IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 3807 OF 2024

ABHIJIT DAS & ORS.

VS.

STATE OF WEST BENGAL & ANR.

For the Petitioner : Mr. Somopriyo Chowdhury, Adv.

Mr. Kousik De, Adv.

Ms. Mohini Majumdar,Adv.

Mr. Raghav Munshi,Adv.

Ms. Ayelita Ghosh, Adv.

Mr. Adrish Chatterjee,Adv.

For the State : Mr. Pritam Roy, Adv.

Mr. Sandeep Prasad Shaw, Adv.

For the Opposite Party no. 2 : Mr. Karan Dhdhewala, Adv.

Ms. Urvashi Jain, Adv.

Heard On : 07.09.2026

Judgement on : 19.11.2026

Uploaded on : 19.11.2026

CHAITALI CHATTERJEE DAS, J.:-

1. This is an application for quashing of proceedings in G.R. case no. 3142 of 2024, pending before the learned Chief Judicial Magistrate at Barasat, 24 Parganas North arising out of Rajarhat Police Station case no. 295 of 2024 dated 10th August, 2024, under Section 406, 419, 420, 465, 120B of the Indian Penal Code.

Brief fact

2. The petitioners are the resident of a housing complex, namely 'The Soul' situated at new town, P.S. Rajarhat, 24 Parganas North. The present petitioners are having their residential flat in the said Housing Complex. The de-facto complainant of the instant cases is also a resident of the side housing complex and having his flat in Tower 5. The Housing complex was constructed by the promoter/developer, P.S. Primarc Projects Private Limited and the management and upkeep of the housing complex, its common areas, amenities, and facilities while being maintained by the same developer during that point of time. The possession of the housing complex, specially the residents of phase 1, Block A & Block B was around 2023. The management and control of the common areas and amenities of the housing complex was lying with the developer. At that point of time it was decided unanimously by the residents of the housing complex with the permission of the developer, that a formal body be formed for control of the management and upkeep of the said housing complex, the cultural and religious festivals, such as Durga Puja, etc. can be celebrated by the residents together by formation of a cultural committee for all social and cultural events

throughout the financial year 2023-2024. An email to that extent was circulated on 27th June, 2023 amongst all the residents to participate in a meeting dated 2nd July 2023, by the developer to form such a cultural committee for all the social and cultural events throughout the financial year as above. Accordingly, an unanimous decision was taken by the residents on the date of meeting and a "Soul" cultural committee was formed for the purpose of executing the necessary publications of the Durga Puja festival and conducting the cultural aspects, a core committee/executive committee was formed comprising of 15 nominated members from amongst the flat owners, residence.

3. The petitioner no. 1 to 4 were nominated unanimously as the President, Secretary, Head of Cultural Committee. It was also decided that the said committee will function till 31st March, 2024 and post 31st March, 2024 the process of formation of a fresh committee which was undergoing and would be formed before approaching Durgapuja of 2024. The said core committee floated a proposal and unanimously collected subscription for the festival of 2023 and other cultural activities to be undertaken by the "Soul Cultural Committee" and to that extent a Bank account was opened. It is the case of the petitioners that after such communication or the decision of the meeting was circulated to the residents, an overwhelming response was received from the residents and almost all the residents (318 flat owners of phase 1& phase 2) voluntarily subscribed for the purpose of successful celebration of Durga Puja and other festivals for the year 2023–2024 Durga Puja

celebration 2023 was a grand success, and also they performed Lakshmi Pooja, Kali Puja & Diwali and Holi etc.

4. According to the case of the petitioner, the cultural committee so formed duly communicated the same to the developer about the celebration of Durga Puja festival and obtained a "no objection" certificate for the cultural programme on 16 September 2023 from the Developer and accordingly, the Durga Puja festival held. After completion of the Durga Puja 2023 a detailed report of the subscription and expenses was provided by the committee to the residents of the Housing complex, followed via detailed audit report. It was unanimously decided that for the purpose of setting up a corpus for the cultural committee to function and to make the immediate upfront expenditures of the committee an exhibition would be arranged and will install spaces to be provided in the community hall of the housing complex to different handicrafts, sari, jewellery, brands, etc. The exhibition held between 20th September 2023 and 24th December 2023 was a huge success and an email communication in this regard was also circulated to all the residents.

