

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

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. No. 560 of 2024

KISHORE KUMAR KHAITAN

Versus

THE STATE OF WEST BENGAL AND ANR.

For the Petitioner	:	Mr. Sudipto Maitra, Sr. Adv. Mr. Vijay Verma, Adv. Mr. Dwaipayan Biswas, Adv. Mr. Anik Bhattacharya, Adv.
For the Opposite Party No. 2	:	Mr. Kumar Jyoti Tewari, Sr. Adv. Mr. Amrit Sinha, Adv. Mr. Aniruddha Tewari, Adv.
For the State	:	Mr. Krishnendu Bhattacharya, Adv. Mr. P. Karan Singh, Adv.
Heard on	:	30.07.2026
Judgment on	:	28.08.2026
Uploaded on	:	28.08.2026

Ajay Kumar Gupta, J.:-

1. By filing this Criminal Revisional application under Section 397 read with Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (In short, 'Cr.P.C.') read with Article 227 of the Constitution of India, the petitioner has challenged the correctness, legality and propriety of the impugned order dated 09.01.2024 passed by the Learned Judicial Magistrate, 7th Court at Howrah, and also alternatively seeks for quashing of the proceeding being G.R. Case No. 249 of 1999 and the charge sheet No. 129 dated 13.07.2001 under Sections 120B/448/379/461/417/109 of the India Penal Code arising out of Golabari P.S. Case No. 37 of 1999 dated 03.02.1999 under Sections 120B/448/379/461/417/109 of the India Penal Code pending before the Learned Judicial Magistrate, 7th Court at Howrah
2. The brief facts of the case are that the de facto complainant (opposite party no. 2 herein) filed a written complaint dated 22nd June, 1998 alleging, *inter alia*, that he was a tenant of the ground floor and the entire second floor consisting of shop nos. 94, 94A, 97 and 98 at Gaganchal (Commercial Complex), 37, Dr. Abani Dutta Road, Golabari P.S., Howrah, and that the petitioner, Mr. Kishore Kumar Khaitan, with the assistance of police personnel led by the then I/C Golabari P.S., attempted to break open the padlocks of his tenanted portion. He alleged that on receiving information that Mr. Kishore

Kumar Khaitan, with police personnel led by the Inspector-in-Charge, Golabari P.S., was breaking open the padlocks of his tenanted portion, he immediately arrived at the spot and found the Secretary of the Gaganchal Shopping Complex Welfare Association and security personnel already present, and that the accused had taken possession of the premises and removed his almirah, computer, stationery, cash of Rs. 2,300/-, typewriter, documents, and electrical fittings worth over Rs. 30,000/-.

- 3.** On the basis of the aforesaid allegations, a Golabari P.S. Case No. 37 of 1999 dated 03.02.1999 was registered under Sections 448/379 of IPC against the petitioner and others on the instruction of the Superintendent of Police, Howrah and later transferred to CID, West Bengal, as the then Inspector-in-Charge, Golabari P.S., was allegedly one of the accused persons.
- 4.** After completion of investigation, Charge-sheet No. 129 dated 13.07.2001 was submitted under Sections 120B/448/379/461/417/109 of IPC against six accused persons, including the petitioner.
- 5.** The de facto complainant claims tenancy under M/s Khaitan Estate, owner of the land and building situated at 37, Dr. Abani Dutta Road, Golabari P.S., Howrah. Smt. Rekha Khaitan and M/s Seela Devi were

the partners in the said Investment Company, making the property a joint-venture holding.

- 6.** The petitioner was a Director of M/s Seela Devi Investment Company. The Khaitan Estate partners later constructed Blocks A, B and C at the aforesaid address under a development agreement with a developer, and, thereafter, sold commercial shops and residential flats to different purchasers.
- 7.** It is the petitioner's case that the de facto complainant, exploiting his close association with the petitioner's family, was entrusted with renovation work and duly paid for it. Taking advantage of this proximity, he allegedly obtained the petitioner's signature on a blank letterhead of Khaitan Paper Mill Ltd., a company unconnected with the said holding, ostensibly to lodge a missing diary on the petitioner's behalf, but, thereafter, converted it into a forged tenancy/lease document, fraudulently intending to claim rights over the property without any actual transaction or the owners' knowledge or consent.
- 8.** The petitioner lodged a complaint at Golabari P.S. against the de facto complainant, Praveen Kumar Singh, alleging forgery, falsification and cheating, leading to Golabari P.S. Case No. 37/1999 and a charge-sheet under Sections 461/420/471 IPC, now pending

trial before the Learned Judicial Magistrate, 4th Court, Howrah. The present case is a counterblast to the said complaint.

