IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 3521 of 2019

M/s. S. Serum Analysis Centre (P) Ltd.

Vs

Gaur Basak & Ors.

For the Petitioner	:	Mr. Phiroze Edulji, Mr. Ajay Choubey, Mr. Chandan Mishra, Ms. Soumili Chaudhuri.
For the Opposite Party No.1	:	Mr. Souvick Mitra, Ms. Nabamita Kapat.
For the Opposite Party No.2 & 3	:	None.
For the State	:	None.
Hearing concluded on	:	27.03.2024
Judgment on	:	02.05.2024

Shampa Dutt (Paul), J.:

1. The present revision has been preferred against an order dated 30.07.2019 passed by the Learned 20th Metropolitan Magistrate, Kolkata in connection with Complaint Case no. CN/115880/2016 registered for the offences under Sections 420/408/468/471/120B of the Indian Penal Code, 1860.

2. The petitioner is a renowned diagnostic centre and referral laboratory.

3. The petitioner states that the opposite party no.1/Gaur Basak was an employee of The Serum Analysis Centre which is the sister concern of the petitioner and he was deputed to work in the Accounts Department of the petitioner/M/s. S. Serum Analysis Centre (P) Ltd. since 2011 and the opposite party no. 2/Ms. Shrabani Sarkar and the opposite party no.3/Kaushik Nandy were working under the supervision of the opposite party no. 1.

4. That the petitioner's account department was mainly controlled & managed by the said opposite parties no. 1 to 3 and during scrutiny for the financial year 2012-2013, it has been found that the opposite parties no. 1 to 3 misappropriated huge amount of the petitioner and for the same the said opposite parties duly acknowledged their involvement in the said huge loss to the petitioner vide declaration dated 13/06/2013 and further they undertook to return the money which they had received from different franchisee/agents for their wrongful gain and the said declaration the opposite parties no. 1 to 3 never raised any objection.

5. On or about 20.06.2013 the petitioner lodged a formal complaint vide G.D. Entry No. 2195 dated 20.06.2013 in respect of Misappropriation of Fund & Breach of Trust against the said opposite parties no.1 to 3 and in the said letter it was requested to the Officer-in-Charge of Shyampukur that "*at once we did not want to record any case against the culprits till the conclusion of our internal audit, enquiry and investigation".*

6. Subsequently the petitioner appointed Sri Ranajit Dey, FCA (Proprietor of R. Dey & Associates of 124B, Lenin Sarani, Kolkata – 700 013 as an Independent Inquiry Officer for investigating the matter for the financial year 2012-2013 and the said Inquiry Officer after giving opportunity to all the parties, concluded the inquiry and submitted the report and during the said inquiry the opposite party no. 2 & 3 confessed that *"Mr. Gaur Basak influenced and instructed them to do the misappropriation of fund on his behalf & he forced us to misappropriate fund".*

7. The petitioner states that the said opposite parties 1 to 3 with others committed an offence and entered into criminal conspiracy and thereby dishonestly misappropriated the huge fund i.e. a sum of **Rs. 35,93,016/-** (Rupees Thirty Five Lacs Ninety Three Thousand Sixteen only) for particular one financial year 2012-13 of the petitioner as per report of the above Inquiry Officer by manipulating the accounts as well as by discounting the bills (they were never authorized for discounting any bill) and also by giving false declaration dated 13.06.2013, that they would return the amount, but they did not return the amount and as such they committed an offence of misappropriation of the huge amount and also cheated the petitioner.

8. The petitioner vide letter dated 27.01.2014 requested the Officer-in-Charge of Shyampukur Police Station, Kolkata to take appropriate steps for investigation in the matter but no action was taken against the said opposite parties. The petitioner filed an application under Section 156(3) Criminal Procedure Code being case no. C/89/2014 before the Learned Additional Chief Metropolitan Magistrate Court Kolkata against the opposite parties no.1 to 3 for the misappropriation/cheating to the tune of **Rs. 35,93,016/-** for the financial year 2012-2013 and after hearing the said matter the Learned Magistrate forwarded the said matter to the Officer-in-Charge Shyampukur Police Station for investigation and thereafter Shyampukur Police Station registered a case vide Shyampukur P.S. Case No. 52/2014 dated 23.02.2014 under Sections 420/408/468/471/120B of IPC.