5. On 28th February 2024, one of the resident and owner of a flat of this housing complex, and also a friend of the opposite party no.2 insisted for arranging a Baishakhi Mela with a tenant residing in the said society, at a community hall and asked for the community hall to be provided to them for their personal business activities. The dispute got intensified after the said proposal was objected to by the residents of the housing complex as it amounts to providing a common space to an individual resident for her

profit, and is not permissible in any housing complex. The opposite party no. 2 supported the said tenant by taking the plea that if "Soul cultural committee" is permitted to use the community hall for its activities, the other residents should also be permitted to conduct business using the community Hall. The petitioners had no knowledge or idea about the case and came to learn about the same when received notices under Section 35(3) of BNSS, 2023.

6. The petitioners then came to learn that the opposite party no.2 had filed an application under Section 156(3) of the Code of Criminal Procedure, 1973 on 14th May 2024, before the learned Chief Judicial Magistrate, Barasat implicating the petitioners herein as accused persons alleging inter alia that the petitioner no. 1 to 5 being the residents of the complex has illegally opened a bank account in SBI Sukho Brishti Branch in the name of the 'Soul Cultural Committee' and obtain the false identity and portrayed themselves as authorised representatives of developer PS PRIMARC PROJECTS LLP to organise and oversee cultural program within the society for the financial year 2023–2024 . Further alleged that the petitioner number 1to 5 engaged in soliciting funds from 550 flat owners, which was framed as a subscription fee set at ₹2500/- per flat, with a deliberate attempt to deceive and manipulate individuals for personal gain. It was also alleged that the petitioners not only took subscription fees, but also in the guise of developers agent conducted several commercial activities and took substantial funds from vendors. They collected funds not only from the present owners, but from the 200 allottees of phase 2. It was also alleged

that the petitioner no. 1 to 5 extended their impersonation to various organisations and falsely claimed to be the authorised representatives of all the flat owners with "The Soul" residential complex under fraudulent pretends, have solicited substantial fund from these organisations. They have illicitly accurate significant funds for personal gains in personal accounts, resulting in financial harm to innocent members of the community.

The further allegations levelled against them is that the said bank account was opened in a partnership manner for profit motive and for illegal gain with illicit documents, but misrepresented the public at-large that the account is of a non-profit making organisation. Further alleged that despite numerous email communications and notices sent, the accused persons did not acknowledge any of the correspondence, leaving the matter unresolved and unattended. The appointment of Mr. Subrata Naskar was questioned and alleged it was done for siphoning the money of the public at large through this bank account. Vide an order dated 8th August 2024, the learned Chief Judicial Magistrate, Barasat allowed the application and the First Information Report was registered by the Rajarhat Police Station. It is the further case of the petitioner that there are suppression of material facts and an attempt has been made to malign the petitioners and the sole intent and purpose of the opposite party number two is to threaten the petitioners and to spite their names in the eyes of the society, and in order to harass them under the garb of investigation and according have come before this Court for quashing of the entire proceeding .

Submissions

7. The learned Advocate representing the petitioner argued that the impugned case is manifestly; frivolous, vexatious, mala fide, instituted to wreak vengeance and this Court has to consider all attending circumstances leading to lodging of a criminal case while considering the application filed under Section 482 of the Code of Criminal Procedure. The learned Advocate put reliance upon the decision of ***Haji Iqbal versus state of Uttar Pradesh***[1] para 15 to 17, ***Mahmood Ali versus State of Uttar Pradesh***[2] **,** para 11 to 13. It is further argued that this Court while exercising jurisdiction under Section 482 of the Cr.P.C did not restrict itself only to the stage of a case, but is empowered to take into consideration the overall circumstances leading to the initiation and registration of the case. It is the contention of the learned advocate representing the petitioner that ingredients to constitute offences under section 420, 419, 406, 465, 120B of the Indian Penal Code are not made out in the instant case. In order to attract the Section 419 and 420 of the IPC the sine qua non is that some wrongful loss must have been occasioned to the complainant. It is not even the case of the opposite party no. 2 that he had made any subscription or any representation and the same was misappropriated. No other person has come forward with the same allegation against the present petitioners. The basic foundation of his case about falsely depicted themselves at the representatives of the developer is completely unfounded, which is clear

[1] (2023) 20 SC 209
[2] (2023) 15 SC 488

from the developers email that the developer will not be involved directly in the Durga Puja celebration. In this regard would reliance on the decision of ***Md. Ibrahim & others versus State of Bihar***[3] para 21. There is no whisper about wrongful loss to the opposite party no. 2 in the complaint and nothing was entrusted by the opposite party no.2 to the petitioners, which has been converted by the petitioners to their own personal gain. That apart, there is no existence of any forgery in the instant case as alleged since it is not a case that there was any forged signature of the complainant or any document has been manufactured in his name to depict something which is non-existent or dishonest.

