

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2730 of 2022

With

CRAN 2 of 2023

CRAN 6 of 2025

Smt. Kamala Devi Goyal

Vs.

The State of West Bengal & anr.

For the Petitioner : Mr. Pratim Priya Das Gupta
Mr. Aasish Choudhury
Ms. Meera Agarwal

For the Opposite Party No.2 : Mr. Pawan Kumar Gupta
Mr. Ayan Bhattacharya

For the State : Mr. R.D. Nandy Ld. APP
Mr. Subham Kanti Bhakat

Heard on : 02.05.2025

Judgment on : 10.06.2025

Dr. Ajoy Kumar Mukherjee, J.

1. This instant prayer for quashing of proceeding relates to GR Case no. 830 of 2020, arising out of Lake Town police station case no. 209 of 2020

dated 26.11.2020 under section 420/467/468/471/120B of the Indian Penal code (IPC), presently pending before learned Additional Chief Judicial Magistrate, Bidhannagar.

2. The allegations as set out in the first information report is that the opposite party no. 2/FIR maker purchased a property being premises no. 54-A Kali Krishna Tagore Street Kolkata-700007 in the year 2011, wherein the petitioner herein is a tenant of a shop room situated at the ground floor allegedly since 1975 -76. The FIR maker after purchasing the said property filed ejectment suit being 130 of 2017 with a prayer for evicting the petitioner. The said suit was decreed ex-parte in favour of opposite party no.2 herein/FIR maker on 28.02.2018. Later on the opposite party no. 2 initiated execution proceeding being no. 72 of 2018 and in execution of the said decree, vacant khas possession of the said tenanted shop room was handed over to the opposite party no. 2 in presence of police. However, on 21.12.2018 the said opposite party no. 2 came to know that the petitioner along with other accused persons unlawfully trespassed into the said shop room and had taken forceful possession of the same. On enquiry the opposite party no.2 came to know that the petitioner along with other accused persons by forging the signature of opposite party no.2 have procured a letter which they have submitted before Jorabagan police station stating that both the parties have entered into an amicable settlement, whereby the opposite party no.2 herein has agreed and has handed over the possession of the said shop in favour of the petitioner on stipulated terms. The FIR maker's specific case is that he neither entered into any kind of mutual settlement with the accused persons nor have signed any such letter

to such effect. The complainant immediately on 22.12.2018 wrote a letter to accused no.4 protesting such forgery. Therefore, the petitioner along with the other accused persons are guilty of forging the signature of the FIR maker and also guilty of committing offence for preparing illegal letter dated 20.12.2018, by which they have taken illegal possession of the shop room.

3. Being aggrieved by the said proceeding Mr. Das Gupta learned counsel appearing on behalf of the petitioner submits that on perusal of the charge sheet it is evident that there is no reflection as to any report being obtained from an expert to substantiate the charge of forgery and in absence of such report offences under section 467/468/471 IPC is not maintainable. Under the provisions of 463 IPC, which defines forgery makes it clear that only one who makes false document can be held liable for offence of forgery. Therefore, the person who is not the maker of false document in question cannot be said to have committed forgery and in this context he relied upon the Judgement of ***Sheila Sebastian Vs. Jawaharaj and another*** reported in **(2018) 7 SCC 581**.

4. Petitioner's further contention is that it is not in dispute that opposite party no.2 after executing decree passed in Title Execution 72 of 2018 obtained possession of the shop room but thereafter through intervention of Posta Bazar Merchants' Association, the opposite party no. 2/ landlord entered into an amicable settlement wherein the opposite party no. 2 agreed to hand over possession to the petitioner herein on condition to clear all previous outstanding rent, amounting to Rs. 80,519/- till November, 2018 and on further condition to pay agreed enhanced rent of Rs. 4,000/- per

month from December, 2018 and copy of such settlement letter was deposited to the nearby Police Station on the self-same date.

5. Petitioner's further contention is as per aforesaid settlement, he paid Rs. 80,519/- through cheque no. 000021 dated 20.12.2018 and opposite party no. 2 duly encashed said cheque on 29.12.2018 and petitioner also paid agreed enhanced monthly rent of Rs. 4,000/- for the month of December, 2018.

