

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

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

C.R.R. 1739 of 2022

**Dulal Kumbhakar
-Vs-
State of West Bengal & Anr.**

For the Petitioner	: Mr. Satatup Purakayastha Mr. Abhishek Chakraborty Mr. Jagriti Bhattacharya
For the State	: Mr. Debasish Roy, Ld. PP Mr. Bitasok Banerjee
For UIDAI (Aadhar Authority)	: Mr. Arun Kumar Maiti (Mohanty) Mr. Jasojeet Mukherjee Mr. R. R. Mohanty
Hearing concluded on	: 23.05.2025
Judgment on	: 13.06.2025

UDAY KUMAR, J.: –

1. This revisional application, filed under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.), seeks the extraordinary relief of quashing First Information Report (FIR) bearing Manbazar Police Station Case No. 47 of 2018, dated September 7, 2018, and all subsequent proceedings arising therefrom, including G.R. Case No. 1187 of 2018, pending before the Learned Chief Judicial Magistrate, Purulia. The petitioner, Dulal Kumbhakar, stands formally arraigned for alleged contraventions of Sections 419, 420, and 468 of the Indian Penal Code,

1860 (IPC), Sections 34, 35, and 42 of the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 (hereinafter, 'the Aadhaar Act, 2016'), and Sections 66C and 66D of the Information Technology Act, 2000 (IT Act, 2000). The fundamental premise of the petitioner's challenge is that the continuation of these criminal proceedings constitutes a manifest abuse of the legal process, being both factually unfounded and legally untenable.

- 2.** The prosecution against the petitioner emanates from a written complaint dated September 7, 2018, lodged by a Section Officer from the Unique Identification Authority of India (UIDAI). The gravamen of the complaint alleges that the petitioner, Dulal Kumbhakar, engaged in impersonation by "wilfully allowing his fingerprints to be used for the generation of an Aadhaar identity of another person," identified as his brother, Subal Kumbhakar. This alleged act occurred on February 16, 2014. It was further claimed that the petitioner subsequently attempted to fraudulently update the demographic particulars of this Aadhaar. Following investigation, a charge sheet was submitted, though notably, the investigating agency refrained from pressing more severe accusations, citing an insufficiency of material.
- 3.** The petitioner presented a contrasting narrative, asserting the absence of his criminal intent, as on the alleged date of the incident, i.e., on February 16, 2014, while he was assisting his physically disabled brother, Subal Kumbhakar, at a crowded Aadhaar enrollment centre, his fingerprints were inadvertently captured twice due to negligence of staff. This purportedly led to his biometrics had been erroneously registered

against his brother's Aadhaar enrollment, while his own subsequent enrollment failed.

4. Crucially, immediately upon discovery of anomaly and realizing of the mistake, petitioner taken proactive effort for rectification by diligently pursuing the matter with UIDAI authorities, submitting numerous complaints and undertaking repeated enrollment attempts, all of which were "rejected." Driven by the persistent failure to obtain his own Aadhaar, he eventually resorted to legal redress, filing a Writ Petition in 2018 against the UIDAI, due to which his own correct Aadhaar number (XXXX-XXXX-0455) could finally generated on May 22, 2019, by cancellation of the erroneously generated Aadhaar (XXXX-XXXX-7693) in his brother's name. It is pertinent that the UIDAI's own affidavit, filed in his earlier writ petition, expressly acknowledged the possibility of biometric mismatches occurring due to issues like uncleaned scanners, lending credence to the petitioner's explanation of an innocent mix-up rather than a deliberate criminal act.
5. Procedurally, the petitioner candidly acknowledged filing a discharge application before the Trial Court on March 16, 2020, prior to initiating the present revisional application. He explained this sequence as a direct consequence of the unforeseen challenges posed by the global COVID-19 pandemic, which brought normal court proceedings to a standstill. Faced with incessant adjournments at the Trial Court and severe professional detriment occasioned by the pendency of the criminal case, the petitioner contends he was compelled by exigent circumstances to seek a more expeditious remedy from this higher forum.

