IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 4976 of 2023

Pawan Agarwal and Another

-Vs-

The State of West Bengal and Another

For the Petitioners	:	Mr. Sourav Chatterjee, Sr. Adv., Mr. Satadru Lahiri, Mr. Safdar Azam.
For the O.P. No. 2	:	Mr. Ayan Bhattacharya, Sr. Adv., Mr. Anirban Dutta, Mr. Ayan Mondal.
Hearing concluded on	:	06.05.2025
Judgment on	:	16.05.2025

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred by the petitioner praying for quashing for the proceeding being Complaint Case No. C/724 of 2023 under Sections 406 /419 /420 /423 /464 /467 /468 /470 /471 /120B /34 of the Indian Penal Code, 1860, pending before the Learned Judicial Magistrate, 4th Court, Alipore.
2. The complainant/opposite party no. 2's case in the petition of complaint before the trial Court contains the following allegations:-

i) *The complainant is a resident of the premises 26/3, Hindustan Park, 3rd floor since the last 25 years. The complainant is presently running a shop from the **ground floor** of the said premises along with his son namely Mr. Shyam Anand Agarwal.*

ii) *The complainant along with the Opposite parties no. 1 to 2 held jointly in diverse undivided share in respect of one road facing shop room measuring 300 sq. ft, being premises no. 26/3B, Hindustan Park, Ground Floor, Police Station Gariahat, Kolkata 700029 (herein after referred to as the (said shop). The complainant is the co-owner of undivided one-third share in the said shop as per the agreed family settlement dated 31st October, 2010.*

iii) *The said shop was rented out to one Asha Rani alias Rajrani Dhawan as a tenant, who started a business under the name and style of "M/s. Kwality Shoes'. After the untimely demise of the tenant namely Asha Rani alias Rajrani Dhawan, one Ashoke Kumar Dhawan had obtained a trade license for operating and carrying on the business under the name and style of "M/s. Kwality Shoes" at the said shop.*

iv) *However since last several years the said tenant started defaulting in payment of rent to the landlords for which several reminder and intimation was given to the said tenant. However, around May 2018, it came to the knowledge of the complainant that the said Ashoke Kumar Dhawan was trying to sublet the* *premises to a third party without the permission or knowledge of the complainant.*

v) *The said property was tenanted and on apprehension that the tenant would sublet, the complainant* ***initiated a Title (Civil) suit being 729 of 2018*** *which is pending at Alipore Court, wherein an order of injunction exists from creating any third party rights.*

vi) *Due to alleged dispute between the parties, the petitioners herein initiated M.P. Case 1962 of 2022, wherein the document dated 27.08.2018 was annexed, and the complainant came to know for the first time about a memorandum of understanding between the petitioners herein and the tenant, who had handed over the possession of the said disputed premises to the petitioners herein being the co-owners for consideration, paid to the tenant and wherein the right of the complainant as a co-owner was ignored.*

vii) *The complainant states that the act of creation of such false document which was done by the opposite parties/Accused persons upon presuming and/or impersonating the authority of the Complainant as a co-owner clearly satisfies the ingredients for commission of the offence of forgery and creation of valuable security for the purpose of cheating.*

3. **The petitioners/accuseds case is that:-**

   a) The parties herein are the co-owners of the disputed property.

b) To stop the tenant from handing over the property to promoters, the petitioner no. 1 and father of the petitioner no. 2, being two of the landlords, to avoid litigations and to recover the property from possession of Dhawans accepted the same. **The complainant/opposite party was requested to contribute but he refused. From the date of surrender of the said shop room is under lock and key position.**

4. The document of surrender was notarized on 27.08.2018.
5. Title suit has also been initiated in the year 2018 and the petitioners have been impleaded as proforma defendants in the suit, as the complainant was not aware of the transfer.
6. Due to subsequent disturbance regarding the possession of the disputed property, the criminal proceedings has been initiated.
7. **From the materials on record, the following is evident:-**

   i) The parties in the present case are related to each other and are **thus family.**

   ii) In fact **the petitioner no. 1 and the complainant are real brothers.**

   iii) **Admittedly the disputed property is their joint property.**

   iv) It is the contention of the petitioners that as the tenant was intending to dispose of the property to a promoter, they entered into an agreement to purchase the same even though, the complainant did not contribute for the purchase.

   v) The petitioner no. 1 filed a complaint with the police against the complainant and his son on **15th June, 2022.**

vi) Complainant lodged an FIR on **24.6.2022** against the petitioners.

vii) Then on 16.03.2023 the complainant filed the complaint in the present proceeding before the trial Court.

8. The opposite party no. 2/complainant has relied upon the judgment of the Supreme Court in ***Anil Kumar J. Bavishi vs. Mahendra Kumar Jalan @ M.K. Jalan, Miscellaneous Application Diary No(s). 5926/2025 in Criminal Appeal No. 5490 of 2024, decided on December 19, 2024.***

9. The dispute between parties who are admittedly relatives relates to property which is admittedly a joint property. Thus the dispute is clearly a family civil dispute and their relief lies before the civil Court.

10. The applicability of the said judgment ***Anil Kumar J. Bavishi vs. Mahendra Kumar Jalan @ M.K. Jalan (Supra)*** to the present case, is not clear to the Court as in the present case admittedly the Court has not initiated the complaint in this case.

11. In ***Paramjeet Batra vs State of Uttarakhand & Ors., Criminal Appeal No. 2069 of 2012 (arising out of SLP (Crl.) No. 7720 of 2011), on 14 December, 2012,*** the Supreme Court held:-

> *"**7.** While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein.* ***Whether essential ingredients of criminal offence are present or not has to be***

judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court.

