

Form J(2)

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction
Appellate Side**

**Present :
The Hon'ble Justice Bibek Chaudhuri**

CRR 1643 of 2022

**Monoranjana Roy
Vs.
The State of West Bengal & Anr.**

For the petitioner: Mr. Milon Mukherjee, Sr. Adv.
Mr. Biswajit Manna

For the State: Mr. Ranabir Roy Chowdhury
Mr. Mainak Gupta

Item No.06.

Heard & Judgment on: 30.06.2022

Bibek Chaudhuri, J.

Affidavit of service be kept with the record.

It appears from the affidavit of service that the private opposite party No.2 refused to accept the notice of the instant

proceeding in spite of the same being tendered to him and the registered envelope was returned with postal remark "refused".

Therefore, this Court can very well take the presumption of Section 27 of the General Clauses Act and holds that the notice of the instant proceeding is presumed to have been served upon the opposite party No.2.

Mr. Ranabir Roy Chowdhury, learned advocate for the State is present to contest the instant application. The application is taken up for hearing.

A short but pertinent question is involved in the instant criminal revision viz., whether the trial of an accused shall be conducted by the learned Special Judge for committing offence under Section 409 of the Indian Penal Code in view of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949. Before dealing with the question directly it is necessary to mention that the accused/petitioner collected huge amount of money from the general members of public in so-called lucrative investment scheme. Subsequently, it is alleged that the said money was misappropriated.

It is submitted by Mr. Milon Mukherjee, learned senior counsel on behalf of the petitioner that as per schedule

appended to the Criminal Procedure Code Section 409 of the Indian Penal Code is triable by the learned Magistrate. However, in view of the West Bengal Criminal Law Amendment (Special Courts) Act, 1949, "offence punishable under Section 409 of the Indian Penal Code, if committed by a public servant or by a person dealing with property belonging to Government as an agent of Government or by a person dealing with property belonging to a Government Company as defined in Section 617 of the Company's Act, 1956 as an agent of such Company in respect of property –

with which he is entrusted, or over which he has dominion in his capacity of a public servant or in the way of his business as such agent" is liable to be prosecuted by the learned Special Judge.

In the instant case, the accused is neither a public servant. He did not deal with the property belonging to Government as an agent of the Government. He is also not a person dealing with the property with which he is entrusted belonging to a Government Company. Therefore, the petitioner cannot be tried by the learned Special Judge. However, he may be tried for the same offence by the learned Magistrate.

In support of his contention Mr. Mukherjee relies on a decision of a Co-ordinate Bench in the case of **Swarup Mazumder versus The State of West Bengal and Anr.** reported in **(2015) 1 C Cr. L. R (Cal) 429.**

Mr. Ranabir Roy Chowdhury, learned P.P.-in-charge, on the other hand, takes me to page 82 onwards of the Banking Regulation Act, 1949 which is annexed with the instant revisional application. Mr. Roy Chowdhury specially refers to Section 5(b) of the Banking Regulation Act, 1949 which defines banking in the following words:-

“5(b) Banking means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise.”

It is pointed out by Mr. Roy Chowdhury that the accused accepted money for the purpose of investment from the general members of the public. However, when the depositors wanted to withdraw the said money, they fail.

Therefore, the petitioner is liable to be prosecuted under Section 409 of the Indian Penal Code.

Even if the submission of Mr. Roy Chowdhury is accepted, the petitioner is to be held having his business as a banker and he commits criminal breach of trust. In case of a banker of private nature West Bengal Criminal Law Amendment (Special Courts) Act, 1949 is not applicable since he is not a public servant or a person dealing with property belonging to Government. Admittedly, the property or money with which the petitioner was handling does not belong to the Government. It belongs to private individuals.

In view of such circumstances, I am in agreement with Mr. Mukherjee that Debra Police Station Case No.234/2017 dated 2nd May, 2017 under Sections 120B/406/409 of the Indian Penal Code is triable by the learned Magistrate.

For the reasons stated above, the instant criminal revision is allowed on contest, however, without costs.

The learned Special Judge, 1st Court, Paschim Midnapore is directed to send back the record of Special Trial No.9 of 2021 to the Court of the learned Chief Judicial Magistrate, Paschim Medinipur for trial and disposal.

(Bibek Chaudhuri, J.)

