

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present: The Hon'ble Justice Partha Sarathi Sen
CRR 396 of 2025
With
CRR 395 OF 2025
Ram Kishan Mittal
Vs.
The State of West Bengal.

For the petitioner:	Dr. Arjun Chowdhury, Adv., Mr. Masood Sultan, Adv., Ms. Pratusha Dutta Chowdhury, Adv., Ms. Sunayana Parveen, Adv., Ms. Riya Agarwal, Adv., Mr. Mantu Mandal, Adv., Mr. Bappaditya Roy, Adv.
For the State in CRR 396: Of 2025	Mr. Nilay Chakraborty, APP, Mr. Saikat Chatterjee, Adv.,
For the State in CRR 396: Of 2025	Mr. Aditi Shankar Chakraborty, APP, Mr. Sourav Ganguly, Adv.
For the O.P nos. 2, 3 &4:	Mr. Ajay Singhal, Adv., Mrs. Heena Yasmin Shaikh, Adv., Ms. Chiroshhre De, Adv.
Heard on :	19.08.2025
Judgement on :	21.08.2025

PARTHA SARATHI SEN, J:-

1. In CRR 396 of 2025 which is an application under Section 528 BNSS the revisionist has prayed for quashing of CR Case no.23 of 2019 as pending before the Judicial Magistrate, Fast Class at Kalimpong, District Kalimpong as well as

for quashing of the order dated 13.05.2025 as passed by the said trial court in CR no. 23 of 2019 and the order dated 23.07.2025 as passed in Criminal Revision no. 07 of 2025 by the learned Sessions Judge at Kalimpong which arose out of the said impugned order dated 13.05.2025 as passed by the learned trial court.

2. In CRR 395 of 2025 which is also an application under Section 528 BNSS the revisionist has prayed for quashing of the entire proceeding in connection with CR case no. 04 of 2020 as pending before the Judicial Magistrate, Fast Class, Kalimpong, District Kalimpong with a further prayer for setting aside the order dated 13.05.2025 as passed by the learned trial court in CR no. 04 of 2020 as well as for setting aside the order dated 23.07.2025 as passed in Criminal Revision no. 07 of 2025.

3. For effective adjudication of the instant two applications under Section 528 BNSS the facts leading to filing of those two applications for quashing are required to be dealt with in a nut shell and those are as under:-

- a. The revisionist before this Court filed OC suit no. 03 of 2013 before the learned Civil Judge, Senior Division at Kalimpong claiming his right, title and interest over the suit property of the said suit.
- b. In the said suit the revisionist tendered six numbers of rent receipts which has been exhibited as Exhibit 7 (series).
- c. According to the opposite party who is the complainant before the trial court, those rent receipts as have been claimed to be executed by one Bangshidhar Agarwal, since deceased are forged and fabricated.

- d. On the basis of the said allegation the opposite party filed CR case no. 23 of 2019 before the learned trial court under Section 200 of CrPC for the alleged commission of offence by the revisionist under Sections 193, 196, 199, 200, 465, 467, 471 IPC read with Sections 191, 192, 463, 464 IPC.
- e. After initial examination in CR case no. 23 of 2019 the trial court issued process in the name of the accused who is the revisionist before this Court. On the basis of such process the accused/revisionist appeared before the trial court in CR case no. 23 of 2019 and was enlarged on bail.
- f. Based on the self same facts the opposite party filed an application under Section 340 Code of Criminal Procedure before the jurisdictional civil court for causing an enquiry which was subsequently sent to the trial court and on such application, the trial court initiated another complaint case being CR case no. 04 of 2020 wherein the present revisionist/accused entered appearance and was enlarged on bail.
- g. In both the aforementioned two complaint cases the opposite party/ complainant on 08.08.2024 filed an application before the trial court with a prayer for directing the accused/revisionist herein to produce the original rent receipts as have been exhibited as Exhibit 7 (series) in OC suit no. 03 of 2013 for sending those documents to CFSL for comparison with the admitted specimen signatures of late

Bangshidhar Agarwal and for opinion of a handwriting expert with regard to the genuineness of the documents in question as well as sample writing and the signatures as appearing on those rent receipts being Exhibit 7 (series) in connection with OC suit no. 50 of 1997.