- 9.** On the strength of those forged documents, the de facto complainant obtained an order of *ex parte* injunction dated 19.06.1998 in Title Suit No. 119 of 1998, and the very next day, he alleged dispossession and illegal occupation of part of the property by initiating false and frivolous proceedings against the petitioner and others.
- 10.** The petitioner challenged the *ex parte* injunction before this Hon'ble High Court and, thereafter, before the Hon'ble Supreme Court in Civil Appeal No. 1101 of 2006 (arising from SLP (Civil) No. 11469 of 2005). By order dated 13.02.2006, the Hon'ble Supreme Court observed that it was difficult to conceive of such premises being let out so informally, without even a rent deed.
- 11.** The Hon'ble Supreme Court directed the Civil Court, Howrah, to restore possession to the petitioner pending disposal of the suit confirming on the petitioner's case, that the dispossession allegation was fabricated, that possession was retaken from the de facto complainant's illegal occupation, and that the petitioner remains in possession.
- 12.** The Inspector-in-Charge, Golabari P.S., a co-accused, moved CRR No. 1244 of 2006 before this Hon'ble High Court for quashing the proceeding. By order dated 05.10.2007, the then Hon'ble Justice

Tapan Mukherjee quashed the proceedings against him, observing therein that the complainant's allegations were baseless, and revealing the entire dispossession narrative to be concocted.

- 13.** The Learned Court below failed to consider that, on identical allegations, the Inspector-in-Charge had already secured quashing on the ground that the case was baseless and concocted, so that no question of framing charge against the petitioner on the self-same facts could arise; yet the Trial Court rejected his prayer for discharge vide order dated 09.01.2024.
- 14.** The Learned Court below also failed to consider the Apex Court's finding in Civil Appeal No. 1101 of 2006 that there was no prima facie material showing the opposite party's dispossession by the petitioner on 20.06.1998.
- 15.** It was further failed to consider the Apex Court's finding that there was no proper or adequate finding by the Learned Additional District Judge on either the plaintiff's prima facie possession as on 19.06.1998 or his alleged forcible dispossession on 20.06.1998, findings which demolish the prosecution's case. However, the petitioner's application under Section 239 of Cr.P.C. for discharge was rejected by the Trial Court, giving rise to the present application. Hence, this application.

- 16.** Mr Maitra, learned Sr. Counsel along with other counsels representing the petitioner, submitted that the petitioner was the director of M/s Seela Devi Investment Company, and that the partners of M/s Khaitan Estate subsequently constructed three blocks i.e. Block A, Block B and Block C at 37, Dr. Abani Dutta Road, P.S. Golabari, District Howrah. He submitted that the petitioner is innocent and has been falsely implicated in this case by the de facto complainant both for illegal gain and to save himself from the case registered against him by the petitioner, and that civil disputes are pending between the parties, have been given a criminal colour by the de facto complainant.
- 17.** It was further submitted that out of the six accused persons, three have since died. The proceedings against the two accused persons namely, Sri Kalyan Chakraborty, Inspector-in-Charge, Golabari P.S. and Ashish Kumar Sen @ Bapi were quashed by the Hon'ble High Court at Calcutta in criminal revisional applications being CRR No. 1244 of 2006, and CRR No. 968 of 2024 vide orders dated 5th October, 2007 and 2nd May, 2025 respectively. It was submitted that the petitioner stands on the same footing as the other two accused persons.
- 18.** Mr. Tiwari, learned Sr. Counsel, on the other hand, appearing on behalf of the opposite party no. 2, vehemently opposed the prayer of

the learned Sr. Counsel appearing on behalf of the petitioner and further submitted that the de facto complainant was a bona fide tenant. He was forcibly dispossessed by breaking open the padlock in his absence and removing several valuable items, thereby committing the offence of theft. During investigation, statements of several witnesses recorded under sections 161 and 164 of the Cr.P.C. have substantiated the case of the de facto complainant. A prima facie case has been established against the present petitioner; as such, a Charge sheet no. 129 dated 13.07.2001 under sections 120B/448/379/461/417/109 of the Indian Penal Code against six accused persons, including the petitioner herein, has been submitted before the trial court. It was submitted that the Trial Court had rightly rejected the prayer for discharge upon finding the Petitioner's involvement; as such, the application is liable to be dismissed.

- 19.** Learned counsel appearing on behalf of the State produced the case diary and opposed the petitioner's prayer, relying on the statements of the witnesses, recorded under Sections 161 and 164 of Cr.P.C.
- 20.** Having heard the learned counsels for the respective parties at length and having gone through the impugned order and materials on record, this Court finds that the allegation against the petitioner is that he, along with his men and agents, forcibly dispossessed the de facto complainant by breaking open the padlock of the shop rooms

occupied by the defacto complainant, and removed several valuable articles, constituting alleged offences. A case was registered against six accused persons for offences punishable under sections 120B/448/379/461/417/109 of the Indian Penal Code.

