IN THE HIGH COURT AT CALCUTTA

CIRCUIT BENCH AT JALPAIGURI

(CRIMINAL REVISIONAL JURISDICTION)

Present:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

C.R.R. 141 of 2024
With
IA No. CRAN 8 of 2025
Debolina Mitra
Vs.
The State of West Bengal & Anr.
With
C.R.R. 142 of 2024
With
IA No. CRAN 8 of 2025
Saurav Kumar Das
Vs.
The State of West Bengal & Ors.
With
C.R.R. 201 of 2024
With
IA No. CRAN 5 of 2025
Pritam Lama
Vs.
The State of West Bengal & Ors.
With
C.R.R. 202 of 2024
With
IA No. CRAN 5 of 2025
Pankaj Saha
Vs.
The State of West Bengal & Ors.

For the Petitioner : Mr. Rajdeep Mazumder
Mr. Avrojyoti Das
Mr. Satyakam Chakraborty
Mr. Rajdeep Das
Mr. Soumya Raha

For the State : Mr. Nilay Chakraborty
Ms. Sanjiv Das

Heard on : 10.03.2025

Judgment on : 25.03.2025

Dr. Ajoy Kumar Mukherjee , J.:

1. The petitioner in CRR 141 of 2024 is the branch operations manager at the HDFC bank Siliguri Branch and the petitioner in CRR 142 of 2024 is the Branch Operations Manager at the HDFC Bank, Burdwan Road Branch and the petitioner in CRR 201 of 2024 is the merchant relationship manger of the HDFC Bank, Hilcart Road Branch, Siliguri and the petitioner in CRR 202 of 2024 is the Relationship Manager of HDFC Bank, Burdwan Branch Road, Siliguri. All the above-mentioned petitioners being aggrieved by the impugned proceeding being Siliguri police station case no. 314 of 2024 under sections 465/468/471/420/34 of the IPC have preferred the aforesaid respective applications for quashment of the said proceeding

2. The glimpse of FIR story in connection with the said impugned proceeding is that opposite party no.2/complainant had opened three accounts with HDFC Bank. Prior to opening the accounts, petitioners of CRR 141 of 2024, CRR 142 of 2024 and CRR 202 of 2024 had a meeting with the opposite party no.2 as official representatives of HDFC Bank and they had told them that they do not want any kind of transaction/MDR charges levied on them for the POS Machines and for cash pickup from their hospital premises. The bank representatives agreed to their condition and the bank operations started from July, 2022. The POS team headed by the petitioner of CRR 142 of 2024 then installed the POS machines at the premises after getting documents signed. After about 10 months of account operation, the accounts team of the hospital realised that the bank has been taking transaction charges for all the payments made through credit/debit cards by the patient and this amounted to a huge sum of money. The *de facto* complainant then raised objection and after waiting about 2 months, the complainants realised that raising the issue before the higher authority of the bank yielded no result and as such he asked the bank authorities to give the copy of the agreement papers for installation of POS machine at hospital premises. When the accused persons mailed the copy, the complainant after going through the agreement paper was shocked to realize that his alleged signature on the agreement paper is a forged one. Accordingly he initiated the FIR against the petitioners of the respective revisional applications, being aforesaid Siliguri P.S. Case no. 314 of 2024 dated 03.04.2024

3. Being aggrieved by the impugned proceedings Mr. Rajdeep Mazumder, learned Counsel appearing on behalf of the petitioners of the abovementioned revisional Applications submits that the entire dispute is civil in nature and has been instituted against the petitioners with *mala fide* intention as the agreement in question was signed in presence of the complainant and all the formalities was completed in his presence.

4. He further submits that during pendency of the present applications, the *de facto* complainant /opposite party no. 2 had initiated a parallel proceeding against the petitioners herein before District Consumer Dispute

Redressal Commission, Siliguri, where the *de facto* complainant has taken a different stand.

5. Mr. Mazumder further contended that the dispute, if any, has been given a cloak of criminal offence, over the issue, which is essentially of civil nature and the Criminal proceeding has been used as weapon of harassment and such *mala fide* proceeding instituted at the behest of the complainant, ought to be quashed for the ends of justice. In fact the ingredients to constitute alleged offences do not exist in the allegation and the complainant had failed to make any specific allegation against the petitioners in respect of offences as alleged in the FIR. Mr. Majumder strenuously argued that on the reading of the allegations levelled in the FIR, it would give an understanding that the impugned FIR has arisen from the alleged breach of agreement, where *mens rea* from the very inception is completely absent and for which it does constitute offence of cheating, as mere failure of a person to keep promise subsequently, without a culpable intention, right at the beginning does not constitute offence. It is also evident that as the dispute is purely civil in nature, the complainant has already approached before the District Consumer Commission and the present criminal proceeding has been initiated only to harass the petitioner.

