Amiya Bhusan Deb Vs State of West Bengal and Others

Matter No. 1421 of 1988

Court: Calcutta High Court

Date of Decision: Aug. 12, 1988

Acts Referred:
Constitution of India, 1950 â€" Article 14#Criminal Procedure Code, 1973 (CrPC) â€" Section 200, 482#Penal Code, 1860 (IPC) â€" Section 30, 463, 464, 467

Citation: (1989) 1 CALLT 333

Hon'ble Judges: Monoranjan Mallick, J

Bench: Single Bench

Advocate: Bhaskar Gupta with Mr. Abhijit Chatterjee, for the Appellant;R.M. Chatterjee with Mr. Susanta Banerjee, For the Respondent No. 1, for the Respondent

Final Decision: Dismissed

Judgement

Monoranjan Mallick, J.
The writ petitioner has prayed for a writ of certiorari to certify and send up to the Court the record relating to the

complaint case upon the purported complaint and the purported summons issued by the 5th Metropolitan Magistrate, Calcutta Annexure ""C"", for a

Writ of Prohibition prohibiting the respondents from giving any effect or further effect to the said purported complaint and the purported summons

including Annexure "C" and from taking any further steps in terms thereof and from taking any further steps in the Criminal case pending before the

5th Metropolitan Magistrate, Calcutta and for a Writ of Mandamus to withdraw, recall and cancel the purported complaint and the said purported

summons and forbear from taking steps pursuant thereto or acting in terms thereof and therefore other consequential reliefs.

2. The allegations made in the petition may be briefly stated as follows:

The petitioner was appointed by the Respondent No. 3 as Assistant Engineer on 21st June 1957 and by dint of his satisfactory service has been

given various promotions from time to time and has ultimately been appointed as General Manager in or about 1983-84. He was due to retire as

per the normal superannuation are of employees of the Respondent No. 3 on or about 31st October, 1985. However, the Company extended the

services of the petitioner obviously in consideration of his dedicated satisfactory and unblemished service in the Company till 31st December 1987.

In or about 29th September 1986 the petitioner submitted his resignation from the services of the Respondent No. 3 which was to take effect on

and from 31st December 1986, i.e., the petitioner gave three months notice in terms of the conditions of Service. Thereafter on or about 10th

December, 1986 Respondent No. 3 purported to issue an Order not to accept the resignation but to initiate a disciplinary proceeding against him.

The petitioner was served with a chargesheet, dated 10th December 1986 wherein various allegations have been made regarding alleged

prejudicial acts committed by the petitioner. In the said charge it was alleged, inter alia, that the petitioner had compromised the appeal being

F.A.T. No. 1583 of 1986 pending in High Court even though he was not authorised to enter into such compromised and that he had also

compromised Suit No. 482 of 1982 and undertook to deliver vacant possession of the Company"s Head Office premises at 27, R. N. Mukherjee

Road to the Landlord even though he did not have any legal authority to effect such compromise. In the reply the petitioner stated that he had

compromised the appeal in question in his best judgment and in the interest of the Respondent No. 3 and regarding the alleged compromise of Suit

No. 482 of 1982 the petitioner stated that he had not given any instruction to the concerned Advocate-on-record for compromising the Suit and

some fraud was practiced in the matter. However, the Respondent No. 3 did not allow the petitioner to resign hut had been proceeding with the

enquiry and had appointed an Enquiry Officer and on conclusion of illegal enquiry has passed the Order of dismissal against which the petitioner

has moved the writ jurisdiction of this Court and has obtained interim relief.

3. The Respondent No. 3 has also filed various proceedings against the alleged compromise and the effect of the alleged compromise have not

been given effect to and the Respondent No. 3 has not suffered any damage whatsoever.

