

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

Present:-

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

CRR 161 of 2023

**Dr. Sunil Kumar Jana
Vs.
The State of West Bengal & Anr.**

For the Petitioner : Ms. Suman Sehanabis.

For the State : Mr. Aditi Shankar Chakraborty,
Mr. Abhijit Sarkar.

For the Opposite Party No. 2 : Mr. Anirban Banerjee.

Hearing concluded on : 11.10.2023

Judgment on : 19.10.2023

SHAMPA DUTT (PAUL), J. :

1. The present Revisional Application has been preferred praying for quashing of the criminal proceeding being G.R. Case No.3937 of 2020 corresponding to Special Case No.26 of 2021 arising out of Kotwali P.S. Case No.559 of 2020 dated 09.09.2020 under Sections 406 and 409 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) now pending before the learned Judge, Special Court (under Section 409 of the IPC), 2nd Court at Jalpaiguri.
2. The petitioner’s case is that the petitioner joined the Ananda Chandra College of Commerce(hereinafter “said College”) on 01.12.1989 and served till the date of his superannuation in different capacities as Lecturer, Selection Grade Lecturer, Reader and finally as an Associate Professor in the subject of Commerce of the said College. Due to the retirement of the then Teacher-in-Charge, namely, Dr. Partha Sarathi Chakraborty, the petitioner, being the next senior most teacher, was the anonymous choice of the staffs as well as the Members of the Governing Body of the said College to resume the post of next Teacher-in-Charge additionally on and from 01.09.2015. The petitioner resumed the said post without any honorarium and continued as a TIC up to 04.11.2016. On 04.11.2016, the petitioner handed over the post of Principal of the said College to one Dr. Siddhartha Sarkar, being the OP 2 herein and on and from 05.11.2016, the OP 2 joined in the said post of Principal and assumed the charge of the said College by an unanimous decision of the

President and Members of the Governing Body as well as staff of the said College.

3. Thereafter on 09.09.2020, an FIR was registered by the Principal, the OP 2 herein, against the petitioner before the Kotwali PS at Jalpaiguri for commission of alleged misappropriation of the college fund amounting to Rs.1,22,500/- and on the basis of the same, Kotwali PS Case No.559 of 2020 dated 09.09.2020 under Sections 406 and 409 of IPC has been registered against the petitioner.
4. **All the parties have appeared in this case.**
5. From the materials on record including the case diary, it appears that Vide a letter dated 22.06.2023 the members of the Governing Body of the said College informed the Principal, Higher Education Department forestay about the severe harassment and irregular acts of the principal/complainant, against the petitioner and others.
6. The charge sheet in the case diary lists the following witnesses, in this case:-

Sl. No.	Name	Type
1	Dr. Siddhartha Sarkar, Principal & Secretary of the Governing Body, Ananda Chandra College of Commerce, DBC Road, Jalpaiguri (Complainant).	Complainant/petitioner
2	Sri Sudipta Paul S/O Sati Sankar Paul (Staff, Ananda Chandra College of Commerce, DBC Road, Jalpaiguri of	Day guard

	South Baman Para, W/No. 20, PS: Kotwali, Dist: Jalpaiguri (witness)	
3	Bishal Routh S/O Suraj Routh (Staff, Ananda Chandra College of Commerce, DBC Road, Jalpaiguri) of 3 No. Ghumti Harijan Basti PS, Kotwali, Dist. Jalpaiguri (Witness)	Karma badhi
4	Sri Krishna Kumar Kalyani (President Governing Body, AC College of Commerce, DBC Road, Jalpaiguri) of Dinbazar, Ward No. 04, PS Kotwali, Dist. Jalpaiguri (witness)	Expired
5	Sri Bipul Sinha I/C of Kotwali PS Dist Jalpaiguri (RO)	Police
6	SI Abdul Alwal Ahmed of Kotwali PS Dist Jalpaiguri (1st IO)	
7	Dil Kuamar Rai of Kotwali PS Dist: Jalpaiguri (2nd IO)	
8	PSI Saten Tamsang of Kotwali PS, Dist: Jalpaiguri (Present IO)	

7. In spite of the offences alleged, none of the teachers/members of the governing body/cashier/accountant have been examined. Nor were they cited as witnesses.

8. From the materials on record it appears that at page 58 is a note on accounts by the chartered accountants of the college dated 21.03.2020.

At no. 4 it is clearly noted:-

“No signature of the Teacher-in-charge is found in the Cash Book of RBU Study Centre from 01.04.2016 to 04.11.2016.

Only signature of the Cashier is found which creates ambiguity.”

Teacher in charge being the petitioner herein.