- h. By the two impugned order nos. 52 both dated 13.09.2025 as passed in CR case no. 23 of 2019 as well as in CR case no. 04 of 2020 the said two applications were allowed whereby and whereunder the learned trial court directed the revisionist/accused to produce six rent receipts as have been marked as Exhibit 7 (series) in OC suit no. 03 of 2013.
- i. The said two orders dated 13.05.2025 were assailed before the learned Sessions Judge, Kalimpong vide Criminal Revision Case nos. 06 of 2025 and 07 of 2025 which were however dismissed by two separate orders dated 23.07.2025.

4. At the time of hearing Dr. Arjun Chowdhury, learned advocate appearing on behalf of the revisionist/ accused at the very outset draws attention of this Court to the copies of the petitions as filed by the complainant before the learned trial court as have been annexed with the instant two revisional applications. Attention of this Court is drawn to Section 91 of Code of Criminal Procedure vis-à-vis Article 20 of the Constitution of India.

5. It is submitted by Dr. Chowdhury that on perusal of the petitions as filed before the learned trial court by the complainant/ opposite party herein it would reveal that the complainant is not in possession of any documents to

substantiate the allegations as made in the said two complaint cases and therefore the complainant cannot be permitted to proceed with the said two compliant cases on the basis of the documents over which the revisionist/accused places his reliance in OC Suit no. 03 of 2013.

6. Drawing attention to Article 20 (3) of the Constitution of India it is submitted by Dr. Chowdhury that learned trial court while passing the said two orders dated 13.05.2025 has failed to visualize the salutary principle of Constitution of India as embodied in Article 20 (3) that no person accused of an offence shall be compelled to be a witness against himself.

7. It is further submitted by Dr. Chowdhury that though Section 91 of Code of Criminal Procedure empowers a court to issue summons to the persons in whose possession or power such document or thing is believed to be, requiring him to attend and produce it at the time and place stated in the summons and order however, the accused cannot be considered to the 'said person' within the meaning of Section 91 of Code of Criminal Procedure since the same is contrary to the spirit of Article 20 (3) of the Constitution of India.

8. It is thus submitted by Dr. Chowdhury that by directing the revisionist /accused to produce Exhibit 7 (series) in connection with OC suit no. 03 of 2013 an endeavour was made by the petitioner to produce alleged incriminating materials in the said two compliant case in order to use the same as an evidence against the accused and therefore the learned trial court has failed to visualize the true spirit of Section 91 Code of Criminal Procedure vis-à-vis Article 20(3) of the Constitution of India.

9. At this juncture Dr. Chowdhury places his reliance upon the reported decision of ***State of Gujarat vs. Shyamlal Mohanlal Choksi and Anr.*** reported in ***AIR 1965 SC 1251*** and ***S. Sagar Suri and Anr. Vs. State of Uttar Pradesh and Ors. Reported in (2000) 2 SCC 636.***

10. In course of his argument, Dr. Chowdhury again draws attention of this Court to the impugned orders dated 23.07.2025 as passed in Criminal Revision nos. 06 of 2025 and 07 of 2025 whereby and whereunder learned Sessions Judge, Kalimpong refused to entertain the revisional applications as filed by the revisionist merely on the ground that the orders impugned before him are interlocutory in nature.

11. Placing his reliance upon the reported decision of ***Amar Nath and Ors. Vs. State of Haryana and Ors. reported in (1977) 4 SCC 137*** it is argued by Mr. Chowdhury that the learned Sessions Judge, Kalimpong while passing the said two impugned orders dated 23.07.2025 has wrongly interpreted the term 'interlocutory order' without considering that the orders impugned before him affects the valuable constitutional rights of the revisionist/accused herein. It is further argued by Dr. Chowdhury that from the chronology of the events it would reveal that in both the aforementioned two complaint cases the complainants are not in possession of any documents to substantiate the allegation as made against the revisionist/accused and therefore there cannot be any justification to allow the learned trial court to proceed with the said two CR cases.

12. It is thus submitted by Dr. Chowdhury that appropriate relief/reliefs may be granted to the petitioners of the instant two applications for quashing in terms of the prayers made therein.

