

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 1722 of 2019

**Avik Majumder
Vs.
Anil Kumar Sharma**

For the petitioners	:	Mr. Dipanjan Dutt Ms. Sambrita B. Chatterjee Mr. Soumodip Ghosh Mr. Ayaan Bhattacharyya
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For the opposite party	:	Mr. Pradip Pandey
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Heard on	:	08.08.2025
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Judgment on	:	20.11.2025
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Dr. Ajoy Kumar Mukherjee, J.

1. This application under section 482 of the Code of Criminal Procedure has been preferred by the petitioner with a prayer for quashment of the proceeding being complaint case no. 61 of 2018 under section 120B/420/406/465/466/467/468/471/506/34 of IPC. The aforesaid complaint case was registered on the basis of a petition of complaint filed by the opposite party herein before the court below and the allegations levelled

in the said complaint are inter alia to the effect that in 2016, the complainant was called on at the office of one Pramod Agarwal, who asked him to arrange for a spacious flat and also agreed to pay brokerage to the opposite party at the rate of 2%. For the next six months the complaint shown a plethora of flats to said Pramod Agarwal and allegedly in the month of Dec 2016, said Agarwal selected one flat at Godrej Platinum as shown by the Opposite Party. It is further alleged that in January 2017, when the flat was selected in presence of his family members by said Agarwal, the petitioner assured the opposite party that he would get a brokerage of 2% as per norms of Godrej Properties Limited. The deal was allegedly finalised at the office of Agarwal on 23.02.2017 and petitioner thereafter asked the opposite party to write a letter to Godrej properties Ltd. for the brokerage. The opposite party wrote an application in Hindi when the petitioner allegedly asked to the opposite party to write the application either in English or in Bengali, then the opposite party said that he only knew how to sign his name in English. On such saying the letter was allegedly typed in English by the petitioner herein in the machine installed at the office of said Pramod Agarwal and after the same was printed, the opposite party asked the petitioner and Mr. Agarwal as to what was printed therein and he was allegedly informed at that time that it contains claim of brokerage of the opposite party from Godrej Properties Ltd. Relying upon such reply the opposite party allegedly signed the said document on good faith and belief.

2. It is further alleged that the opposite party thereafter asked for his brokerage on several occasions. Finally on 19/02/2018 the opposite party was allegedly told by the petitioner that the brokerage has been remitted to

his bank account and the opposite party was asked to cross check the same but the opposite party found that no payment has been made. Thereafter opposite party was told that a letter has been mailed to him and the opposite party when opened the mail found an attachment with the said mail which discloses that the opposite party had relinquished the claim of brokerage. Thereafter opposite party made contact with the petitioner but the petitioner did not pay any heed to it. The opposite party further alleged that he was informed that the brokerage of Rs. 16,6000/- was paid to Karishma Agarwal by Godrej Properties Ltd. and thereby the accused person have caused a loss of Rs. 32,12,000/- to the opposite party.

3. It further appears that upon receipt of the aforesaid petition of complain filed under section 156(3) Cr.P.C, learned magistrate converted the same into a complaint and was pleased to take cognizance of the offence. Thereafter on examining the complainant's witness, he postponed the issuance of process and invoking jurisdiction under section 202 of Cr.P.C, he directed the officer-in-charge of Hare Street police station to cause investigation into the alleged offence, and to submit a report. Thereafter on 18th January, 2019 one sub-inspector of police submitted a report and the Magistrate by a subsequent order was pleased to record that the report is not satisfactory and directed the enquiry officer to appear personally before the learned court on 19.02.2019 for offering explanation regarding said report and on 19.02.2019 after hearing the enquiry officer learned court below recorded his satisfaction over the explanation and thereafter was pleased to issue process against the petitioner under section 204 of Cr.P.C.

