IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1672 of 2013

Shibaji Sengupta @ Shivaji
-Vs-
The State of West Bengal & Anr.

For the Petitioner : Mr. Sourav Chatterjee

For the State : Mr. Avishek Sinha

Heard on : 22.02.2023, 24.03.2023, 23.06.2023, 12.03.2024, 19.06.2024

Judgment on : 24.09.2024

Ananya Bandyopadhyay, J.:-

1. The instant revisional application has been filed by the petitioner for quashing of proceedings being G.R. Case No. 319 of 2009 pending before the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas arising out of Bidhannagar (East) Police Station Case No. 99 of 2009 dated 20.06.2009 under Sections 406/420/120B of the Indian Penal Code and all orders passed therein including the order dated 23.02.2012 passed by the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas thereby taking cognizance of the offences punishable

under Sections 406/420/120B of the Indian Penal Code against the petitioner in connection with the aforesaid case.

2. The petitioner enumerated the following circumstances for filing the instant revisional application. By a letter dated 15th November, 2006 the petitioner was appointed as a trainee in a company viz "Assurgent Technology solutions Pvt. Ltd."

3. By a letter dated 15th January, 2007 the said company informed the petitioner to have been promoted to the post of Administrative Officer with effect from 1st January, 2007.

4. By a letter dated 31st May, 2007 the petitioner communicated to the company, inter alia, to refund the security deposit to the tune of Rs.10,000/- deposited on 31 October, 2006 vide demand draft no.116545 drawn on Dena Bank, Burrabazar Branch.

5. Consequently the said company by a letter dated 31st May, 2007 informed the petitioner to have increased by 25% with effect from May, 2007.

6. By letter dated 1st June, 2007 the petitioner informed the said company, an acknowledgement of receiving a refund of the security money to the tune of Rs.10,000/-.

7. By a letter dated 21st July, 2008, the said company informed the petitioner that his salary has been increased his salary with effect from 1st July, 2008.

8. Subsequently, by a mass petition dated 4th June, 2009, the petitioner along with other colleagues addressed to the said company that the atmosphere and working condition in the said company had become precarious and had

to confront the grievances of the employees regarding repayment of their dues, such as security deposit, employee deposit, salaries etc. and various phone calls from different vendors of the said company to the detriment, annoyance and insecurity of all his colleagues. The petitioner and his colleagues also agitated the denial of salaries since March, 2009 seeking management of the said company to restore normalcy instantaneously.

9. Despite the aforesaid mass petition, the conditions in the said company did not improve. Consequently the petitioner by a letter dated 17th June, 2009 tendered his resignation.

10. Another mass petition dated 18th June, 2009 was similarly addressed to the Hon'ble Minister of Information and Technology, Government of West Bengal for intervention and redressal.

11. The opposite party no.2 who was also an employee of the said company, lodged a written complaint before the Officer in Charge, Bidhannagar Police Station on 20th June, 2009 giving rise to the institution of Bidhannagar (East) Police Station Case No.99 of 2009 dated 20th June, 2009 registered under Sections 419/420/406/120B of the Indian Penal Code against the petitioner herein and others.

12. The petitioner was arrested by the Investigating Agency in the course of investigation of the instant case. The learned Trial Court refused to grant an order of bail and, the petitioner preferred an application for bail before this Hon'ble Court, which was numbered as C.R.M No.9766 of 2009. By order dated 20th July, 2009 His Lordship the Hon'ble Justice Ashim Kumar Roy

was pleased to grant bail to the petitioner inter alia with the following observations:-

> *"The present petitioner along with other accused persons after being arrested in connection with the case in question were in police custody for about 5 days. I have gone through the remand report and I find that during their police remand, police has not able to collect anything incriminating against them except that the petitioner is the administrative officer of the company and in absence of the directors, the principal accused who are still absconding, he used to attend parties and others at their office. I further found that police has verified his bank account and found that there is no money which can alleged to have been siphoned out of the cheated money. According to the investigating agency that petitioner has also not received his salaries since February, 2009."*

13. The Investigating agency on completion of investigation submitted a Charge Sheet being Charge Sheet No 53 of 2011 dated 21 December, 2011 under Sections 406/420/120B of the Indian Penal Code against the petitioner and others.