9. It is stated that the Investigating Officer without collecting the relevant documents and without conducting a fair investigation filed the final report in the said case.

10. **On a 'naraji' petition being filed, the court treated the police case as a complaint case and the petitioner filed a formal complaint petition which was registered as CN/115880/2016 and on an enquiry/investigation conducted under the Section 202 of Cr.P.C., the Ld. Magistrate on considering the police report dismissed the complaint case.**

11. **In spite of due service, there is no representation on behalf of the opposite party no. 2 and 3.**

12. **Hence the revision** on the ground that there being a prima facie case against the opposite parties no. 1 to 3, the Magistrate was wrong to accept the FRT and subsequently the police report under Section 202 of Cr.P.C.

13. From the revisional application, written argument and other materials on record, it appears that the petitioner has relied upon the declaration confessions (written) of the accused persons.

14. It appears that the petitioner has handed over the audit report to the police.

15. Copies of documents sent to the police by the petitioner/complainant are on record and need to be examined.

16. In the written argument filed on behalf of the opposite party no. 1, the entire allegation is denied.

17. Affidavit in opposition and reply are on record.

18. **From the materials on record it appears that:-**

i) The relevant extract from the audit reports at page 36/37 of the revisional application is as follows:-

The opening balance as on 01.04.2012 is also suspicious. This could lead to a conclusion that, the practice of misappropriation of fund has taken place in the earlier years also.

<u>INTERACTION WITH THE SUSPENDED STAFFS</u>:

An interaction with the following suspended staffs were made on 16.09.2013.

1. *Mr. Gaur Basak*
2. *Ms. Shrabani Sarkar and*
3. *Mr. Kaushik Nandy*

In the interaction it was definitely ascertained that the three staffs acted as a team. ***The zones that were listed as "bad zones" were also involved in the misappropriation of fund.*** *Even out of the total misappropriated fund of Rs. 60,03,390/-, if we consider only the bad zones, there is a total loss of monies of Rs. 35,93,016/-.*

All the three admitted to their misdeed. It could be derived from the conversation that Mr. Gaur Basak, who was then the General Manager of the organization spear headed.

This operation but nevertheless the other two also benefited from this. ***The share of the misappropriated fund between these three staffs and that between the zones could not be established.***

In the concluding part of the interaction, the staffs Ms. Shrabani Sarkar and Kaushik Nandy, after *repeatedly confessing to the misappropriation gave into the confession in writing that they will cooperate in every manner with M/s. S. Serum Analysis Centre (P) Ltd., in order to unearth the various persons involved in this embezzlement of fund that will enable M/s. S. Serum Analysis Centre (P) Ltd. to take necessary legal action against those involved and recover the monetary loss. A copy of the self written declaration is enclosed with this report.*

CONCLUSION

It could be readily confirmed that embezzlement of fund of Rs. 35,93,016/- has been committed by these three(3) staffs and the Twenty zones (21) mentioned in the Annexure – 2. Necessary steps may be taken as decided by the management. ***There are lot of loop holes in the system of Billing issue of money receipt and accounting of the transaction of M/s. S. Serum Analysis Centre (P) Ltd. A few recommendations had been suggested below M/s. S. Serum Analysis Centre (P) Ltd. needs to streamline its accounting procedure.***

RECOMMENDATIONS:-

1. The zones should be persuaded to give the balance of Serum Analysis Centre (P) Ltd. standing in their books of accounts as on 31.03.2013.

2. Issuance of clearance certificate to be stopped immediately. In future the zones should request to keep the necessary document carefully so that the balances could be cross checked. The Statutory Auditor should take *initiative to obtain Sundry Debtor and Creditors confirmation.*

3. For many Sundry Creditors the actual balance payable to them has changed due to adjustments with the zones. This needs to be rectified.

4. Adjustment with Revenue Expenses needs to be rectified in order to disclose the actual profitability of the organization.

5. The Management should take necessary steps to recover the amount from the zones and/or the staffs involved in the practice.

