

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. No. 3700 of 2018

Dr. Gour Das

Versus

Bhabani Bhattacharjee

For the Petitioner : Mr. Milon Mukherjee, Ld. Sr. Adv.
Mr. Rahul Ganguly, Adv.

Heard on : 22.07.2026

Judgment on : 21.08.2026

Uploaded On : 21.08.2026

Ajay Kumar Gupta, J.:-

1. The instant Criminal Revisional application has been filed by the petitioner under Section 482 of the Code of Criminal Procedure, 1973 (In short, 'Cr.P.C.') seeking quashing of the proceeding being Complaint Case No. 856 of 2018 under Sections

420/465/471/120B/506/34 of the Indian Penal Code, 1860, pending before the Court of the learned Judicial Magistrate, 2nd Court at Barasat, North 24 Parganas.

FACTS OF THE CASE:-

- 2.** The brief facts of this case, essential for the purpose of disposal of this Revisional application, are as under: -
 - a.** The aforesaid complaint case has been initiated before the learned Trial Court by the complainant/opposite party, i.e., the niece of one Himangshu Nag who was the absolute owner/landlord of premises no. 42/139/1, New Ballygunge Road, P.S. – Kasba, Kolkata – 700039. He had purchased a landed property by way of Registered Deed of Conveyance in the year 1967.
 - b.** The opposite party has been looking after him as he had lost his only daughter, Anindita Nag in the year 2009. After the demise of his daughter, said Himangshu Nag and his wife Anima Nag lost their mental balance. Taking advantage of such situation, the accused persons committed fraud upon them by inducing and compelling them to execute a 'Deed of Trust' in the memory of their only beloved daughter in respect of aforesaid premises.
 - c.** It was further alleged that the aforesaid Deed of Trust speaks about proposed charitable and benevolent activities rendered to the poor and downtrodden. However, since the execution and authentication

of the deed, not a single charitable or philanthropic activity had been launched by the said trust. The purpose of execution of the said trust deed was only to grab the property by the accused persons. The preamble of the Deed of Trust clearly specified that till the lifetime of the settlers, the said 'Anindita Trust' shall be in existence. After the demise of the settlers, the said Trust shall be merged with 'Somsar Sri Ramkrishna Seva Mondir' in which the accused no. 1 and the petitioner were President and Secretary respectively.

- d.** Finally, it was alleged that the entire creation of 'Anindita Trust' is the brainchild of the accused persons, which is nothing but an outcome of a dupe and manipulation. After execution of the said Registered Deed of Trust, Himangshu Nag's wife expired and, thereafter, in order to revoke the said Registered Deed of Trust, he sent a Legal Notice dated 10.05.2018 through his learned advocate to the accused persons, and, for that reason, on 07.05.2018, the accused persons threatened Himangshu Nag with dire consequences, if he would take recourse of law against them.
- e.** The CJM, Barasat, North 24 Parganas took cognizance and transferred the case to the Learned Judicial Magistrate, 2nd Court, Barasat for its disposal. The learned Judicial Magistrate further examined the complainant and proceeded with the case against the petitioner and Dr. Tapas Kr. Banerjee for alleged commission of

offence punishable under Sections 420/465/471/120B/506/34 of the Indian Penal Code, 1860, summon was issued. Although, whole case is based on false and frivolous allegations. Hence, this Revisional application.

ARGUMENTS ON BEHALF OF THE PETITIONER: -

3. Mr. Mukherjee, learned senior counsel representing the petitioner, submitted that the petitioner herein is a reputed doctor by profession and has been practising for more than 30 years. He was a visiting physician at Ruby General Hospital and also held the post of Secretary and Managing Member of National Neuro Sciences, Calcutta, as well as the Director of the Institute of Neuro Sciences, Kolkata. The case was initiated by Himangshu Nag's niece without knowing the actual fact of execution and registration of the deed of trust.
4. In or about April, 2009 the uncle of the complainant/opposite party, namely, Himangshu Nag had actually contacted the petitioner over the phone to discuss about his desire of giving his property to some religious organization, for which, he intended to have more discussions on the subject and further informed the petitioner that he got the name and address of the petitioner from his known monk settled at Tarapith, Birbhum. Upon discussions, both husband and wife expressed their desire after being very upset by losing their only

daughter who died of Cancer in April 2009. As a respect to the departed soul, some philanthropic works may be carried out in the residential premises by occupying the entire ground floor of the building. As such, it was decided that the same would be handed over to Somsar Sri Ramkrishna Seva Mondir for the purpose of the service of humanity, including medical services.