6. Petitioner alleged that despite receiving rent from petitioner at enhanced rate for the month of December, 2018, the opposite party no. 2 did not issue rent receipt, for which petitioner lodged complaint at Jorabagan P.S on 31.12.2018. Thereafter petitioner filed Title Suit no. 105 of 2019 before competent Civil Court for declaration of his tenancy right and for injunction and learned civil court vide order dated 19.01.2019 passed an ad-interim injunction in the nature of statues-quo in respect of possession, nature and character of tenanted suit shop room. Subsequently opposite party no. 2 herein as defendant appeared and filed one application under Order XXXIX, Rule 4 of Civil Procedure Code with a prayer for vacating the aforesaid order of interim injunction, contending that said letter concerning amicable settlement dated 20.12.2018 is a forged one and complain to that effect has already been lodged at Jorabagan P.S. However said Civil Court by it's order dated 08.02.2019 affirmed the injunction order and thereby rejected application under order XXXIX, Rule 4 filed by opposite party no. 2, seeking vacating the injunction order. After more than one and half year of rejection of prayer for vacating injunction order, present criminal proceeding has been falsely initiated at the behest of opposite party No.2.

7. Petitioners counsel further submits that on perusal of the contents of complaint, it is evident that no averment has been made justifying as to how the court below assumed territorial jurisdiction to entertain such application and subsequently to pass a direction upon Lake Town P.S. to register the purported FIR, when no part of alleged cause of action has taken place within the jurisdiction of learned ACJM Bidhannagore and also when it is clear from the said complaint that the address of both the petitioner and the opposite party no.2 herein does not fall within the jurisdiction of Jorabagan Police Station and for which learned ACMM-1, Calcutta has only got the jurisdiction to cause enquiry and trial, if any. In this context he relied upon the judgment of **Y. Abraham Ajith and others. Vs. Inspector of Police Chennai** reported in **(2004) 8 SCC 100**.

8. He further submits that on perusal of the application filed under Order XXXIX Rule 4, wherein the opposite party sought for vacating the order of injunction, it is evident that the opposite party no.2 herein made a previous complaint on the self-same issue before Jorabagan Police Station and as such present first information Report is not the first information. In fact there was a previous complaint made by opposite party no.2, which should be treated as first information report. In such circumstances the complaint which has resulted in the registration of instant FIR, cannot be translated into legal evidence as because the same is barred by the provision of the Code of Criminal procedure which states that the first information disclosing a cognizable offence shall be treated as an FIR and any subsequent information even if disclosing cognizable offence cannot be

treated as FIR and in this context he relied upon ***Amit Bhai Anil Chandra shah Vs. CBI and another*** reported in **(2013) 6 SCC 348**.

9. Mr. Das Gupta further argued that there is no dispute that after execution of said letter dated 20.12.2018, the petitioner duly paid Rs. 80519/- through cheque no. 000021 dated 20.12.2018, which was duly encashed by the opposite party no.2 on 29.12.2018. Furthermore the petitioner also paid the enhanced monthly rent of Rs. 4,000/- for the month of December, 2018 through NEFT and it is not the case of the opposite party no.2 that they have refunded the said sum and as such the allegation that the said letter dated 20.12.2018 is a forged document, is an afterthought and manifestly attended with *mala fide*.

10. He further contended that the dispute between the parties is essentially civil in nature, which the FIR maker tried to convert into a criminal proceeding and such attempt must not be encouraged and in this context he relied upon the observation made by supreme Court in ***Indian Oil Corporation Vs. NEPC India Ltd. and others*** reported in **(2006) 6 SCC 736**.

11. It has been further argued on behalf of petitioner that the petitioner is not conversant with the English language and even in the cheque issued for payment of arrear rent, she put her signature in Hindi and therefore the allegation that the petitioner had forged the signature of the opposite party no.2 appearing to be in English is imaginary and fictitious and the petitioner has been implicated to wreck vengeance and to put pressure to settle a civil dispute, since an order of status quo in respect of the said tenanted property is still prevailing.

12. Apart from that, the necessary ingredients to constitute an offence under section 420 of IPC is clearly missing. The existence of dishonest or fraudulent intention since inception and thereby alluring the other person to do or omit to do something are sine qua non to make out an offence of cheating. In the present case there is no dispute that the petitioner duly paid the outstanding rent as well as enhanced rate of rent and thus the fraudulent intention since inception is clearly absent. In this context he further argued that the issue as to genuineness of a document, forgery of which is the basis of criminal proceeding, which is also pending for consideration in a civil suit, criminal proceeding ought not to be allowed to continue.