8. It is further argued that the instant case is a clear counterblast to the police complaint lodged by the petitioner against opposite party no. 2 and his wife on 18.3.24, as clearly emanating from the records of the Case. Therefore, the complaint filed under Section 156(3) Cr.P.C filed on 14.5.2026 was an afterthought. The impugned proceeding is a clear abuse of the process of Court initiated with mala fide and for the purpose of wreaking vengeance and prima facie no offence is made out against the petitioners and therefore is liable to be quashed.

9. Per Contra, the argument advanced on behalf of the learned advocate representing the opposite party no. 2 is that the accused individual not only misrepresented themselves as an authorised agent of the developer by creating a bank account under the project's name with forged documents, but also engaged in soliciting funds from all 550 flat owners and as a

[3] (2009) 3 SCC criminal 929

subscription fee set at ₹2500 per flat. The accused persons not only took the amount as subscription, but also in the guise of developers agent conducted several commercial activities stating that they have the power to conduct commercial activities as allegedly claiming themselves authorised by the developer and taking substantial funds from the vendors and those funds collected from such entities has been siphoned off by the accused persons. It is further argued that the detailed account provided disclose a sequence of criminal activities or treated by the accused individuals, encompassing various offences, such as cheating, fraud, criminal conspiracy, cheating by impersonation and forgery. Their actions constitute cheating by deceiving individuals, fraud through the misrepresentation of facts, criminal conspiracy by collaborating to commit unlawful act, breach of trust by violating confidence placed in them.

It is the specific argument advanced by the learned Advocate representing the opposite party no. 2 that the argument of the petitioner that defence of an accused cannot be looked into while quashing a criminal proceeding is not tenable since the defence raised by the accused can be urged and proved only during the course of trial. While entertaining a protection under Section 482 Cr.P.C, the materials furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial. In the instant case, a brief perusal of the main application would reveal that the petitioner herein from its own defence materials has tried to establish that the allegation against them is false, which is not permissible while entertaining a petition under Section 482 Cr.P.C.

10. It is the further contention that the accused is doubtless entitled to set up his defence before the Trial Court at the proper stage, confront the witnesses appearing before the court with any document relevant to the controversy and have the documents brought on record as evidence to enable the Trial Court to take a proper view regarding the effect thereof. It is trite law that in a revision petition photocopy produced by the accused for the first time, cannot be entertained and made a basis for quashing of a criminal prosecution otherwise makes out the commission of an offence. The stand of the learned Advocate representing the opposite party no. 2 is that malafide cannot be the sole grounds for quashing of a criminal prosecution. It is submitted that it is a trite law that the powers possessed by the High Court under Section 482 Cr.P.C is very wide and the very plenitude of the power requires great caution in its exercise. The Court must be careful to see its decision, in exercise of this power is based on sound principles. The inherent powers ought to be exercised sparingly from giving a privacy decision in a case where the entire fax, incomplete and hazy and mood, so when the evidence has not been collected and produced before the court and the issues involved with the factual or legal are magnitude and cannot be seen in their true perspective without sufficient material. The allegations of mala fide against the informant out of no consequence and cannot by themselves be the basis for quashing the proceedings. In the instant case, the sole ground as argued by the petitioners is that the complaint has been lodged with mala fide intention, but the petitioners have miserably failed to establish any such mala fide of the OP.2, and on the contrary, they have

deliberately avoided from arguing on the point that the complaint has raised.

