

21.08.2025
SL No.10
Court No.32
S.Gayen

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

CRR 1021 of 2024

with

CRAN 1 of 2024

Biswajit Kundu & Anr.

Versus

The State of West Bengal & Anr.

Mr. Dipanjan Dutt
Mr. Surajit Saha

...for the Petitioners

1. None appears on behalf of the opposite parties in spite of service.
2. This revisional application has been preferred with a prayer for quashing the proceeding of Case No. CN-3794 of 2023 under Sections 384/403/465/406/420/120B/34 of the Indian Penal Code pending before the learned Metropolitan Magistrate, 11th Court, Calcutta.
3. The complaint case was initiated through a complaint under Section 200 of the Code of Criminal Procedure (hereinafter referred to as CrPC) alleging, *inter alia*, that the complainant and his father/accused No.1 are the partner of a firm where the complainant had a profit share of 95% and also invested a sum of Rs. 1,70,246/- as a portion of capital. It is alleged that the accused No.1 had withdrawn a sum of Rs. 18,00,000/- from the bank account of the said partnership firm without the consent of the complainant and also after forging the signature.

4. The above-mentioned complaint was filed before the learned Additional Chief Metropolitan Magistrate, Calcutta (now Additional Chief Judicial Magistrate, Calcutta) on 3rd November, 2023. Cognizance was taken and the same was transferred to the learned Metropolitan Magistrate, 11th Court, Calcutta for enquiry and disposal. The learned Metropolitan Magistrate, 11th Court examined the witnesses on solemn affirmation and issued process after being satisfied the prima facie commission of offence under Sections 384/403/465/406/420/120B/34 of the Indian Penal Code.
5. Learned counsel appearing for the petitioner has contended before this Court that on self-same allegation one case was initiated at the behest of the complainant/opposite party No.2 herein under Section 156(3) of CrPC which was forwarded to the Officer-in-Charge, Shyampukur Police Station. The particular case was registered as Shyampukur Police Station Case No. 65 of 2023 dated 22.07.2023 under Sections 420/406/403 of the Indian Penal Code. The complaint was investigated and final report was filed as the allegation made in the complainant under Section 156(3) of CrPC was not substantiated by any evidence against the accused.
6. Learned counsel has further submitted that the allegation of misappropriation cannot be leveled against any partner of a partnership firm without the same being dissolved by process of law.
7. In support of his contention he relied on a case of **Velji Raghavji Patel vs. State of Maharashtra** reported in **1964 SCC Online SC**

185, wherein the Hon'ble Apex Court handed down the following principle which reads as follows:-

“... It is obvious that an owner of property, in whichever way he uses his property and with whatever intention will not be liable for misappropriation and that would be so even if he is not the exclusive owner thereof. As already stated, a partner has, undefined ownership along with the other partners over all the assets of the partnership. If he chooses to use any of them for his own purposes he may be accountable civilly to the other partners. But he does not thereby commit any misappropriation. Mr. Chatterjee's alternative contention must be rejected.”

8. After keeping both the written complaint under Section 200 of CrPC involves in this revisional application as well as the complaint under Section 156(3) of CrPC in juxtaposition, I find that the complainant/opposite party No.2 herein had already filed an application making an allegation of mis-appropriation and forgery, under Section 156(3) of CrPC before the Court of learned Additional Chief Metropolitan Magistrate I, Calcutta. The self-same allegation was investigated by the Shyampukur Police Station and report in final form was submitted where the accused/petitioner No.1 herein was found not chargesheeted as allegation against him has not been substantiated by any cogent evidence. Both the allegations made in the complaint under Section 200 of CrPC as well as Section 156(3) of CrPC are absolutely identical.
9. It appears from the application under Section 200 of CrPC involves in this revisional application, that all allegations made by the complainant against partner of a partnership firm and it is not in dispute that the such firm was not dissolved. According to procedure prescribed for dissolution of firm. In this regard, I find

no other option but to rely on the principle handed down by the Hon'ble Apex Court in ***Velji Raghavji Patel*** (supra).

10. In the aforesaid view of the matter the proceeding involves in this revisional is liable to be quashed on the following grounds:-

- i) The complainant earlier filed one application under Section 156(3) of CrPC which was duly investigated by Shyampur Police Station and the accused was not chargesheeted.
- ii) The principles handed down by the Hon'ble Apex Court in ***Velji Raghavji Patel*** (supra).

11. As a sequel, the proceeding in connection with Case No. CN-3794 of 2023 under Sections 384/403/465/406/420/120B/34 of the Indian Penal Code pending before the learned Metropolitan Magistrate, 11th Court, Calcutta (now Judicial Magistrate, 11th Court, Calcutta) stands quashed.

12. Therefore, further proceeding in this case would be a glaring example of abuse of process of law.

13. With the above observations, the revisional application stands disposed of and connected application, if any, also stands disposed of.

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

15. Urgent Photostat certified copy, if applied for, be given to the parties upon compliance with all requisite formalities.

(Bibhas Ranjan De, J.)