.1) was transferred and relieved from the duty of Chief Manager (Revenue). In the meantime on 17.12.2016 the petitioner received notice under section 41A about the initiation of the aforesaid proceeding and thereafter on 07.03.2017 petitioner no.2 was also transferred to Service Record and Account Sale and had no connection with the activity of Assessment Collector (South) department.

8. Mr. Basu appearing on behalf of both the petitioners submits that it appears from the FIR as well as from the charge sheet that allegation made out in complaint do not disclose any offence nor disclose the offences as have been alleged in the FIR against the petitioners. The chronology of the events clearly shows that the officials attached to KMC had duly discharged their official duties with due diligence, which cannot be called in question. The grievance of the complainant has arisen from pecuniary benefits in respect of the land he purchased, for which any responsible officer attached to KMC can never be called in question and on the basis of that, implicating them in a criminal case is absolutely hopeless and liable to be nipped in the bud. He further submits that this court on 12.09.2017 has made clear observation *that "it appears from the report no specific evidence could be collected so far as the petitioners are concerned"* and thereafter stayed all further proceedings of the instant criminal case. Interim order was subsequently modified to the effect that investigation will continue and the petitioners shall co-operate with the investigating agency. This Court has made further order on 03.02.2020 for compliance with the notice under section 41A and the petitioners appeared before the investigating officer and complied the notice and also produced all relevant documents pertaining to the complainants allegation.

9. I have considered submissions made by both the parties.

10. The chronology of the events as stated by complainant at the cost of repetition is that the complainants company namely Gravity Vinimoy Pvt. Ltd. purchased 3 cottah 8 chittakh in premises no. 20 B Belvedere Road on 06.03.2012 and it further purchased 1 cottah 17 chittakh and 17sq.ft. 2 cottah 10 chitakh and 33 sq.ft. in premises no. 25A Belvedere Road on 12.02.2012 and are in possession of the same and when the complainant made an application for mutation he was informed that premises no. 25A Belvedere Road in connection with the complainants Assessee no. has been cancelled. Thereafter going through the order sheet the complainant found that the accused no.1 company had submitted two copies of blue print plan and both the blue print plans differ from each other. However the blue print plan attached to the deed of sale dated 25.06.2006 correctly showing that the accused no.1/company had purchased the land together with western portion of premises no. 25A Belvedere Road including passage on the west of the building connecting Belvedere Road being the west portion of 25A Belvedere Road. The schedule of the property mentioned in the deed of sale according to opposite party, makes it clear that on the east of the schedule property lies eastern portion of 25A Belvedere Road and as such according to complainant accused no.1 company never purchased and was never in possession of eastern portion of 25 A Belvedere Road.

11. Complainant's further argument is that the documents pertaining to partition suit being T.S. 28 of 1998 filed by the father of the previous owner, Tapan Kumar Biswas and his siblings for partition of 25A Belvedere Road inherited by them that the father of the previous owner namely Tapan Kumar Biswas came into possession of 4 cottah 16 chittakh and 13 sq.ft. together with the western portion of premises no 25 A Belvedere Road and not the entire portion of the premises no. 25A Belvedere Road, and the same is also reflected in the partition plan, annexed to the decree in the said T.S. no. 28 of 1985.

12. Now the allegations levelled against the present two petitioners who were then posted as KMC officials is as follows:-

(a) The petitioners on the basis of fake fresh site plan submitted by accused no.1/company proceeded to cancel the aforesaid Assessee no. and converted the same into 33B Biplabi Kanai Lal Bhattacharjee Sarani and granted new Assessee no., instead of considering the original site plan attached to the deed of sale dated 26.05.2006, which was available with the petitioners when the order was passed

(b) petitioners herein even after having knowledge that the said properties purchased by M/S crystals did not have access to any KMC Road and knowing that the said property is landlocked, illegally proceeded to separate the said premises 25 A Belvedere Road to 33B Biplabi Kanai Lal Bhattacharjee Sarani by granting new Assessee number.

(c) since the petitioners were fully aware that on the basis of the deed of sale dated 26.05.2006 mutation and/or separation of premises no. 25A Belvedere Road cannot be granted, a fresh fake site plan was brought on record with sole intention to make unlawful gain.

(d) the petitioner intentionally choose not to verify the correctness of the fresh site plan submitted by the accused no.1/company with the site plan annexed with the deed of sale dated 26.05.2006, because they were aware of the property purchased by accused no.1/company is landlocked and in order to increase the market value they have done the misdeeds.

(e) the previous owner of the aforementioned property namely Tapan Kumar Biswas never submitted Form A-42 prescribed by the KMC for grant of any mutation or separation or for allotment of any new premises no. and to record his name as the owner of the premises. Once said Tapan Kumar Biswas sold his entire property inherited by them, there was no occasion of KMC to grant mutation/separation of any portion of the land in his favour and thereby the petitioner had acted illegally to make wrongful gain.

