

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 52 OF 2025

BIDISHA BHATTACHARJEE

VS

STATE OF WEST BENGAL & ANR.

For the Petitioner : **Mr. Moyukh Mukherjee, Adv.**
Ms. Sarmistha Basak, Adv.
Mr. Kaustav Bhattacharyya, Adv.

For the State : **Mr. Debasish Roy, Ld. P.P**
Mr. Saryati Dutta, Adv.
Ms. Eshita Dutta, Adv.

Last heard on : **06.11.2025**

Judgement on : **14.11.2025**

Uploaded on : **14.11.2025**

CHAITALI CHATTERJEE DAS, J. :-

1. This revision application is filed for quashing of the proceedings in connection with special case no. 25 of 2022 arising out of G.R. Case no. 872 of 2022, under Section 420/406/409/34 of the Indian Penal Code, where the charge-sheet has been submitted on 8.6.2022, under Sections 420/406/409/467/468/471/477A/34 of the Indian penal code, 1860 pending before the Learned Special Judge, 1st Court, Hooghly.

2. The petitioner has been arraigned as an accused person in a criminal case initiated on the basis of a complaint lodged by the complainant/Opposite Party, NO.2 alleging inter alia that on advice by Hooghly zonal office of UCO Bank, Bhadeshwar Branch on January 10, 2022, by Chief Manager of Bandel Branch, Shri P.K Patra, a huge cash shortage of ₹7.5 lakhs was detected. It was alleged that after closure of cash transaction for January 10, 2022, cash ledger balance was found to be of ₹36, 56, 844, 58, whereas physical balance was ₹29,06,844,58. No cash, summary was available in the branch for January 7, 2022, and on further enquiry revealed unauthorised withdrawal of physical cash to the tune of ₹7.50 lakhs on January 7, 2022 from cash vault of the branch by Soumitra Mridha , Ex- Branch manager and one Soumik Dutta SWA – A, posted at the same branch and officiating as joint custodian of the vault ,without passing any transaction which resulted shortage of physical cash on January 7, 2022. Subsequently, he repaid the shortage of ₹7.50 lakhs on January 10, 2022, and immediately after that under the instruction of the competent authority, detailed departmental investigation was made in the said branch when other various fraudulent transactions and unauthorised activities conducted by the accused persons came to light. It is alleged that the offence in this case reflected cheating and misappropriation of cash of 1.41crores approximately. Accordingly, the complaint was lodged for criminal breach of trust, cheating forgery etc. section, including misappropriation of fund.

3. The petitioner being one of the accused preferred an application under Section 239 of Cr.Pc. praying for discharge before the learned Additional Session

Judge, 1st Court, Hooghly Chandannagar on June 9, 2023, but the petition was not heard as other accused persons were absconding and not the date petition was fixed for hearing of the petition on August 22, 2023. On account of non-presence of any advocate to represent the petitioner on that date, the Learned Court rejected the discharge petition without entering into the merit of the discharge petition and fixed the date for hearing of charge on 13. 10.2023. The petitioner approached the Court and the coordinate bench of this Court vide order dated 22.8.2023 directed the Learned Court to give an opportunity of hearing to the Learned Advocate representing the petitioner to address the Court on merit of the case and thereby set aside the order dated September 18, 2023.

4. The learned Trial Court again further hearing both the learned advocates rejected the said application on March 19, 2024, against which revisional application was filed by the petitioner before this Court being CRR no. 1351 of 2024 and prayed for withdrawal of the same which was allowed without liberty to file afresh on the self-same cause of action. Vide an order dated 30.7.2024, the coordinate bench of this court while passing such order of dismissal granted liberty to place all the points made out in the revisional application before the Learned Trial Court at the appropriate stage.
5. The further contention is that on the date fixed, the Learned Trial Court again passed an order of rejection on September 21, 2024, against which this revisional application has been filed for quashing of the entire proceeding. It is contended by the learned advocate representing the petitioner that on perusal of the FIR and the complaint by the UCO Bank, it is evident that nothing has been reflected regarding involvement of the petitioner and the handwriting of

the account holder did not match with the handwritten amount in word. It is submitted that the Hon'ble Court in the decision of ***Union of India versus Prafulla Kumar Samal and others***¹, further affirmed in ***Vijayan versus state of Kerala and another***² held that the judge has the unquestioned authority to carefully examine the evidence in order to determine whether or not a prima facie case has been established against the accused and the court must take into account the overall likelihood of the case and not only operate as a post office or a mouth piece for the prosecution.