14. The Opposite Party No.2 herein, who was also an employee of the said company, lodged a written complaint before the Officer in Charge, New Township Police Station, Durgapur on 28th May, 2009. Based on the written complaint, the instant case, being New Township Police Station Case No.61

of 2009 dated 28" May. 2009 was initially registered for investigation under Sections 420/406/418/120B of the Indian Penal Code.

15. The petitioner was not named in the First Information Report of the instant case ie. New Township Police Station Case No.61 of 2009 dated 28th May, 2009.

16. Upon conclusion of the investigation of the instant case, the Investigating Agency submitted a Charge Sheet being Charge Sheet No.83 of 2011 dated 24th December, 2011 under Sections 406/420/120B of the Indian Penal Code against the petitioner and others.

17. The said Charge Sheet was filed before the Learned Additional Chief Judicial Magistrate, Durgapur, Burdwan and by the impugned order dated 2nd May, 2012 the Learned Magistrate took cognizance of the offences punishable under Sections 406/420/120B of the Indian Penal Code against the petitioner and others.

18. Learned Advocate for the petitioner submitted as follows –

    i. In order to constitute an offence of cheating punishable under Section 420 of the Indian Penal Code, the accused had an ill intention to defraud from the inception of the transaction was to be demonstrated. Such ill intention from the inception of the transaction and materials, supporting the same were unavailable in the instant case and as such, no case of cheating could be said to have been made out against the petitioner

ii. In order to constitute an offence of criminal breach of trust available under Section 406 of the Indian Penal Code, two essential ingredients were to be met namely, there must be an entrustment or dominion over property and by virtue of such entrustment and/or dominion over property, there must be a dishonest misappropriation. In the instant case, the First Information Report as well as the materials collected in the course of the investigation culminating into the charge sheet did not make out any case against the petitioner that he misappropriated anything in the course of his service with the said company and no stolen property was recovered from the petitioner.

iii. This Hon'ble Court while granting bail to the petitioner in connection with the said Bidhannagar (East) Police Station Case No.99 of 2009 dated 20th June, 2009 vide order dated 20th July, 2009 passed in C.R.M No.9766 of 2009 clearly arrived at a finding that the Investigating Agency verified the bank account of the petitioner and did not find reference of any money which was alleged to have been siphoned away and/or misappropriated. This Hon'ble Court while passing the said order also arrived at a finding that as per the investigating agency itself, the petitioner was also a victim of the alleged offence which constituted the institution of Bidhannagar (East) Police Station Case No.99 of 2009 dated 20th June, 2009. Such findings of this Hon'ble Court were given a complete go-bye by the Investigating agency as well as by the Learned Magistrate in as much as both the Investigating agency as well as the Learned Magistrate failed to appreciate that the petitioner instead of being roped in as an accused ought to have been made a witness against the said company.

iv. A bare perusal of the impugned Charge Sheet would indicate that no materials, far less materials constituting offences under Sections 406/420/1208 of the Indian Penal Code were available qua the petitioner It further appeared from the said Charge Sheet that the only reason why the petitioner was Charge Sheeted was that earlier a Charge Sheet had been filed against the petitioner in connection with the said Bidhannagar (East) Police Station Case No.99 of 2009 dated 20 June, 2009. Filing of Charge Sheet in such mechanical and laconic manner and taking cognizance on the basis there of occasioned a complete failure of justice.

v. The petitioner had no role to play with regard to the commission of the offences as alleged or at all.

vi. The continuation of the impugned proceedings shall amount to an abuse of the process of the court and it is expedient in the interest of justice that the impugned proceedings and all orders passed therein including the impugned order dated 2nd May, 2012 be quashed and/or set aside in order to prevent the abuse of the process of court or otherwise to secure the ends of justice.