6. Mr. Mazumder further argued that from the FIR it is clear that the agreement was signed in presence of the complainant and all the formalities was completed in his presence. Opposite party no. 2/ complainant put his signature on the agreement and only with a *mala fide* intention is denying the same, in order to falsely entangle the petitioners into *mala fide* proceeding. He further contended that the complainant has contradicted his own statement made in the FIR, where the opposite party no.2 herein admitted that signatures were put voluntarily and as such no case of forgery or cheating can be made out. He further argued that it is evident from the application made before Consumer Commission that the main signatory of the company is one Mr. L.T. Subba and there is no indication in any manner whatsoever, that there is any necessity or requirement of signature of second director. Accordingly there is no *mens rea* in the offence alleged. Thus Mr. Mazumder submits that even if the complainant story is accepted to the gospel truth, then also placement of fact singularly lacks either of the ingredients of the offences alleged and the allegations are absurd and inherently improbable.

7. Referring the judgment of ***State of Haryana and others Vs. Bhajanlal,*** reported in **1992 Supp (1) SCC 335,** Mr. Mazumder relied sub paragraph (5), (6) and (7) of paragraph 102 of the said judgment and contended that the allegations so levelled does not make out any case against the petitioners, since there is no material before the court which would reflect that the forgery was done at the behest of the petitioners, specially when there is no requirement of forgery to be added in the present case, as admittedly the agreement bears the signature of one director namely Mr. L.B. Subba.

8. Relying upon sub para (6) of para 102 of ***Bhajanlal's Case (supra)***, Mr. Mazumder contended opposite party no.2 also approached consumer forum where lies the alternative and efficacious remedy and even the ancillary issues which are levelled in the allegations can also be looked into by the said forum under section 38(9) and section 38(10) of the Consumer Protection Act 2019, as the Consumer Forums have given the designation of civil courts and for certain offences of forgery, they can act as criminal courts. Relying upon sub para (7) of para 102 of the said judgment he further contended that the *mala fide* in the present case is palpably clear from the fact that the written complaint was submitted to the officer-in-charge of khalpara town out post who had received the same and reduced the same to general diary, entry no. 68 dated 03.04.2024 but the present case has been registered for investigation surprisingly for Siliguri police station with the G.D. reference being G.D. entry no. 175. In this context he further argued that it is trite law that first information report can be understood as the first in point of time information and on a bare perusal of the written complaint, it becomes evident that the first in point of time information is the G.D. Entry No. 68 and no action was taken on the basis of the same. It is only on a mysterious G.D. Entry that too by a different police station that the present FIR was registered. He also argued that the case of *malafide* is also evident from the fact that the informant collected the CFSL Report at the investigation stage and he admitted that he obtained the same from investigating officer which pointed out that the investigating officer is in hand in glove with the complainant. In support of his contention he also relied upon the following judgments.

9. ***Paramjit Batra Vs. State of Uttarkhand and others,*** reported in **(2013) 11 SCC 673.**

10. ***HDFC Bank Ltd. Vs. State of others,*** **SPL. (Cri) 2906 of 2022.**

11. ***B. Suresh Yadav Vs. Sarifa and another,*** reported in **(2007) 13 SCC 107.**

12. ***Saliv @ Shalu @ salim Vs. state of U.P. and others*** reported in **2023 SCC Online SC 947.**

13. **Hazi Iqbal @ Bala Vs. State of U.P. & others** reported in **2023 SCC Online SC 948.**

14. Learned Counsel appearing on behalf of the opposite party submits that the anomaly in the G.D. Entry as pointed out by the ld. Counsel for the petitioner is not correct in view of the fact that the incident was diarised first in Khalpara outpost where it was recorded and then it was sent to Siliguri where second entry of the self-same subject matter was duly noted. In reply to the argument made on behalf of the petitioner that this is a case of delayed FIR, where investigation started without following directions made by Supreme Court in ***Lalita Kumari's Case,*** Learned Counsel for the opposite party submits that after operating the account when the audit was conducted it was detected and after going through the copy of the agreement which was received through mail service, the complainant detected the forgery and thereafter the FIR was lodged.