4. Being aggrieved by the aforesaid criminal proceeding Mr. Dipanjan Dutt learned counsel appearing for the petitioner submits that the petitioner is completely innocent and in no way connected with the commission of alleged offence. He further submits that Godrej properties limited does not have any 'channel partner agreement' with either Mr. Anil Kumer Sharma/opposite party herein or Mr. Rajesh Jain being the two person earlier accompanying Mr. Pramod Agarwal. Therefore Godrej Properties ltd. does not owe any obligation to either the opposite party or said Mr. Jain in connection with the sale of the said unit to Mr. Promod Agarwal and as a corollary neither the opposite party nor Mr. Jain can claim anything from Godraj Properties Ltd. as a matter of right, in as much as there was never any agreement regarding the same. That apart the purchase of the said unit by Mr. Pramod Agarwal was brought about by Karishma Padia Agarwal as per the words of Mr. Agarwal and the opposite party or Mr. Jain did not succeed in making Mr. Agarwal purchase the said unit.

5. It is further submitted by Mr. Dutt that as a matter of good ethics in business, Godrej Properties Ltd. however felt that it was imperative that the opposite party as well as Mr. Jain ought to be informed about the purchase of the said unit proposed by Mr. Agarwal through the agency of the said Karishma Padia Agarwal. Thereupon both the opposite party as well as Mr. Jain had admitted of their failure to clinch the sale of the apartment and in such circumstances, of their own volition issued their respective letters bringing on record that they did not have any claim whatsoever against the proposed sale of the said unit.

6. Mr. Dutt strenuously argued that the allegation that the opposite party/complainant was not aware about the contents of said letter is a blatant lie and an eye wash. The law does not permit a man to sign a document voluntarily and then turn around and say that he signed in ignorance of contents of the document. The report of the police authorities pursuant to the enquiry conducted under the provision of section 202 of Cr. P.C. also does not say that the opposite party is incapable of reading or writing in English. It is also apparent from the application dated 23.02.2019 that the name of Karishma Padia Agarwal appears as the broker for the said sale of the unit. Therefore it is apparent that Godrej Properties Ltd. entered into a 'channel partner agreement' with the said Karishma Padia Agarwal and paid the brokerage amount towards sale of the said unit of Rs. 17,81,445/- by way of RTGS on 30.01.2018 to the bank account of padia.

7. Mr. Dutt argued that under section 420 of the IPC there has to be dishonest intention to deceive another person from the inception of the transaction and that to deceive is to induce a man to belief that a thing is true which is false and which the person practicing the deceit knows or believes to be false. In the fact of the instant case there is no allegation that the petitioner herein has made any false or fraudulent misrepresentation to the opposite party at least at the time of inception. Infact in the instant proceeding there appears to be no allegation that opposite party have acted in any manner pursuant to the representation of the petitioner and no transaction took place between the petitioner and the opposite party. The allegations relating to promise of brokerage is allegedly made by the petitioner only after the opposite party had brought the buyer before the

petitioner and therefore the petitioner never induced the opposite party to act as a broker. There is also no allegation to the effect that the opposite party was dishonestly induced by the petitioner to deliver any property to any person and as such the allegation does not constitute any offence punishable under section 420 of the IPC.

8. Mr. Dutt further argued that so far the allegation under section 406 of the IPC is concerned, it appears that there exist no allegation of any entrustment of any property by the opposite party with the petitioner or any other accused. With regard to the allegation of forgery it has been alleged without any basis and the allegation of forgery is being foisted upon petitioner unnecessarily. In the instant case the opposite party alleges that the document by which complainant waived his claim of brokerage was written in English and that he signed on the same without understanding the contents thereof. According to Mr. Dutt such allegations are ex-facie absurd in view of the admitted signature of the opposite party on the said document which is in English. The opposite party has not adverted to any circumstances that would have prevented from ascertaining the contents of document prior to its execution and thereby there exists no material wherefore it can be said that the document in question is a 'false document' within the meaning of section 464 of the IPC.

9. Mr. Dutt further argued that in the instant case the learned magistrate did not advert to any offences punishable under any law which is apparent from the order dated 20th April 2018 whereby the learned Magistrate was pleased to take cognizance in the instant case. The absence of mentioning of any offence which allegedly committed by the accused, in

order taking cognizance reflects non application of judicial mind to the facts of the instant case. He further argued that the address of the work place of the petitioner as mentioned in the cause title of the petition of complaint is situated outside the territorial jurisdiction of the court below and in such circumstance the law mandates an enquiry in terms of section 202 of the Code and in the instant case by an order dated 3rd September 2018, the Magistrate was pleased to direct an enquiry under section 202 by the officer in charge of the Here Street Police Station.

