

Calcutta High Court

Amiya Bhusan Deb vs State Of West Bengal And Ors. on 12 August, 1988

Equivalent citations: (1989) 1 CALLT 333 HC

Author: M Mallick

Bench: M Mallick

JUDGMENT Monoranjan Mallick, J.

1. 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 therefor 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 age 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 compromise 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 practised in the matter. However, the Respondent No. 3 did not allow the petitioner to resign but 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 under Section 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 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 submits that the complaint does not disclose any offence punishable under Section 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 under Section 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 under Section 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 under Section 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-inOpposition 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 under Section 467 of the Indian Penal Code have been prima facie established in the petition of complaint filed before the Magistrate, that the 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 effect 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 on 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 under Section 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 under Section 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 petitioner 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 v. Swapan Kumar Guha, 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) Calcutta Law Journal, page 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 under Section 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 under Section 482 of the Code of Criminal Procedure.

13. Mr. Banerjee, however, submits that the two decisions cited indicate that High Court invoked its writ 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 be 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 effective 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 under Section 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 under Section 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 not amount to committing any offence of forgery for which a process could be issued under Section 467 of the Indian Penal Code and the Learned Metropolitan Magistrate by taking cognizance of the alleged offence under Section 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 complaint 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 under Section 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 under Section 200 of the Criminal Procedure Code was justified in issuing process against the petitioner under Section 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 under Section 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 under Section 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 affirmed 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 and/or to 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 soon 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 under Section 467 of the Indian Penal Code."

17. The xerox copies of the terms of settlement of F.A.T. No. 1583 of 1986 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 petitioner 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 acquittance or 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 whereby 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 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 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 or 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 give him any authority to do the above acts and that he

did the same fraudulently and dishonestly and consequently prima facie he makes a false document which under Section 464 is forgery under Section 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 under Section 467 of the Indian Penal Code has been established by the complainant and there is no ground 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 under Section 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 complaint 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" under Section 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 v. 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 makes 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 inriipcent, 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 at 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 under Section 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 under Section 467 of Indian Penal Code. In the petition of complaint it is alleged that the petitioner signed the documents 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 on the basis of these documents have been stayed has nothing to do with the commission of the alleged offence punishable under Section 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 of 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 under Section 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.