- 21.** Out of the six accused persons, three have since expired. The proceedings against the two accused persons apart from the present Petitioner, namely, Sri Kalyan Chakraborty, Inspector-in-Charge, Golabari P.S. and Ashish Kumar Sen @ Bapi were quashed by the Hon'ble High Court at Calcutta in criminal revisional applications being CRR No.1244 of 2006 and CRR No.968 of 2024 vide order dated 5th October, 2007 and 2nd May, 2025 respectively. The then Co-ordinate Bench of the Hon'ble High Court at Calcutta, while quashing the proceeding against the co-accused, Sri Kalyan Chakraborty, *inter alia*, observed as follows: -

“It appears that police personnels who were allegedly present at the time of occurrence have not been made accused in that case. There is nothing to show that the said police personnels were sent by the petitioner to help Kishore Kumar Khaitan to take possession of the disputed premises. There is no allegation that those police personnels were deputed to the P.O. from the P.S. at the instance of the petitioner.

It further appears that the witnesses examined under Section 161 Cr.P.C such as Surajit Kar Purakayasta, Smt. Reba Sarkar, Dr. Nazrul Islam, Dr. Sudhir Bhan of Joypur, Dr. Narendra of Joypur, Dr. Abhiram Sharma of Joypur and Smt. Puran Malhotra were not cited

as witnesses in the charge sheet. There is nothing to show that the offences were committed by the accused persons in pursuance of abetment or in consequence of instigation or conspiracy or with the aid of the petitioner. It is true that I.C, Golabari P.S. did not start case on the basis of the complaint of defacto complainant immediately and the S.P. was to be moved by the defacto complainant. On 14.7.98 there was an order of this Court for registering complaint of the complainant and finally the case was registered on 3.2.99. From this failure to start case on the basis of the complaint of the complainant and starting of case subsequently on 3.2.99 it cannot be inferred that this petitioner abetted commission of offences by other accused. It is true that the petitioner did not take any positive action against Kishore Kumar Khaitan on receipt of the complaint and after long persuasion the case was registered till then such inaction does not amount to abetment of commission of offences alleged. For such inaction as alleged the petitioner can at best be visited with departmental or administrative action and he cannot be made liable for commission of offence as an abettor.

As regards phone calls to the petitioner by Kishore Khaitan it must be said that there may be several reasons for such phone calls. The said phone calls do not ipso facto show that accused was abettor. Under the circumstances there are no materials making out a case of abetment even prima facie against the petitioner.

That apart from the same, in the judgment Civil Appeal No.1101 of 2006 the Apex Court categorically held that there is no prima facie material to indicate that on 20.6.98 the plaintiff was in fact dispossessed by the defendant. It was further held by the Apex Court that there was no proper or adequate finding by the Learned Additional District Judge either on prima facie possession of the plaintiff on 19.6.98 or of his forcible dispossession on 20.6.98. So, the finding of the Apex Court stands against the claim of dispossession of the suit premises by the defendants. In view of the said fact the

edifice of the prosecution case crumbles down and the question of abetment of offences by the petitioner does not arise.

Even if it is assumed that such finding of the Apex Court is tentative as the Apex Court directed to dispose the suit expeditiously and the Apex Court also passed order for disposal of interim application for prohibitory injunction along with the suit still then in view of my above discussions the case of abetment is not made out prima facie and the instant criminal proceedings against the petitioner cannot proceed. Therefore, it must be held that the continuance of the criminal proceeding being G.R.249 of 1999 arising out of Golabari P.S. Case No.37 of 1999 dated 3.2.99 under Section 120B, 448, 379, 461, 417, 109 I.P.C against the petitioner is an abuse of the process of Court and the same cannot be permitted to continue so far, the petitioner is concerned. The said criminal proceedings against the petitioner is hereby quashed.”

- 22.** Another Co-ordinate Bench of this Hon’ble High Court also quashed the proceeding insofar as the other accused, namely, Ashish Kumar Sen @ Bapi, observing therein, *inter alia*, as follows: -

“24. In the present case, the written complaint or the evidence on record does not disclose any specific allegation against the petitioner save and except that he was present at the place of occurrence at the relevant time. Even if the case made out by the prosecution is taken on its face value, no offence is disclosed against the petitioner.

