

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2735 of 2022

Hemendra Mullick
Versus
The State of West Bengal & Another

For the Petitioner : Mrs. Baisali Ghoshal, Adv.

For the State : Ms. Faria Hossain, Adv.
Mr. Asif Dewan, Adv.

Heard on : 04.04.2025

Judgment on : 23.04.2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the

petitioner seeking for quashing of the proceeding being G.R. Case No. 554 of 2022 arising out of Chandannagar P.S. Case No. 96 of 2022 dated 17.04.2022 under Sections 341/420/406/504/506/34 of the Indian Penal Code, 1860 pending before the Court of the Learned Additional Chief Judicial Magistrate, Chandannagar, Hooghly.

2. The brief facts are relevant for the purpose of disposal of this case, are as under:

2a. On 2nd April, 2022, the opposite party no. 2 herein filed an application under Section 156(3) of CrPC before the Learned Additional Chief Judicial Magistrate, Chandannagar, Hooghly being C.R. Case No. 85 of 2022 alleging, inter alia, therein that on 19.01.2022, when the complainant was returning to his house, the FIR named accused persons along with some others stopped him at the adjacent road of his house. They threatened him with dire consequences. The accused no. 2 along with others cheated him in business by way of manufactured documents and deed of business and thereby they committed offence punishable under Sections 341/420/406/504/506/34 of the Indian Penal Code, 1860.

2b. The Learned Magistrate, after hearing, was pleased to allow the said application filed by the opposite party no. 2 and directed the concerned police station to register an FIR as such, an FIR has been

registered being Chandannagar P.S. Case No. 96 of 2022 dated 17.04.2022 under Sections 341/420/406/504/506/34 of the Indian Penal Code, 1860 against two accused persons including the present petitioner. Subsequently, after culmination of investigation, a charge sheet being Charge Sheet No. 96/22 dated 30.04.2022 under Sections 341/420/406/504/506/34 of IPC has been submitted against the accused persons including petitioner as accused no. 2.

2c. Whereas, the contention of the petitioner is that the present petitioner is aged about 78 years old. His actual name is Hemendra Mullick. However, the opposite party no. 2 with mala fide intention indicated his name as Hemandra Mallick and age mentioned wrongfully as 57 years old. He is the owner of the property where shop (alleged property) situated at Burra Bazar, Room No. NG-1, on ground floor of 64, Netaji Subhash Road, P.S. Burra Bazar, Kolkata 700 001.

2d. The tenancy of the alleged property was in the name of Ashok Sheth and Sudhir Sheth, the father of accused no. 1, namely, Surajit Sheth. Sudhir Sheth expired and due to his demise, accused no. 1 Surajit Sheth became the tenant as a legal heir in place of late Sudhir Sheth and the said tenancy is now in the name of Ashok Sheth and Surajit Sheth, Son of Late Sudhir Sheth. His name was

incorporated in the tenancy receipt on the basis of no objection given by other legal heirs of Sudhir Sheth. Petitioner being the owner of the tenanted premises has nothing to do with the business carried on in the tenanted portion. Therefore, he has been falsely implicated into this case. Allegation is out and out false. Hence, this Criminal Revisional application.

3. None appears on behalf of the opposite party no. 2. No accommodation has been sought for.

4. The learned counsel appearing on behalf of the State produced the case diary and submitted that during investigation, it reveals Petitioner is the owner of the tenanted shop room. He has changed or mutated the name of accused no. 1 after the demise of one of erstwhile tenants as such, dispute arises.

DISCUSSION AND FINDINGS BY THIS COURT:

5. Heard the learned counsel appearing for the parties and on perusal of the case diary as well as record, this Court finds it is admitted fact that the present petitioner is the owner of the tenanted premises and he was/is no way involved in the business of proprietorship or partnership business of the family of the accused no. 1 and/or the opposite party no. 2.

6. From the perusal of the case diary, it reveals that a partnership deed dated 1st April, 1996 was seized by the investigating officer and the said deed was executed by and between Ashok Kumar Sett, son of Shri Pushupati Sett and Sri Sudhir Kumar Sett, son of Shri Pashupati Sett. The name and style of the business was carried on as M/s. P. Sett & Sons having its office situate at 64, N.S. Road, Calcutta – 1.

7. The said business was totally under the control of Ashok Kumar Sett and Sri Sudhir Kumar Sett. After demise of Sudhir Kumar Sett, his legal heir Surajit Sett became the tenant. He applied for mutating his name as a tenant in place of his father to the landowner. No objection had been given by other legal heirs. On the basis of said no objection, the landlord/petitioner herein incorporated the name of Ashok Kumar Sett and Surajit Sett in the rent receipt. Even for the sake of arguments, changing name of the tenant is a nature of civil dispute and no concern with the business affairs. He was/is no way either involved or connected in the business transactions.

8. It further reveals from the complaint that general and vague allegations have been made against the present petitioner without any supporting evidence. He has no role to play in the business.

Being the landlord, he is not involved in any manner of the offence as alleged by the de-facto complainant. Mere vague and general allegations would not suffice to make him accused in the instant case. There must be specific allegation with regard to his role or involvement in the alleged offence and thereby ingredient also must be fulfilled otherwise initiation of proceeding would be an abuse of process of law.

9. We should not forget at this moment the well-settled law declared by the Hon'ble Supreme Court in the case of ***State of Haryana & Ors. vs. Bhajanlal & Ors.***¹ which has laid down the basic points for consideration pursuant to which a complaint may be entertained in accordance with law before a Court of law. The Hon'ble Court has narrated down as to when the extraordinary power of this Court under Section 482 of the Code of Criminal Procedure, 1973 may be espoused. Relevant portion thereof may beneficially be quoted herein below: -

“102. This Court in the backdrop of interpretation of various relevant provisions of CrPC 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 of the

¹ AIR 1992 SUPREME COURT 604 : 1992 Supp. (1) Supreme Court Cases 335

Constitution of India or the inherent powers under Section 482 CrPC gave the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of the court or otherwise to secure the ends of justice. Thus, this Court made it clear that 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 to 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 Act concerned (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 Act concerned, 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.”

10. In the light of above discussions made by this Court and in view of observation made by the Hon'ble Supreme Court in the above cited judgment, this Court fully satisfies that this case falls in the Categories mentioned in 1 , 3, 5 and 7 above.

11. Accordingly, **CRR No. 2735 of 2022** is **allowed**. Connected applications, if any, are also, thus, disposed of.

12. Consequently, proceeding being G.R. Case No. 554 of 2022 arising out of Chandannagar P.S. Case No. 96 of 2022 dated 17.04.2022 under Sections 341/420/406/504/506/34 of the Indian Penal Code, 1860 pending before the Court of the Learned Additional Chief Judicial Magistrate, Chandannagar, Hooghly is hereby quashed insofar as the petitioner is concerned.

13. Let a copy of this Judgment be sent to the Learned Trial Court for information.

14. Case Diary is to be returned to the learned counsel appearing on behalf of the State.

15. Interim order, if any, stands vacated.

16. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)