

17.04.2023
Court-42
Item No.-9 & 10

**CRR 922 of 2023
With
CRR 917 of 2023**

**Smt. Mala Roy
VS
The State of West Bengal & Anr.**

For the petitioner: Mr. Sandipan Ganguly, Sr. Adv.,
Mr. Somopriya Chowdhury, Adv.,
Mr. Kaushik De, Adv.,
Ms. Mohini Majumder, Adv.,
Mr. Raghav Munshi, Adv.

CRR 922 of 2023 and CRR 917 of 2023 arose between the same parties. The subject matter of both the cases are related to each other. Therefore, this court proposes to take up both the revisions for hearing on the point of admission and passes the following composite order.

CRR No. 922 of 2023 is an application for quashing of proceedings in G.R. case no. 2546 of 2006 pending before the Learned Metropolitan Magistrate, 5th Court, Calcutta under Section 419/420/467/468/471 of the IPC arising out of Hare Street P.S. case no. 404 of 2006 dated 30th November, 2006 and an order dated 13th December, 2022 passed by the Learned Additional Sessions Judge, 1st Track Court, Bichar Bhawan in CRR No. 67 of 2020 upholding the order dated 10th December, 2019 passed by the Learned Chief Metropolitan Magistrate, 5th Court at Calcutta.

CRR No. 917 of 2023 is an application under section 482 of the Cr.P.C. filed assailing an order dated 13th December, 2022 passed by the Learned Additional Sessions Judge, 1st Track Court, Bichar Bhawan in CRR No. 121 of 2020 upholding the order dated 30th

September, 2020 passed by the Learned Chief Metropolitan Magistrate, Calcutta in connection with case no. C/53/2020 under Section 380/388/467/468/182/192/193 of the IPC read with section 120B/34 of the IPC thereby rejecting the prayer of the petitioner made under Section 156(3) of the Cr.P.C.

Brief fact of the case is that the petitioner's husband late Abhijit Roy and his elder brother late Bikramjit Roy together used to run a business namely, India Trade Corporation situated at 4, Lyons Range, Kolkata- 700001. The opposite party no. 2 developed a relation with Late Bikramjit Roy. After the demise of Late Bikramjit Roy on 20th April, 1987 the opposite party got a probate ex parte issued by the Court of Hamilton, Ohio, USA in relation to assets and properties of Late Bikramjit Roy claiming to be the wife and the only heir and started demanding the share of joint ancestral properties of Late Abhijit Roy and Late Bikramjit Roy situated in India. An application was filed by the opposite party no. 2 before This Court for confirming the order passed by the Court of Hamilton, Ohio being P.L.A. no. 85 of 1998. The said application was challenged by the legal heirs of Late Bikramjit Roy and Ms. Ruth Hazel Wallace who got divorced earlier and This Court by an order dated 25th June, 2007 rectified on 27th July, 2007 dismissed the said application for suppressing the existence of other legal heirs before the Court of Ohio.

On such dismissal the opposite party no. 2 started disturbing the petitioner and the petitioner tried to pay off the opposite party no. 2 an amount of Rs. 10 Lakhs by way of several demand drafts. The opposite party no. 2 misappropriated the demand drafts given to the opposite party no. 2 by the petitioner and created false account in the Bank of America, Dalhousie branch with the documents of the petitioner which the opposite party no. 2 stole.

It is stated by the petitioner that the opposite party no. 2 filed a false case against the petitioner under Section 419/420/467/468 and 471 of the IPC before the Hare Street P.S. being no. 404 of 2006 dated 30th November, 2006 alleging, inter alia, that the petitioner has fraudulently opened bank account in the name of Opposite party no. 2 forging her signature. The petitioner was arrested and was enlarged on bail. After completion of investigation Chargesheet was submitted being CS no. 84 of 2008 on 11th April, 2008. The petitioner filed an application under Section 239 of the Cr.P.C. before the Learned Metropolitan Magistrate, 5th Court at Calcutta in G.R. case no. 2546 of 2006 which was rejected vide order dated 10th December, 2019. Being aggrieved by such order, the petitioner preferred a revisional application being Criminal revision case no. 67 of 2020 which was heard by the Learned Additional Session Judge, 1st Track Court, City Sessions Court at Calcutta and dismissed the application by an order dated 13th December, 2022.

Being aggrieved with the initiation and continuation of the impugned proceeding being G.R. No. 2546 of 2006 pending before the Id. Metropolitan Magistrate and the order dated 13th December, 2022, the petitioner filed the instant application being CRR No. 922 of 2023.

Simultaneously, the petitioner filed an application under Section 156(3) of the Cr.P.C. before the Learned Chief Metropolitan Magistrate where a preliminary enquiry was directed by an order dated 16th September, 2020. The said application was dismissed by the Learned Court below by an order dated 30th September, 2020. Being aggrieved by such order the petitioner filed revisional application before the Learned City Sessions Judge by filing Criminal revision no. 121 of 2020. However, after conclusion of hearing, the Learned Additional Session Judge, 1st Fast Track Court, Calcutta dismissed the said

revisional application vide order dated 13th December, 2022.

Being aggrieved by the impugned order dated 13th December, 2022 the petitioner filed the instant revisional application being CRR No. 917 of 2023.

In CRR No.922 the crux of the allegation is that the petitioner created false document in the name of the opposite party/defacto complainant and used the same as genuine to open a bank account in the bank of America Dalhousi Branch to extort money and also for the purpose of cheating. The learned Senior Counsel on behalf of the petitioner refers to the decision of the Hon'ble Supreme Court in **Sheila Sebastian vs. R. Jawaharaj** reported in **(2018) 7 SCC 581**. Paragraph 25 of the aforesaid judgment is relevant for the purpose of this case:

“25. Keeping in view the strict interpretation of penal statute i.e., referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery.”

Thus, it is submitted by Mr. Ganguly, learned Senior Counsel that this Court should look into the case diary to ascertain as to whether the Investigating Officer has been able to collect any evidence in support of the allegation that the petitioner created false document in the name of the opposite party and the petitioner used the said document as genuine for the purpose of cheating.

It is also submitted by Mr. Ganguly that the fate of CRR 917 of 2023 is dependent upon the fate of the

investigation of Hare Street P.S Case No.404 dated 30th November, 2006.

For the reasons stated above both the revisions are admitted.

Petitioners of both the revisions are directed to serve notice upon the private opposite party under registered speed post with AD and file affidavit of service within three weeks from the date of this order.

In the mean time, further proceeding in connection with G.R Case No.2546 of 2006 pending before the learned Metropolitan Magistrate, 5th Court at Calcutta be stayed till two weeks after vacation.

The CRR 922 of 2023 and CRR 917 of 2023 be tagged together.

(Bibek Chaudhuri, J.)