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

**Present:**

**The Hon'ble Justice Ananya Bandyopadhyay**

**C.R.R. 1561 of 2008**

**Malay Kanti Dutta @ Malay Kumat Dutta**
**-Vs-**
**The State of West Bengal & Anr.**

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| For the Petitioner | : Mr. Angshuman Chakraborty<br>Mr. Debabrata Sardar<br>Mr. S.S. Saha |
| For the State | : Mr. Narayan Prasad Agarwalla<br>Mr. Pratick Bose |
| Heard on | : 09.10.2023, 04.12.2023 |
| Judgment on | : 07.03.2024 |

**<u>AnanyaBandyopadhyay, J.:-</u>**

1. The instant revisional application is filed by the petitioner praying for quashing of the criminal proceeding being T.R. Case No. 7 of 1999 pending before the Learned Judge, Special Court, Purba Medinipur at Tamluk arising out of Tamluk P.S. Case No. 69 dated 20.4.1998 under Sections 468/471/406/409/420/120B of the Indian Penal Code and 13(d)(ii) of the Prevention of Corruption Act, 1988 and charge sheet No. 142 dated 4.9.1999 under Sections 468/471/406/409/420/120B of the Indian Penal Code.

2. The petitioner was employed as a Manager/Chief Administrative Officer (C.A.O) of the Tamluk Ghatal Central Co-operative Bank Ltd. at Tamluk P.S. Tamluk, District Purba Medinipur at all material times.
3. One Pratick Banerjee, Deputy Registrar of Co-operative Societies, Western Zone, Burdwan being the opposite party No. 2 herein lodged an F.I.R. with the Officer-in-Charge of Tamluk P.S. on 20.4.1998 against the petitioner herein and 10 others, inter alia, alleging that the members of the Board of Directors including the petitioner who was the Chief Administrative Officer of the Tamluk Ghatal Central Co-operative Bank Ltd. at Tamluk sanctioned a loan of Rs. 36.00/- lakhs in favour of one Mata Prasad Jaiswal, proprietor of M/s. Dock Palace Pvt. Ltd. at Durgachak, Haldia on account of hotel-cum-restaurant business at Durgachak, Haldia by forging documents and misusing their official powers without proper security and violating the provisions of NABARD and that the loan application was purchased on 22.02.1996 but the loan application was submitted after forging the date on 09.02.1996 which was duly forwarded and recommended on 10.02.1996 by accused Bankim Ghorai, Field Officer and accused Dulal Das, Branch Manager, Haldia branch, giving back date and loan was sanctioned on 15.02.1996 to M/s Jaiswal Traders but the payment of Rs. 32/- lakhs was made to Mata Prasad Jaiswal and ultimately he did not repay the loan amount with its interest, all the accused persons entered into a criminal conspiracy with common intention and ulterior motive for their personal gain and also committed Criminal Breach of trust by sanctioning the loan to accused used Mata

Prasad Jaiswal and the Bank authority did not take proper steps for repayment of the loan of Rs. 32/- lakhs with interest.

4. On the basis of the said F.I.R. Tamluk P.S. Case No. 69 dated 20.4.1998 under Sections 468/471/420/120B/406/409 of the Indian Penal Code and 13(d) of the Prevention of Corruption Act, 1988 was started against the petitioner and 10 others.
5. On completion of the investigation, a charge-sheet bearing No. 142 dated 4.9.1999 under Sections 468/471/409/420/120B, of the Indian Penal Code was submitted against the petitioner and 10 others.
6. The petitioner surrendered in the Court below on 4.9.1999 and he was released on bail.
7. The petitioner was placed under suspension on 13.5.1998.
8. Ultimately the case was placed before the Learned Judge, Special Court, Purba Medinipur at Tamluk and the same was registered as T.R. Case No. 7 of 1999.
9. On 16.2.2004, the petitioner filed a petition before the Trial Court, inter alia praying for discharge from the case and in the said petition, it was inter alia, stated as follows :-
    i. The Bank authority is, not guided by the provisions of NABARD if the loan is given from Bank’s fund but when the loan is given by the NABARD in their case only the provisions of NABARD will apply. In the present case the Loan was given from Bank’s fund and proper security has been taken as thought by the Bank Authority and there is nothing wrong in sanctioning the loan.