6. Decision has to be taken by the Management to make necessary adjustments in order to bring the closing balances of the zones as on 31.03.2013 to an acceptable figure. ***It has been informed that the closing balances were subsequently adjusted as on 31.03.2013.***

7. The bank reconciliation as on 31.03.2013 needs to be reviewed.

8. There are deposits in the bank account that are unidentified.

9. The system of operation of Serum Analysis Centre (P) Ltd. needs to be reviewed.

ii) The petitioner's advocate's letter dated 05.03.2019 to the Officer-in-Charge, Shyampukur Police Station annexed the following documents:-

1. Copy of Power of Attorney.

2. Copy of Joint Declaration dated 13.06.2013 given by the accused persons where they **declared and confessed** that they had misappropriated the amount.
3. Report of Chartered Accountant dated 25/11/2013.

   (After such incident one Sri Ranjit Dey, a Chartered Accountant was appointed as Enquiry Officer of 124B, Lenin Sarani, Kolkata and the said accuseds **duly appeared** before the said Enquiry Officer and in the said proceeding 2 accuseds out of 3 accuseds in writing **confessed** their guilt in such manipulation/incident).
4. Copy of Complaint dated 27/01/2014 filed by the petitioner with the Shyampukur Police Station. (But no action and thereafter filed an application u/s 156(3) Cr.P.C.).
5. Name & particulars of **21** zones from where money was allegedly collected by the accuseds and siphoned into their pockets & also deposited into some Fake Zones which are not the zones of the petitioner.
6. **Bank Statements of the accuseds, where salary amount was disbursed into the account of the accuseds.**
7. Name of two persons namely (1) Rupayan Chowdhury (2) Sandip Mill, who can narrate the function of accuseds.

8. Summary Sheet/Breakup of Misappropriated Fund by the accused persons for the financial year 2012-2013.
9. Other relevant paper and documents.

(iii) Vide letter dated 05/07/17 the investigating officer asked for the following documents:-

(i) Appointment letter of all the accused persons.

(ii) Registered Working Portfolio of the accused persons signed & accepted by alleged accused persons indicating what kind of work was mainly allotted to the said accuseds.

(iii) Organization Chart of Complainant's Company in descending chronological manner.

(iv) Details of declared misappropriated funds in specified tabular form (e.g. Table 1) and also submit date wise as well as franchise/customer wise tabular report (e.g. Table 2) regarding misappropriated funds with supporting documents.

TABLE >1

DATE	NAME OF FRANCHISE/ CUSTOMER	DETAILS OF CHECKLIST ORIENTED WITH PRICE OF EACH SAMPLE INCLUDED IN CHECK LIST	NO. OF BILLS ORIENTED WITH SAMPLE WIS BREAK-UP DETAILS	QUANTUM OF MONEY APPEARS TO BE MISAPPROPIATED

TABLE >2

NAME OF FRANCHISE	TOTAL FUNDS MISAPPROPIATED	DATE WISE CORROBORATIVE BREAK-UP OF MISAPPROPIATED FUND

(v) List of franchise who appear to be associated with the process of misappropriation and also communicate those franchise to submit their related 'Books of Account' & computerized data to compare the collected data.

iv) The Investigating Officer submitted a report forwarded on 11.07.17 before the trial Court stating as follows:-

"In course of enquiry after getting the order sheet on 04.07.16 immediately on 05.07.17 the petitioner was asked for desired documents and the same was acknowledged.

On 09.07.17 the petitioner submitted a bunch of document with a forwarding letter. Subsequently by perusing the same a parawise report is being summarised for your honor's kind consideration.

On perusing the forwarding letter of said set of document it has been transpired that most of the points mentioned at said forwarding letter (cover letter) are seemingly irrelevant and not at all asked by the undersigned.

In the next phase of the forwarding letter of said set of document the petitioner mentioned a line which is quoted here for your honor's ready reference i.e. "Now we are submitting (Page 1 to 7) only those documents which are available to us". From this kind of quote it may presume that the desired document is not with the petitioner or the petitioner is reluctant to submit the same.