4. Thereafter the petitioner was surprised to receive on or about 16th March, 1988, a purported summons, dated 21st January 1988 by the

Respondent No. 3 directing the petitioner to appear before the 5th Metropolitan Magistrate on 17th March, 1988. A copy of the purported

complaint u/s 467 of the Indian Penal Code was annexed with the purported summons. It appears from the said purported complaint that in the

meantime on or about 30th December, 1987 and after about one and a half years from the said purported dismissal Order and after about one and

a half years from the said purported dismissal Order and after about one and a half years from the date of the events which form the subject matter

of the allegations against the petitioner a purported Criminal Complaint was filed and copy of the complaint is marked Annexure "O" to this

petition. The petitioner has appeared before the Learned 5th Metropolitan Magistrate, Calcutta on or about 17th March, 1988 and has been

enlarged on bail. The petitioner submitted that the complaint does not disclose any offence punishable u/s 467 of the Indian Penal Code as it does

not disclose commission of any forgery as defined in Section 463 of the Indian Penal Code and which is an essential ingredient of the offence u/s

467 of the Indian Penal Code, that there is no allegation that the petitioner has made any false document or part of a document and as such there

can be no question of commission of forgery as has been defined in Section 463 of the Indian Penal Code and that there is also no allegation which

shows that there was any intention on the part of the petitioner to cause any damage or injury to the public or to any person or to support any claim

or title or to cause any person to part with property or to enter into any express or implied contract or with intent to commit fraud or that fraud

may be committed.

5. The Learned Magistrate ought not to have taken any cognizance of the alleged offence u/s 467 of the Indian Penal Code and ought not to have

issued any summons against the petitioner and the purported summons is without or in excess of the jurisdiction and is ultra vires of the provisions

of the Code of Criminal Procedure 1973. Since the allegations do not prima facie disclose the commission of an offence u/s 467 of the Indian

Penal Code read with Section 463 of the Indian Penal Code, there is no chance of the petitioner being convicted of the alleged offence and in any

event such chances are bleak.

6. The said purported complaint cannot form the foundation of any proceeding or investigation and the Respondent No. 2 the 5th Metropolitan

Magistrate has no jurisdiction to issue any summons to the petitioner for appearance before him. Such purported complaint is unjust and

unreasonable and violative of Article 14 of the Constitution.

7. Respondent Nos. 3 and 4 have filed an application for vacating the interim Order passed by Ajit Kumar Sengupta, J. to which an Affidavit-in-

Opposition has been filed by the writ petitioner. The said application has been treated as Affidavit-in-opposition in the main writ petition and the

Affidavit-in-opposition of the writ petitioner as Affidavit-in-reply.

8. The Respondents contend that the ingredients of the offence punishable u/s 467 of the Indian Penal Code have been prima facie established in

the petition of complaint filed before the Magistrate, that "A writ petitioner had no valid authority to enter into compromise on behalf of the

Respondents, that the Affidavit affirmed by him before the appeal Court in F.A.T. 1583 of 1986 and that in Suit No. 482 of 1982 were in

substance ""valuable security"" as it had the elect of extinguishing the right of the Respondent No. 3 in the Company flat as well as in the Head Office

premises, that the signing of the Affidavits for and an behalf of the Respondent without any legal Authority of the Respondent No. 3 Company

amounts to forgery within the meaning of Section 464 of the Indian Penal Code and there were prima facie materials before the Learned

Magistrate to take cognizance and thereafter on considering the petition complaint and evidence of the complainant who was authorised by the

Respondent No. 3 to file the petition of complaint on behalf of the Respondent No. 3 the Learned Magistrate issued summons against the

petitioner which is an act in accordance with provisions of the Code of Criminal Procedure and the contention of the writ petitioner that the

Learned Magistrate did not have any jurisdiction to entertain the petition or complaint and to issue summons upon the petitioner has no substance

and there is no ground for the Writ Court to interfere with the Criminal Proceeding pending in a Court of Law.

9. At the time of hearing the Respondent Nos. 3 and 4 have also challenged the jurisdiction of the writ court to entertain the petition as -the writ

petitioner had effective legal remedy provided in the Code of Criminal Procedure itself and it is submitted that the writ petition liable to be

dismissed only on that ground.