13. Mr. Gupta Learned Counsel appearing on behalf of the opposite party no.2 argued that in the instant proceeding seeking quashment, no material of sterling and unimpeachable quality have been relied on by the petitioner herein which could safely and sufficiently refute the charges qua the instant petitioner. The documents like information slip of the bank or the purported cheque etc. cannot be said to be materials of sterling and unimpeachable quality to single headedly dispel the prosecution case qua the instant petitioner. The materials relied upon by the accused is not such as would persuade a reasonable person to dismiss the actual basis of the acquisitions as false. In the instant case the petitioner herself pleaded that the opposite party no.2 did not furnish any rent receipt in favour of the instant petitioner qua the said shop room at the subject premise and such pleading in fact admits to a judicial admission which controverts and disputes the purported stand of mutual settlement at the behest of the instant petitioner. He further

submits that disputed and controversial issue of facts cannot be made the basis of exercise of jurisdiction in terms of section 482 of the Cr.P.C. for quashment of a criminal proceeding.

14. Referring the judgment of ***Kamala Devi Agarwal Vs. State of West Bengal***, reported in **(2002) 1 SCC 555**, Mr. Gupta contended that it is trite law that a criminal proceeding cannot and ought not be quashed on the ground of mere pendency of a civil suit between the self-same parties. In reply to the petitioners contention about non acceptability of second FIR, Mr. Gupta argued that the instant FIR has been registered under sections 420/467/468/471/120B of the IPC and the same is based on the allegation of manufacturing of a forged and fabricated letter of purported mutual settlement to symbolize and claim possession of the said shop room at the subject premises, whereas the earlier application under section 156(3) of the Cr.P.C. was filed by the opposite party no.2 was about alleging commission of offence under sections 380/448/341/403/506(ii) of the IPC at the behest of the four accused persons including the instant petitioner. However, the said application under section 156 (3) Cr.P.C. was never directed to be treated as an FIR and there was no investigation in connection therewith. Therefore, it cannot be said that the instant FIR is a second FIR. The instant FIR is very much maintainable in law and in facts because the ambit of offence as alleged in the earlier petition of complaint under section 156(3) Cr.P.C. is altogether on a different cause of action.

15. In reply to the petitioners argument about territoriality of jurisdiction of the court below, Mr. Gupta Submits that in the instant case the investigational proceeding was taken up in consonance with the territorial

jurisdiction, since the fountain head of the cause of action arose within the bounds of Lake Town P.S. and as such there is no lack of territorial jurisdiction whatsoever. Furthermore, it is trite law that an investigational proceeding ought not be called into question on the ground of lack of territorial jurisdiction since section 156(2) of the Cr.P.C. engrafts a saving clause in such respect.

16. He further argued that the petitioner has averred that the original of the letter dated December, 20th, 2018 was lost even prior to the initiation of the subject investigation. In the charge sheet the police has alleged that the petitioner did not even bother to comply with the notice under section 41A of Cr.P.C. and as such he submits that the petitioner has purposefully not provided the original of the forged and fabricated letter dated 20th December, 2018 before the investigating officer. Therefore, the petitioner by no stretch of imagination can take benefit of his own wrong for non-availability of the original document because under section 61 of the Evidence Act, the contents of a document may be proved by primary or secondary evidence and the photocopy of the said letter is a secondary evidence being a copy made from the original by mechanical process. According to section 65 of the Evidence Act, secondary evidence can be admitted when the original is in the possession or in the power of the adversary and secondly when the original has been destroyed or lost. In the present case the petitioner had claimed loss of the original letter dated December 20th, 2018 in response to the notice under section 91 of the Cr.P.C. Therefore, the present case squarely falls within exceptions of section 65(c) read with Section 65(a) of the Act and therefore, merely because the original of the letter has been

allegedly lost by the petitioner, the charges under section 467/468/471 of the IPC cannot be diluted when the photocopy of such documents is custodia legis. Moreover the charges of forgery is ordinarily proved by invoking opinion of expert under section 45 of the evidence Act. A persons who is acquainted with the handwriting of a person can also testify in terms of section 45 of the Evidence Act in support of such forgery and in this context he pointed out the illustration appended to section 47 of the Evidence Act. Apart from all this a court of law may also invoke the provision as envisaged in section 73 of the Evidence Act to evaluate the charge of forgery. Therefore only because the provisions under section 45 of the Evidence Act was not invoked, it does not mean that the offence of forgery cannot be determined specially when provisions under section 47 read with section 73 of the Evidence Act are available. Above all the admissibility of such document can only be considered in a trial which can take place after framing of charge. Though the petitioner being the beneficiary and user of the forged document has now conveniently claimed to have lost such document but still the charges of forgery can very well be proved by secondary evidence and as such he prayed for dismissal of the instant Application.

17. Learned Counsel appearing on behalf of the state placed the case diary and leaves the prayer for quashment to the discretion of the court.