13. Having considered submissions made by the parties it appears that the mutation process whereby earlier Assessee number has been cancelled is under challenge in the instant proceeding. The complaint was filed against various persons including the petitioners herein who happens to be the higher officials of KMC. On perusal of the complaint and the allegations made therein, it appears that the imputation do not disclose any offence against the petitioners. The chronology of events do not suggest that the petitioners have done anything beyond their official course of business, which may attract criminality. Learned counsel for the petitioners also taken a specific plea that the proceeding is barred under section 197 of the Cr.P.C as the petitioners are the public servant and that alleged acts by the petitioners are being stated to have done while they were performing there official duty. In the charge sheet there is no averment against the petitioners herein and no specific role could be collected against the petitioners attributing the alleged offence. The involvement of the petitioners in the alleged offence are also not disclosed or described in the charge sheet. Therefore it is clear that though allegation against the petitioners are to the effect that on the basis of some forged deeds/documents, the mutation has been granted in favour of another co-accused person but during investigation nothing has come wherefrom it would reveal that the papers on the basis of which the mutation process had been conducted, are forged or fabricated. Infact opposite party no. 2 herein also preferred Writ Application before this High Court being WPA no. 500(W) of 2014 which was dismissed. The opposite party no. 2 also filed a civil suit being T.S no. 23 of 2019 before commercial court which also got dismissed on the ground of proper jurisdiction.

14. I have also gone through the other materials available in the case diary including the charge sheet. There is no mention in the charge sheet which crime has been committed by which petitioner/accused and what is the material evidence available against him in the file. In Sharif Ahmed and another Vs. State of UP & another, reported in 2024 Live Law(SC) 337, court has made it clear that IO must make clear and complete entries of all columns in the charge sheet so that court can clearly understand, which crime has been committed by which accused. When I see the instant charge sheet filed against the petitioners, it is sadely vague and the role played by each petitioner/accused in the crime has not been mentioned at all separately in the charge-sheet. Neither FIR nor materials in C.D makes out any case of dishonest or fraudulent removal or concealment of property against the present petitioner nor any case of breach of trust or dishonest or fraudulent execution of deed of transfer containing false statement of consideration can be levelled under section 424,406 and 423 of IPC. In view thereof also section 409 has got no application in the present context. The allegation of cheating under section 420 read with 417 also does not have any application in the present context in the absence of any allegation of inducement or thereby to deliver of any property. Even section 466 and 471 which deals with forgery of record or using any forged document as genuine do not attract in the present context against the present petitioners who are KMC officials. Needless to say that there is a 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 owners behalf. If the executor dishonestly and fraudulently is making such claim, knowing fully well that it is not his property, then it may come under the category of false documents. In the present context it is not even the allegation of the complainant that the present petitioners have dishonestly or fraudulently prepared any deed or any blue print. Charge sheet states that during investigation police did not seize any document far from suspicious document. The essential ingredient to attract section 465 read with section 466 is that the accused must have forged the document or the electronic record. It is also well settled principle of law that "criminal breach of trust" and "cheating" proceeding cannot run simultaneously in connection with self same incident.

15. From the entire episode as stated above it appears that the petitioners have discharged there duty being the employee of the KMC in exercise of the power vested on them by the KMC law and therefore they can be hardly implicated with the liability of criminality in absence of any *mens rea* on their part in discharging that function as alleged against them in this case. Upon perusal of the case record, no material much less any sufficient thereof would be found to support prosecution allegations against the present petitioners and the same is grossly unfounded and as I have stated above that the ingredients of each of the offence as alleged against the petitioners are not available in this case and the complaint and the material collected during investigation failed to make out any case or any cognizable offence against the present petitioner. On the other hand the possibility of the same to be the result of malice and personal vendetta of the defacto complainant, whose Assessee number got changed by way of a proceeding conducted by the petitioners, cannot be ruled out.

16. Under such circumstances it would only be a gross abuse of the process of the court to further continue with the prosecution against the present petitioners. When a complaint does not make out any case against the petitioners, it will not be correct to say that the petitioners must still undergo the agony of criminal trial. The allegation found in the investigation record even if are taken at the face value, do not constitute an offence alleged against the petitioners. The admitted facts and documents relied upon by the complaint, without weighing evidence, do not make out any case against the petitioners and for which the criminal proceeding instituted against them is required to be quashed.

17. Infact the allegation made against the petitioner are inherently not probable and no prudent person can ever reach a just conclusion that there is sufficient room for continuing criminal proceeding against the petitioners on the basis of a blurred allegation that accused number 1 filed some deed/ blueprint and documents which the petitioners relied and cancelled complainant's Assessee number, specially when neither of those documents have been declared as null and void by any competent court of law. There is no reason as to why petitioners being official of KMC should face criminal trial that too for the offence of cheating, criminal breach of trust or forgery or with the allegation of execution or concealment of fraudulent document.

18. Having considered the written complaint in the background of dispute between the parties and by taking the allegations made in the FIR at their face value as correct in their entirety, I am unable to persuade myself to hold that the contents of FIR disclose any cognizable offence against the petitioners with regard to forgery/cheating/criminal breach of trust or dishonest or fraudulent execution of deed of transfer or criminal conspiracy.

19. The irresistible inference of my entire above observation is that the contents of the FIR and materials collected during investigation do not disclose any cognizable offence against the petitioners and as such the continuance of proceeding against the present petitioners would be mere abuse of process of court and therefore this is a fit case where the proceeding is liable to be quashed by invoking inherent power of this court under section 482 of the Code qua the petitioners.

20. In such view of the matter **CRR 524 of 2017** is allowed.

21. The impugned proceeding being G.R case no. 727 of 2014 arising out of New Market police station Case no. 108 of 2014 presently pending before Learned Chief Metropolitan Magistrate Calcutta is hereby quashed qua the petitioners namely **Sri Bhaskar Ghosh and Mrs. Rakhi Ganguly**.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)