10. The writ petition involves determination of two points, (1) whether the Writ Court was justified in entertaining the writ petition for quashing a

Criminal Proceeding and (2) whether on merits the writ petitioner has succeeded in proving that there being no ingredient of offence punishable u/s

467 of the Indian Penal Code in the petition of Complaint Annexure ""O"", the act of the Magistrate in taking cognizance and in issuing process

against the writ petitioner u/s 467 of the Indian Penal Code is illegal and without jurisdiction.

11. As regards the first point, Mr. Banerjee appearing for the Respondent Nos. 3 and 4 has vehemently urged before me that for quashing a

Criminal Proceeding instituted on a private complaint of the Respondent No. 3 the accused cannot move writ jurisdiction of the High Court as he

has effective remedy provided in the Criminal Procedure Code and he can invoke the revisional jurisdiction of High Court and also Section 482 of

the Code of Criminal Procedure and the High Court can grant appropriate relief if really the petition of complaint did not disclose any offence for

which the cognizance was taken and process had been issued against the accused. So, he submits that the writ petition be dismissed on this

preliminary ground and the petitioner may be directed to seek appropriate relief as provided in the Code of Criminal Procedure.

12. Mr. Bhaskar Gupta, Learned Counsel appearing on behalf of the writ petitioner has cited before me the decision of the Supreme Court in

State of West Bengal and Others Vs. Swapan Kumar Guha and Others, in which the Supreme Court has approved the Order of this Calcutta

High Court quashing a police investigation in its writ petition on the finding that the First Information Report on the basis of which the investigation

was proceeding against the Respondent did not disclose any cognizable offence for which investigation was pending. He has also referred to me

the judgment of U. C. Banerjee, J. reported in 1987(1) CLJ, 257 in which the Learned Judge relying on the above Supreme Court decision has

also quashed a police investigation on the finding that the F.I.R. did not disclose any offence for which the investigation was proceeding against the

writ petitioner. He has also submitted that a writ of Mandamus can be issued against a Court also if the Court acts without jurisdiction and,

therefore, if the writ petitioner intends to invoke the writ jurisdiction to quash or set aside or for not giving any effect or further effect to any

Criminal Proceeding for which the Learned Magistrate did not have jurisdiction to initiate, the writ Court can also interfere. He concedes that the

accused in such a case has the remedy under the Code of Criminal Procedure also but either of the two the jurisdictions can be invoked and if the

jurisdiction of the Writ Court is invoked and the Writ Court entertains such jurisdiction then there is no lack of jurisdiction of the Writ Court and

the writ petition cannot be dismissed in limine without considering the case of the petitioner on merits, He has also submitted that the jurisdiction of

the High Court u/s 482 of the Code of Criminal Procedure is a discretionary jurisdiction of the High Court and that of High Court under its writ

jurisdiction is also a discretionary jurisdiction and the petitioner did not commit any illegality in invoking the writ jurisdiction instead of the inherent

jurisdiction of the High Court in its Criminal jurisdiction u/s 482 of the Code of Criminal Procedure.

13. Mr. Banerjee, however, submits that the two decisions cited indicate that High Court invoked its wit jurisdiction to set aside police

investigation initiated on the basis of the F.I.R, and that for quashing a private criminal complaint of the Respondent No. 3'' writ jurisdiction cannot

he invoked and the accused in such a case has the only remedy provided in the Code of Criminal Procedure. On hearing the submissions made by

the Learned Advocates of both sides and on considering the two decisions, cited before me by Mr. Bhaskar Gupta, I am of the view that Mr.

Gupta is justified in submitting that for quashing any Order of the Criminal Court which is alleged to be ultra vires and without jurisdiction the

accused can invoke the writ jurisdiction of High Court, because the writ of Mandamus can be issued against a Criminal Court also for quashing a.

proceeding which is illegal and invalid. But normally the accused should pursue such remedy as provided in the Criminal Procedure Code and the

Writ Court can at the initial stage refuse to exercise jurisdiction and direct the accused to pursue the remedy as provided in the Criminal Procedure

Code. When such effective remedy is provided under the Code of Criminal Procedure the Writ Court should not entertain such petition. But that is

the discretion to be exercised by the Writ Court at the stage of admitting the petition. In the state of large number of writ petitions amounting in

every High Court it would be desirable if the accused were directed to pursue the elective legal remedy provided in the Code of Criminal

Procedure when a writ petition was filed for quashing a Criminal Proceeding. But there being no inherent lack of jurisdiction of the Writ Court to

entertain such writ petition and when the Writ Court has admitted this petition for hearing and the Respondents have appeared to contest the

petition on merits, it will not be proper at this stage to refuse to decide the writ petition on merits and to dismiss it on the ground that the petitioner

should have pursued the remedy provided in the Code of Criminal Procedure. In view of the above, I am unable to dismiss the petition in limine. I

would, therefore, consider the writ petition on merits.