6. Mr. Satarup Purakayastha, Learned Counsel for the petitioner fundamentally assailed the criminal proceedings on four key grounds:

- (i) the impermissible retrospective application of the Aadhaar Act, 2016, for an act committed prior to its enforcement, violating Article 20(1) of the Constitution;
- (ii) the absence of essential ingredients for the IPC offenses (Sections 419, 420, 468), particularly the lack of "delivery of property" and criminal *mens rea* for cheating and forgery;
- (iii) the inapplicability of the IT Act provisions (Sections 66C, 66D) due to the absence of "wilful" intent, given the explanation of an inadvertent mix-up and UIDAI's own acknowledgements; and
- (iv) the contention that the entire prosecution was an abuse of process, devoid of criminal intent and contrary to the petitioner's consistent efforts at rectification.
- (v) the petitioner's subsequent conduct, meticulously detailed, demonstrably militated against any inference of criminal intent. Far from seeking to benefit, the petitioner had diligently pursued rectification since 2015 through numerous complaints, multiple enrolment attempts, and ultimately a Writ Petition. The eventual resolution, with the petitioner receiving his correct Aadhaar and the erroneous one being cancelled, served as conclusive proof that the anomaly was a rectifiable error, not a malicious criminal enterprise.

(vi) He also addressed the procedural objection regarding the prior discharge application, explaining the pandemic-induced exigency.

7. Mr. Debasish Roy, Ld. PP Learned Counsel for the State and Mr. Arun Kumar Maiti (Mohanty) Learned Advocate representing the UIDAI (Aadhar Authority) robustly resisted the prayer for quashing of the proceeding, primarily asserting the sufficiency of material in the charge sheet for prosecution. They contended that the "detection" of the fraudulent act in 2016, post-Aadhaar Act's enforcement, negated retrospectivity. A strong procedural objection was raised concerning the petitioner's alleged suppression of the prior discharge application, arguing that such non-disclosure *ipso facto* warranted dismissal, relying on *Raju Thapar and Others vs. Madan Lal Kapur*. The UIDAI's affidavit affirming "de-duplication" was presented as definitive proof of impersonation, arguing that subsequent administrative resolution does not expunge the original criminal act.
8. Based on the competing submissions and the material on record, this Court formulates the following pivotal points for its judicial determination:
 - (i) Whether the Aadhaar Act, 2016 (Sections 34, 35, 42), can be applied retrospectively to an alleged act committed in 2014, prior to its enforcement.
 - (ii) Whether the allegations, even *prima facie*, satisfy the essential legal ingredients for offenses under Sections 419, 420, and 468 IPC, and Sections 66C and 66D of the IT Act, 2000.

- (iii) Whether the continuation of these criminal proceedings, in the factual and legal context, constitutes an abuse of the process of the Court, justifying intervention under Section 482 Cr.P.C.
 - (iv) Whether the petitioner's non-disclosure of a prior discharge application mandates the outright dismissal of this revisional application.
- 9.** I have meticulously analysed the comprehensive submissions made by the learned advocates, the intricate factual matrix, and the governing legal principles, to arrive at its logical determination.
- 10.** At the threshold, it is crucial to delineate the parameters of this Court's inherent powers under Section 482 Cr.P.C. This provision vests in the High Court extraordinary jurisdiction to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. This power, while vast, is to be exercised sparingly, cautiously, and with utmost circumspection. The Hon'ble Supreme Court, in its seminal judgment in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604, laid down illustrative categories where such power can be invoked. Notably, these include cases where the allegations in the FIR or the complaint, even if taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused, or where the criminal proceedings are manifestly *mala fide* or maliciously instituted. The inherent power is not to be used to stifle a legitimate prosecution, but to ensure that the criminal justice system is not perverted or misused for extraneous considerations, thereby causing

grave injustice. This principle has been recently reiterated in *Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra*, (2021) SCC Online SC 315, emphasizing that the power to quash should be exercised with great circumspection and only in the rarest of rare cases where a *prima facie* case is not discernible or the proceedings are an abuse of process.