11. It is further argued that enough materials are there to attract the allegations levelled for committing an offence under Section 419 of Indian Penal Code in the written complaint since the residence were kept in dark about the authorisation alleged to have been given to them by the promoter. So far the point raised regarding non maintainability of 465 of the Indian Penal Code, it is argued that the petitioners have relied upon an NOC issued by the developer in the name of "The Soul cultural committee" which is not an authenticated document since the developer had categorically denied giving any authorisation to establish any organisation or for any cultural committee or collect fund from the flat owners. It is the point taken by the learned advocate that defence of an accused cannot be looked into at the stage of quashing specially when the complaint makes out a prima facie case and relied upon the decision supported *in* ***Ravindra Goenka versus Rugmini Ram Spinners Private Limited[4],*** para 12,-20. Secondly, when a complaint clearly sets out the relevant facts and makes specific allegations against accused, a criminal case cannot be quashed on the basis of the photocopies of the documents produced by the accused for the first time in the revision petition. In this regard, reliance was put in the decision of ***Helios and Matheson Information Technology Ltd. V Rajeev Sawhney[5] para-12, 13, 16.***

[4] (2009) 11 SCC 529
[5] (2012) 1 SCC 699

12. It was further submitted that the allegations of mala fides against the informant of no consequence and cannot by themselves be the basis for quashing the proceedings. In this regard relied upon the decision of Supreme Court in ***Renu Kumari versus Sanjay Kumar***[6] para 10, 12**.**The learned Advocate put reliance in the decision of ***Kaptan Singh versus State of UP***[7], para 9.1, 10 substantial that when prima facie case is made out and process is issued by the Magistrate, the High Court ought not substitute its own discretion by considering the defence of the accused. With regard to the power to quash criminal proceedings under Section 482 of the Cr.P.C is to be exercised, sparingly and in exceptional circumstances and Court must refrain from entering into the truthfulness or otherwise of the allegations at this at this stage and may interfere only where the case falls within the narrowly recognised category warranting quashing reliance was put upon the decision of ***Rocky versus State of Telangana***[8]**,** para 15, 16, 18, 19, ***Jitul Jentilal Kotecha vs State of Gujarat***[9] Para 25, 27, 29 has been relied upon by the learned advocate on the point that draft chart sheets prepared by the investigating agency cannot be relied upon to quash a criminal proceeding. Hence prayed for dismissal of the revisional application.

13. On behalf of prosecution, it is submitted that on completion of investigation, the charge sheet has been submitted under section 406/419/420/465/120B IPC against the accused persons, which Prima

[6] (2008) 12 SCC 346
[7] (2021) 9 SCC 35
[8] 2025 SCC OnLine SC 2713
[9] (2022) 13 SCC 652

facie establishes the allegations against the petitioners. Therefore, it is necessary that the witnesses must appear before the Court in order to unearth the truth and it is not a fit case to quash the entire proceedings against the petitioners. Accordingly, prayed for dismissal of this revisional application.

Analysis

14. Heard the submissions of the respective counsels representing the parties. On careful perusal of the materials on record, it appears that the petitioners/accused persons and the de facto complainant are the residents of a housing complex at Newtown namely "The Soul". The housing complex was constructed by the developer namely M/S PS PRIMARC PROJECTS LLP. The residential complex is having 550 flats in different phases. By early part of 2023, the petitioners and other resident of the housing complex, especially the residents of Phase- 1/block A & B came into possession of their respective flats. The materials further demonstrate that till the date of lodging of the complaint, the developers did not handover the control and management of the said residential complex since no association was formed in accordance with the West Bengal Apartment Ownership Act, 1972. The opposite party no. 2 is a practicing advocate and a resident of the said housing complex. The grievance of the opposite party no. 2 primary revolves round the formation of a cultural committee in the said residential complex for the purpose of conducting Durga Puja 2023, as well as other social and cultural events in the housing complex and collection of funds for that said purpose and to open a bank account in SBI in the name of the