10. However from the report submitted by the police authorities, it appears that the enquiry has been done by a sub-inspector of police who is not the officer in charge of Hare Street Police Station and therefore the enquiry done by the other police personal other than the officer in charge of Here Street police station does not amount to an enquiry envisaged under section 202 of the Code and to that score also learned magistrate was erred in treating the said police report as due compliance of section 202 of the Code. The order by which Magistrate had issued process also does not reflect as to which offences are found to have been prima face committed by the petitioner and the order is absolutely silent as to which offences, the commission whereof, in the opinion of the magistrate, are found to have been prima facie made out. He further submitted that the Magistrate has acted like a post office by merely reproducing the penal sections contain in the petition of complaint and thereby issued summon against the petitioner without applying judicial mind, which resulted travesty of justice.

11. Mr. Pradip Pandey learned counsel appearing on behalf of the opposite party/complainant argued that the opposite party herein showed several

flats to Mr. Agarwal and in the middle of December 2016, Mr. Agarwal arrived to visit the said unit in presence of the petitioner and again in middle of January 2017, Mr. Agarwal with his daughter-in-law Karishma Agarwal had again arrived to see the said unit with the opposite party in presence of the petitioner herein and during the course of such visit, the petitioner represented himself as sales persons of Godrej properties Ltd. and he was assured on behalf of Godrej that he will get brokerage fee at the rate of 2% of the value of the flat as per their policy. On 22nd February 2017 necessary bargain relating to said unit took place at the office of said Agarwal and ultimately on 23rd February, 2017 booking of said flat along with parking spaces took place in presence of the petitioner.

12. Mr Pandey further submits that at the time of booking of the said unit the petitioner asked the opposite party to sign a pre written letter for brokerage fee and it is only then the petitioner could be able to process the brokerage which opposite party claimed and can ask Godrej to remit brokerage fee in favour of opposite party. The opposite party was having no choice requested the petitioner to write the alleged letter by using the office computer of Pramod Agarwal and the opposite party put his signature on good faith based on representations that the letter contains the opposite party's claim of brokerage fee from Godrej. Therefore it is clear that taking advantage of the fact that the opposite party does not understand English as well as incapable to write the letter in English or Bengali, the petitioners scribed something else and illegally remitted the brokerage to Karishma Padia Agarwal and thereby the petitioner has suffered wrong full loss of Rs. 32,12,000/- by way of cheating and breach of trust.

13. Mr. Pandey further argued that the scripts of alleged both letters are fully similar without any discrimination of if, buts and commas, which completely speaks that both the letters were prepared by a single person i.e. the petitioner herein in collusion with Mr. Agarwal. He strenuously argued that the opposite party does not know who is Rajesh Jain and therefore it is unbelievable as to how an unknown person can write a similar letter without any difference of if, buts, commas. Therefore it is clear that the petitioner is the person, who has dealt a wrong business in collusion with said Mr. Pramod Agarwal and Karisma Padia Agarwal and as such the petitioner is required to be examined before the Trial Court at the time of trial so that the truth can reveal.

14. Mr. Pandey further argued that said Karishma Padia Agarwal who has been newly married with the son of Pramod Agarwal i.e. daughter-in-law of said Pramod Agarwal, having no previous experience as real estate agent is having too much interest to receive the brokerage for purchasing the said flat in which she will reside and the opposite party who is having a long time experience to run business as a real estate agent can never have any intent to relinquish his right for getting brokerage and in fact he was cheated by the petitioner in collusion with said Pramod Agarwal. He further pointed out that the report submitted by the officer in charge, Here Street Police Station has clearly pointed out and describe about the issue of language of the opposite party and his educational background. The whole case of the opposite party is based on the said letter addressed to Mr. Avik Mujumdar and he is the only person responsible for the illegal fraud with opposite party herein because he was present all along in the dealings and

transaction and about disbursement of the brokerage by the accused person.

