

28.02. 2023  
item No.10 &11  
n.b.  
ct. no.III

**In the High Court at Calcutta  
Circuit Bench at Jalpaiguri**

**CRR 219 of 2022**

**Pritam Sarkar  
Vs.  
The State of West Bengal & Anr.**

**With**

**CRR 259 of 2022**

**Smt. Nilu Lepcha nee Nilu Lohar  
Vs.  
State of West Bengal & Anr.**

Mr. Partha Pratim Sarkar,  
..... for the petitioner.  
Mr. Anirban Banerjee,  
Mr. Mananbendra Ghosh,  
... for the opposite party no.2.  
Mr. Aditi Shankar Chakraborty,  
Mr. Nilay Chakraborty,  
Mr. Kallol Acharja  
.....for the State.

This instant revisional application has been preferred for quashing the entire proceeding being Darjeeling Sadar Police Station Case No. 146 of 2019 dated 20.7.2019 under Sections 409/420/24 of the IPC pending before the Court of the learned Special Judge Darjeeling and also challenged the order dated 17.5.2022 wherein the application of the petitioner under Section 227 of the Code of Criminal Procedure was turned down.

Learned advocate for the petitioner submitted before this Court that the present petitioner is an employee of the Bank and he was appointed in the said branch of the Bank. By filing a complaint some irregularity was noticed during his tenure on the same branch. After completion of the investigation, the police submitted charge-sheet. They preferred an application before the

learned Special Judge for discharging him under Section 227 of the Code of Criminal Procedure, which was turned down.

Learned advocate for the petitioners submitted that one departmental proceeding was initiated by the bank which was disposed of with minor penalties against the present petitioner. He further argued that the present petitioner was again re-instate in the same Bank. He argued that case under Section 409 of the IPC is not substantiated by sufficient materials. There are no wrongful gain on behalf of the present petitioner and bank also not suffered any loss for which the minor penalty was imposed. He further submitted that only some irregularity was noticed by the bank authorities for which the complaint was lodged.

Learned advocate for the petitioner submitted before this Court that the ingredients of Section 405 was not complied with by sufficient materials. The provision of Section 409 regarding criminal breach of trust by a public servant or bankers was also not proved in this case. In this case the bank could not produce a single document before the investigating agency for which it can be presumed that bank has sustained any loss. He further pointed out that no independent complaint was lodged before the bank or no witness was stated before the investigating agency that he has received money from the present petitioner. He further submitted before this court that the learned court below did not considered the matter and passed the impugned order. He prayed for quashing the entire proceeding.

Learned advocate appearing on behalf of the petitioner submitted before this Court that the bank is dealing with public

money and the conduct of the present petitioner was transpired during the investigation of the bank. He further submitted before this Court that sufficient incriminating materials found by the bank to raise sufficient reason that they had committed the offence for which the complaint was lodged. He further submitted before this Court that the impugned order passed by the learned Court below is a specking order that cannot be set aside.

Learned advocate appearing on behalf of the State produced the Case Diary and specifically submission before this Court that the special investigating audit was conducted to unearth the wrong conduct of the present petitioner. On perusal of the report, which was submitted before the learned Court below; it would be revealed that a huge amount of money was defalcated by the present petitioner. He also contended that it would be revealed that the huge loan was granted in favoure of the relatives of the present petitioner but without complying formalities as laid down in the bank manual. He submitted before this Court that the investigation of the police has ended incharge sheet. So, at this juncture, the proceeding cannot be quashed.

Heard the learned advocate perused the materials on record also perused the case diary. It is the submission of the learned advocate for the petitioner that one departmental proceeding was initiated where a minor punishment was awarded against the present petitioner. This is a criminal case where the inputs and the notion of proving fact in the departmental proceeding is unknown. In this criminal case the prosecution has to prove his case on the basis of the collective evidence on placing

the case dairy. I perused the report; it appears that there are sufficient materials against the present petitioner to proceed with this instant proceeding. Furthermore learned Court below has pointed out that he has perused the case diary as well as the statement of available witnesses which goes against the present petitioner.

This court is under criminal revisional jurisdiction wherein a mini trial is not permissible. Considering the entire submission and consider the materials on record I find no justification to entertain with the impugned order passed by this Court.

Considering the matter the revisional applications appears to be meritless and liable to be rejected.

Accordingly, the criminal revisional application is dismissed and disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**( Subhendu Samanta, J.)**