

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

The Hon'ble **JUSTICE BIBEK CHAUDHURI**

CRR 4306 of 2022

Raj Kumar Prasad alias Fitting Babu & Ors.

-Vs-

The State of West Bengal & Anr.

For the Petitioner: Mr. Sekhar Basu, Sr. Adv.,
 Mr. Kuhal Mukherjee, Adv.,
 Mr. Diptangshu Basu, Adv.

For the O.P No.2: Mr. Sandipan Ganguly, Sr. Adv.,
 Mr. Arkadeb Bhattacharya, Adv.,
 Mr. Rajesh Upadhyay, Adv.

For the State: Mr. Sudip Ghosh, Adv.,
 Mr. Bitasok Banerjee, Adv.

Hearing concluded on: 24 January, 2023

Judgment on: 16 February , 2023.

BIBEK CHAUDHURI, J. : –

1. The petitioners have been arraigned as accused persons in GR Case No.3588 of 2022 arising out of Jadavpur Police Station Case No.166 of 2022 dated 17th August, 2022 under Section 409/120B of the Indian Penal Code presently pending before the learned Additional Chief Judicial Magistrate at Alipore. The petitioners have prayed for quashing of the aforementioned criminal case instituted against them.

2. On the basis of written complaint submitted by the opposite party No.2 alleging, inter alia, that he is an exporter of wheat from India to

Bangladesh. Several trucks containing wheat worth Rs.50,00,000/- entered Khidderpore for transporting the said wheat to Bangladesh in the months of May and June. Unfortunately, as soon as all the trucks loaded with packets of wheat reached Khidderpore area, the Central Government issued a notice banning export of wheat from India. Considering such precarious situations the opposite party No.2 was thinking for safety of the wheat loaded in the trucks. At that time a man disclosing his identity as the owner of a godown offered opposite party No.2 to release the wheat from the truck and stored them in his godown situated at Sankrial Industrial Park, Dhulagarh, Howrah. It is alleged that one Manoj Kumar represented himself as the owner of the godown and one Manoj Jaiswal disclosed his identity as the manger of the said godown. They in connivance with the petitioner No.1 induced the complainant to believe that the aforesaid godown was owned by the abovementioned Manoj Kumar and Manoj Jaiswal. It is also alleged that the accused also induced the complainant to believe that they would purchase the wheat at the market rate in case the said wheat could not be exported to Bangladesh due to government notification. They also offered to pay 10 percent more than the market rate for the wheat. Relying on such representations the complainant allowed all the trucks to be unloaded in the godown at Dhulagarh on 2nd, 3rd and 5th of June, 2022. After unloading all wheat the co-accused persons contacted the complainant and stated him that the godown is actually owned by the petitioner and they are respectively the manager and the relative of the petitioner. They also put pressure upon

the complainant to deliver and sell the entire stock of wheat on consideration amount of Rs. 20,00,000/-. The complainant informed the entire matter in writing in the jurisdictional police station which was treated as FIR and a case under Section 409/120B of the IPC was registered against the petitioner and the co-accused persons.

3. It is alleged by the petitioner that by issuing notification dated 13th May, 2022 by the Ministry of Commerce & Industry, Government of India there was a prohibition imposed in export of wheat from India. But the complainant has alleged that he brought wheat by truck to Khidderpore during the period starting from 9th May to 3rd June, 2022, is a cooked-up story. It is also stated by the petitioners that there was no business transaction between the petitioner and the defacto complainant at any point of time especially in connection with purchase or sale of wheat as alleged or at all. Therefore, no question of defrauding, threatening or false and frivolous inducement arises as far as the present petitioner are concerned. Accused Manoj Kumar was released on bail on 23rd September, 2022 by the learned Additional Chief Judicial Magistrate on the ground that considerable amount of wheat has been recovered while the accused was in custody. The seized wheat was returned to the opposite party on his execution of a bond of Rs.45,00,000/- on 27th September, 2022. It is further stated on behalf of the petitioner No.1 that he filed an application for anticipatory bail before this Court which was registered as CRM (A) 4598 of 2022. The Division Bench of this Court granted anticipatory bail holding, inter alia that the issue involved in the

present matter arises out of a dispute between the private parties which are civil in nature and subsequently major portion of the goods stands accounted for. The petitioner No.2 Manoj Kumar Jaiswal was also granted anticipatory bail by the Division Bench of this Court. Further grievance of the petitioner is that the alleged offence committed by the petitioners does not satisfy any of the ingredients under Section 409 of the IPC and prima facie the opposite party has failed to make out any case of entrustment of wheats upon the petitioners. Since substantial amount of wheats that were stored in the godown of the petitioner was recovered and reached to the opposite party No.2 and in view of prima facie findings that that dispute is civil in nature, the instant criminal case cannot stand and the jurisdictional process of Jadavpur police station Case No.166 of 2022 be returned.