19. The complaints lodged against the petitioner are replicated as follows:-

a. The letter dated 28/05/2009 is quoted below:-

"To

The Officer in Charge

New Township Police Station

Durgapur-10

Dist-Burdwan

Sub: Complaint against

1) Mr. Soumitree Mukherjee (CEO)

2) Mr. Prem Prakash Gupta(C.FO)

3) Mr. Sanjay Sanyal (C.T.O)

4) Mr. Sreejan Chatterjee (Branch Head)

5) Mr. Sajal Basak (B.D.M)

6) Mr. Sumit Goswami (TL)

7) Mr . Sanjay Das(A.O)

all are attached with Assurgent Technology Solutions Ltd. Durgapur Branch, Sector-II-D,Bidhannagar, Durgpur-12, Dist-Burdwan

Sir,

With due respect, I the under signed an employee of Assurgent Technology Solutions Ltd. Durgapur Branch beg to state as follows:

That myself and some of my colleagues have been appointed the above said Assurgent Technology Solutions Ltd. According to the campus interview at our respective colleges at different times in the year of 2007

That at the time of our appointment, as per the terms and conditions of the above said company we deposited Rs. 50,000 (Fifty Thousand) to Rs. 1,00,000(one lakh) for each candidate as security *money which we deposited at the company through demand draft by relying the above said respected person with a hope and good faith*

That as per the terms and conditions of our employment the above said company assured us to pay sum of Rs. 2,000 (two thousand) per month during training period, Rs. 1.6 lakhs per annum during probation period and Rs. 2.4 lakhs per annum after probation.

That at this stage more or less have completed our training period but during this training period we have not been paid our remuneration/stipend money as per the terms and conditions of our appointment.

That the management issued a post dated cheque almost to each of us to pay our remuneration for the month of Feb 2009. But all the cheques through the bankers The Axis Bank, Salt Lake branch are dishonoured due to insufficient of funds.

That from the month of March 2009 the above said persons of our company harassing us by not paying our monthly stipend amount as well as their delaying thepayment of our security money on different plea

That we informed the matter before the different authority with a view to redress our problem, but the above said company people are depriving us by taking differentpleas and pretext and lastly on 28-05-2009 they displayed a notice directing us tocontact with them on 16-06-2009 without mentioning any date at their notice

Sir, we are all unemployed youth engineers from different parts of our country joined the above said company with a good hope and better future prospects bybelieving and trusting the above said persons on good faith. But the above said persons cheated us by way of

1) Non refunding our security money which was refundable as per the terms and conditions.

2) Losing our time for building our future career and future prospects.

3) By non payment of our remuneration at our working period.

Above the facts now we are being helpless and hopeless beg to pray your kind attention and help to take appropriate action against the above said persons according to the law of the land so that we can get our security deposit as well as our remunerations from the above said company and take other action against the abovesaid persons which your good self may deem fit and proper. Hope you will be kind enough to take action immediately and oblige.

Thanking You.

Yours faithfully

Sujoy Ghosh"

b. The letter dated 20/06/2009 is replicated as follows:-

"The officer in charge,
Bidhannagar East police Station
Kolkata 700091
Sub: Complain against the office executive staffslisted below and the complaint should be treated as FR
1.Mr.Soumitri Mukherjee (CEO)
2.Mr. Premprakash Gupta (CFO)
3.Mr. Sanjay Sanyal (CTO)
4. Mr Sreejan Chaterjee (Branch in charge Bidhannagar)
5.Mr Sajal Basak (BDM)
6.Mr Sumit Gorvami (TL)

7.Mr Sanjoy Das (AO)

8.Mr Sujit Paul (Chief accountant)

9.Mr Shivaji Sengupta](Administrative Officer)

Above mentioned persons are all attached with assurgentTechnology Solutions Private Limited Block-GP Plot F5Saltlake Electronic Complex Sector- V

Dear Sir, With due respect I, the undersigned and some of my colleagues(enclosed list of names) are employees of Assurgent technology solutions Pvt ltd beg to state as follows:

1. That myself and some other Btech students have been appointed by the said company through campus interview from our respective colleges at different times in the year 2007,2008,2009.

2. That at the time of our appointment as per terms and conditions of the said company, we deposited Rs 50,000(Pifty Thousand-to-Rs-100000(one lakh) for each candidate(indicated in the enclosed list) as security deposit through demand draft for a period of 13 to 16 months and the security money to be returned by the third company after the maturity date mentioned in the security bond as per terms and agreement.

3. That as per the terms and condition of our offer letter the said company assured us to pay sum of Rs 2000(two thousands) per month during training, period and Rs 1.6 lakhs per annum after probation period.

4. That we have successfully undergone the entire training period with full attendance, sincerity, and punctuality as per direction of local management.

