

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 541 of 2025

**Gopal Banerjee & Anr.
Vs.
The State of West Bengal & Anr.**

For the petitioners : Mr. Moyukh Mukherjee
Mr. Pritam Roy
Ms. Triparna Roy
Ms. Sagnika Banerjee

For the Opposite Party No.2 : Mr. Sandipan Ganguly, Sr. Adv.
Ms. Priyanka Sarkar

For the State : Mr. Sanjay Bardhan
Mr. Bikram Mitra

Heard on : 13.02.2026

Judgment on : 27.02.2026

Dr. Ajoy Kumar Mukherjee, J.

1. Being aggrieved and dissatisfied with the continuation of the order dated 9th January, 2025 passed by the learned Judicial Magistrate , 1st Court Bolpure, corresponding to GR Case No. 678 of 2022, present

Application has been preferred. By the impugned order, learned Court below has rejected the petitioners' prayer for discharge.

2. Opposite party no.2 Smt, Tumpa Das lodged aforesaid written complaint *interalia* alleging that she paid an amount of Rs. 1,00,000/- to one Sukumar Ghosh towards advance consideration price for purchasing a piece of land located at Madhusudanpur Mouza, having Dag No. 278. Thereafter said Sukumar Gosh was showing reluctance to execute registered deed in favour of the complainant and was making different excuses to postpone the same. Thereafter Complainant came to know that inspite of taking aforesaid advance consideration price from opposite party, said Sukumar had sold said piece of land to the petitioners herein.

3. In the year 2021 the complainant/opposite party no.2 herein filed a civil suit against said Sukumar and the present petitioners, in order to get back the advance money along with compensation amount. During pendency of the said civil proceeding, the petitioners offered the opposite party no. 2 herein for an amount of Rs. 3,50,000/- inclusive of all charges and requested her to withdraw the case against them, which the complainant herein/plaintiff had agreed. On 16.03.2022 the petitioner no.1 prepared two draft receipts which were duly signed by his lawyer and such receipts along with two demand drafts was handed over to the opposite party no.2 herein in order to obtain her signature on the said money receipt and on being receipt of bank draft, she put her signature on the two money receipts and returned it to the petitioner.

4. Later on to her dismay the opposite party no.2 came to know that taking illegal means, the petitioners have managed to rewrite in the empty

space of the said two money receipts above her signature, as if the opposite party no.2 has taken the said amount of Rs. 3,50,000/- in two receipts, towards advance consideration price, in connection with the sale of a piece of land bearing Dag No. 226 at Mouza Goalpara. Therefore, the opposite party no.2 had lodged instant FIR alleging forgery, cheating etc. under sections 420/468/471/34 of the Indian Penal Code.

5. The investigating agency after completion of investigation submitted charge sheet under the above mentioned sections against the present petitioners and the copies of documents which prosecution wants to rely were also supplied to the petitioners. The petitioners previously challenging the entire proceeding preferred a Criminal Revisional application before this High Court being CRR 1740 of 2024 and the same was disposed of by this court granting liberty to the petitioner to file an appropriate application before the court below seeking their discharge from the case.

6. Pursuant to such liberty granted by this Court, the petitioners preferred an application for discharge with the contentions that the materials relied by the investigating agency does not prima facie constitute any offence as alleged. However, learned Court below by the impugned order dismissed their prayer for discharge

7. Being aggrieved by the said order, Mr. Mayukh Mukherjee, learned counsel appearing on behalf of the petitioners argued that the entire dispute arose regarding purchase and sale of land in question and he stressed that the agreement which was made by and between the complainant and Sukumar Ghosh was not in form or in accordance with law. The petitioners herein lodged a complaint against the opposite party no.2 and her

associates being Santiniketan Police Station Case no. 110/2022 dated 23.06.2022 under sections 420/406/506/34 of Indian Penal Code. Said FIR was lodged against the opposite party no.2 at first by the petitioners and thereafter as a matter of counter act and to harass the petitioners by twisting the actual fact and for making false allegations, the opposite party no.2 lodged the instant complaint on 01.07.2022 against the petitioners herein.