Decision

18. It is not in dispute in the present case that the petitioner was inducted as a tenant in the said shop room and thereafter in the year 2017,

the opposite party no. 2 herein filed ejectment suit, which was decreed ex-parte and thereafter the decree holder/opposite party no. 2 got possession on 13.12.2018 by executing the said decree through court. The dispute arises thereafter, where the FIR maker's case is that the accused person including the petitioner herein have manufactured a letter dated 20.12.2018 forging signature of the FIR maker and by sending a copy to local P.S. took forcibly possession of the suit shop room. On the contrary the contention of the petitioner/accused persons is that on 20.12.2018, opposite party no. 2 herein and the petitioner entered into an amicable settlement wherein opposite party no. 2 agreed to handover possession of the shop to the petitioner on condition of clearing previous outstanding rent amounting Rs. 80,519/- and to pay the agreed rent of Rs. 4,000/- per month from December, 2018.

19. From the case diary I find that during investigation police has collected copy of the material documents namely the impugned letter dated 20.12.2018 which further reflects that Jorabagan P.S received a copy of that letter on the self-same date i.e. 20.12.2018. They have also collected the copy of plaint of aforesaid Title Suit no. 105 of 2019 and the copy of the cheque by which the arrear amount of Rs. 80,519/- was paid and the document in support of the encashment of the cheque and also recorded statements of both the petitioner herein and the opposite party no. 2. It further appears that the investigating agency also collected a letter dated 22.12.2018, admittedly written by the complainant to the petitioner wherefrom it appears that he has not alleged the case of forgery in the said letter but in response to paragraph 2 of petitioner's letter dated 20.12.2018

about mutual settlement, the complainant herein has simply denied and disputed about the mutual talks and his contention is that the contents of said letter is merely baseless and concocted.

20. Needless to say that to constitute an offence of forgery using a forged document as genuine for the purpose of cheating the prosecution is required to establish that particular accused i.e. the petitioner herein has committed forgery by preparation of a forged documents in the manner provided in section 463 and 464 IPC and that such forgery is to be made for the purpose of cheating and in order to constitute offence under section 471 the prosecution has to show that the accused fraudulently and dishonestly used such document knowing it to be forged one. Here in the petition of complaint the complainant has stated that all the accused persons have forged the signature of the complainant in the letter dated 20.12.2018. From the materials in the case diary and also from the written complaint I do not find any material that the instant petitioner Smt. Kamala Devi Goel has prepared the allegedly forged letter. Infact during investigation, maker of alleged false document was not found nor any investigation was done to that extent. The available document in the case diary and the complaint does not reveal any relationship between the alleged wrongdoer and the present petitioner. It is well settled that the charge of forgery cannot be imposed or sustained against a person against whom *prima facie* allegation of making false letter in question has not been established. The essential element of an offence under Section 464 of the IPC is that the accused must make the document with the intent of making it to be believed that it was signed by or under the authority of someone else while he knows that it was not so made

or authorised to make by that person. In other words to bring the offence within the four corners of the sections, the letter dated 20.12.2018 must be shown to have created by the present petitioner with a view to making it appear that it was made by some person other than the person who the petitioner knows did not make it. The materials available during investigation does not suggest that the prosecution could even *prima facie* establish that the alleged letter dated 20.12.2018 was procured by the petitioner or she procured the signature of the complainant.

21. Moreover during investigation the said letter dated 20.12.2018 could not be seized by the investigating agency nor there was any scope for investigation or to compare signature of the complainant with the signature that was appearing in the letter dated 20.12.2018, may be due to the reason that said alleged document being letter dated 20-12.2018 has been made part of the record of the Title Suit no. 105 of 2019 where the issue of forging letter has also been raised by the opposite party herein, before filing of the instant complaint or because it could not be traced. Since the issue as to whether the letter dated 20.12.2018 is a forged document containing forged signature or not is under consideration before the Civil court for adjudication of petitioner's tenancy right, the present FIR also ought not to have been allowed to continue as it would prejudice the interest of the parties and the stand taken by them in the civil suit. In a similar situation in a case ***Rajeshhai Muljibhai Patel & Other Vs. State of Gujarat & another*** reported in **(2020) 3 SCC 794**, the Apex Court quashed the FIR with the following observation made in para 20 of the judgement:-