5. That more or less we have completed our training period but the company have not paid our remuneration/stipend money as per terms and conditions of our appointment

6. That after much agitation by us the management issued post dated cheeses to us to pay our remuneration for the month of

February 2009 but some of the cheques through the bankers, The Axis Bank, are dishonoured/bounced due to insufficient balance/funds,

7. That at present there is no working environment in any branches in West Bengal or in other states in India. The management wound up their company and escaped by cheating, the hard earned money of our parents accounting to about Rs Ten crores.

Under the above facts and circumstances, we are praying to your honour for immediate actions as follows.

1. To refund our security money along with interest which was refundable as per the terms and agreement of appointment letters.

2. Payment of our non-paid remunerations/stipend which was due at our working period.

3. Compensation for losing our valuable time and energy for building our future career and prospects.

4. To seal all assets, properties and cease bank accounts of above-mentioned executives of the said company.

5. To arrest immediately those unscrupulous executives who have deliberately with criminal intent have cheated us.

Sir, we all beg your kind cooperation to take immediate actions against the above said persons according to the law and take strong actions as prayed for in the para 1-5.

Thanking You,
Yours Faithfully,
Souvik Majumder"

31. The Hon'ble Supreme Court held the following in ***Delhi Race Club (1940) Ltd. v. State of U.P.***[1]:-

[1] 2024 SCC OnLine SC 2248

"DIFFERENCE BETWEEN CRIMINAL BREACH OF TRUST AND CHEATING

24. *This Court in its decision in S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 expounded the difference in the ingredients required for constituting an of offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under:—*

"9. The ingredients in order to constitute a criminal breach of trust are : (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."

25. *What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients.*

In order to constitute a criminal breach of trust (Section 406 IPC)*:—*

1) There must be entrustment with person for property or dominion over the property, and

2) The person entrusted:—

a) dishonestly misappropriated or converted property to his own use, or

b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:

i. any direction of law prescribing the method in which the trust is discharged; or

ii. legal contract touching the discharge of trust (see : S.W.P. Palanitkar (supra).

***Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are**:—*

1) deception of any person, either by making a false or misleading representation or by other action or by omission;

2) fraudulently or dishonestly inducing any person to deliver any property, or

3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see : Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : 2009 Cri LJ 3462 (SC))

***26.** Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.*

***27.** In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as* *defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.*

28. *Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha, reported in* ***(1973) 2 SCC 823*** *as under:*

"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating."

29. *To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the* *case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.*

30. *The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly* *misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.*

31. *At the most, the court of the Additional Chief Judicial Magistrate could have issued process for the offence punishable under Section 420 of the IPC i.e. cheating but in any circumstances no case of criminal breach of trust is made out. The reason being that indisputably there is no entrustment of any property in the case at hand. It is not even the case of the complainant that any property was lawfully entrusted to the appellants and that the same has been dishonestly misappropriated. The case of the complainant is plain and simple. He says that the price of the goods sold by him has not been paid. Once there is a sale, Section 406 of the IPC goes out of picture. According to the complainant, the invoices raised by him were not cleared. No case worth the name of cheating is also made out.*

32. *Even if the Magistrate would have issued process for the offence punishable under Section 420 of the IPC, i.e., cheating the same would have been liable to be quashed and set aside, as none of the ingredients to constitute the offence of cheating are disclosed from the materials on record.*

33. *It has been held in State of Gujarat v. Jaswantlal Nathalal reported in* ***(1968) 2 SCR 408****, "The term "entrusted" found in Section 405 IPC governs not only the words "with the property" immediately following it but also the words "or with any dominion over the property" occurring thereafter—see Velji Raghvaji Patel v. State of Maharashtra [(1965) 2 SCR 429]. Before there can be any entrustment there must be a trust meaning thereby an obligation annexed to the ownership of property and a confidence reposed in and accepted by the owner or declared and accepted by* *him for the benefit of another or of another and the owner. But that does not mean that such an entrustment need conform to all the technicalities of the law of trust — see Jaswantrai Manilal Akhaney v. State of Bombay [1956 SCR 483]. The expression "entrustment" carries with it the implication that the person handing over any property or on whose behalf that property is handed over to another, continues to be its owner. Further the person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them. A mere transaction of sale cannot amount to an "entrustment"".*