8. He further argued that while learned court below passed the impugned order, he completely failed to appreciate that the alleged documents i.e. the original money receipts, as relied by the prosecution for initiation of the proceeding had never been seized in connection with the present case. It further transpires from the charge sheet that the prosecution has relied upon the original questioned document which was sent for examination is not in connection with the present case and as such the conclusion which was arrived at was erroneous but learned Magistrate after consideration of QEDB Report which suggest sample marked S1 & S2 has been used to compare questioned document Q1 & Q2 which was never seized in connection with the instant case and thereby has rejected the prayer of the petitioners. The entire prosecution case depends upon the opinion of the expert, based upon the available documents but when the same has been shaken by the available materials or the same cannot be established by the materials collected, the charge of forgery cannot stand on its legs. Learned Magistrate unnecessarily placed reliance on the statements collected so far which are also irrelevant to the present facts and

circumstances of the case, as the entire allegation revolves around forgery of documents but the documents are not properly seized

9. Learned Magistrate also failed to appreciate that the entire materials on record shows no involvement or does not reflect any role whatsoever regarding petitioner no.2 herein, who has been falsely implicated in the case without having any iota of evidence or without having attributing any specific role or involvement of the petitioner no.2 in the alleged offence of forgery. Even the seizure in the instant case so far has been made, has been seized from the petitioner no.1 and for which he was not justified in rejecting the petitioners' prayer for discharge.

10. He further argued that the allegation of cheating also does not stand against the petitioners as it is evident that *mens rea* from the very inception which is the most vital ingredient of the offence of cheating is completely absent. He further argued that mere use of expressions like "cheating", "deception" and "inducement" is of no consequence in the absence of the ingredients thereof

11. Mr. Mukherjee further pointed out that the examiner of questioned document has not been made a witness in the case and therefore it can be said that prosecution had not relied upon the expert as a witness and has been intentionally withheld the said witness so that the petitioners' right of cross examination can be curtailed. Therefore, even if the allegations are taken in its entirety, it does not disclose any offence against the petitioners. The dispute is purely civil in nature and the instant complaint has been lodged owing to *malafide* motives and therefore is not sustainable in the eye of law.

12. Mr. Sandipan Gangully learned counsel appearing on behalf of the opposite party no.2 and Mr. Sanjay Bardhan learned counsel appearing on behalf of the state relying upon the materials available in the case diary submits that during investigation sufficient incriminating materials including the report received from the questioned document examiner, demonstrates that there are sufficient grounds for proceeding with the trial and there is every likelihood that the petitioners will be convicted for committing forgery and other criminal offences, which they have committed in conspiracy with each other.

Decision

13. Before going further it is pertinent to have a look at the definition of forgery as envisaged in section 463

“Whoever makes any false document or false electronic record¹ or part of a document or electronic record with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.”

14. It is also necessary in this context to refer what is meant by “making a false document” under section 464 IPC.

*“A person is said to make a false document or false electronic record—
First Who dishonestly or fraudulently—
(a)makes, signs, seals or executes a document or part of a document;
(b)makes or transmits any electronic record or part of any electronic record;
(c)affixes any electronic signature on any electronic record;
(d)makes any mark denoting the execution of a document or the authenticity of the electronic signature,
with the intention of causing it to be believed that such document or part of document, electronic record or electronic signature was made, signed, sealed, executed, transmitted or affixed by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, executed or affixed; or
Secondly — Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration; or
Thirdly — Who dishonestly or fraudulently causes any person to sign, seal, execute or alter a document or an electronic record or to affix his electronic*

signature on any electronic record knowing that such person by reason of unsoundness of mind or intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or electronic record or the nature of the alteration.

15. From the aforesaid provisions it is clear that section 463 defines the offence of forgery while section 464 deals with the answer as to when a false document could be said to have been made for the purpose of committing an offence of forgery under section 463 IPC. Section 465 deals with punishment for the commission of the offence of forgery. Now in order to sustain a conviction under section 465, first it has to be proved that forgery was committed under section 463 implying that ingredients under section 464 should also be satisfied. There is no conflict with the proposition of law that unless and until ingredients under section 463 are satisfied a person cannot be convicted under section 465 by solely relying on the ingredients of section 464.

16. The key to unfold the present dispute lies in the understanding

“Secondly — Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document or an electronic record in any material part thereof, after it has been made, executed or affixed with electronic signature either by himself or by any other person, whether such person be living or dead at the time of such alteration.”

17. It was observed in the case of ***Md. Ibrahim & Ors. Vs. State of Bihar and another*** reported in , **(2009) 8 SCC 751** at para 14 as follows:-

14. *An analysis of Section 464 of the Penal Code shows that it divides false documents into three categories:*

1. The first is where a person dishonestly or fraudulently makes or executes a document with the intention of causing it to be believed that such document was made or executed by some other person, or by the authority of some other person, by whom or by whose authority he knows it was not made or executed.