ii. It is not correct to say that the loan application was purchased on 22.02.1996 and the said loan application was submitted after forgoing the date on 02.02.1996. In fact the loan application was purchased on 06.10.1995.

iii. It is also not correct that the Bank Authority did not take proper steps for repayment of the Loan with its interest, In fact the major portion of the loan amount has been realized by the Bank Authority.

iv. The petitioner is not a public servant within the meaning of Section 21 of the Indian Penal Code as such this Court has no jurisdiction to try the case.

v. There is no specific allegation against the petitioner to frame charge against him. The petitioner to fram charge against him. The petitioner is totally in dark about the loan sanctioned to Mata Prasad Jaiswal.

vi. The petitioner is an employee of the Co-operative Bank and at the time of alleged occurrence he was posted at Chief Administrative Officer, at Tamluk and the loan in question is of Haldia Branch.

vii. It may be stated herein that the other accused persons also filed petitioner in the trial court inter alis, praying for discharge from the case.

10. The trial court, however, by order No. 54 dated 4.3.2008 passed in T.R. Case No. 7 of 1999, rejected all the petitions of all the accused persons, including the petitioner, inter alia, praying for discharge from the case and fixed on 15.3.2008 for framing of the charges. The said date was, however, shifted to 3.5.2008.

11. The contentions of the petitioner are delineated as follows:-

    i. The petitioner submitted that the Learned Judge, Special Court, Tamluk gained authority to try the petitioner on the premises that the petitioner, being the officer of a Co-operative Society is deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code as per the provisions of Section 8 of the West Bengal Co-operative Societies Act, 1983 and that Section 3 of the West Bengal Criminal Law Amendment (Special Courts) Act, 1948 provides that offence specified in the Schedule of the said Act shall be triable by the Special Courts created by the State Government under Section 2 of the said Act of 1949 and that Schedule of the said Act of 1949 provides that an offence punishable under Sections 409 and 420 of the Indian Penal Code, if committed by a public servant, or by a person dealing with property belonging to the Government as an agent of the Government or by a person dealing with property belonging to the Government Company as defined under Section 617 of the Companies Act, 1956 as an agent of such Government Company, shall be triable by a special judge under the said Act of 1949 and thus is apparent that in order a case to be triable by a special court, constituted under the said Act, of 1949, it is imperative that any of the accused therein is a public servant within the meaning of Section 21 of the Indian Penal Code but in the instant case, the petitioner has been deemed to be a public Servant, within the meaning of Section 21 of the Indian Penal Code, in view of theprovisions of Section 8 of the West Bengal Co-operative Societies Act and so it is clear that the Learned Judge failed to appreciate that a legal fiction created by the provisions of Section 8 of the West Bengal Co-operative Societies public servant, was for the purpose of the said Act and cannot be extended to cover another Act, being the Indian Penal Code.

ii. The West Bengal Co-operative Societies Act is a completely self-contained Act and has created specific offence quite different from the offences in the Indian Penal Code and thus cannot be taken to be statutes in *pari materia* so as to form one system abd in such circumstances, the legal fiction created under Section 8 of the said Act, that the petitioner is a public servant within the meaning of Section 21 of the Indian Penal Code, cannot be extended in respect of the offences provided under Section 409 of the Indian Penal Code by suggesting that the petitioner is to be treated as a public servant for the offence described in the Indian Penal Code and as such, the petitioner cannot be treated to be a public servant for the purpose of Section 409 of the Indian Penal Code and his trial before the Learned Judge, Special Court, Tamluk will be clearly without jurisdiction.

iii. The petitioner being an officer within the meaning of Section 2(31) of the Co-operative Societies Act, 1983 and he being deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code as per Section 8 of the said Act of 1983, the petitioner is liable to be tried for commission of the alleged offences under the Act of 1983 and not under the Indian Penal Code as he does not satisfy the tests and/or ingredients of Section 21 of the Indian Penal Code for being treated as a Public Servant and so it cannot be legally said that the petitioner has committed an offence under Section 409 of the Indian Penal Code.