15. Mr. Dutta, learned Counsel appearing on behalf of the opposite party no.2 further argued that in the agreement, though the signature of one director Lok Subba is appearing but since he had no power to deal with financial issues, his signature is of no importance and furthermore even the signature of Lok Subba was obtained on a blank form, which prompted the petitioners to forge signature of the *de facto* complainant on the agreement and therefore, *mens rea* for committing the offence lies in the fact that unless the signature of the *de facto* complainant be forged on the agreement, the agreement does not have any acceptability. He further contended that truth will come out only when the evidence would be concluded and this is not a case where the proceeding can be quashed at the very initial stage.

16. Learned Counsel appearing on behalf of the state placed the case diary before the court and contended that during investigation police has obtained sufficient materials against the present petitioners which needs corroboration during trial and as such this is not a fit case, where the proceeding can be quashed invoking court's jurisdiction under section 482 of the Code of Criminal Procedure.

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

18. During investigation Police collected the report given by the examiner of questioned documents, who formed opinion as follows:-

> *"the person, who wrote the specimen signature enclosed stamped and marked B to B3 did not write the question signatures similarly enclosed, stamped and marked A1 to A2."*

19. Accordingly it is apparently clear that the allegations levelled in the FIR that the de facto complainant after receipt mailed copy was shocked to realize that his signature has been forged in the impugned agreement for installation of the POS machine at the hospital premises, has prima facie been established.

20. Now while it is the case of the petitioners that the main signatory of the company is one Mr. L.B. Subba and there is nothing to show that there was any necessity or requirement of procuring signature of second director/*de facto* complainant and as such there cannot be any *mens rea* which is the most essential ingredient to constituter the alleged offences, the prosecution's specific case on the other hand is said Lok Subba whose signature is appearing as director, had no power to deal with the financial matters of the company and as per resolution he was not solely authorized to make any such agreement and for which in order to create the impugned agreement a legal and valid document, procurement of complainant's signature was must and for which the bank authorities have forged his signature.

21. In the above backdrop I find that to adjudicate the said issue as to whether signature of the complainant was at all required to make the agreement effective, the parties are required to go for trial because that is the crux of the issue to determine whether there existed any *mens rea* on the part of the petitioners or not. Furthermore, a transaction can at the same time give rise to breach of contract as well as the offence of cheating. I find that the present dispute is not simply concerned with breach of contract but the allegation also tagged with the case of forgery.

22. In order to constitute offence under section 468 of IPC, the following ingredients are essential:-

(I) There should be a forgery in respect of the document in question.

(II) The intention of the forgery should be that the forged document is to be used for the purpose of cheating.

(III) There should be forgery with particular intent.

23. Under section 463 of IPC "forgery" means making a false document with intent to cause damage to any person. In the present context it has been established during investigation that there exists a forgery in respect of complaints signature in the agreement. Now whether in the instant proceeding ingredient no. (II) and (III) as above exists or not can only be decided during trial. It is no more *res integra* that exercise of power under Section 482 Cr.P.C to quash a criminal proceeding is when an allegation made in the FIR or materials collected during investigation does not constitutes the ingredients of alleged offence.

24. The fact that complaint has not put signature on the agreement, *prima facie* established during investigation. It is also to be noted that a person or institution who is required to approve a financial proposal is duty bound to observe due care and responsibility. There are specific allegations in regard to the irregularities which have been allegedly committed in the course of contractual relationship. At this stage, the High Court ought not to be scrutinizing the materials in the manner in which the trial court would do in the course of criminal trial after evidence is adduced. The FIR is not expected to contain everything like an encyclopaedia, particularly in a matter involving allegation of financial irregularities in the course of contractual relationship.

25. It is settled law that the High Court is to exercise power under section 482 of the Code in very rare and exceptional cases.

26. However, in the present case I find that the allegations levelled in the FIR by the complainant that his signature appearing in the impugned agreement has been forged is established prima facie during investigation. Now the allegations that the petitioners in conspiracy with each other have forged the signature of the complainant is correct or not and whether for doing any such act there was any guilty mind or not shall be decided during trial.

27. In such view of the matter I find that this is not a fit case where the criminal proceeding ought to be quashed invoking this court's jurisdiction under section 482 of the Code.

28. **CRR 141 of 2024** thus stands dismissed.

29. In view of dismissal of the said application the other applications being **CRR 142 of 2024, CRR 201 OF 2024, CRR 202 OF 2024** also stands dismissed.

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.)