14. As regards the second point, namely, whether the Learned 5th Metropolitan Magistrate acted illegally and without jurisdiction in taking

cognizance and issuing summons u/s 467 of the Indian Penal Code, Mr. Bhaskar Gupta has drawn my attention to the relevant portions of the

petition of complaint and has urged that the petition of complaint on the face of it does not disclose any offence u/s 467 of the Indian Penal Code

because it is not prima facie established in the allegations of the petition of complaint that the writ petitioner committed the offence of forgery and

even if the allegation that the writ petitioner signed the Affidavits before the High Court in the Civil Proceedings pending against the Respondent

No. 3 for and on behalf of the Respondent No. 3 without any legal authority of the Respondent No. 3 be taken on its face value that act did not

amount to forgery and it might be at best an unauthorised act but would not amount to forgery and not to speak. of forging a valuable security. It is

also submitted that the Respondent No. 3 already took suitable action in the Court challenging the authority of the writ petitioner and the taking of

possession of the premises had been stayed by the Court of Law and the act of the petitioner does got amount to committing any offence of

forgery for which a process could be issued u/s 467 of the Indian Penal Code and the Learned Metropolitan, Magistrate by taking cognizance of

the alleged offence u/s 467 of the Indian Penal Code and issuing summons upon such complaint acted without jurisdiction because he had no

jurisdiction to entertain a petition of com-plaint if it did not disclose any offence for which cognizance could be taken and process could be issued.

15. On behalf of the Respondent Nos. 3 and 4 it is urged by Mr. Banerjee it is alleged in the complaint that the writ petitioner signed the Affidavits

claiming to be having the legal authority of the Respondent No. 3 to sign it in when fact did not have any such legal authority and thus prima facie

signed the Affidavits without any legal authority of the Respondent No. 3 and such act amounts to making a. false document within the meaning of

Section 464 of the Indian Penal Code and. when it is alleged in the petition that it was done fraudulently and dishonestly and the Affidavits

purported to extinguish the tenancy right of the Respondent No. 3 in the flat as well as in the Head Office Premises such Affidavits amount to

valuable security and consequently prima facie the offence punishable u/s 467 of the Indian Penal Code was established by the petition of

complaint and the Learned Magistrate was justified in taking cognizance and thereafter on considering the evidence of the complainant u/s 200 of

the Criminal Procedure Code was justified in issuing process against the petitioner u/s 467 of the said Act and the writ petition is liable to be

dismissed as it has no merits whatsoever.

16. The writ petitioner has annexed a copy of the petition of complaint which was served upon him being annexed with the summons issued by the

Learned Magistrate. On the prayer of the Learned Advocate for the writ petitioner the original case record of Case No. C 2387 of 1987 (T.R,

286 of 1987) has been called for and has been received. From the record it appears that Mr. Ranjan Kumar Bhattacharyya, Deputy Manager

(Personnel) of the Respondent No. 3, having been authorised by the Management has filed this petition of complaint before the Learned Chief

Metropolitan Magistrate, Calcutta on 30.12.1987 who took cognizance and transferred it to the Court of 5th Metropolitan Magistrate, Calcutta.