34. *Similarly, in Central Bureau of Investigation, SPE, SIU(X), New Delhi v. Duncans Agro Industries Ltd., Calcutta, (1996) 5 SCC 591 this Court held that the expression "entrusted with property" used in Section 405 of the IPC connotes that the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or that the beneficial interest in or ownership thereof must be in the other person and the offender must hold such property in trust for such other person or for his benefit. The relevant observations read as under:—*

"27. In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary

that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee. […]"

(Emphasis supplied)"

32. The Hon'ble Supreme Court held the following in ***Jay Shri v. State of Rajasthan***[2]:-

> ***"4.*** *Prima facie, in our opinion, mere breach of contract does not amount to an offence under Section 420 or Section 406 of the Penal Code, 1860, unless fraudulent or dishonest intention is shown right at the beginning of the transaction. This Court has time and again cautioned about converting purely civil disputes into criminal cases. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged."*

[2] 2024 SCC OnLine SC 54

33. The following was held by the Hon'ble Supreme Court in ***Parveen v. State of Haryana***[3]***:-***

> ***"12.*** *It is fairly well settled, to prove the charge of conspiracy, within the ambit of Section 120-B, it is necessary to establish that there was an agreement between the parties for doing an unlawful act. At the same time, it is to be noted that it is difficult to establish conspiracy by direct evidence at all, but at the same time, in absence of any evidence to show meeting of minds between the conspirators for the intended object of committing an illegal act, it is not safe to hold a person guilty for offences under Section 120-B of IPC. A few bits here and a few bits there on which prosecution relies, cannot be held to be adequate for connecting the accused with the commission of crime of criminal conspiracy. Even the alleged confessional statements of the co-accused, in absence of other acceptable corroborative evidence, is not safe to convict the accused...."*

34. The petitioner working in the capacity of an administrative officer could not have dominated the management of the company to act perversely, motivatedly and illegally to cheat the employees of the same, being an employee himself. The petitioner had been inducted into the company following similar process like other rebellious colleagues including the opposite party no. 2. The petitioner too was subjected to the same fate of being deprived of his salary like others who protested. The petitioner was not the receiver or the custodian of the fund of the company in his individual capacity dictating the disbursement of the same at his own whims and frenzy.

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[3] 2021 SCC OnLine SC 1184

35. The defacto complainant acted according to the stipulations of the company, complying the formalities subject to payment of salary in lieu of his employment, where the petitioner did not have an iota of role to play or even be intrusive being similarly circumstanced. Presumption and or suspicion on the part of the defacto complainant of any proximity of the petitioner with the management of the company influencing the same to act to their financial detriment, discomposure and loss are utterly imaginative and figmantary, devoid of legal basis.

36. The contents of the complaint did not explicitly and categorically describe the action on the part of the petitioner to implicate him. The complaint should mention the role of the accused to the extent to satisfy the elements to constitute the offences alleged to have been committed. No casual connection exists in the relationship between the parties. The petitioner did not intentionally deceive the complainant at the inception to deposit money, devoid of any authority or capacity or position to accept the same as well as to deny grant of salary to other employees.

37. The Learned Advocate representing the State has placed the entire case diary for the perusal of this Court and submitted at the nascent stage the proceedings should not be quashed. Exercising its power under Section 482 of the CrPC, if the High Court does not find any ingredients of the alleged offense at a preliminary stage to convince the court, specifically in the instant case where apart from conjectures, surmises, presumptions and aberration, the allegations against the petitioner being indistinct, irrational,

illogical barring legality, the proceedings shall not be allowed to continue to result in the abuse of power.

38. In view of the above discussions, proceedings being G.R. Case No. 319 of 2009 pending before the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas arising out of Bidhannagar (East) Police Station Case No. 99 of 2009 dated 20.06.2009 under Sections 406/420/120B of the Indian Penal Code and all orders passed therein including the order dated 23.02.2012 passed by the Learned Additional Chief Judicial Magistrate, Bidhannagar, North 24 Parganas is quashed.
39. The criminal revisional application being CRR 1672 of 2013 is allowed.
40. Accordingly, CRR 1672 of 2013 stands disposed of. Connected application, if there be any, also stands disposed of.
41. There is no order as to costs.
42. Department is directed to return the case diary.
43. 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.
44. All parties shall act on the server copy of this judgment duly downloaded from the official website of this court.

(Ananya Bandyopadhyay, J.)