

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 132 of 2021

Partha Sarathi Das & Anr.

-Vs-

The State of West Bengal & Anr.

For the Petitioners: Mr. Amales Ray, Adv.,
Mr. Deborshi Dhar, Adv.

For the State: Mr. Aditi Shankar Chakraborty, Adv.,
Mr. Nilay Chakraborty, Adv.

For the Opposite Party No.2:
Mr. Pabitra Pal Chowdhury, Adv.

Heard on: January 7, 2022.

Judgment on: February 3, 2022.

BIBEK CHAUDHURI, J. : –

1. Instant criminal revision under Section 401 read with Section 482 of the Code of Criminal Procedure is filed by the accused persons of Special Case No.1 of 2020 assailing legality, validity and propriety of the order passed by the learned Additional Sessions Judge, 1st Court-cum-Special Court at Darjeeling on 6th February, 2021.

2. By passing the said order, the learned Special Judge, Darjeeling rejected an application under Section 227 of the Code of Criminal

Procedure filed by the accused persons praying for discharging them from the aforesaid case under Section 409 of the Indian Penal Code.

3. Suffice it to say, that the petitioner No.1 was the Headmaster of Nilnalini Vidyamandir, Siliguri in the district of Darjeeling and the petitioner No.2 was an assistant teacher of physics in the said school. Both of them resigned from service on superannuation on 30th July, 2019 and 31st March, 2013 respectively.

4. The opposite party No.2 being the Secretary of the Managing Committee of the said school lodging a complaint against the petitioners on 28th October, 2013 alleging, misappropriation of public money and breach of trust against them in the local police station. The police, however, did not treat the said complaint as FIR and a General Diary was lodged upon the said complaint being No.1511 dated 28th October, 2013. Subsequently, on 02.06.2014 the opposite party No.2 filed another complaint on selfsame allegation before the Inspector-in-Charge, Siliguri Police Station against the petitioners alleging misappropriation of money and criminal breach of trust involving a sum of Rs.6 lakhs approximately.

5. On the basis of the said complaint police registered Siliguri P.S Case No.456 of 2014 dated 2nd June, 2014 under Section 409/34 of the Indian Penal Code against the petitioners. It is alleged by the petitioners that along with the said complaint, the opposite party No.2 annexed letters dated 15th July, 2013, 22nd August, 2013 and 11th September, 2013 addressed to the petitioner No.1 requesting him to provide the documents relating to utilization of the said sum of Rs.6 lakhs but the

petitioner No.1 refused and neglected to produce the same. The petitioner No.2 was also requested to submit such utilization certificate but he also failed to produce such documents to the opposite party No.2.

6. It is contended by the petitioners that during investigation the Investigating Officer must have seized those documents under proper seizure list from the opposite party No.2. The audit report of the school for the relevant period might also have seized.

7. Therefore, in accordance with Sub-section (5) of Section 173 of the Code of Criminal Procedure the Investigating Officer is under obligation to produce along with the charge-sheet/final report –

(a) All documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation;

(b) The statements recorded under Section 161 of the persons whom the prosecution proposes to examine as its witnesses.

8. It is submitted by the petitioners that they have not been supplied with the seized documents and therefore they have every reason to presume that the Investigating Agency could not seize or recover the material documents during investigation from the complainant, opposite party No.2 herein.

9. Therefore, it is submitted by the petitioners that the witnesses on behalf of the prosecution would not be able to substantiate their statement made before the Investigating Officer under Section 161 of the Code of Criminal Procedure during trial of the case. The trial of the case

will be a mere formality. So, the petitioners prayed for their discharge from the case.

10. The learned trial judge rejected the said petition filed by the petitioners and framed charge against them under Section 409/34 of the Indian Penal Code. Hence the instant revision.

11. I have heard Mr. Amales Ray, learned Advocate for the petitioners and the learned Public Prosecutor-in-Charge.

12. It is needless to say that at the stage of passed the order in terms of Section 227 of the Code of Criminal Procedure, the court has merely to peruse the evidence in order to find out whether or not there is sufficient ground to proceed against the accused. If prima facie case is made out, charge is to be framed in terms of Section 228 of the Code. While considering the question of framing the charge under Section 227 of the Cr.P.C, the trial court has the undoubted power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out. The test to determine prima facie case would depend upon the facts of each case. Secondly, where the materials placed before the court disclose grave suspicion against the accused which has not been properly explained, the court will be fully justified in framing a charge and proceeding with the trial. In other words, the court has to consider the broad probabilities of the case, the total effect of the evidence and the basic infirmities if any.

13. Coming to the instant case, the petitioners have alleged that the Investigating Officer did not seize any document in support of the allegation so charge cannot be proved.

14. It is needless to say that while decided the application under Section 227 of the Code of Criminal Procedure, the trial court must have considered the statement of the witnesses recorded under Section 161 of the Code of Criminal Procedure. From such statement the learned trial judge found prima facie case in support of the charge under Section 409/34 of the IPC. It is a matter of trial as to whether the prosecution will be able to prove the said charge or not on the basis of the evidence, both oral and documentary. It is needless to say that the Code contains the provision for production of documents not even seized by the investigating agency during investigation in course of trial of the case.

15. Therefore, contention of the petitioners that they are entitled to be discharged due to the reason that the investigating agency failed to seize any document during investigation, is misconceived.

16. The instant criminal revision being devoid of any merit is dismissed on contest, however, without cost.

(Bibek Chaudhuri, J.)