On being unfold the submitted document it came to know that instead of showing any of the desired document ***the petitioner tried to concentrate the attention of enquiry over a 'Declaration of alleged person' dated. – 13.06.13.*** *But it can't be possible to know that on which situation said declaration was made by the alleged persons. Similarly the petitioner also intends to streamline the enquiry by mentioning observation of 'Special Audit Report on the Accounts of S. Serum Analysis Centre (P) Ltd. for the financial year 2012-2013' made by private auditor.*

It is also important to mention that the petitioner annexed a 'Leave Application' of alleged Gour Basak where he assigned as 'Marketing Manager' whereas since inception the petitioner claimed him as Head of Account Dept. During examination the petitioner can't make any satisfactory reply in this regard.

In this circumstance it is reported before your honor that despite of our consecutive requests and your valuable direction the petitioner did not divulge to us the desired documents.

Hence, nothing conclusive could be evident against the alleged persons for want to desired documents."

v) Vide report dated 08/02/19, the Investigating Officer has stated:-

> *"During enquiry most of the required facts have already been examined but involvement of accuseds into this effect yet to unearth."*

vi) Report dated 11/03/19 state as follows:-

i) *"In the year of 2014 a Case has been indexed vide Shyampukur PS c/No. 52/14, U/s 420 /408 /468 /471 /120B IPC on strength of complaint of instant complainant against Gaur Basak & Ors.*

ii) *From the available case records it has been observed that the complainant side remains reluctant to provide any related documents in spite of receiving several Notice of 91 Cr.P.C. Subsequently said case have to close by filing F.R.T. in the year of 2015 by obtaining valuable opinion from Ld. P.P.*

iii) *Subsequently against the F.R.T. report first Naraji Petition was filed by complainant before Ld. A.C.M.M., Kolkata and after considering the case Ld. A.C.M.M., Kolkata converted the case into private Complaint Case & transferred before your honour's Court.*

iv) *Since then a number of times order has been passed from your honour's Court to submit a report and in every occasion concerned complainant has been noticed to produce desired documents. But in each time either they requested for time or produce a bunch of irrelevant papers and tried to streamline the enquiry by mentioning observation of 'Special Audit Report on the Accounts of S. Serum Analysis Centre (P) Ltd. for the financial year 2012-2013' made by private auditor. As a result in each occasion after submission of enquiry report Naraji Petition was filed by complainant by raising question upon credibility of investigating agency."*

vii) The Final Enquiry report dated 19.07.2019 conducted as per direction of the Magistrate under Section 202 Cr.P.C. was submitted stating as follows:-

> *"In due course of enquiry the petitioner was noticed in earlier occasion to produce relevant documents in support against the alleged persons which can prove their criminality. But on 10.07.2019 the authorised person namely Rupayan Chowdhury of Serum Analysis Centre Pvt. Limited, submitted some photocopies of documents attached with one forwarding letter addressing to Officer-In-Charge of Shyampukur Police Station. During enquiry read over the contents submitted by the petitioner and it could be learnt from that the petitioner found the discrepancy into their company account for the Financial Year 2012-2013, which was resultant of special Audit report by R. Dey & Associates Chartered Accountants, not authorised by any Govt. Audit Sections.*
>
> *Hence, nothing conclusive could be drawn against the alleged persons for want of desired documents."*

CONCLUSION:-

19. From the above findings put on record and on careful perusal of the documents filed by the petitioner through their Advocate on 05.03.2019 with the Investigating Officer, it appears that the petitioner has till date not produced any specific documents making out offences alleged against the accuseds. **It could not be even prima facie shown by the petitioner/auditor that any unaccounted sum (money) had been credited to the accounts of the accused persons, other than salary.**

20. The declarations relied upon are not reliable document. The audit report by a private auditor is vague and no specific materials could be shown to implicate the accuseds/opposite parties no. 1 to 3 for the offences alleged, even prima facie. The report of investigating agency is clearly on basis of fair & lawful enquiry and suffers from no illegality.

21. Thus the order under revision dated 30.07.2019 being a well reasoned order and being in accordance with law requires no interference.

22. **The proceedings/inquiry/investigation in this case continued from 2013 to 2019 (seven years).**

23. Any further indulgence shown will be a clear abuse of the process of law/Court.

24. **CRR 3521 of 2019 is dismissed.**

25. All connected applications, if any, stand disposed of.

26. Interim order, if any, stands vacated.

27. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

28. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)