13. Per contra, Mr. Singhal, learned advocate appearing on behalf of the opposite party no.2/complainant also draws attention of this Court to the photocopy of the complaint as filed before the learned trial court in CR no. 23 of 2019 and the photocopy of the application under Section 340 Code of Criminal Procedure as filed before the jurisdictional civil court which is subject matter of CR 04 of 2020. Attention of this Court is also drawn to the copies of the petition as filed before the learned trial court on which the impugned orders have been passed.

14. It is submitted by Mr. Singhal that from the impugned orders it would reveal that the learned trial court on the basis of the complaints made before him practically wanted to secure the documents which are very much needed for adjudication of the subject matter of dispute in the said two complaint cases. Placing his reliance upon the reported decision of ***State of Bombay vs. Kathi Kalu Oghad*** reported in ***AIR 1961 SC 1808*** it is argued by Mr. Singhal that by passing the impugned orders dated 13.05.2025 learned trial court made no endeavour to make the accused/revisionist herein to be a witness against himself in view of the fact that by production of a document on the basis of a summons to produce documents that person summoned does not become witness.

15. It is further argued that while passing the said two impugned orders dated 13.05.2025 the learned trial court merely directed the accused/revisionist herein to produce documents in his possession which may throw some light on the controversy for effective adjudication of the *lis* before him and thus by no stretch of imagination it can be said that the impugned orders as passed by the trial court are violative of the provisions of Article 20 (3) of the Constitution of India vis-à-vis Section 91 of the Code of Criminal Procedure.

16. It is further submitted by Mr. Singhal that learned Sessions Judge, Kalimpong rightly observed that the orders impugned before him are purely interlocutory in nature and thus found sufficient justification not to interfere with the same.

17. This Court has meticulously gone through the entire materials as placed before this Court. This Court has given due consideration over the submissions of the learned advocates for the contending parties.

18. On careful perusal of the contents of the aforementioned two complaint cases it appears to this Court that it is the case of the complainant that the rent receipts which have been exhibited as Exhibit 7 (series) in OC Suit no. 03 of 2013 are forged since those were never executed by his father Banshidhar Agarwal, since deceased.

19. At this juncture if I look to the copies of the petition dated 08.08.2024 it reveals to this Court that the opposite party/complainant herein has prayed for a direction upon the revisionist/accused herein to produce those original rent

receipts for sending the same for examination to CFSL for seeking opinion of a handwriting expert.

20. On perusal of paragraph no.7 of the said petition dated 08.08.2024 it reveals further that it is the specific case of the complainant before the learned trial court that for seeking an opinion with regard to the genuineness of the said questioned documents comparison of the same with the admitted specimen documents is necessary.

21. On careful perusal of the said two petitions dated 08.08.2024 and even at the time of hearing of the instant two applications for quashing, Mr. Singhal could not satisfy this Court as to which are the admitted specimen documents as have been placed before the learned trial court for sending the same along with the questioned documents to CFSL for FSL report.

22. This Court has noticed that before the learned trial court no documents have been placed containing either the specimen or the admitted signatures and/or handwriting of the deceased Banghsidhar Agarwal.

23. In absence of such, there is hardly any scope on the part of the learned trial court to send those Exhibit 7 (series) for comparing the same.

24. In order to assess as to whether the said two orders dated 13.05.2025 as passed by the trial court are at all justified this Court at the very outset proposes to look to the Article 20 of the Constitution of India which is quoted hereinbelow in verbatim:-

“20. Protection in respect of conviction for offences

(1)No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2)No person shall be prosecuted and punished for the same offence more than once.

(3)No person accused of any offence shall be compelled to be a witness against himself.”

25. Section 91 of the Code of Criminal Procedure reads as under:-

“91. Summons to produce document or other thing.

(1)Whenever any Court or any officer-in-charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2)Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3)Nothing in this section shall be deemed –

(a)to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Banker's Books Evidence Act, 1891(13 of 1891); or

(b)to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegram authority.”

26. As discussed hereinabove Article 20 (3) mandates that an accused of an offence shall not be compelled to be witness against himself.

27. Section 91 of Code of Criminal Procedure mandates for production of any document or other thing by a person in whose possession or power such document or thing is believed to be in the event a court issues a summons to produce it.

28. Keeping in mind the proposition of law as discussed hereinabove if I look to the factual aspects of the case it is undisputed that the alleged fabricated/forged receipts as has been exhibited in connection with the OC Suit no. 03 of 2013 are certainly in possession of the present revisionist/accused.