11. Addressing the first pivotal legal question concerns the applicability of the Aadhaar Act, 2016, to an act committed before its enactment, is deeply embedded in constitutional guarantees, dictates that penal statutes operate prospectively, as is encapsulated in the Latin maxim *lex prospicit non respicit* (the law looks forward, not backward), which serves as a paramount safeguard against arbitrary criminalization. The constitution enshrined these fundamental principles in Article 20(1) of the Constitution of India, which dictates that "no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence." This constitutional safeguard prohibits *ex post facto* laws, ensuring that an individual is prosecuted only for actions that constituted an offense at the time of their commission. The alleged act of fraudulent fingerprint usage in this case unequivocally occurred on February 16, 2014. Conversely, the penal provisions of the Aadhaar Act, 2016, specifically Sections 34, 35, and 42, upon which the prosecution relies, came into effect only on September 12, 2016. Upon a thorough examination of the Aadhaar Act, 2016, I found no express provision within its text stipulating its retrospective application. In the absence of such an explicit legislative mandate, criminalizing an act that was not an offense under the specific

statute at the time of its commission would directly contravene Article 20(1) of the Constitution. The State's argument, attempting to circumvent this constitutional protection by contending that the "detection" of the fraudulent act occurred in 2016, is legally unsound. The critical factor for determining the applicability of a penal statute is unequivocally the date of the alleged offense, not the date of its discovery or detection. To accept the State's proposition would be to erode the constitutional safeguard against retrospective criminalization. Therefore, this Court concludes that the prosecution of the petitioner under the Aadhaar Act, 2016, for an act committed in 2014, is legally untenable and an impermissible retrospective application of law. The charges under Sections 34, 35, and 42 of the Aadhaar Act, 2016, are consequently unsustainable.

- 12.** In respect of second point, I examined whether the allegations, even if taken at their highest, satisfy the essential legal ingredients for the offenses under the IPC and IT Act. For an offense under Section 420 IPC (Cheating and dishonestly inducing delivery of property), a fundamental and indispensable element is the "dishonest inducement of delivery of property" from the victim to the accused. While an Aadhaar number is a unique identification document, the complaint and the charge-sheet conspicuously fail to clearly articulate how the alleged fraudulent generation of the Aadhaar in 2014 directly led to the "delivery of any property" by any person to the petitioner, or any discernible wrongful gain to the petitioner, or wrongful loss to the UIDAI or any other entity, at the time of the alleged commission. The mere issuance of an Aadhaar

number, without a clear and direct nexus to a dishonest inducement for specific property delivery or economic benefit, cannot fulfill this crucial statutory requirement. The *mens rea* for cheating, which requires a dishonest intention to induce the person deceived to deliver property, appears absent from the factual narrative, particularly when viewed in light of the petitioner's subsequent and consistent actions to rectify the error.

13. Similarly, for an offense of forgery with the intent to cheat under Section 468 IPC, the *mens rea* (criminal intent) for 'forgery' with the specific 'intent to cheat' must be unequivocally established. As defined in Section 463 IPC, forgery involves making a false document or electronic record with intent to cause damage or injury, or to commit fraud, or to enable another to commit fraud. The factual matrix presented by the petitioner, particularly his consistent and protracted efforts to rectify the anomaly since 2015—through numerous complaints to UIDAI and even by filing a writ petition against the very authority—strongly negates any inference of criminal *mens rea* for 'cheating' or 'forgery'. His subsequent actions demonstrate a clear and persistent intent to correct an inadvertent error and obtain his own legitimate Aadhaar, rather than an intent to perpetuate a fraud or derive dishonest gain from the initial mix-up. The absence of a deliberate intent to defraud at the time of the alleged act is a critical missing link.