iv. The amount of money towards loan to be given to the accused Mata Prasad Jaiswal was sanctioned out of the own fund of the Bank in question and as such the question of hatching a criminal conspiracy or committing a criminal breach of trust does not arise as alleged or at all.

v. Section 120A of the Indian Penal Code provided that two or more persons must agree to do or to cause to be done an act and thus it is apparent that there must be commonality with respect to the act being conspired to be committed between the parties and offence, which is being conspired to be committed, thus be the same but in the instant case, the Learned Judge has found an offence punishable under Sections 420/120B of the Indian Penal code to have been committed by Mata Prasad Jaiswal while the rest Ten accused persons including the petitioner have been found to commit offence punishable under Section 409/120B of the Indian Penal code and so it is apparent that Mata Prasad Jaiswal has been found by the Learned Judge to have conspired to commit offence of cheating and thereby inducing delivery of property while the rest ten accused persons including the petitioner have been found to have conspired to commit an offence of Criminal breach of trust and thus it cannot be said that there existed any agreement or meeting of minds between Mata Prasad Jaiswal and the rest ten accused persons to omit an act or offence, while was their common aim and that the offence under Section 420 of the Indian Penal Code cannot be said to be the same as the offence described under Section 409/120B of the Indian Penal Code and so it is apparent that Mata Prasad Jaiswal has been found by the Learned Judge to have conspired to commit offence of cheating and thereby inducing delivery of property while the rest ten accused persons including the petitioner have been found to have conspired to commit an offence of Criminal breach of trust and thus it cannot be said that there existed any agreement or meeting of minds between Mata Prasad Jaiswal and the rest ten accused persons to omit an act or offence, which was their common aim and that the offence under Section 420 of the Indian Penal Code cannot be said to be the same as the offence described under Section 409 of the Indian Penal Code and that in such circumstances, the findings of the Learned Judge relating to the proposed charge against the petitioner and the other accused persons is clearly incongruous thereby rendering the impugned proceeding and the impugned order bad in law and liable to be quashed.

vi. The discretion of the Board of Directors of a Bank to grant loan to a person is not always to be determined by the collateral security provided by the proposed borrower and the discretion to be exercised by a business house/bank while granting such loan is dependent upon various circumstances, like credit worthiness of the proposed borrower, his past records, etc. The mere fact that collateral security was not sufficient cannot be construed to be a factor which goes to show any malafide action on the part of the officers of the Bank and that negligence or over sight on the part of an Officer of the Bank canot always lead to initiation of a Criminal proceeding or commission of criminal offence and it is only when the action of the officers of the Bank is found to be so grave and grossly negligent that malafide can be attached to such action so that criminal action is justified but the materials on record do not suggest, in any manner, such grossly negligent behavior on the part of the petitioner and as such, the initiation and continuation of the impugned proceeding against the petitioner is clearly bad in law and illegal and the Learned Judge, by failing to consider such aspect relating to difference between civil liability and criminal action, has committed grave error in law.

vii. The norms of the Bank were followed specially for the sanction of loan and as such there were no laches in the part of petitioner.

viii. In any event the petitioner cannot be tried for having committed an offence under Section 409 of the Indian Penal Code. Simpliciter or with the aid of Section 120B of the Indian Penal Code as it has been wrongly found by the court below and so the impugned proceeding is liable to be set aside and/or quashed in the interest of justice.