said cultural committee without taking proper permission from the Developer .The opposite party no. 2 has raised serious allegation of cheating as well as forgery and manufacturing of documents and siphoning of the amount collected under the guise of celebration of Durga Puja and various other social functions. The defacto complainant further circulated emails and other communication through social media and also wrote to the developer that the residents do not have the authority to form a cultural committee by using the name of "The Soul" Housing complex. On close scrutiny of the content of the complaint and pleadings placed before this Court, it is evident that in the year 2023, an email dated 27th June 2023 addressed to all the residents were communicated intimating that since the residence of the soul housing complex have planned for Durga Puja celebration, 2023 within the complex, the promoter though will not be directly involved in the Durga Puja activities but will facilitate assistance to the best possible extent. It further appears from the bare perusal that a general body meeting took place on 2nd July 2023, and a committee was constituted where the present petitioner no. 1 to 4 were nominated as President, Secretary, Cultural Committee, Head. The opposite party no.2 did not deny that the committee was formed for the financial year 2023 and 2024 and took the subscription but raised objection regarding the usage of the funds, so collected not from the individual flat owners, but also from the sponsors and contributions and did not give a detailed intimation. He further alleged about receiving funds towards personal gain in their personal account, causing wrongful losses upon the other flat owners of the society.

15. It is apparent that the complaint is lodged only by the present opposite party no. 2, and admittedly he did not make any contribution. The complaint demonstrates that the neighbour of the complainant have suffered financial losses due to the wrongful actions of the accused when it is evident that the amount was decided of Rs. 2500/- per flat so according to the opposite party no. 2 his neighbour (the name is not mentioned) suffered personal losses by contributing an amount of Rs 2500/- . It is settled propositions of law that the documents annexed with the revisional application usually should not be considered solely for the purpose of quashing of a complaint, but it is no more *res integra* that the Court while exercising power under Section 482 Cr.P.C when found the allegations prima facie lodged with maliciousness must look for the attending circumstance. In the instant case, on completion of the investigation, the charge-sheet has been submitted and hence this Court in order to prevent abuse of process of law is empowered to look into the evidences collected in course of the investigation. It is evident from the charge-sheet that the committee so constituted appointed a chartered accountant as an Auditor and audit was conducted in respect of the cultural expenses of the financial year which ended on 31.3.2024 and in terms of the audit report, there was an unpaid voucher of Rs. 6000/- relating to expenditure towards purchase of Laxmi Idol, which was not considered in receipt and payment statement. The issued cheque was not presented to bank by the vendor before expiry of 90 days from the day of issuance of the cheque. From the charge-sheet, it transpires that excepting the complainant and the police witness there are three other persons of the said residential complex when 378 residents ,

made their subscriptions. No statement of the residents amongst such 378 residents were recorded as can be found from the charge sheet and also no statement of the promoter was recorded when the primary objection raised regarding misrepresenting the consent of the Promoter/Developer .Similarly, no materials were seized by the investigating officer or to any statement from the auditor whose report has been challenged by filing the written complaint with a series of allegations. No document was also seized to substantiate the charge of forgery or any expert opinion was collected with regard to the allegation of forgery.

16. The petition of complaint was filed on 14 May 2024 that is long after the tenure of the said committee was expired. The complaint was lodged where the date and time of occurrence was mentioned as since 2023 till filing of the said complain but the complaint is void of any date or reason of discovery questioning the functioning of the committee and unlawful organisation, purportedly affiliated with the developer. The complainant mentioned about forwarding an email on 19.3.2024 and on 22.4.2024 to the official email address of the officer in-charge of Rajarhat Police Station stating all the facts of the case and requested to initiate criminal proceeding, but no FIR was registered. The complainant also stated in his written complaint about forwarding an email on 22.4.2024 to the Commissioner Bidhannagar for just and proper adjudication of the matter that is long after the life of the committee so formed was expired.

Therefore on careful perusal of the records prima facie nothing can be found which triggered the present opposite party no. 2, to raise question

about the malfunctioning of the committee when the committee duly performed the Pooja and other social activities for last one year and their tenure came to end on 31.3.2024.

The investigating officer at the time of submission of charge-sheet did not seize a single document to support any of the allegation made in the written complaint but in the charge sheet only averred that 'examined all available witnesses and recorded their statement and accumulated adequate documents and freezed the bank account and the prime facie charge are established'. It is significant to note that the investigating officer did not utter a single word as to how he was of the opinion that the ingredients for commission of offences like cheating, forgery, criminal of trust were committed.