5. As per the proposal of Himangshu Nag and his wife along with the outcome of detailed discussions, the petitioner placed the proposal in the Executive Committee Meeting of Somsar Sri Ramkrishna Seva Mondir on 05.06.2010. Deed of trust was formally drafted. The draft was finally approved by Himangshu Nag and his wife, and finally the deed of trust was executed and registered on 18.08.2010 between Himangshu Nag, Anima Nag and the President and Secretary of Somsar Ramkrishna Seva Mondir at the residence of accused no. 1, namely, Dr. Tapash Kumar Banerjee for his signature as he was, at that point of time, seriously ill and was bedridden.
6. Dr. Tapash Kumar Banerjee died on 22.09.2010. Despite knowledge of the same, the de facto complainant filed the complaint before the CJM, Barasat, North 24 Parganas in the month of 2018, after expiry of 8 years of registration of deed. The CJM, Barasat, North 24 Parganas took cognizance against both accused persons although one of the accused persons was not alive. Thereafter, upon transfer, the

learned Judicial Magistrate issued summon against both the accused persons upon examining the complainant under Section 200 of Cr.P.C. on 26.09.2018.

- 7.** She alleged before the learned Judicial Magistrate, 2nd Court on 26.08.2018, while solemn affirmation, that the accused persons threatened her uncle when he asked to cancel the trust deed, although the accused person no. 1 died in the year 2010.
- 8.** It was further submitted that the said de facto complainant also filed a civil suit on the self-same dispute; currently the same is sub judice before the Learned 1st Additional Civil Judge (Junior Division) at Alipore, being Title Suit No. 801 of 2018.
- 9.** Finally, the learned senior counsel submitted that the property situated at Ballygunge is within the Kasba P.S., Kol – 700 039, and the present petitioner is a resident outside the jurisdiction of the learned Trial Court, even though the mandatory provision of Section 202 of the Cr.P.C. was not complied with before issuing summon against the petitioner. The entire case is based on false, frivolous, malicious and further the case involves purely civil, however, she tried to colour it to criminality; as such, the same is liable to be quashed to prevent abuse of process of law and secure the ends of justice.

10. On the other hand, none appeared on behalf of the opposite party/de-facto complainant despite good service.

ANALYSIS AND FINDINGS OF THIS COURT:-

11. Having heard the submissions of the learned senior counsel for the petitioner and upon perusal of the materials available on record, this Court finds the following relevant facts: -
- a. Firstly, the complaint was filed after a delay of 8 years without explaining the same.
 - b. Secondly, the complaint was filed against the two accused persons with an allegation that they threatened Himangshu Nag with dire consequences, which appears to be totally false, when it was an admitted fact that accused person no. 1, Dr. Tapash Kumar Banerjee, expired on 22.09.2010. She did not even disclose this fact on the date of S.A./examination before the learned Trial Court on 26.08.2018.
 - c. Thirdly, the deed of trust was executed and registered in the presence of the witnesses, and the same was registered before the Additional Registrar of Assurance – I; as such, it disproves the contention of forgery on the face of the record.
 - d. Fourthly, the learned Trial Court did not follow the mandatory provision as stipulated under Section 202 of the Cr.P.C. before issuing summon to the Petitioner, whose residential address is beyond the territorial jurisdiction of the Court.