12. The Learned Advocate for the petitioner submitted that :

i. The petitioner submitted that the Learned Judge, Special Court Tamluk gained authority to try the petitioner on the premises that the petitioner, being the officer of Co-operative Society is deemed to be a public Servant within the meaning of Section 21 of the Indian Penal code as per the provisions of Section 8 of the West Bengal Co-operative Societies Act, 1983 and that Section 3 of the West Bengal Criminal Law Amendment (Special Court) Act, 1949 provisions that offences specified in the Schedule of the said Act shall be triable by the Special Courts created by the State Government under Section 2 of the said Act of 1949 and that Schedule of the said Act of 1949 provides that an offence punishable under Section 409 and 420 of the Indian Penal Code, if committed by a Public Servant, or by a person dealing with property belonging to the Government as an agent of the Government or by a person dealing with property belonging to the Government Company as defined under Section 617 of the Companies Act, 1956 as an agent of such Government Company, shall be triable by a Special Judge under the said Act of 1949 and thus it is apparent that in order a case to be triable by a special court, constituted under the said Act of 1949, it is imperative that any of the accused therein is a public servant within the meaning of Section 21 of the Indian Penal Code but in the instant case, the petitioner has been deemed to be a public servant, within the meaning of Section 21 of the Indian Penal code. in view of the provisions of Section 8 of the West Bengal Co-operative Societies Act and so it is clear that the Learned Judge failed to appreciate that a legal fiction created by the provisions of Section 8 of the West Bengal Co-operative Societies Act, regarding description of the petitioner as a Public servant, was for the purpose of the said Act and cannot be extended to cover another Act, being the Indian Penal Code.

ii. The West Bengal Co-operative Societies Act is a completely self contained Act and has created specific offences quite different from the offences in the Indian Penal Code and thus cannot be taken to be statutes in *Pari material* so as to from one system and in such circumstances, the legal fiction created under Section 8 of the said Act, that the petitioner is a public servant within the meaning of Section 21 of the offence provided under Section 409 of the Indian Penal Code by suggesting that the petitioner is to be treated as a public servant for the offence described in the Indian Penal Code and as such, the petitioner cannot be treated to be a public servant for the purpose of Section 409 of the Indian Penal Code and his trial before the Learned Judge, Special Court, Tamluk will be clearly without jurisdiction.

iii. The petitioner being an officer as within the meaning of Section 2(31) of the Co-operative Societies Act, 1983 and he being deemed to be a public servant within the meaning of Section 21 of the

Indian Penal Code as per Section 8 of the said Act of 1983, the petitioner is liable to be tried for commission of the alleged offences under the Act of 1983 and not under the Indian Penal Code as he does not satisfy the tests and/or ingredients of Section 21 of the Indian Penal Code for being treated as a Public Servant and so it cannot be legally said that the petitioner has committed an offence under Section 409 of the Indian Penal Code.

iv. The amount of money towards loan to be given to the accused Meta Prasad Jaiswal was sanctioned out of the own fund of the Bank in question and as such the own fund of the Bank in question and as such question of hatching a Criminal conspiracy or committing a Criminal breach of trust does not arise as alleged or at all.

v. The petitioner submitted that Section 120A of Indian Penal Code provides that two or more persons must agree to do to cause to be done an act and thus it is apparent that there must be commonality with respect to the Act being conspired to be committed between the parties and offences, which is being conspired to be committed thus be the same but in the instant case, the Learned Judge has found an offence punishable under Sections 420/120B of the Indian Penal Code to have been committed by Mata Prasad Jaiswal while the rest ten accused persons including the petitioner have been found to commit offences punishable under Section 309/120B of the Indian Penal Code and so it is apparent that Mata Prasad Jaiswal has been found by the Learned Judge to have conspired to commit offence of cheating and thereby inducing delivery of property while the rest ten accused persons including the petitioner have been found to have conspired to commit an offence of Criminal breach of trust and thus it cannot be said that there existed any agreement or meeting of minds between Mata Prasad Jaiswal and the rest ten accused persons to omit an act or offence, which was their common aim and that the offence under Section 420 of the Indian Penal Code, cannot be said to be the same as the offence described under Section 409 of the Indian Penal Code and that in such circumstances, the findings of the Learned Judge relating to the proposed charge against the petitioner and the other accused persons is clearly incongruous thereby rendering the impugned proceeding and the impugned order bad in law and liable to be quashed.