17. In the decision of ***Mahmood Ali (supra***) as relied upon by the petitioner the Hon'ble Apex Court took note of the decision of ***R.P Kapoor vs State of Punjab***[10] in paragraph 6 and 7 certain categories were summarised wherein the inherent power can and should be exercised to quash the proceedings, which were

> *"6…….i) where it manifestly appears that there is a legal bar against the institution or continuance e.g want of sanction,*
>
> *ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety , do not constitute the offence alleged;*

[10] 1960 SCC OnLine SC 21

iii) where the allegations constitute an offence, but there is no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind that the distinction between a case, where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence, which, on appreciation, may or may not support the acquisitions. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry, whether the evidence in question is reliable or not, or whether on a reasonable appreciation of it, accusation would not be sustained. That is the function of the trial judge. Judicial process, no doubt should not be an instrument of operation, or, endless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time, the section is not an instrument handed over to an accused to short-circuit a prosecution and brings about its sudden death."'

18. In the instant case the petitioner specifically pleaded that they received a 'no objection' certificate from the developer, issued in favour of the cultural committee on 16th September 2023 to conduct the Durga Puja festival. In course of investigation, the investigating authority did not make an attempt to record the statement of the concerned developer regarding the authenticity of the copy of said NOC. On the contrary, giving a cursory look on the said photocopy of the document, annexed with the revisional application on affidavit it is seen that such permission was very much granted subject to observing of certain approval from their concerned authorities however since the document is a photocopy this court refrains taking the said document inconsideration. The petitioner has annexed the documents which pertains to the permissions obtained from the required authorities before holding Durga Puja in the housing complex and the investigating officer did not collect any materials to suggest that those documents were either manufactured or forged.

19. The investigating authority has also not seized any bank paper in order to substantiate that there was siphoning of money which were collected by way of contribution from the various residents. On the contrary, the petitioners have pleaded that a flat owner of T-903, Mrs Smriti Nayak, who is a friend of opposite party no. 2 insisted that she would arrange for Baisakhi Mela with the tenant residing in flat number T2 –704 ,at the community Hall and asked for permission for their personal business activities where the resident raised objection and did not allow her to continue with the same and opposite party no. 2 supported Smt. Nayak, insisting that if the cultural

committee is permitted to use the community hall for its activities, the other residents should also be permitted to conduct business using the community hall. The complaint was lodged after the objections raised by the residents of the said housing complex, refusing the permission to Mrs. Smriti Naik, from arranging such fair.

20. In the decision of ***Mohammed Ibrahim and others (supra)*** as relied upon by the petitioners, the essential ingredients to attract cheating, and the meaning of fraud was discussed. It was held that criminal courts should ensure that criminal proceedings are not misused for settling scores or pressurising parties to settle civil disputes. The said case pertains to execution of sale deed. In paragraph 12 Supreme Court discussed section 464 defining making a false document and depicted the section itself, which is as follows;

> *"464. Making a false document. —*
>
> *A person is said to make a false document or false electronic record—*
>
> *First — Who dishonestly or fradulently—*
>
> *(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.

Explanation 1. — A man's signature of his own name may amount to forgery.

Explanation 2. — The making of a false document in the name of a fictitious person, intending it to be believed that the document was

made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by the person in his lifetime, may amount to forgery."

21. It was held further in paragraph 13 that:-

"the condition precedent for an offence under section 467 and four 471 is forgery. The condition precedent for forgery is making a false document (or false electronic record part thereof). This case does not relate to any false electronic record"

No documents were seized in the instant case in order to prima facie establish that any false document was created. Much emphasis is given by the opposite party no.2 regarding opening of bank account by the committee and the authorisation given by the developer to form cultural committee or collect fund from the flat owners. In the written complaint, nothing has been substantiated as to why suddenly it came to the mind of the opposite party no. 2, almost after one year of the formation of such committee and opening of such bank account. No material was collected by the investigating officer in order to show that any false document was created by the present petitioners to create an impression in the minds of the residence of the housing complex that they were authorised to collect the same. On the other hand from the pleading, it is very much evident that after the decision was taken and primary approval was obtained to hold a meeting, a general meeting was held and their unanimously it was decided to form a cultural committee to conduct the Durga Puja for the year 2023 as well as to

conduct other social events and Pooja's and the period would come to end on 31st March 2024.