25. Last but not the least, the petitioner has drawn the attention of the Court to the delay in the proceedings. Placing reliance on the authorities in Motilal Saraf (supra), Santosh De (supra), Vakil Prasad Singh (supra) and Ramanand Chaudhury (supra), learned counsel for the petitioner has submitted that the alleged incident occurred on 20th June, 1998 and FIR was lodged on 3rd February, 1999, the delay not being explained. Charge sheet was submitted on 13th July,

2001. Charges are yet to be framed. The proceeding is required to be quashed only on such ground.

26. It is a fact that delay is a relevant factor and every accused is entitled to speedy justice in view of Article 21 of the Constitution of India. But attending facts and circumstances leading to the delay should also be taken into consideration in deciding the issue. If prima facie material is found against the accused in a particular case, the proceedings cannot be quashed merely on the ground of delay. [Sajjan Kumar Singh (supra)]. Herein, no offence as alleged having been made out against the petitioner either in the FIR or in course of investigation, allowing the proceeding to continue against the petitioner shall be an abuse of the process of the Court. The petitioner having suffered the ordeal of trial for considerable period of time should not be made to suffer further due to continuation of the proceeding against him”

- 23.** Upon careful perusal of the case diary, produced by the State, including the statements recorded under Sections 161 and 164 of the Cr.P.C. corresponding to Sections 180 and 183 of the BNSS, 2023, this Court finds that the main contentions of the witnesses against the petitioner is that on 20th June, 1998, at around 6 am, the Petitioner arrived at the Market complex in a car. Subsequently, Rajendra Adhikary, who worked for a Security company, along with a few security personnel, came in another car. Thereafter, the padlocks of the shop-rooms were broken open, and several valuable articles, i.e., air-conditioning machines, tables and almirahs, were removed and kept outside. While all of this was happening, the Petitioner

made a phone call, and, thereafter, the police arrived and prevented the de facto complainant from entering the premises.

24. Apart from the aforesaid statements, there is no direct evidence that has transpired from the case diary, which can prima facie prove that the present petitioner had played any specific role in the alleged offence. The ocular witness also failed to implicate the petitioner in the commission of the offence as alleged. The petitioner arriving at the spot in his car, and the other accused subsequently arriving in another car, does not, *ipso facto*, constitute an offence. No specific role is attributed against the petitioner. A criminal case cannot be allowed to continue merely on vague and general statements without any specific role attributed to the petitioner; otherwise, it would be a sheer abuse of process of law. The case was registered in the year 1999 against six accused persons, but after expiry of more than 26 years, the case survives only against the present petitioner.

25. Considering the overall facts and circumstances and materials available in the case diary, this court is of the opinion that there is insufficient material against the petitioner. The disputes pending between the de facto complainant and the petitioner are essentially civil in nature, which the de facto complainant has sought to cloak in criminality. No case has been made out against the petitioner. To allow this proceeding, which has been pending for nearly 27 years, to

continue would be an empty formality. The conviction would be remote and improbable, causing grave prejudice to the petitioner, constituting an abuse of the process of law.

- 26.** In the light of the above discussion and findings of this court, this is a fit case for exercising the inherent power of this Court under Section 482 of the Cr.P.C. to secure the ends of justice and to prevent the abuse of process of law.
- 27.** The law relating to the power of the High Courts to interdict criminal proceedings where the dispute is essentially civil in nature has been settled beyond doubt in the landmark case passed in the case of ***State of Haryana & Ors. vs. Bhajanlal & Ors.***¹ In this case, the Hon'ble Supreme Court 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 as to when the extraordinary power of this Court under Section 482 of the Cr.P.C. may be espoused. Relevant portion thereof has beneficially been 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 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

¹ **AIR 1992 SC 604**

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.”

28. Applying the aforesaid principles to the facts of the present case, this Court finds that the case at hand squarely falls within Categories (3) and (7) enumerated in ***Bhajanlal (supra)***. The allegation, even if taken at its face value and accepted in its entirety after filing of the charge sheet, does not disclose the commission of any offence by him. Furthermore, no prudent person could ever reach a just conclusion that there exists sufficient ground for proceeding against him [Categories (3) and (7)].
29. In view of observations made by the Hon’ble Supreme Court in the above-cited judgments and overall consideration of aforesaid facts, this Court is fully satisfied that this case falls in Categories (3) and (7) mentioned above.
30. Accordingly, **CRR No. 560 of 2024** is, thus, **allowed**. Connected applications, if any, are also, thus, disposed of.
31. The proceeding being G.R. Case No. 249 of 1999 and the charge sheet No. 129 dated 13.07.2001 under Sections 120B/448/379/461/417/109 of the India Penal Code arising out of Golabari P.S. Case No. 37 of 1999 dated 03.02.1999 under Sections 120B/448/379/461/417/109 of the India Penal Code pending before the Learned Judicial Magistrate, 7th Court at Howrah is hereby quashed and the impugned order dated 09.01.2024 passed by the

Learned Judicial Magistrate, 7th Court at Howrah is also hereby set aside insofar as the petitioner is concerned.

- 32.** Case Diary, if any, are to be returned to the learned counsel for the State.
- 33.** Let a copy of this Judgment be sent to the Learned Court below for information.
- 34.** Interim order, if any, stands vacated.
- 35.** All parties will act on the server copies of this Judgment duly downloaded from the official *website* of this Hon'ble High Court.
- 36.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J.)

(P.A.)