vi. The discretion of the Board of Directors of a Bank to grant loan to a person is not always to be determined by the collateral Security provided by the proposed borrower and the discretion to be exercised by a business house/bank while granting such loan is dependent upon various circumstances like credit worthiness of the proposed borrower his past records etc. The mere fact that Collateral Security was not sufficient cannot be construed to be a factor which goes to show any malafide action on the part of the officers of the Bank, and that negligence or over sight on the part of an officer of the Bank cannot always lead to initiation of Criminal proceeding or commission of criminal offence and it is only when the action of the officers of the Bank is found to be so grave and grossly negligent that malafide action is justified but the materials on record not suggest in any manner, such grossly negligent behavior on the part of the petitioner and as such, the initiation and continuation of the impugned proceeding against the petitioner is clearly bad in law and illegal and the Learned Judge failing to consider such relating to difference between civil liability and criminal action has committed grave error in law.

vii. The norms of the Bank were followed specially for the sanction of loan and as such there was no paches in the part of petitioner.

viii. In any event the petitioner cannot be tried for having committed an offence under Section 409 of the Indian Penal Code. Simpliciter or with the said of Section 120B of the Indian Penal Code as it has been wrongly found by the Court below and the impugned order is liable to be set aside and/or quashed in the interest of justice.

13. The Learned Advocate for the petitioner further submitted that:-

i. The petitioner was employed as Deputy Manager/Chief Administrative Officer of Tamluk Ghatal central co-operative bank at Tamluk.

ii. The co-operative bank authority is not guided by the provision of NABARD, when a loan is given from the bank funds, if the loan is given under NABARD then the provision of NABARD will apply. In the present case the loan was given from the bank fund, the provision of NABARD was not applied.

a. The bank after accepting proper security sanctioned the loan amount.

b. The alleged loan application was purchased on 6. ..1996 and was sanctioned on 2.6.1996. thus it is not a fact that the purchase date was 22.2.1996 and thus there was no forgery with the date of submission of said loan application.

c. The major portion of loan amount was realized back by the bank and hence allegation that no proper steps for realization of loan amount with interest was taken by bank authority is not correct.

d. Petitioner is not a public servant within the meaning of Section 21 of the Indian Penal Code (old code).

e. There was no allegation made out in the written complaint against the petitioner of the said offences and petitioner is in dark about loan sanctioned to one Mata Prasad Jaiswal since at that time petitioner was an employee of co-operative bank at Tamluk but alleged loan was sectioned at Haldia Branch.

f. The allegation of the offences cannot be labeled against the petitioners since all the norms of the bank for sanction of loan amount was followed and there was no latch on their part since NABARD recommended Rs. 10/- lakhs for restaurant etc. hence Mata Prasad Jaiswal was given the loan from the banks' own fund.

g. The Learned jurisdictional Court erred in rejecting the petitioners' prayer for discharge by not appreciating that the provisions of Section 8 of the West Bengal Co-operative Society Act regarding description of the petitioner as a public servant was for the purpose of the said act and can not be extended to cover another Act i.e. Indian Penal Code.

h. The West Bengal Co-operative Society Act is completely self contented act and specific offence are quite different from the offence describe in the Indian Penal Code and thus legal fiction created by Section 8 of the said act that the petitioner is a public servant within the meaning of Section 21 of the Indian Penal Code cannot be extended in respect of offences provided under Section 409 of the Indian Penal Code is not tenable.

i. Even if the allegation are accepted to be true the petitioner can be tried not for the offence under Section 409 of the Indian Penal Code but as per the provision of Section 8 of the West Bengal Co-operative Society Act 1983.

j. The loan amount was sanctioned in favor of Mata Prasad Jaiswal from bank's fund and hence there was no conspiracy in sanction of the same

k. There was no meeting of mind of the petitioner and other accused persons with the loan sanctioned to Mata Prasad Jaiswal since the bank grants loan to an applicant after scrutinizing various aspect of the applicant and hence no offences can be said to have been committed by the petitioner.