22. In the decision of ***Kaptan Singh (Supra***) as relied upon by the defence counsel It was observed by the Apex Court that when proceedings are at stage when statements are recorded and evidence is collected and charge-sheet is filed after completion of investigation/inquiry, restraint to be exercised by the High Court while exercising inherent jurisdiction under Section 482 Cr.P.C. In this regard, it is pertinent to mention that in the same decision in paragraph 10, the Hon'ble Apex Court found a very serious triable issue /allegations which are required to be gone into and considered the time of trial and the High court did not consider the crucial aspects which were emerged during the course of investigation as in that case an allegation of huge amount was found to be received and possession of a land was transferred on the basis of notarised Affidavit which was seriously disputed and found those were not appreciated by the High and therefore held that the High Court has grossly erred in quashing the criminal proceedings by entering into the merits of the allegations, as if the High Court was exercising, the appellate jurisdiction and conducting the trial.

23. In the case of ***Ravindra Kumar Madanlal Goenka (supra***) the allegation of 420/406/384/120B IPC was made and the charge sheet was submitted .The defence took the point of civil dispute and it was observed that while entertaining petition under Section 482 Cr.P.C the materials furnished by the defence cannot be looked into and the defence materials can be entertained only at the time of trial .It is well settled position that

when there are prima facie materials available ,a petition for quashing the criminal proceedings cannot be entertained .The investigating agency should have had the freedom to go into the whole gamut of the allegations and to reach a conclusion of its own .Pre-emption of such investigation would be justified only in very extreme cases.

In the decision of ***Haji Iqbal alias Bala (supra)*** the Hon'ble Supreme Court in paragraph 17 held,

> *"17. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged."*

24. In the present case primarily no such materials found in the written complaint to constitute the offences and it is very much on the other hand

that in course of investigation, not a single material was collected, which can substantiate any of the allegations levelled against the present petitioners. No documents seized at least *prima facie* to substantiate that it was a false document manufactured for the purpose of forgery. No statement was recorded by the promoter/developer who was alleged to have given the no objection certificate to the present petitioners to constitute the committee. No documents collected during investigation from the bank to prima facie establish that there was siphoning of huge amount as collected by way of contribution from the residents. The investigating officer did not collect the audit report or interrogated the auditor who was appointed by the said committee. Therefore without even entering into the merits of the case and simply on scrutiny of the written complaint and the charge sheet submitted it is glaringly visible that there is so substance in the argument advanced on behalf of the opposite party or the prosecution.

25. In the decision of ***Rocky versus State of Telangana (Supra)*** the Hon'ble Supreme Court took note of the case of ***Pradeep Kumar Kesarwani vs State of Uttar Pradesh***[11] where the no dues certificate relied upon by the appellant was fabricated and true financial position between the parties was not reflected .The complainant constantly disputed its authenticity and therefore held that the document cannot form the basis for quashing the criminal proceedings at the threshold. More so the documents collected in course of investigation fully supported the allegation and disclose a prima facie case against the appellant. In the above case the dispute relates to construction work and the stand taken by the accused

[11] 2025 SCC Online SC 1947

that the dispute was civil in nature. Hon'ble Supreme Court outlined the structured four step test to access claims for quashing under section 482 of the Cr.P.C which are –

> *"The materials relied on by the accused must be*
>
> *i) of Sterling and impeccable quality ,*
>
> *ii) sufficient to completely negate the allegation,*
>
> *iii) uncontested or incapable of legitimate contest by the prosecution, and*
>
> *iv) such that continuing the trial amount to abuse of process."*

It was further held that-

> *"32. It is trite that the power under Section 482 of Cr,P.C is to be exercise sparingly, with circumspection and only in exceptional situations. Courts must avoid delving into disputed facts at the pre-trial stage. Interference is wanted only where the case clearly falls within the recognised parameters for quashing."*

In the present case the "No objection" was granted by the promoter in favour of the petitioners to conduct annual Pujo and other festivals and the "No objection" was given through email and the complainant is also a resident of such complex and did not pay any amount to the committee and hence question of wrongful loss to him does not arises. .In order to constitute an offence of forgery the basic ingredients are defined in section 463 IPC and