29. At this juncture the moot question arises for consideration before this Court is as to whether pursuant to the provisions of Section 91 Code of Criminal Procedure learned trial court is at all justified in asking the accused before him to produce those rent receipts as claimed to have been executed in favour of him by the father of the complainant i.e. Banghsidhar Agarwal, since deceased.

30. As rightly argued by Dr. Chowdhury that on perusal of the complaint and the petition as filed under Section 340 of Code of Criminal Procedure as filed before the learned trial court as well as from the subsequent conduct of the complainant it reveals that the complainant prima facie is not in possession of any evidence to substantiate the allegation as made against the complainant. It further appears to this Court that by filing the two applications

dated 08.08.2024 the complainant made an endeavour for production of the said alleged fake rent receipts which may be incriminating against the accused.

31. It appears to this Court that by two impugned orders dated 13.05.2025 learned trial court allowed the prayer of the complainant directing the accused to produce six numbers of alleged fake rent receipts.

32. At this juncture if I again look to the provisions of Section 91 Code of Criminal Procedure as well as Article 20 (3) of the Constitution of India it appears to this Court that though Section 91 empowers a Court to issue summons against a person for production of a document in whose possession such document or thing is believed to be however, such power cannot be exercised overlooking the provisions of Article 20 (3) of the Constitution of India especially when it is the positive assertion of the complainant that rent receipts are fake and were never executed by the father of the complainant and therefore in the event the same is proved to be fake that would become incriminating against the accused who is the revisionist before this Court.

33. This Court is conscious that issuance of summons to produce a document against a person asking him to produce a document does not *ipso facto* make the said person as a witness however, it would be highly unjust if the word 'person' used in Section 91 of the Code of Criminal Procedure is presumed to include an accused.

34. The same view was taken by the Hon'ble Supreme Court in the reported decision of ***Shyamlal Mohanlal Choksi (supra)*** wherein the Hon'ble Supreme Court held the following:-

“ 31. It seems to us that in view of this background the Legislature, if it were minded to make Section 94 applicable to an accused person, would have said so in specific words. It is true that the words of Section 94 are wide enough to include an accused person but it is well recognised that in some cases a limitation may be put on the construction of the wide terms of a statute (vide Craies on Statute Law, p. 177). Again it is a rule as to the limitation of the meaning of general words used in a statute that they are to be, if possible, construed as not to alter the common law (vide Craies on Statute Law p. 187).

32. There is one other consideration which is important. Article 20(3) has been construed by this Court in Kalu Oghad's case, to mean that an accused person cannot be compelled to disclose documents which are incriminatory and based on his knowledge: Section 94, Criminal Procedure Code, permits the production of all documents including the above-mentioned class of documents. If Section 94 is construed to include an accused person, some unfortunate consequences, follow. Suppose a police officer --- and here it is necessary to emphasise that the police officer has the same powers as a Court--- directs an accused to attend and produce or produce a document. According to the accused, he cannot be compelled to produce this document under Article 20(3) of the Constitution. What is he to do? If he refuses to produce it before the Police Officer, he would be faced with a prosecution under Section 175 Indian Penal Code, and in this prosecution he could not contend that he was not legally bound to produce it because the order to produce is valid order if Section 94 applies to an accused person. This becomes clearer if the language of Section 175 is compared with the language employed in Section 485, Criminal Procedure Code Under the latter section a reasonable excuse for refusing to produce is a good defence. If he takes the document and objects to its production, there is no machinery provided or the police officer to hold a preliminary enquiry. The Police Officer could well say that on the terms of the section

he was not bound to listen to the accused or his counsel. Even if he were minded to listen, would he take evidence and hear arguments to determine whether the production of the document is prohibited by Article 20(3). At any rate, his decision would be final under the Code for no appeal or revision would lie against his order. Thus it seems to us that if we construe Section 94 to include an accused person, this construction is likely to lead to grave hardship for the accused and make investigation unfair to him.

