IN THE HIGH COURT AT CALCUTTA
(CRIMINAL REVISIONAL JURISDICTION)

PRESENT:
THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY

CRR 2858 of 2006

JWALA PRASAD AGARWAL & ORS.
VS.
PAWAN KUMAR GANERIWALA & ANR.

For the Petitioners : Mr. Debasish Roy, Adv.
Mr. Vivek Jhunjhunwala, Adv.

For the Opposite Parties : Mr. Somopriyo Chowdhury, Adv.
Mr. Sanket Sarangi, Adv.

Hearing concluded on : 16th November, 2022

Judgement on : 29th November, 2022

Siddhartha Roy Chowdhury, J.:

1. Challenge in this criminal revision is to judgement and order passed by learned Metropolitan Magistrate, 11th Court, Calcutta in Case No. C/7623/06 on 1st August, 2006, whereby learned Trial Court was pleased to issue process under Section 204 of the Criminal Procedure Code for offence punishable under Section 420/406/120B of the I.P.C against the accused persons after examining the complainant Pawan Kumar Ganeriwala under Section 200 of the Cr.P.C.

2. Briefly stated, Sri Pawan Kumar Ganeriwala was an employee of Gwalior Webbing Company Private Limited having its office at R.N. Mukherjee Road. Said Pawan Kumar Ganeriwala prior to joining

Gwalior Webbing Company Private Limited on 16th September, 2005, was an employee of Jute Investment Company Limited in the Managerial post. The Company participated in the Voluntary Provident Fund Scheme administered by Birla Brothers Private Limited Provident Fund Institution. Deduction used to be made from the salary of Mr. Ganeriwala like other employees and the employee's share so deducted used to be complimented with the share of the employer and the aforesaid sum used to be deposited in the Provident Fund Institution and credited in the name of employee who is given a membership number in respect of account. Mr. Ganeriwala was also awarded membership no. 024807 and regular deduction towards employees share of provident fund used to be made from the salary of Mr. Ganeriwala and same was deposited to the credit of Mr. Ganeriwala in his provident fund account. At the time of his resignation from the said Company on 16th September, 2005 the accumulated sum was Rs. 7,05,965.25/- after adjustment of non refundable withdrawal of Rs. 83,000/-. After his resignation, new employer of Mr. Ganeriwala submitted a new membership declaration form with the Provident Fund Institution under the cover of letter dated 22nd February, 2006 and requested the Provident Fund Institution to transfer the accumulated amount against the membership of Mr. Ganeriwala for credit under the new membership allotted. But it was not done. Hence, Mr. Ganeriwala filed the petition of complaint before the Competent Court of law against the trustees of Birla Brothers Private Limited and other members managing the Birla Brothers Private Limited Provident Fund Institution. It was alleged that accused nos. 1 to 5 are responsible of the affairs of the said Company who deducted the contribution of the provident fund from his salary and entrusted the said fund in the hands of accused nos. 1 , 4, 6 and 8 who were the trustees of the Provident Fund Institution. According to complainant the accused persons have acted dishonestly and fraudulently by denying the complainant of the just amount due to him under the aforesaid provident fund scheme maintained by Birla Brothers Provident Fund Institution and they have converted the same to their own use resulting into wrongful loss to the complainant and wrongful gain to the accused persons. Learned Trial Court, as I have pointed out earlier was pleased to issue process against the accused persons under Section 406/420/120B of the I.P.C.

3. Mr. Debasish Roy, learned Senior Counsel representing the petitioners submitted that the petitioners though arrayed as accused persons, as Trustee of the Birla Brothers Provident Fund Institution, they did not have any authority to disburse amount or transfer any amount without being approached by the employer on behalf of the employee concerned. The petitioners hold the fund in trust having no authority to disburse any amount independently, sans requisition from the employer depositing the provident fund on behalf of its employees. Therefore, the petitioners cannot be said to have any intention to dupe any individual since inception so as to expose themselves to the offence of cheating within the meaning of Indian Penal Code. It is further argued that the Opposite Party is not contesting the case. In order to ascertain whether or not the complainant Pawan Kumar Ganeriwala received the amount accumulated in his provident fund, the Co-

ordinate Bench of this Court directed the petitioner to implead M.P. Birla Group Provident Fund Institution as an Opposite Party with a limited purpose to ascertain the factual aspect involved in the lis. Accordingly M.P. Birla Group Provident Fund Institution has been added as Opposite Party and the said M.P. Birla Group Provident Fund Institution submitted affidavit indicating that a sum of Rs. 1,23,244/- was transferred to M.P. Birla Group Provident Fund Institution by the Birla Brothers Provident Fund Institution in respect of provident fund accumulated in the provident fund of Mr. Pawan Kumar Ganeriwala from M/s Gwalior Webbing Company Private Limited on 26th May, 2009 and a further sum of Rs. 10,77,194.74/- was transferred from M/s Jute Investment Company Limited on 31st December, 2010 in the form of cheque and securities. These documents unerringly indicate that the provident fund institution, used to be managed by the petitioners, transferred entire sum accumulated with interest as against the membership of Mr. Pawan Kumar Generiwala, while he was serving in the Jute Investment Company Limited. Thus the petitioners cannot be said to have incurred culpability for committing offence. Mr. Roy, learned Counsel representing the added Opposite Party, submits that with holding of fund was intentional. Since the added Opposite Party had very limited role to play in this proceeding, I am not inclined to get into the issue raised by Mr. Chowdhury. As provident institution transferred the amount upon institution from the employer and there is no material suggest that the fund or the managing Trustees had intention to dupe Mr. Ganeriwala since inception, there was no ingredient of offence within the meaning of Section 405/415 of the I.P.C., punishable under Section 406/420 of the I.P.C.

4. Therefore, in my humble opinion, the petitioners being the Trustees cannot and should not be said to have any complicity and learned Trial Court had no reason to issue process upon the petitioners. If the proceeding being C/7326/06 is allowed to remain in force it would amount to abuse of process of law. Accordingly, I am inclined to invoke the inherent jurisdiction conferred under Section 482 of the Criminal Procedure Code to quash the proceeding before the learned Trial Court as against the accused/petitioners. The criminal revision is thus disposed of.

5. Let a copy of this judgement be sent down to learned Trial Court along with lower Court record for information and taking necessary action.

6. Parties are to act on the server copy of this judgement.

7. Urgent Photostat certified copy of this judgement, if applied therefor, should be made available to the parties upon compliance with the requisite formalities.

(SIDDHARTHA ROY CHOWDHURY, J.)