4. Mr. Basu, the learned Senior Counsel on behalf of the petitioner submits that no case of criminal breach has been prima facie established from the petition of complaint, major portion of goods were recovered and handed over to the opposite party No.2. Therefore the criminal proceeding against the petitioners cannot stand. It is urged by Mr. Basu on behalf of the petitioners that there was no agreement between the petitioners and the opposite party No.2 regarding entrustment of wheats in the godown of petitioner No.1. It is further submitted by him that in order to attract Section 409 of the IPC the prosecution has no obligation to prove the ingredients of criminal breach of trust defined in Section 405 of the IPC. The gist of the offence under Section 405 of the IPC is entrustment of

property and dishonest misappropriation thereof. The person entrusted may misappropriate or he may willfully suffer another person to do so. Thus, a person is said to commit the offence of criminal breach of trust when being entrusted in any manner with property or with dominion over it, he dishonestly misappropriates the same or converts it to his use or dishonestly use it or disposes of it in violation of any direction of law prescribing the mode in which trust is carried out or of any lawful contract made by the parties touching execution of trust, or willfully suffers any other persons to do so. In the instant case there was no entrustment of property in favour of the petitioners. The petitioners cannot be held to be liable for misappropriation of any property because from the orders passed by the jurisdictional Magistrate as well as the Division Bench of this Court while granting anticipatory bail to the petitioners it was observed that almost entire property was accounted for.

5. Thus, it is submitted by Mr. Basu that the dispute between the parties are absolutely private and civil in nature for recovery of the goods, if any. Efficacious relief of the complainant lies in filing a suit for recovery of goods and/or damages.

6. Mr. Ganguly, learned Senior Counsel on behalf of the State of West Bengal, on the other hand submits that the case of the petitioner is that he procured huge quantity of wheats amounting to Rs.50,00,000/- approximately from Bihar for transportation to Bangladesh. However the said articles could not be transported due to prohibition imposed by the Central Government. Initially Manoj Kumar and Manoj Kumar Jaiswal

induced him to store the bags of wheat in their godown. Subsequently it is learnt that the godown belongs to the petitioner No.1. The written complaint also narrates an allegation to the effect that at the time of storing wheat petitioner No.2 and 3 made a false promise that the complainant, if failed to sell the wheat, they would purchase the wheat at the market rate and over and above they will pay 10 percent commission to the complainant. Therefore, it is submitted by Mr. Ganguly that the complaint was induced by petitioner No.2 & 3 to store the wheats in the said godown. As soon as the wheat was stored in the godown the property was entrusted to the godown owner. Next he draws the relevant page of the case diary wherefrom it is ascertained that before recovery of some wheat from the godown of the petitioner No.1, substantial quantity of wheats was sold out to a 3rd party company. There is sufficient evidence in the case diary that the petitioners dishonestly used or disposed of substantial amount of property in violation of the mode in which trust ought to have been discharged.

7. It is submitted by him that the petitioners were entrusted with the wheat in his capacity as merchant. The petitioner No.2 & 3 were subsequently proved to be an agent of petitioner No.1. Therefore prima facie charge under Section 409 is established from the materials in case diary.

8. I have carefully considered submission made by the learned Senior Counsel on behalf of the parties and closely perused the case diary. It is found from the case diary that wheats loaded in 7 trucks were unloaded

and stored in the godown of petitioner No.1. It is actually not a fact that substantial amount of good were accounted for. From the case diary it is found that goods loaded in 3 trucks were recovered from the godown of petitioner No.1. Some of the goods belonging to the opposite party No.2 was recovered from the custody of 3rd party company and the materials in case diary shows that the said wheats were transferred from the godown of the petitioner No.1.

9. The learned Senior Counsel on behalf of the petitioners did not deny that opposite party No.2 stored 7 trucks of wheat in the godown of the petitioner No.1. As soon as the article is handed to them and stored in the custody of a merchant carrying on business of keeping articles in the godown, possession of the articles is transferred and entrusted to the godown owner. On demand, godown owner was under obligation to return the said goods to the lawful owner on receipt of charges for storage of the article. The opposite party No.2/complainant has alleged that the petitioners subsequently put illegal pressure upon him to deliver the wheats at a consideration price of Rs.20,00,000/-. Therefore prima facie ingredient of breach of trust is apparent on the face of record.

10. The petitioners have admitted entrustment of wheats by the opposite party No.2 unto them. Therefore it is for them to discharge the burden that the entrustment has been carried out as accepted and the obligation has been discharged. The decision of the Hon'ble Supreme Court in **Mustafikhan vs. State of Maharashtra** reported in **(2007) 1 SCC 623** may be relied on in this regard.

11. On close scrutiny of the case diary this Court finds sufficient materials against the petitioners and at this stage investigational process cannot be quashed. The case diary reveals criminal liability of the petitioners in Jadavpur Police Station Case No.166 dated 17th August, 2022.

12. For the reasons stated above I do not find any ground to quash the investigational process and the instant revision is dismissed on contest, however without costs.

13. The original case diary be returned to the learned P.P-in-charge.

(Bibek Chaudhuri, J.)