20. Be that as it may, in Summary Suit No. 105 of 2015, leave to defend was granted to Respondent 2 Mahendrakumar on 19-4-2016. On the application filed by Appellant 3 in the said Summary Suit No. 105 of 2015, four receipts filed in the suit were sent to the handwriting expert. The handwriting expert has opined that signatures in all the four receipts did not tally with the sample signatures which were of Respondent 2 Mahendrakumar. It was only thereafter, complaint was filed by Mahendrakumar, based on which, FIR No. I-194/2016 was registered on 28-12-2016 against the appellants for the offences punishable under Sections 406, 420, 465, 467, 468, 471 and 114 IPC. As rightly contended by the learned counsel for the appellants, in Summary Suit No. 105 of 2015, Issue 5 has been framed by the Court “whether the defendant proved that the plaintiff has fabricated the forged signature illegally and created forged receipts”. When the issue as to the genuineness of the receipts is pending consideration in the civil suit, in our view, the FIR ought not to have been allowed to continue as it would prejudice the interest of the parties and the stand taken by them in the civil suit.”

22. Materials available in the case record reveals that after about one and half year of refusal order passed by civil court in respect of opposite party’s prayer for vacating injunction order, frustrated landlord has initiated the impugned criminal proceeding which if allowed to continue would be an abuse of process of law. In **Chandanpal Singh and others Vs. Maharaj Singh and another** reported in **(1982) 1 SCC 466**, Supreme Court made following observation :-

“.....it is equally true that chagrined and frustrated litigants should not be permitted to give vent to their frustration by cheaply invoking jurisdiction of the criminal court. Complainant herein is an advocate. He lost in both courts in the rent control proceedings and has now rushed to the criminal court. This itself speaks volumes. Add to this the fact that another suit between the parties was pending from 1975. The conclusion is inescapable that invoking the jurisdiction of the criminal court in this background is an abuse of the process of law and the High Court rather glossed over this important fact while declining to exercise its power under Section 482 CrPC.”

23. In this context Mr. Gupta through heavily relied upon the judgment of **Kamal Devi Agarwal Vs. State of West Bengal** reported in **(2002) 1 SCC 555** but said case is factually distinguishable with present one as in that case trial court found that the complaint had made out a *prima facie* case

against the accused person of forgery of a deed of dissolution of partnership firm, so it was held that the criminal proceeding should continue, which is not the case in the present context. There is nothing to show that either the complainant or the prosecution agency has made out any *prima facie* case of criminality against the present petitioner namely Kamala Devi Goyel about forging of the said letter.

24. Mr. Gupta though argued strenuously referring 64,65 and 73 of Indian Evidence Act to established that the petitioner's case is that copy of that letter can be proved as secondary evidence or by a person who is acquainted with the signature of the complainant, but I find that such argument is not tenable in view of the fact that the nature and scope and standard of proof required in Civil and Criminal proceedings are distinct. While the said copy of letter may have been made admissible as a secondary evidence in the civil suit where preponderance of probability is to be judged but in the absence of the seizure of the original document by the investigating agency and without sending it for comparison to establish that the signature and/or handwriting appearing therein is not the signature of the complainant but has been prepared by the petitioner herein either in the manner provided in section 463 and 464 of IPC or otherwise, there is hardly any scope of establishing the charge of forgery as alleged against the present petitioner and also because a penal statute cannot be expanded by using implications. In this context the observation of the Apex court in ***Sheila Sebastian Vs. R. Jawaharaj and another*** may be profitably referred:-

“30. Although we acknowledge the appellant's plight who has suffered due to alleged acts of forgery, but we are not able to appreciate the appellant's contentions as a penal statute cannot be expanded by using implications.

Section 464 IPC makes it clear that only the one who makes a false document can be held liable under the aforesaid provision. It must be borne in mind that, where there exists no ambiguity, there lies no scope for interpretation. The contentions of the appellant are contrary to the provision and contrary to the settled law. The prosecution could not succeed to prove the offence of forgery by adducing cogent and reliable evidence. Apart from that, it is not as though the appellant is remediless. She has a common law remedy of instituting a suit challenging the validity and binding nature of the mortgage deed and it is brought to our notice that already the competent civil court has cancelled the mortgage deed and the appellant got back the property.”

25. In view of above I have every reason to believe that further continuance of instant preceding before the court below against present petitioner will be a mere abuse of the process of the court as at the end of trial, conviction of the present petitioner on the basis of aforesaid materials available in record is bleak.

26. CRR 2730 of 2022 is allowed. The impugned proceeding being G.R case no. 830 of 2020 arising out of Lake Town P.S case no. 209 of 2020 dated 20.12.2020 presently pending before the court of Additional Chief Judicial Magistrate, Bidhannagar is quashed, Quo Smt. Kamala Devi Goyal. The connected Applications are also disposed of accordingly.

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.)