The petition of complaint had annexed with it xerox copies of the impugned Affidavits purported to have been signed by the writ petitioner on

behalf of the Respondent No. 3. The Learned 5th Metropolitan Magistrate on considering the said petition of complaint and on examining the

complainant u/s 200 of the Code of Criminal Procedure on the same date, i.e., 30.12.1987 and observing that there is a prima facie case against

the writ petitioner issued summons against him u/s 467 of the Indian Penal Code. The paragraph Nos. 9 to 15 being the very relevant paragraphs

of the petition of complaint are reproduced hereinbelow:

(9) That on or about November 12, 1986, the Accounts Officer of the said Company called on Mr. S. K. Sengupta, the Advocate on record of

the accused in Suit No. 482 of 1982 in the usual course to obtain necessary challans for deposit of rent in favour of the Registrar, Original Side of

the Hon''ble Calcutta High Court when the said Advocate on record gave out for the first time that the Suit had been decreed on the basis of a

purported compromise petition filed in Court and signed by the accused on behalf of the Complainant Company as the General Manager without

giving any further particulars whatsoever and refusing to assist and/or help the Company in any manner, although he was the Advocate on record

of the said Suit.

(10) That thereafter the Complainant Company engaged M/s; S. C. Roy Chowdhury & Co., Advocate in this behalf and to cause necessary

searches of the records of the Hon''ble .Calcutta High Court in respect of the said Suit No. 482 of 1982 and in particular about any alleged

compromise petition filed therein or any document based thereon. While upon search of the records of the case, the Complainant Company came

to know that the accused executed a purported compromise petition on or about August 29, 1988 supported by the Affidavit of one Abhoymal

Laddha on behalf of the Landlord Company where the accused already signed an Affidavit as the General Manager of the Company alleging

himself to have had the authority and competence to give undertaking on behalf of the Company in terms of the purported settlement contained in

the said compromise petition.

(11) That the accused without any authority and surreptitiously executed such purported document and gave an undertaking that the Complainant

Company would vacate possession of the said Suit property being the Registered Office of the Company itself and its representative in charge and

further purported to concede to all the prayers contained in the plaint filed in the said Suit on behalf of the Company.

(12) That the accused had no authority nor had he been given any power or authority nor was he appointed as the lawful attorney of the Company

to do any act relating to or in connection with the said Suit No. 482 of 1982 to enter into any alleged compromise and/or advise or sign any

compromise petition in the said Suit No. 482 of 1982. He was not even given the authority generally to attend any legal matter for an or behalf of

the Complainant Company. His power was confined to the administrative functions of the Company. The accused as the General Manager of the

Company never communicated to the Company nor produced before it any purported petition appearing to have been alarmed by him on behalf of

the Company and put it in the said Suit which resulted in the purported consent decree, for the consideration by the Board of Directors of the said

Company and/or for any necessary resolution to that effect and/or any authority to the said accused to enter into such alleged compromise petition

at a verify and to get any consent decree from the Hon''ble Court.

(13) That the accused had nor has any authority competency on behalf of the Company to sign any compromise petition on behalf of the Company

in any legal proceeding far less in the said Suit No. 482 of 1982. Notwithstanding that the accused surreptitiously at the behest of the Landlord

filed the purported compromise petition before Hon''ble Mr. Justice S. A. Hazari and purportedly affirmed on behalf of the Company, which is for

all intents and purposes to be deemed to be a nullity in the eye of Law.

(14) That the accused by practising fraud in the Hon''ble Court purportedly obtained a decree of ejectment against the Company. The complainant

Company as soar as came to know of such criminal acts by the accused immediately moved the Hon''ble Court and filed a separate Suit and

obtained an Order of status quo. The accused in the same manner also dishonestly and fraudulently signed and executed a purported petition of

compromise in respect of the Company''s flat No. 28 at 10 Lansdown Court on the basis of which the purported decree as obtained and the

plaintiff Company immediately coming to know such purported and dishonest move of the accused, moved the Hon''ble Court and filed an

application for setting aside such purported compromise petition in respect of the Company''s flat and upon which the Hon''ble Court also passed

the Order of status quo in favour of the Company.

(15) That it is submitted that the acts and deeds of the accused herein makes him liable for an offence of forgery of valuable security, will, etc., as

envisaged u/s 467 of the Indian Penal Code.