14. The complaint dated 20.04.98 lodged by the Deputy Registrar of Co-operative Society, West Zone, Burdwan, elucidated one Mata Prasad Jaiswal to have sought for a loan of Rs.36 lakhs from Tamluk Ghatal Central Co-operative Bank. Mata Prasad Jaiswal was the proprietor of M/s. Jaiswal Traders, Haldia, Durgachak. The present petitioners along with 8 other accused persons were instrumented in sanctioning the aforementioned loan to the aforesaid Mata Prasad Jaiswal for pursuing the business of his hotel-cum-restaurant for providing proper security and violating the norms and conditions of NABARD.
15. The aforesaid complainant had accused eleven persons namely Prakash Chandra Das, Jagannath Goswami, Saroj Kumar Maity, Ratan Chakraborty, Tarun Samanta, Prabhat Adhikary, Sachinandan Mondal, Malay Kanti Dutta, Dulal Chandra Das, Bankim Ghorai and Mata Prasad Jaiswal. It was further alleged that the present petitioners along with four other accused persons held a Board Meeting on 15.02.96 at Tamluk in order to sanction the aforesaid loan amount to the accused no. 11, i.e. Mata Prasad Jaiswal. The loan application was obtained on 22.02.96. However, the date was forged to be on 09.02.96 and a recommendation was forwarded on 10.02.96 by the accused Bankim Ghorai, Field Officer and accused Dulal Das, Branch Manager, Haldia and the loan was sanctioned on 15.0296 antidated. A sum of Rs.32 lakhs was not repaid by the accused no. 11 along with interest.
16. It was further alleged that the aforesaid accused persons hatched a criminal conspiracy with common intention and with an ulterior motive for their wrongful gain committed criminal breach of trust by sanctioning

the aforesaid loan and the bank authority did not initiate steps for repayment of the aforesaid loan.

17. Based on the aforesaid complaint, Tamluk P.S. Case No. 69/98 dated 20.04.98 under Sections 468/471/320/120B/406/409 of the Indian Penal Code and Section 3(d)(ii) of the P.C. Act, 1988 was started.

18. After completion of the investigation, the police filed a Charge-sheet being No. 142/99 dated 04.09.99 under Sections 468/471/406/320/120B of the Indian Penal Code against the accused persons. On 16.02.04, the present petitioners filed an application before the Learned Trial Court for discharge. The Learned Trial Court vide order no. 54 dated 04.03.08 rejected their prayer for discharge and fixed the next date to be 15.03.08 for framing of charge. The allegations on record are serious in nature.

19. The Learned Trial Court scrutinized the materials in the case diary and was of the opinion that sufficient collateral security was not granted against gleaning the loan in question. The land in the name of the brother of the accused Mata Prasad Jaiswal was pledged. There had been discrepancies with regard to the date of applying for loan as well as the competency of the applicant thereto. Several documents were seized which indicated the prima facie involvement of the present accused persons in the alleged offences. The approval necessary to grant the loan should have been sent to NABARD and the same had not been complied with. The bank officials exceeded their jurisdiction to sanction a loan amount of Rs.36 lakhs beyond its own resources. The role of the present petitioners has to be assessed through recording of documentary as well as oral evidence with regard to their status as public servant and their

specific overt act in committing the alleged offence of illegal misappropriation conjointly with the knowledge for the purpose of subserving wrongful gain.

20. The Learned Trial Court has rejected the prayer for discharge with a reasonable observation and this Court is not inclined to interfere with the same.

21. In the case of ***State of Haryana and Others v. Bhajan Lal and Others***[1] the Hon'ble Supreme Court observed as follows :

> *"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*

[1] 1992 SCC(Cri) 426

*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."*

22. The complaint filed by the opposite party no. 2 against the present petitioners allegedly describes a wrongful intent on the part of the present petitioners to facilitate accused no. 11 to obtain a loan beyond the

capacity of the bank to grant the same. The procedure to be followed for granting the said loan were not complied with.

23. The complaint revealed prima facie case which was the cognizable in nature substantially delineating the role of the present petitioners in constituting a criminal conspiracy to commit criminal misappropriation of property as well as criminal breach of trust.
24. The allegations are serious in nature and the proceeding before the Trial Court cannot be quashed and has to be tried to determine the actual offenders.
25. In view of the above, the instant criminal revisional application is dismissed.
26. There is no order as to costs.
27. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
28. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

**(Ananya Bandyopadhyay, J.)**