6. The learned Advocate strenuously argued that after passing the judgement by the Hon'ble Court in ***Delhi race club (1940) Limited and another versus State of Uttar Pradesh and another***³ there has been a substantial change in incorporating Section 420 and 406 IPC simultaneously against the same accused person. The Hon'ble Apex Court made a distinction between criminal breach of trust and cheating.
7. Per Contra the learned advocate representing the state/ Opposite Party raises vehement objection to that extent that the charges were not framed only under Section 420 and 406 of the Indian Penal Code but under various other Sections for the offence committed. The allegation was serious in nature involving huge amount of money and on completion of investigation the charge sheet was submitted long back. On account of several applications made by the petitioner, there has been a substantial delay in proceeding with the case. It is further contended that the next date is fixed for hearing charge and if any such point has to be raised that could have been raised before the concerned

¹ AIR 1979 SC 366

² (2010) 2 SC 398

³ (2024) 10 SCC 690

court while framing of charge. That apart during the course of hearing the learned advocate, who represented the petitioner before the learned Trial Court specifically said he had no other point to canvas and the learned Court, considering all other factors passed such order of rejection affirming his previous order and therefore no occasion arises to set aside such order . It is further submitted that even if the submission of the learned advocate of the petitioner is to be considered, it would be appropriate the quashing of the entire proceeding does not arise and if the point be taken before Learned Trial Court to consider in the light of the decisions giving an opportunity of hearing to both the parties at the time of framing the charge.

- 8.** Heard the submission fact remains that the petitioner is not an FIR named accused person, but subsequently arraigned as an accused in the supplementary charge-sheet along with other 11 accused persons. After filing of the charge-sheet, the present petitioner took out an application for discharge. There are round of litigations revolving around with the said application, and the present revisional application is also filed challenging the order passed by the Learned Court in respect of such application with a further prayed for quashing of the entire proceeding. The learned Advocate has relied upon the decision of Delhi race club in order to impress upon this court that the charge sheet was submitted against the petitioner, arraigning her in both criminal breach of trust as well as cheating when there is a clear distinction made by the High Court of the country, which has not been followed and hence the entire proceeding should be quashed. In para 43 of the said judgement it was observed:

43. *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 misappropriate the same. Whereas, in case of cheating, the offender, fraudulently or dishonest induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot coexist simultaneously. It is therefore submitted that the learned court did not apply his judicial mind while refusing the prayer of the petitioner after the direction passed by the Co-ordinate bench of this Court.*

9. Section 239 of the Code of Criminal Procedure speaks of when accused shall be discharged. It read as.;

“If, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the magistrate thinks necessary, and after giving the prosecution and the accused, an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for doing so. Therefore, the obligations under Section 239 arises when the magistrate is of the view that there is no ground to proceed against the accused persons. In order to arrive at such decision, the learned magistrate after the final charge-sheet is produced and the accused is put on trial for framing charge under Section 227, if find no prima facie materials in exist can discharge the accused persons. The Learned Magistrate before taking such records must

examine the record to ascertain whether any ground exists to proceed against the accused person and the magistrate will have to appoint that the charges are baseless” .

10. In the instant case, after the direction was given by the coordinate bench of this Court to the Learned Magistrate to consider the point to be raised on behalf of the petitioner in accordance with law, on March 19, 2024, the learned court on considering the materials available and the submissions advanced before the learned court on behalf of the Learned Advocate of the petitioner as well as the learned P.P in-charge and further considering the decisions relied upon by both the Learned Advocates was of the view that the case is not fit for discharging the accused person as prayed for.

11. The complaint pertains to fraudulent transactions by the bank branch employees by manipulating the withdrawal slips and creating fake FDR certificates in the name of several customers. As a result, their amount was debited in those FDR and thereby the amount was siphoned to other accounts. The present petitioner is one of such beneficiary who received an amount of Rs.1 lakh which got revealed in course of investigation and in course of investigation one deposit slip dated 2.12.21 and one withdrawal slip of the account holder named Bidisha Bhattacharya with an endorsement pls TRF to amount Bidha Bhattacharya written on the back of such slips was found. Therefore the Learned court found primary involvement of the petitioner as beneficiary of a portion of such amount which was debited by practising fraud.

12. Challenging the said order, the revisional application was filed before this High Court and when the matter was taken up for hearing the Learned

Advocate prayed to withdraw the revisional application without any liberty to file a fresh on the same cause of action. Accordingly, the revisional application was dismissed as withdrawn, however the coordinate Bench further extended liberty to the petitioner to place all the points made out in the revisional application before the learned Trial Court at the appropriate stage. After that on September 21, 2024, when the matter was taken up by the learned court initially prayer was made to adjourn the case which was not considered by the Learned Court, and when the matter was taken up for hearing, the learned advocate expressed that he has no other fresh point to canvass or to credit it for the purpose of discharging the accused petitioner Bidisha Bhattacharya from this case. Accordingly, the learned court was of the view that the order passed by the Learned Court on March 19, 2024 shall stand as it is. Therefore there appears to be no illegality in the order passed by the Learned Court.

