

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

The Hon'ble **JUSTICE SUVRA GHOSH**

**CRAN 3 of 2024
in
CRR 3230 of 2024**

Modhucon Projects Limited and Others
v/s.
The State of West Bengal & Another

For the Petitioners:	Mr. Kaushik Gupta, Adv., Mr. Anirban Joarder, Adv., Mr. Sohel Tudu, Adv.
For the Opposite Party no. 2:	Mr. Apalak Basu, Adv., Mr. Amit Chowdhury, Adv., Ms. Sompurna Chatterjee, Adv., Ms. Sanjukta Das, Adv., Ms. Shreya Kar, Adv.,
For the State:	Mr. Debasis Roy, Adv., Ms. Rituparna Ghosh, Adv., Mr. Rahul Ganguly, Adv.,

Judgment delivered on: 21-02-2025

SUVRA GHOSH, J. :-

1. The petitioners in the revisional application being C.R.R. 3230 of 2024 sought quashing of proceedings being G.R. (NS) Case no. 994 of 2022 pending before the learned Additional Chief Judicial Magistrate, second Court, Calcutta. Upon hearing the parties, this Court, vide order dated 9th August, 2024 directed that since the Court was in seisin of the matter, no coercive steps be taken against the petitioners in connection with the case till 31st August, 2024 subject to the petitioners cooperating in

investigation. The said order has been extended from time to time. The applicant/private opposite party assailed the said order before the Hon'ble Supreme Court in Special Leave Petition (Cri) no. 53651 of 2024. By an order passed on 9th December, 2024 the Special Leave Petition was disposed of granting liberty to the applicant/opposite party to apply for vacation of the interim order. In compliance thereof, the applicant has filed the present application being CRAN 3 of 2024 seeking vacation of the interim order granted on 9th August, 2024.

2. Heard learned counsels for the parties.
3. Learned counsel for the applicant has submitted that on the pretext of the interim order granted in their favour, the petitioners have not responded to the notice issued upon them under section 41A of the Code of Criminal Procedure and are also not cooperating in investigation. The petitioners are party to a huge fraud perpetrated upon the applicant on the basis of forged public documents and there is every possibility that they shall evade the process of law. The petitioners have approached this Court with unclean hands and have stated misleading facts without dealing with the matter in issue in the complaint. Protection granted to the petitioners has led to impairing the fair process of investigation as they have deliberately not cooperated in investigation. The interim order has in effect curtailed the rights of the applicant and has resulted in impediment to the investigation. The applicant prays for vacating the order dated 9th August, 2024.
4. In submitting an affidavit-in-opposition to the application, learned counsel for the petitioners has submitted that the petitioners have been

implicated in a false criminal case since the applicant found the commercial dispute time barred. The petitioners have been cooperating with the investigating officer and the notice requiring physical presence of the petitioners was duly complied with by the petitioners no. 1 and 3. Petitioner no. 2 being a septuagenarian person suffering from various ailments sought time to comply with the notice vide letter dated 3rd February, 2025. Learned counsel submits that cooperation does not mean that the petitioners should admit the alleged offence which they have not committed. The case was lodged in 2022 and the present revisional application filed in 2024. There was ample scope for the investigating agency to carry out and conclude the investigation during this period. It was only after the revisional application was filed by the petitioners that the applicant is alleging hindrance in investigation. The petitioners are in touch with the investigating officer and are answering all queries of the officer to the best of their knowledge and ability. They assure cooperation including appearing before the officer and producing relevant documents as and when called for.

5. Learned counsel for the State has submitted that custodial interrogation of the petitioners is necessary for the purpose of investigation. The petitioners are influential persons and are reluctant to cooperate with the investigating agency. Several raids were conducted to arrest the FIR named accused/petitioners since they were absconding. Search warrants also could not be executed due to non-cooperation of the men and agents of the petitioners. Only one of the petitioners Seethaiah Nama appeared before the authority on 5th February, 2025 but did not cooperate. The

other petitioners did not appear before the authority despite service of notice. Several materials have surfaced against the petitioners during investigation which require their custodial interrogation.

6. At the outset, it shall be useful to refer to the authority in Tusharbhai Rajnikantbhai Shah v/s. Kamal Dayani and others reported in 2024 Live Law (SC) 557 wherein the Hon'ble Supreme Court has observed as hereunder:-

“We are of the firm opinion that non-cooperation by the accused is one matter and the accused refusing to confess to the crime is another. There would be no obligation upon the accused that on being interrogated, he must confess to the crime and only thereafter, would the Investigating Officer be satisfied that the accused has cooperated with the investigation. As a matter of fact, any confession made by the accused before a police officer is inadmissible in evidence and cannot even form a part of the record.”

7. In the present case, it appears that the third petitioner appeared before the investigating agency in response to the notice issued upon him. Petitioner nos. 2 and 4 have responded to the notices issued by the investigating officer and have stated that they are ready and willing to cooperate in investigation and face interrogation. Expressing their difficulty to appear before the investigating officer physically due to the distance between his office and their residence, they have requested for permission to appear through video conferencing and in the event the investigating officer would insist on their physical appearance, to inform them well in time in order to enable them to travel to his office. The

second petitioner has, in addition, urged his health issues. It cannot be ascertained whether the fifth petitioner was called by the investigating officer for interrogation.

8. It is trite law that the accused cannot be compelled to confess to the crime or respond to the queries of the investigating agency to the satisfaction of the agency in the garb of interrogation. It is crystal clear that the petitioners have cooperated in investigation and have also undertaken to cooperate with the investigating agency as and when required. On the contrary, there is nothing on record to demonstrate that the request of the petitioners for appearing before the investigating officer through video conferencing was either acceded to or refused. In fact, no communication appears to have been made with the petitioners by the investigating agency in response to their request. Therefore it cannot be said that on protection being granted by this Court, the petitioners have not been cooperating in investigation. It is for the investigating agency to unravel the truth in course of investigation and progress in investigation can under no circumstances depend on favourable responses from the accused.
9. Since this Court is convinced that the petitioners are cooperating in investigation, it cannot be said that custodial interrogation of the petitioners is required for the purpose of investigation or that the petitioners are taking undue advantage of the protection granted by this Court.

10. In the said backdrop, this Court is inclined to hold that the application filed by the private opposite party is devoid of any merit and is liable to be dismissed.
11. Accordingly, the application being CRAN 3 of 2024 is dismissed.
12. However, in the event the petitioners fail to cooperate with the investigating agency, the interim protection shall stand automatically vacated and the investigating officer shall be at liberty to take necessary steps against them in accordance with law without further reference to this Court.
13. Be it stated that the application being CRAN 3 of 2024 and the affidavit-in-opposition filed against the same also deal in merits of the case which shall be considered in course of hearing of the revisional application.
14. The revisional application shall appear under the heading "Contested Application" on 11th April, 2025.
15. The interim order granted earlier is extended till 30th April, 2025 or until further orders, whichever is earlier.
16. Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)