2. The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful authority, after it has been made or executed by either himself or any other person.

3. The third is where a person dishonestly or fraudulently causes any person to sign, execute or alter a document knowing that such person could not by

reason of (a) unsoundness of mind; or (b) intoxication; or (c) deception practised upon him, know the contents of the document or the nature of the alteration.

In short, a person is said to have made a “false document”, if (i) he made or executed a document claiming to be someone else or authorised by someone else; or (ii) he altered or tampered a document; or (iii) he obtained a document by practising deception, or from a person not in control of his senses.

18. Coming back to the instant case it appears that the allegation against the petitioners is that on 16.03.2022 the petitioner no.1 herein prepared a draft which was duly signed by his lawyer and which was handed over to the opposite party no.2 who was asked to put signature therein on receipt of two demand drafts. However at a later stage, to her utter surprise she found that the petitioners with illegal means have managed to rewrite the empty space of the money receipt above her signature, as if said amount of Rs. 3,50,000/- have been received by the complainant towards consideration price of selling a piece of land at Goalpara Mouza. It further appears that during investigation said two money receipts one of Rs. 3,00,000/- and other showing payment of Rs. 50,000/- was seized by police as produced by petitioner Gopal Banerjee. It further appears that the examiner on examination of two money receipts submitted a report with the following observation:-

“Observation

On Scrutiny of the documents it is observed that there are fraudulent symptoms in alignment of the disputed texts viz., position of typing in relation to the existing texts, location in relation to the original previous base line etc.

It is thus evident that the disputed texts i.e. Q/1 and Q/2 were added latter on with the original texts i.e. S/1 and S/2 of the money receipts respectively.”

19. Learned counsel for the petitioner Mr. Mukherjee argued that there is nothing to show that the either of the petitioner has made any alteration or has tampered any document, even if for the sake of argument it is presumed

that there are any alteration or tampering of documents but section 463 IPC starts with the words “whoever makes” and therefore section 463 of the IPC has got no application in the present context and he further pointed out that the petitioner no.2 had no role to play as the questioned document was not even seized from her possession. In this context it can be said that at the stage of charge hearing, the court below is not required to held mini trial. The only thing that he needs to look into at this stage is whether there are grounds to proceed or not. Apex Court in the case of **Sajjan Kumar Vs. CBI** reported in **(2010) 9 SCC 368** had laid down the ratio for exercise of jurisdiction by the court below in this field.

21. *On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:*

(i) The Judge while considering the question of framing the charges under Section 227 CrPC has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case.

(ii) Where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial.

(iii) The court cannot act merely as a post office or a mouthpiece of the prosecution but has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the court, any basic infirmities, etc. However, at this stage, there cannot be a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial.

(iv) If on the basis of the material on record, the court could form an opinion that the accused might have committed offence, it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence.

(v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.

(vi) At the stage of Sections 227 and 228, the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

(vii) If two views are possible and one of them gives rise to suspicion only, as distinguished from grave suspicion, the trial Judge will be empowered to

discharge the accused and at this stage, he is not to see whether the trial will end in conviction or acquittal.

20. With the above principles, if I consider that the seizure was made from the conscious possession of the petitioner no.1 and the allegation levelled against the other petitioner under section 34 of the Indian Penal Code is that the Act of forgery was allegedly done in furtherance of common intention as joint beneficiary, I find that whether the petitioners have manufactured the subject matter i.e. alleged forged addition of sentence or not would be the subject matter of trial and at this stage it cannot be presumed that there is no case at all to proceed, since on evaluating the materials and the documents on record which if prima facie taken at their face value, discloses the existence of the ingredients constituting criminal offence. I do not find any substance in the petitioners argument that the questioned document examiner has not been cited as a witness in the charge sheet and therefore there is no scope to prove the report submitted by the said examiner, because section 311 of the Cr.P.C. gives ample power to the Court to summon material witness at any stage of trial, though not cited as witness in the charge sheet.

21. In the light of above discussion, I am of the view that it cannot be concluded that the rejection of their discharge prayer by the court below is either bad in law or abuse of process of law or without any material.

22. Therefore, CRR 541 of 2025 stands dismissed.

23. However, I make it clear that whatever observation made herein has been made for the purpose of deciding the question as to whether the trial court was justified in rejecting petitioners prayer for discharge. The Trial

judge would be free to analyse, appreciate, evaluate and to arrive at a proper conclusion based on the materials being placed by the prosecution as well as the defence at any subsequent stage of trial.

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.)