17. The xerox copies of the terms of settlement of F.A.T. No. 1583 of1986 and the undertaking in Suit No. 482 of 1982 have been filed by the

Complainant before the Learned Magistrate. The terms of settlement are purported to be signed by the writ petition on behalf of the Respondent

No. 3 and in para 8 it is stated that the signatory is authorised by the Respondent No. 3 Company to give the undertaking for and on behalf of the

Company. The undertaking in T. Suit No. 482 of 1982 is also purported to have been signed by the writ petitioner in which in para 1 of the

Affidavit the petitioner described himself as the General Manager of the Respondent No. 3 and stated that he was duly authorised and competent

to give the undertaking on behalf of the Respondent No. 3.

18. So, Prima Facie it has been established by the complainant in the above complaint case that the writ petitioner compromised F.A.T. No. 1583

of 1986 in High Court signing in the appeal case the terms of settlement on behalf of the Respondent No. 3 declaring himself as authorised to

compromise the appeal and in Suit No. 482 of 1982 signed the undertaking on behalf of the Respondent No. 3 declaring that he was duly

authorised by the Respondent No. 3 Company to give that undertaking. The purport of the terms of settlement in the appeal case as well as in the

Suit is to deliver vacant possession of the Company flat and the Company Head Office in favour of the Landlord.

19. It is alleged by the complainant being Respondent No. 4 filing the complaint on behalf of the Respondent No. 3 before the Magistrate that the

writ petitioner did not have such Authority, that the Respondent No. 3 had neither authorised him to compromise the appeal or to give the

undertaking nor did the writ petitioner had any concern with above legal proceedings and as General Manager he was concerned with

administrative matters of the Company. It is also alleged that the writ petitioner did it in collusion with the Landlord. fraudulently and dishonestly

with the intention to cause harm to the Company. Section 467 of the Indian Penal Code under which the process has been issued reads thus:

Whoever forges a document which purports to be a valuable security or a will, or an authority to adopt a son, or which purports to give authority

to any person to make or transfer any valuable security, or to receive the principal, interest or dividends thereon, or to receive or deliver any

money movable property or Valuable security, or any document purporting to be an acquittance, or receipt acknowledging the payment of money,

or an acquittancer receipt for the delivery of any movable property or valuable security, shall be punished with imprisonment for life, or with

imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

20. The valuable security is defined in Section 30 as denoting a document which is or purports to be, a document whereby any legal right is

created, extended, transferred, restricted, extinguished or released, or where by any person acknowledges that he lies under legal liability or has

not a certain legal right.

Section 463 defines forgery as follows:

Whoever makes any false document or part of a document with intent to cause damage or injury, to the public or to any person, or to support any

claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that

fraud may be committed, commits forgery.

21. The expression making a false document is defined in Section 464 as follows:

A person is said to make a false document -

First -Who dishonestly or fraudulently makes, signs, seals or executes a document or part of a document, or makes any mark denoting the

execution of a document, with the intention elf causing to be believed that such document or part of a document was made, signed, sealed or

executed by or by the authority of a person by whom or by whose authority of a person by whom or by whose authority he knows that it was not

made, signed, sealed or executed, or at a time at which he knows that it was made, signed, sealed or executed; or

Secondly-Who, without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof,

after it has been made or executed either by himself or 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, knowing that such person by reason of

unsoundness of mind ex intoxication cannot, or that by reason of deception practised upon him, he does not know the contents of the document or

the nature of the alteration.

22. It is urged on behalf of the Respondents that the allegation of the petition of complaint is that the writ petitioner signed the compromise petition

in appeal case and the undertaking in Suit No. 482 of 1982 purporting to act under the legal authority of the Respondent No. 3 a Government