15. He further stated that the Magistrate concerned has rightly applied his judicial mind and has not committed any error in issuance of process. The petitioner herein has approached before the court with unclean hand being hands in gloves with the other accused persons. The petitioner herein is key person to unlock the main material facts and evidence before the learned Court below and the petitioner herein is trying to avoid the process of court trial and the opposite party has a fair chance of success in the proceeding and for which petitioner is required to be examined before the court below during trial and in such circumstances, if the proceeding is quashed the opposite party shall suffer irreparable loss and injury and his right to justice will be seriously affected. In support of his contention he relied upon the following judgments:-

- i) *Nainmal Partap Mal Shah Vs. Union of India and others***
reported in **(1980) 4 SCC 427.**
- ii) Sharafat Sheikh @ Md. Ayub Vs. Union of India , WP (Crl) no. 1213**
of 2021 dated 02.09.2022 passed by Hon'ble Division Bench of the Delhi High Court.

16. From the copy of the order dated 3rd September, 2018 passed by the court below it is clear that learned magistrate on careful perusal of the contents of the complaint was of the view that the issuance of process under section 204 is required to be postponed and thereupon directed OC, Hare Street Police Station to investigate the case and to submit a report.

17. However, from the order dated 02.11.2018 it appears that one SI of Hare street police station has submitted the report which was only forwarded by the concerned OC of the Hare Street Police Station, on the basis of which learned Court below asked said SI to appear before the court and after receiving explanation from said sub-Inspector of police, he issued process against the petitioner/accused persons.

18. Now the question that has cropped up before this court on the basis of argument made on behalf of learned counsel appearing on behalf of the petitioner as to whether the said officer in charge of the Hare Street Police Station has/had any authority to delegate said power of investigation under section 202(1) to another police officer namely SI of Police.

19. It cannot be disputed that section 202 is not an empty formality. Rather the legislators expected compliance of the requirement of said section in it's true letter and spirit. Therefore when the accused takes objection after his appearance in the case and has argued that he has been prejudiced because of non-compliance of the order by the officer-in-charge and due to irregularity committed by the Magistrate, the order is not sustainable. Section 202 Cr.P.C gives Magistrate two alternatives either to inquire himself or to send for investigation to another person with a view to ascertain if the allegations in the petition of complaint are intrinsically true. The investigation under section 156(3) Cr.P.C is not of the complaint which has already been taken cognizance by Magistrate whereas investigation under section 202 is one in a case, which has already been taken cognizance by a Magistrate. Therefore using the words "*either inquire into the case himself or direct an investigation to be made by a police officer or by*

such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding” makes the legislative intent clear that the person who has been entrusted by the Magistrate to reveal the truth regarding sufficiency of grounds, is the only competent person to make the inquiry/investigation and unless Magistrate gives him the authority to delegate, he cannot sub-delegate the same.

20. In the case of ***Surendra Mohan Majumder Vs. Babulal Tudu***, reported in **(1988) 3 crimes 143** the said question came up before this High Court for determination and this court decided the issue in para 3 of the judgment as follows:-

“3.The short point for determination, therefore, is whether the result of the investigation as made by the K.G.O (T. & W.) could be taken note of by the learned Magistrate for the purpose of deciding whether there was sufficient ground for proceeding. Section 202(1) Code of Criminal Procedure provides inter alia that the Magistrate may direct an investigation by such person as he thinks fit for the purpose of deciding whether or not there is sufficient ground for proceeding. Therefore, it is entirely for the Magistrate to decide the fitness of a person to hold an investigation and not open to the person so found fit to entrust the investigation to somebody else. In other words the person ordered by a Magistrate to hold an investigation cannot delegate his function to somebody else and if he does so the person delegated acquires no jurisdiction to investigate. Therefore, in the instant case it must be held that the entrustment of the enquiry by the Schedule Castes and Schedule Tribes Welfare Officer was not within his competence nor the K.G.O (T. & W.) acquired any authority to hold the investigation by reason of such delegation. The result is that the learned Magistrate ought not to have looked into the result of such investigation and the order issuing process upon the petitioner cannot consequently be sustained.”