13. The argument advanced on behalf of the Learned Advocate representing the petitioner that the said statement by the learned advocate was incorrectly inserted in the order cannot be considered or accepted at present on two fold ground. Firstly, no attempt was made on the part of the petitioner to raise an objection regarding incorrect insertion of the submission made by the learned advocate immediately after perusal of the order passed by the Learned Court, by filing any application or by making any objection verbally. Secondly, nowhere in the revisional application, this stand of the petitioner can be found.

14. In pure legal lens, it is now settled that the same person cannot be simultaneously charged with offences punishable under Section 406 and 420 of IPC with regard to one particular transaction as per ratio decidendi of **Delhi**

race club (supra) .The submission made by the learned advocate, relying upon **Delhi Race Club(supra)** that an FIR cannot be maintained under both the sanctions as the ingredients of both the Sections are mutually exclusive and cannot co-exist sounds very logical and backed by the judicial pronouncement but the question boils down as to whether the entire proceeding if can be quashed by this court exercising the power under Section 528 of BNSS on this score when there are other charges and the date is fixed for hearing of charge. In the said case the complaint was filed for the offences under Section 420 and 406 IPC and the learned Magistrate took the cognizance and issued process only for the offence under Section 406 IPC against which an application was filed to quash and set aside the order before the High court of judicature at Allahabad when such prayer was refused and the Hon'ble Supreme court set aside both the orders. In this case the point was never raised before the learned court on the date fixed when the Learned Advocate refused to canvass any further point to discharge the petitioner. That apart initially the learned Court on examining the materials refused to allow the prayer to discharge the petitioner and the refusal order of the learned Court was challenged before the higher forum was not proceeded with and the revisional application was dismissed as withdrawn.

The charge is yet to be framed and the learned Trial court is to frame the charge after applying its mind to the question, whether or not, there is any ground for presuming the commission of the offence by the accused on the touchstone of the prevailing Law laid down, as well as the various judicial

pronouncements in this regard. In the decision of **State versus Mohanlal**⁴ it was observed that the crystallised judicial view is that at the stage of framing charge, the Court has to prima facie consider whether there is sufficing Ground for proceeding against the accused. The Court is not required to appreciate evidence to conclude whether the materials produced sufficient or not for convicting the accused;

- 15.** It is the settled provision of law that while exercising jurisdiction under Section 482 Cr.Pc corresponding to Section 528 Cr.Pc. the court must be conscious that the power is to be exercised, sparingly and only for the purpose of prevention of abuse of the process of court or otherwise to secure the ends of justice .

In the case of **State of Odisha v. Pratima Mohanty**⁵ it was held that,

‘as per the settled proposition of law, while examining an FIR/complaint, quashing of which is sought, the court cannot embark upon any enquiry as to the reliability or genuineness of allegations made in the FIR/complaint. Quashing a complaint/FIR should be an exception rather than any ordinary rule. Normally, the criminal proceedings should not be quashed in exercise of powers under section 482 of the Code when, after a thorough investigation, the charge-sheet has been filed. At the stage of discharge and/or considering the application under section 482 of the Code the courts are not required to go into the merits of the allegations and/or evidence in detail as if conducting a mini-trial. As held by this Court, the powers under this section are very wide, but the conferment of wide power

⁴ (2000) 6 SCC 338

⁵ (2022) 16 SCC 703

requires the court to be more cautious. It casts an onerous and more diligent duty on the Court”.

16. Therefore in the light of aforesaid discussion this Court do not find any reason to exercise the power under section 528 BNSS to quash the entire proceeding on the ground raised on behalf of the petitioner specially when the charge has not yet been framed by the Learned Trial Court.

However it is directed that the learned court while framing the charge would consider the issue raised regarding the maintainability of both the offences punishable under Section 420 as well as 406 of the Indian Penal Code against the same person, in the light of the decision of ***Delhi race club (supra)***.

17. It is pertinent to mention herein that the petitioner prayed for time on August 22, 2023, which was not considered by the Learned Court and rejected the discharge application, on the prayer made to withdraw the revisional application before this Court and accordingly, the same was dismissed as withdrawn. The Coordinate Bench of this court granted liberty to the petitioner to raise all the points before the learned Trial Court at the appropriate stage. On the date was fixed a petition was filed on behalf of the petitioner praying for adjournment which was refused in absence of any clear and cogent ground with specific observation about the delay in proceeding with the case and after that this revisional application has been filed for quashing of the proceeding. Therefore the Learned Magistrate is directed to dispose of the hearing of charge on the next date fixed by the learned Court and in the event of any such situation beyond control the matter is not heard on that day, the same must

be disposed of within a period of month thereafter without granting any unnecessary adjournment to either of the parties.

18. Hence this revisional application stands dismissed.

19. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)