Company but the Respondent No. 3 did not move him any authority to do the above arts and that he did the same fraudulently and dishonestly and

consequently prima facie he makes a false document which u/s 464 is forgery u/s 463 of the Indian Penal Code and when the said documents

purport to extinguish the tenancy right of the Respondent No. 3 in the Company flat and in Company Head Office comes within the definition of

valuable security and thus the ingredients of the offence punishable u/s 467 of the Indian Penal Code has been established by the complainant and

there is no grated for holding that the Magistrate had no jurisdiction to entertain the complaint. Mr. Gupta, however, submits that simply because

the writ petitioner executed the documents without legal authority the acts of the writ petitioner do not come within the definition of making false

document u/s 464 of the Indian Penal Code. But I am of the view that the definition of making false document indicates that a person makes a false

document if he signs a document or part of a document dishonestly or fraudulently with the intention of causing to be believed that such document

or part of a document was made signed, sealed or executed by or by the authority of a person by whom or whose authority he knows that it was

not signed, sealed or executed or at a time he knows that it was not made, signed, sealed or executed. In the petition of com-plaint it is alleged that

the petitioner signed the documents in question claiming to be have authority to sign those documents for and on behalf of the Respondent No. 3

when he knew that he did not have such authority and that he did it fraudulently and dishonestly. Respondent No. 3 being a Government Company

has to act only through its authorised person and no person so authorised has any authority to sign any document and if such a person signs such a

document without any such lawful authority he does it with the knowledge that he had no such authority. So, when it is alleged in the petition of

complaint that the said making of false document is with a fraudulent and dishonest motive, I am, of the view that prima facie the acts of the

petitioner come within the definition of ""making false document"" and as such within the definition of ""forgery"" u/s 463 of the Indian Penal Code. The

documents prima facie have the effect of extinguishing the tenancy right of the Respondent No. 3 in the Company flat and in Company Head

Office. So they are a valuable security within the meaning of Section 30 of the Indian Penal Code.

23. In Pramatha Nath Vs. The State, the Division Bench of this Court had to consider a similar question in which the question arose as to whether

the appellant abetted the offence of forgery. It was alleged that the appellant withdrew the appeal by signing the withdrawal petition being

authorised by one Haricharan who alleged in the petition of complaint that he did not give him such authority. The Division Bench held that a

person signing the withdrawal petition without any lawful authority of the person for whom he was signing such application make"s a false

document. The Division Bench quoted with approval the following observation of the Garth, C.J. in 7 Cal. 352 as follows:

What constitutes a false document or part of a document, is not the writing of any number of words which in themselves are innocent, but the

affixing the seal or signature of some person to the document or part of a document knowing that the seal or signature is not his, and that he gave

no authority to affix it. In other words, the falsity consists in the document or part of a document being signed or sealed with the name or seal of a

person who did not in fact sign or seal it.

24. The Division Bench has further observed al para 9 at page 583 that in every case of forgery where the question of authority is raised, as it is

raised here, it is essential to prove not only lack of authority but also the dishonest intention with probably more than usual care.

25. In the present case we are not concerned as to whether the charge u/s 467 of the Indian Penal Code has been proved against the petitioner or

not. But we are concerned in deciding as to whether there is a prima facie case against the writ petitioner for issuing summons u/s 467 of Indian

Penal Code. In the petition of complaint it is alleged that the petitioner signed the document on behalf of Respondent No. 3 without lawful authority

of the Respondent No. 3 with a fraudulent and dishonest motive. That satisfies the test that the prima facie case for issuing summons has been

established. The fact that the Respondent No. 3 did not suffer any damage because the order passed by the Courts an the basis of these

documents have been stayed has nothing to do with the commission of the alleged offence punishable u/s 467 of the Indian Penal Code.

26. The defence of the writ petitioner that he had signed the compromise petition in good faith or that he did not give any undertaking to vacate the

Head Office premises in Suit No. 482 6f 1982 is his defence which the writ petitioner can raise in the criminal proceeding initiated against him but

that defence cannot be considered for deciding as to whether the Learned Magistrate had the jurisdiction to take cognizance and to issue summons

against him.

27. I have no doubt in my mind that the petition of complaint prima facie discloses the offence punishable u/s 467 of the Indian Penal Code and the

Learned Magistrate did not commit any illegality in taking cognizance and issuing summons against the petitioner.

28. In the result, the writ petition is dismissed. All interim Orders are vacated. Let the Trial Court''s record be sent down at once.

29. No Order for costs is passed.

30. The Learned Counsel for the writ petitioner prays for a stay of operation of the Order.

31. Such prayer is refused as there is no urgency in the matter.