8. *As we have already noted, here the dispute is essentially about the profit of the hotel business and its ownership. The pending civil suit will take care of all those issues. The allegation that forged and fabricated documents are used by the appellant can also be dealt with in the said suit. Respondent 2's attempt to file similar complaint against the appellant having failed, he has filed the present complaint. The appellant has been acquitted in another case filed by respondent 2 against him alleging offence under Section 406 of the IPC. Possession of the shop in question has also been handed over by the appellant to respondent 2. In such a situation, in our opinion, continuation of the pending criminal proceedings would be abuse of the process of law. The High Court was wrong in holding otherwise."*

12. **The Supreme Court in several precedents has discouraged such proceedings initiated by the complainant only to harass the other party. Some of the rulings are as follows:-**

a) M/s. Indian Oil Corporation vs. M/s NEPC India Ltd. & Ors., Appeal (crl.) 834 of 2002 decided on 20.07.2006 (Para 8, 9, 10).

b) Birla Corporation Ltd. vs Adventz Investments and holdings, (Criminal Appeal No. 877 of 2019) (Para 86).

c) Mitesh Kumar J. Sha vs. The State of Karnataka & Ors. (Criminal Appeal no. 1285 of 2021) (Para 37, 41, 42).

d) *R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022 (Para 17).*

e) *Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023 (Para 21, 24).*

f) *Paramjeet Batra vs State of Uttarakhand & Ors., (2013) 11 SCC 673.*

13. In ***Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). .... of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022),*** the Supreme Court held:-

> *"**15.** This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another**, **(2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*
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> *"22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power 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.*
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> *23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court*

or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

'7. … In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

'102. (7) Where a criminal proceeding is manifestly attended with mala fides 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.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings."

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in* ***State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335*** *as under :*

*"**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."

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in* ***Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315****."*

14. The present case falls under category 1, 3 and 7 of ***Para 102 of Bhajan Lal (Supra).***

15. The Supreme Court in ***Randheer Singh Vs. State of Uttar Pradesh & Ors., (2021) 14 SCC 626,*** held:-

> *"**18.** The only question is whether there is any criminal offence disclosed in the FIR so far as the Appellant is concerned. When the High Court passed its order dated 5th October, 2017, Rajan Kumar (since deceased), the executant of the sale deed and the Power of Attorney holder was also an applicant before the Court. Today, there has been a change in situation, in that, criminal proceedings against Rajan Kumar have abated since Rajan Kumar is no longer alive. It is the case of the private respondent that the private respondent purchased property. In the meantime, Rajan Kumar, who is no longer alive, on the basis of a false Power of Attorney of Bela Rani, executed a sale deed in favour of Randheer Singh, i.e., the Appellant herein. There is only a vague averment "by connivance". The next part of the sentence reads "Bela Rani had no right to sell the aforesaid plot."*
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> ***23.** Even though an FIR need not contain every detail, an offence has to be made out in the FIR itself. It is the case of the Private Respondents that Bela Rani has no title. Bela Rani executed a false Power of Attorney in favour of Rajan Kumar (since deceased). Alternatively, the Power of Attorney, in itself, was a forged document.*
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> ***24.** A fraudulent, fabricated or forged deed could mean a deed which was not actually executed, but a deed which had fraudulently been manufactured by forging the signature of the ostensible executants. It is one thing to say that Bela Rani fraudulently executed a Power of Attorney authorising the sale of property knowing that she had no title to convey the property. It is another thing to say that the Power of Attorney itself was a forged, fraudulent, fabricated or manufactured one, meaning thereby that it had never been executed by Bela Rani. Her signature had been forged. It is impossible to fathom how the investigating authorities could even have been prima facie satisfied that the deed had been forged or fabricated or was fraudulent without even examining the apparent executant Bela Rani, who has not even been cited as a witness."*

On noting several precedents the Court finally held:-

> *"**33.** In this case, it appears that criminal proceedings are being taken recourse to as a weapon of harassment against a purchaser. It is reiterated at the cost of repetition that the FIR does not disclose any*

offence so far as the Appellant is concerned. There is no whisper of how and in what manner, this Appellant is involved in any criminal offence and the charge sheet, the relevant part whereof has been extracted above, is absolutely vague. There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.

34. *The given set of facts may make out a civil wrong as also a criminal offence. Only because a civil remedy is available may not be a ground to quash criminal proceedings. But as observed above, in this case, no criminal offence has been made out in the FIR read with the Charge-Sheet so far as this Appellant is concerned. The other accused Rajan Kumar has died."*

16. From the evidence on record, it is clear that no criminal act or intent of the petitioners has been prima facie made out in respect of the offences alleged. **The dispute is clearly a civil/family property dispute,** with no materials on record to prima facie show that the essential ingredients required to constitute the offences alleged are present against any of the petitioners. The proceedings in this case before the Trial Court is thus clearly an abuse of the process of law.

17. Thus, there being no prima facie materials on record against the petitioners in respect of the offences alleged, the proceeding being Complaint Case No. C/724 of 2023 under Sections 406 /419 /420

/423 /464 /467 /468 /470 /471 /120B /34 of the Indian Penal Code, 1860 pending before the Learned Judicial Magistrate, 4th Court, Alipore, **is liable to be quashed.**

18. **CRR 4976 of 2023 is allowed.**

19. The proceeding being Complaint Case No. C/724 of 2023 under Sections 406 /419 /420 /423 /464 /467 /468 /470 /471 /120B /34 of the Indian Penal Code, 1860 pending before the Learned Judicial Magistrate, 4th Court, Alipore, **is hereby quashed, in respect of the petitioners, namely Pawan Agarwal and Vishnu Kishen Agarwal.**

20. All connected applications, if any, stand disposed of.

21. Interim order, if any, stands vacated.

22. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

23. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)