9. At page 65 is a declaration by the cashier stating that he handed over the amount (Rs.1,22,500) to the petitioner, but there are admittedly no documents to substantiate the said statement.
10. At page 67 again is a certificate issued by the cashier alleging that the principal/complainant had compelled him to make the false allegation against the petitioner in fear of his pension papers not being processed.
11. Admittedly, no disciplinary proceedings were initiated against the petitioner by the college authorities.
12. On 18.06.2022, the women teaching staff lodged a complaint against the complainant/opposite party herein.
13. It is also seen that neither the cashier nor the teaching staffs have been examined nor their statement recorded.
14. The Supreme Court in ***N. Raghavender vs State of Andhra Pradesh, CBI, Criminal Appeal No. 5 of 2010, on 13.12.2021***, held:-

*“41. Section 409 IPC pertains to criminal breach of trust by a public servant or a banker, in respect of the property entrusted to him. The onus is on the prosecution to prove that the accused, a public servant or a banker was entrusted with the property which he is duly bound to account for and that he has committed criminal breach of trust. (See: **Sadupati Nageswara Rao v. State of Andhra Pradesh, (2012) 8 SCC 547**).*

42. The entrustment of public property and dishonest misappropriation or use thereof in

the manner illustrated under Section 405 are a sine qua non for making an offence punishable under Section 409 IPC. The expression 'criminal breach of trust' is defined under Section 405 IPC which provides, inter alia, that whoever being in any manner entrusted with property or with any dominion over a property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property contrary to law, or in violation of any law prescribing the mode in which such trust is to be discharged, or contravenes any legal contract, express or implied, etc. shall be held to have committed criminal breach of trust. Hence, to attract Section 405 IPC, the following ingredients must be satisfied:

- (i) Entrusting any person with property or with any dominion over property;*
- (ii) That person has dishonestly misappropriated or converted that property to his own use;*
- (iii) Or that person dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation of any direction of law or a legal contract.*

43. *It ought to be noted that the crucial word used in Section 405 IPC is 'dishonestly' and therefore, it pre-supposes the existence of mens rea. In other words, mere retention of property entrusted to a person without any misappropriation cannot fall within the ambit of criminal breach of trust. Unless there is some actual use by the accused in violation of law or contract, coupled with dishonest intention, there is no criminal breach of trust. The second significant expression is 'misappropriates' which means improperly setting apart for ones use and to the exclusion of the owner.*

44. *No sooner are the two fundamental ingredients of 'criminal breach of trust' within the meaning of Section 405 IPC proved, and if such criminal breach is caused by a public servant or a banker, merchant or agent, the*

said offence of criminal breach of trust is punishable under Section 409 IPC, for which it is essential to prove that:

- (i) The accused must be a public servant or a banker, merchant or agent;*
- (ii) He/She must have been entrusted, in such capacity, with property; and*
- (iii) He/She must have committed breach of trust in respect of such property.*

45. *Accordingly, unless it is proved that the accused, a public servant or a banker etc. was 'entrusted' with the property which he is duty bound to account for and that such a person has committed criminal breach of trust, Section 409 IPC may not be attracted. 'Entrustment of property' is a wide and generic expression. While the initial onus lies on the prosecution to show that the property in question was 'entrusted' to the accused, it is not necessary to prove further, the actual mode of entrustment of the property or misappropriation thereof. Where the 'entrustment' is admitted by the accused or has been established by the prosecution, the burden then shifts on the accused to prove that the obligation vis-à-vis the entrusted property was carried out in a legally and contractually acceptable manner."*

15. The facts and circumstances in the present case are clear that:-

- (i) There is no material to prove "dishonest intention" and thus the existence of 'mens rea'.
- (ii) There has been no "mis appropriation" of any "property entrusted".
- (iii) There has been no "use" of the property by the petitioner, thus, no "mis appropriation" which means improperly setting

apart for ones use and to the exclusion of the owner (opposite party), (***N. Raghavender vs State of Andhra Pradesh (Supra)***).

(iv) There has been no ‘actual use’ of the property by the petitioner and no dishonest intention and thus no mis-appropriation as nothing was entrusted to the petitioner.

(v) As such the two fundamental ingredient of ‘criminal breach of trust’ within the meaning of Section 405 IPC has not been proved in the present case (***N. Raghavender vs State of Andhra Pradesh (Supra)***).

16. Thus the ingredients required to constitute the offence of criminal breach of trust are absent (no materials on record).

17. Accordingly there is no prima facie case against the petitioner for commission of offence under Section 409 of IPC and allowing the proceedings to continue against the petitioner will be an abuse of the process of law/Court.

18. In ***Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)***, the Supreme Court held:-

“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13

SCC 369 decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:-

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the

like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 which is to the following effect :

'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of State of Haryana v. Bhajan Lal 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :*

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie

constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the

accused and with a view to spite him due to private and personal grudge.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.***

- 19.** The present case is thus clearly covered by the guidelines in ***State of Haryana vs Bhajanlal (Supra) (Para 102)***.
- 20.** **CRR 161 of 2023 is allowed.**
- 21.** The proceeding being G.R. Case No.3937 of 2020 corresponding to Special Case No.26 of 2021 arising out of Kotwali P.S. Case No.559 of 2020 dated 09.09.2020 under Sections 406 and 409 of the Indian Penal Code, 1860 (hereinafter referred to as “IPC”) now pending before the learned Judge, Special Court (under Section 409 of the IPC), 2nd Court at Jalpaiguri **is hereby quashed in respect of the petitioner herein.**
- 22.** All connected applications, if any, stand disposed of.
- 23.** Interim order, if any, stands vacated.
- 24.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 25.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)