

04.04.2025
Item No.100
Ct. No.35
dc.

W.P.A. 6334 of 2025

**Ajaim Mallick
versus
The State of West Bengal & Ors.**

Mr. Bibek Chatterjee,
Ms. Paramita Sahu,
Ms. Susmita Saha ... For the Petitioner.

Mr. Susovan Sengupta,
Mr. Tarak Karan ... For the State.

Report submitted by the learned advocate appearing for the State be kept with the record.

The petitioner has approached this Court with prayers- for consideration of his representation dated 14.02.2025, for not to take any coercive steps against him in connection with Singur P.S. Case No. 109 of 2024 dated 12.03.2024 under Sections 420/406 of the Indian Penal Code and for quashing of the notice under Section 160 of the Code of Criminal Procedure in connection with the aforesaid case.

Learned advocate appearing for the petitioner submits that the petitioner intends to answer the police authorities by audio-video electronic means and as such, he sent a representation on 14.02.2025 after he was served with a notice under Section 160 of the Code of Criminal Procedure. Learned advocate for the petitioner further contends that it has been settled by the Hon'ble Apex Court in *Delhi Race Club (1940) Ltd. & Ors. Vs. State of Uttar Pradesh & Anr., 2024 INSC 626* that

offences of cheating and criminal breach of trust cannot go together simultaneously. To that effect, learned advocate has drawn the attention of the Court to paragraph 43 of the said judgement which is quoted below :

“43. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating *viz-a-viz* criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other.”

Learned advocate appearing for the State has submitted a report which reflects that earlier on repeated occasions, notices under Section 160 of the Code of Criminal Procedure has been sought to be served on the available address, however, the same was not responded to and lastly on 14.02.2025, the petitioner has responded that he would be attending by audio-video electronic means. According to the State, the petitioner is in know-how of the incident complained of as it took place in his premises wherein a sum of Rs.10,00,000/- was accepted from the *de facto* complainant and thereafter, the accused persons fled away.

So far as the accusation made or the content of the FIR is concerned, *prima facie*, a cognizable

offence is made out. At the stage of the investigation, it is not relevant which are the sections to be added or incorporated and a wider number of sections allows the investigating officer to come to a conclusion at the time of submission of the report under Section 173 of the Code of Criminal Procedure as to the specific offence which is to be attracted. As such, the assessment in respect of applicability of the section cannot be made at the stage of investigation. Consequently the judgement relied upon on behalf of the petitioner is not applicable to the present case.

The police authorities are directed to take a decision whether the locus of the petitioner is a witness or an accused. If the petitioner is an accused in a case, it is the duty of the police authorities to serve notice under Section 41A of the Code of Criminal Procedure. Accordingly, the police authorities are directed to serve a fresh notice under the relevant provisions according to the locus of the petitioner in respect of the materials which have surfaced in course of the investigation. The prayers as such made in the writ petition are not acceptable.

With the aforesaid observations, the writ petition being WPA 6334 of 2025 is disposed of.

There will be no order as to costs.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)