21. Thereafter the same question arose again in the case of ***Krishna Chandra Pal and others Vs. Md. Nantu Seikh and another*** reported in **1999 SCC Online Cal 271** wherein this High Court expressed the same

view that when a magistrate made an order for such enquiry to an authority he cannot delegate his function to some other person and if he does so the person so delegated acquires no jurisdiction to hold such enquiry. Para 10 in this context may be reproduced below.

10. Section 202(1) Cr. P.C. provides that the Magistrate may direct an investigation by any person as he thinks fit for the purpose of ascertaining whether there is sufficient ground for proceeding. Therefore, it is entirely for the Magistrate to decide the fitness of a person to hold an enquiry under section 202 Cr. P.C. But the person who has been directed by the learned Magistrate to hold such enquiry can not delegate his function to some other person and if he does so, the person so delegated acquires no jurisdiction to hold such enquiry. Therefore, in the instant case it must be held that the entrustment of the enquiry by the Officer-in-Charge of the P.S. was not within his competence, nor the Assistant Sub-Inspector of Police acquired any authority to hold the enquiry. In my considered opinion the learned Magistrate should not have looked into the result of such enquiry/investigation and the order issuing process on the basis of such inquiry report can not be sustained.

22. Thereafter again in **Saurav Jhunjhunwala Vs. M/s Piyarilal Iron and Steel Pvt. Ltd.**, reported in **2015 (1) Cr.L.R (Cal) 912** the same issue was again raised for determination as to whether the learned Court below was justified to issue process on the basis of the investigation of the SI in place of OC of the concerned police Station. This court answered the issue relying upon the earlier judgment of this court passed in **Krishna Chandra Pal and others** (supra) in para 7 as follows:-

“7. Admittedly, learned Court below in terms of order dated 20th of May, 2013 directed O.C. Park Street P.S., to cause an investigation under Section 202, Cr.P.C. Admittedly, O.C. Park Street P.S. did not make said investigation in terms of said order dated 20.05.2013. rather, one S.I. Jayanta Ghosh submitted a report dated 20.06.2013 making investigation under Section 202, Cr.P.C. which was forwarded to the Court below by the O.C. Park Street P.S. In the case of Surindra Mohan Majumdar (Supra) said question came up before this Court for determination as to whether the persons who was directed by the Magistrate to cause the investigation under Section 202, Cr.P.C., had any authority to delegate said power to another person., It was decided in the negative. Said proposition of law was reiterated by this Court again in the case of Krishna Chandra Paul & Ors. (supra) As such, it has been well settled by more than one judgment of this Court that the person who was directed to make an investigation under Section 202, Cr.P.C. had no authority to delegate said power and that learned Magistrate cannot act upon said report of investigation under Section 202, Cr.P.C. filed by another person.

23. Therefore, the consistent view of this High Court is that the person who was directed by the Magistrate to cause investigation under section 202(1) of the Cr.P.C. had no authority to delegate such power to some other police officer and learned Magistrate also cannot act upon such investigation report filed by an incompetent authority. Therefore OC, Hare Street police station had acted illegally in delegating his power to some other police officer to cause investigation and the learned Magistrate had not acted judiciously in issuing process under section 204 of Cr.P.C. on the basis of such report submitted by a SI of police who was not authorized to investigate.

24. In such circumstances the impugned order dated 02.11.2018 and all subsequent orders are hereby quashed. In terms of direction made by the Court below dated 3rd September, 2018, OC of Hare Street Police Station will personally cause investigation/enquiry under section 202(1) of the Cr.P.C. and will submit a report to the court below within a period of 60 days from the date of communication of the order and on receipt of such report from the OC Hare Street PS, the court below will decide whether he will proceed under the provision of chapter XV or chapter XVI of Cr.P.C, without being influence by any observation made herein.

25. CRR 1722 of 2019 thus stands disposed of.

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.)