- e. Finally, on the self-same issue, a Title Suit being No. 801 of 2018 is pending before the Learned 1st Additional Civil Judge (Junior Division) at Alipore.
- 12.** Each of these facts carries an independent legal consequence. The unexplained delay of nearly eight years between registration of the deed of trust on 18.08.2010 and the lodging of the complaint in 2018, without a word of explanation either in the complaint or before the Court, is itself a circumstance from which an inference of afterthought and design may reasonably be drawn. More telling is the allegation that the accused persons threatened the complainant's uncle with dire consequences on 07.05.2018, an allegation levelled equally against accused no. 1, Dr. Tapash Kumar Banerjee, who had admittedly died on 22.09.2010, nearly eight years before the date of the alleged threat. This averment attributing a specific overt act to a person who was, on the complainant's own showing, no longer alive at the relevant point of time, is not merely improbable but impossible on its face, and no criminal proceeding can be permitted to continue on the strength of such an averment; otherwise, it would be an abuse of process of law.
- 13.** The fact that the complainant chose not to disclose this fact even at the stage of her examination under Section 200 of the Cr.P.C. on 26.09.2018 further reflects on the bona fides of the complaint as a

whole. The learned Magistrate has failed to hold an inquiry under Section 202 of the Cr.P.C., a mandatory safeguard, where the accused resides beyond the territorial jurisdiction of the Court. This is a jurisdictional infirmity that independently vitiates the issuance of process in the present case. Finally, the pendency of Title Suit No. 801 of 2018 before the learned 1st Additional Civil Judge (Junior Division), Alipore, touching the very same deed of trust, confirms that the real character of the dispute is civil, relating to the validity and revocability of a trust, and that the machinery of criminal law has been invoked as a parallel and improper means of pressuring the petitioner in what is essentially a civil contest between the parties.

14. In view of the above facts and circumstances, this Court finds that 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.
15. 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

¹ ***AIR 1992 SC 604***

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 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.”

- 16.** Applying the aforesaid principles to the facts of the present case, this Court finds that the case, at hand, squarely falls within Categories (1), (5), (6) and (7) enumerated in ***Bhajanlal (supra)***. The allegation of threat attributed to the accused no. 1, who had admittedly died nearly eight years before the date of the alleged occurrence, even if taken at its face value and accepted in its entirety, does not disclose the commission of any offence by him and is, on the face of the complaint itself, so inherently improbable, that no prudent person

could ever reach a just conclusion that there exists sufficient ground for proceeding against him [Categories (1) and (5)]. Non-compliance with the mandatory procedure prescribed under Section 202 of the Cr.P.C., applicable where the accused resides beyond the jurisdiction of the Court, constitutes an express legal bar to the continuance of the proceeding in its present form [Category (6)]. This, read together with the unexplained delay of eight years in lodging the complaint, the complainant's silence regarding the death of accused no. 1 even at the stage of her statement under Section 200 of the Cr.P.C., and the pendency of a civil suit between the self-same parties on the self-same cause, this Court is satisfied that the present criminal proceeding is a civil dispute clothed in the garb of criminality and has been instituted with an ulterior motive to harass and pressurise the petitioner. The continuance of such a proceeding would amount to a gross abuse of the process of the Court and would not serve the ends of justice.

17. In the light of the above discussions made by this Court and in view of observations made by the Hon'ble Supreme Court in the above-cited judgments, this Court is fully satisfied that this case falls in the Categories (1), (5), (6), and (7) mentioned above.
18. Accordingly, **CRR No. 3700 of 2018** is **allowed**. Connected pending application, if any, is also disposed of.

- 19.** Consequently, the proceeding being Complaint Case No. 856 of 2018 under Sections 420/465/471/120B/506/34 of the Indian Penal Code, 1860, pending before the Court of the learned Judicial Magistrate, 2nd Court at Barasat, North 24 Parganas is hereby quashed insofar as the petitioner is concerned.
- 20.** Let a copy of this Judgment be sent to the Learned Court below for information.
- 21.** Interim order, if any, stands vacated.
- 22.** Case Diary, if any, be returned to the learned counsel for the State.
- 23.** Parties shall act on the server copies of this Judgment uploaded on the official website of this Court.
- 24.** 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.)