forgery in turn depends upon creation of a false document as defined in section 464 IPC .In order to establish the charge it was necessary to seize or collect any document either physical or electronic to show that such false documents were made with intent to cause damage or injury to public or to any person and the same is absolutely missing in the charge sheet. To attract Section 419 and 420 IPC the sine qua non is the wrongful loss of the complainant and no such case could be made out since the complainant did not pay the subscription. Similarly there was no wrongful loss to the complainant and nothing was entrusted with the petitioners by the opposite party no. 2 which has been converted by the petitioners to their wrongful gain. On the contrary the petitioners lodged a complaint on 18.3.2024 with the Inspector in charge, Rajarhat Police station against the opposite party no. 2 by the petitioners and other residents for threats and criminal intimidation where it was categorically mentioned that the opposite party no. 2 threatened to lodge an FIR if an unconditional apology is not given to him and this complaint was lodged on 14th May 2024 and hence the possibility of lodging the complaint as counterblast to the same cannot be ruled out.

26. It is settled proposition of law that the recognised parameters were discussed in the celebrated decision of ***State of Haryana & Ors. versus Bhajanlal & Ors.***[12] after considering such parameters, and the fact and circumstances of the instant case and comparing each through the touchstone of the laws laid down by judicial announcement, it is glaringly visible in the instant case that the investigating authority has failed to

[12] 1992 SCC (SUPP) 1 335

collect enough materials to prima facie establish the ingredients to constitute the offences under which the charge sheet has been submitted. Merely because by summarising the brief fact of the written complaint and by recording statement of bear minimum witnesses to support such serious allegations without collecting any materials or papers or documents where the charges are of making false document and in this regard, it is pertinent to mention a decision of the Hon'ble Apex court in ***Sharif Ahmed and another versus state of Uttar Pradesh and Another***[13] in paragraph 32 observed that,

> *"32. Therefore, the investigating officer must make clear and complete entries of all columns in the chargesheet so that the court can clearly understand which crime has been committed by which accused and what is the material evidence available on the file. Statements under Section 161 of the Code and related documents have to be enclosed with the list of witnesses. The role played by the accused in the crime should be separately and clearly mentioned in the chargesheet, for each of the accused persons."*

27. The Hon'ble Apex Court in this case also took note of the decision of ***H.N Rishbud and Indur Singh versus State Delhi***[14] where it was observed that-

> *"The process of investigation generally consist of i) proceeding to the spot concerned, 2)*

[13] (2024) 14 SCC 122
[14] (1954) 2 SCC 934

ascertainment of facts and circumstances,3) discovery, and arrest,4) collection of evidence which includes examination of various persons, search of places, and seizure of things, and 5) formation of an opinion on Weather and offence is made out, and filing the chargesheet accordingly. The formation of opinion is therefore the combination of several stages that an investigation goes through'.

28. The Apex Court further observed that-

"The final report has to be prepared with these aspects in mind and should show with sufficient particularity and clarity, the contravention of the law which is alleged. When the report complies with the said requirements, the court concerned should apply its mind whether or not to take cognisance and also proceed by issuing summons to the accused. While doing so, the court will take into account the statement of witnesses recorded under Section 161 of the Code and the documents placed on record by the investigating officer."

This court is of the considered view that if the case is allowed to be proceeded with further, it would be gross abuse of the process of law and hence is liable to be dismissed.

Conclusion

29. So to sum up the allegations in the complaint do not make out the ingredients of an offence under Section 406/419/420/465/120B IPC. The

charge sheet of the present case is in complete violation of dictum as envisaged in the decision of Hon'ble Supreme Court as discussed. The Investigating officer despite having found no iota of materials arrayed the petitioners as accused persons and hence the charge sheet is not legally sustainable. Excepting the complainant and another person no other residents were cited as witness nor the Developer whose no grant of no objection was challenged. No papers seized from the auditor or from the office neither the said Auditor has been cited as witness when allegation was levelled of siphoning of money. Accordingly this Court is of the considered view that if the proceeding is allowed to be continued it would be an abuse of the process of law as no case is made out to put the accused persons on trial sand hence liable to be quashed.

30. Accordingly this revisional application stands allowed. The entire proceeding pending before the learned Chief Judicial Magistrate at Barasat, 24 Parganas North arising out of Rajarhat Police Station case no. 295 of 2024 dated 10th August, 2024, under Section 406, 419, 420, 465, 120B of the Indian Penal Code is hereby quashed against the petitioners .

31. All other connected applications, if any, hereby stand disposed of.

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

[CHAITALI CHATTERJEE (DAS), J.]