33. We may mention that the question about the constitutionality of Section 94(1), Criminal Procedure Code, was not argued before us, because at the end of the hearing on the construction of Section 94(1), we indicated to the counsel that we were inclined to put a narrow construction on the said section, and so the question its constitutionality did not arise. In the course of arguments, however, it was suggested by Mr. Bindra that even if Section 94(1) received a broad construction, it would be open to the Court to take the view that the document or thing required to be produced by the accused would not be admitted in evidence if it was found to incriminate him, and in that sense Section 94(1) would not contravene Article 20(3). Even so, since we thought that Section 94(1) should receive a narrow construction, we did not require the advocates to pursue the constitutional point any further.

34. Keeping the above considerations in mind, let us look at the terms of the section. It will be noticed that the language is general, and prima facie apt to include an accused person. But there are indications that the Legislature did not intend to include an accused person. The words 'attend and produce' are rather inept to cover the case of an accused person. It would be an odd procedure for a Court to issue a summons to an accused person present in Court 'to attend and produce' a document. It would be still more odd for a police officer to issue a written order to an accused person in his custody to attend and produce a document."

35. It is pertinent to mention herein that while passing the judgment of **Shyamlal Mohanlal Choksi (supra)** the Hon'ble Supreme Court has also taken care of the judgement as passed in **Kathi Kalu Oghad (supra)** as cited from the side of the complainant/opposite party. It has been held by the Hon'ble Supreme Court that in the said case that Article 20 (3) of the Constitution of India does not permit an accused person to compel him to disclose documents which are incriminating and based on his knowledge.

36. It thus appears to this Court that from the series of reported decision as cited from the Bar it would reveal that it was never the legislative intent while enacting Section 91 of the Code of Criminal Procedure that court can summon an accused to produce any incriminating materials which may be used against him in trial. As rightly pointed out on behalf of the revisionist/accused that the learned Sessions Judge, Kalimpong while passing the impugned orders dated 23.07.2025 has failed to visualize the settled principles of law as enunciated in the case of **Amar Nath (supra)** wherein the Hon'ble Supreme Court expressed the following view:-

"6. Let us now proceed to interpret the provisions of Section 397 against the historical background of these facts. Sub-section (2) of Section 397 of the 1973 Code may be extracted thus :

"The powers of revision conferred by Sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."

The main question which falls for determination in this appeal is as to, the what is the connotation of the term "interlocutory order" as appearing in

sub-section (2) of Section 397 which bars any revision of such an order by the High Court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High Courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide 'the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights, or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court."

37. In view of the discussion made hereinabove this Court thus finds that the learned Sessions Judge, Kalimpong had failed to apply his judicial mind while passing the two impugned orders dated 23.07.2025.

38. As rightly pointed out by Dr. Chowdhury that the complaints made in CR case nos. 23 of 2019 and 04 of 2020 are almost similar and identical and therefore CR 04 of 2020 is hit as per the provisions of Article 20 (2) of the Constitution of India.

39. In view of the discussion made hereinabove the instant two applications as filed under Section 528 of BNSS succeeds.

40. Consequently, the impugned orders dated 13.05.2025 as passed in CR 23 of 2019 and CR 04 of 2020 as passed by the Learned Judicial Magistrate, Kalimpong are set aside.

41. Consequently, the impugned orders dated 23.07.2025 as passed in Criminal Revision Case no. 06 of 2025 and Criminal Revision Case no. 07 of 2025 are also set aside.

42. Sufficient materials have been placed before this Court that the complainant before the learned trial court has only relied upon the alleged fake rent receipts being Exhibit 7 (series) in connection with OC Suit no. 03 of 2013 which are in possession of the present accused and apart from those documents the complainants are not in possession of any further documents to substantiate the allegations in the said two compliant cases.

43. In view of such, there cannot be any justification in allowing the learned trial court to proceed with the said two complaint cases in absence of any other cogent materials supporting the case of the complainant.

44. In view of such, all proceedings in connection with CR case no. 23 of 2019 and CR case no. 04 of 2020 as pending before the learned Judicial Magistrate, Fast Class, Kalimpong are hereby quashed.

45. With the aforementioned observation CRR 396 of 2025 and CRR 395 of 2025 are allowed and disposed of along with all pending interlocutory applications, if any.

46. Liberty is given to the learned advocate on record for the revisionist to communicate the server copy of this order to the learned trial court. Learned trial court is directed to act on the basis of the server copy of this order.

47. Department is directed to communicate a copy of this order to the learned trial court forthwith.

48. Urgent photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all the necessary formalities.

(Partha Sarathi Sen, J)