14. The element of "wilful" commission of identity theft or cheating by personation by using a computer resource is an indispensable prerequisite for the offenses under Sections 66C (punishment for

identity theft) and 66D (punishment for cheating by personation by using computer resource) of the IT Act, 2000. The petitioner's narrative of an inadvertent "mix-up" during a crowded and hurried enrollment process, coupled with the significant detail that UIDAI's own affidavit reportedly acknowledged the possibility of biometric mismatches due to issues like inadequately cleaned fingerprint scanners, casts serious and legitimate doubt on the presence of the necessary criminal intent ("wilful" act) for these specific digital offenses. The subsequent administrative resolution of the Aadhaar issue, wherein the petitioner finally received his correct Aadhaar number and the erroneously generated Aadhaar of his brother was cancelled, further undermines the premise of a deliberate and wilful act of identity theft or cheating by personation. The essence of these sections lies in deliberate deception with the specific intent to cause wrongful gain or wrongful loss. In the given circumstances, where the petitioner's actions are demonstrably geared towards rectifying an error rather than exploiting it, the requisite criminal intent for these provisions appears conspicuously absent.

- 15.** A holistic view of the factual matrix strongly indicates the absence of criminal *mens rea* for any of the alleged offenses. The consistent and proactive efforts made by the petitioner since 2015 to rectify the Aadhaar anomaly—submitting numerous complaints, making repeated enrollment attempts, and ultimately filing a writ petition against the UIDAI—are antithetical to the conduct of an individual with fraudulent intent. An individual engaged in deliberate fraud would typically seek to conceal the anomaly, not diligently pursue its correction at multiple

levels, including judicial intervention. The fact that the petitioner eventually succeeded in obtaining his correct Aadhaar, and the erroneous one was cancelled, further supports the contention that the initial incident was an inadvertent error or operational glitch rather than a pre-meditated criminal enterprise. Moreover, the UIDAI's own admission in an affidavit acknowledging the possibility of biometric mismatches due to technical issues such as uncleaned scanners provides crucial corroboration for the petitioner's narrative of an innocent mix-up. This Court finds that the *mens rea*, which is the very soul of criminal liability, is demonstrably absent from the conduct of the petitioner.

16. The respondents have raised a strong procedural objection regarding the petitioner's alleged suppression of a material fact, namely the pendency of a prior discharge application before the Trial Court. They contend that such non-disclosure *ipso facto* warrants the dismissal of the revisional application and have relied upon the Supreme Court's pronouncement in *Raju Thapar and Others vs. Madan Lal Kapur*, 2013 (3) SCC 330, which, they argue, precludes simultaneous pursuit of discharge and revisional remedies.
17. I acknowledge the paramount importance of full and candid disclosure in legal proceedings. However, the petitioner has offered a plausible and compelling explanation for the sequence of events. He admitted to filing the discharge application on March 16, 2020, but meticulously explained that this occurred immediately preceding the unprecedented and unforeseen global COVID-19 pandemic, which caused an extensive

and prolonged cessation of normal court functioning. Faced with incessant adjournments at the Trial Court and the severe professional detriment caused by the pendency of the criminal case, he was compelled by compelling and exigent circumstances to seek more expeditious and efficacious relief from this Hon'ble Court's inherent jurisdiction.

18. While the *Raju Thapar* case indeed emphasizes the principle against simultaneous pursuit of remedies and the importance of disclosure, it must be read in context. The inherent powers under Section 482 Cr.P.C. are extraordinary and are specifically meant to secure the ends of justice and prevent abuse of process. In situations where exceptional circumstances, such as a global pandemic causing prolonged judicial paralysis, compel a party to seek relief from a higher forum, a strict and absolute application of the non-disclosure rule, leading to outright dismissal, might itself result in injustice and a miscarriage of justice. The fundamental question for this Court, in exercising its inherent powers, is whether the continuation of the criminal proceedings is justified on merits, irrespective of the procedural overlap that arose due to *force majeure*. Given the substantial legal infirmities in the prosecution's case (impermissible retrospective application of law, absence of *mens rea*, lack of essential ingredients for the alleged offenses), I find that the procedural lapse, though noted, is sufficiently explained by the petitioner and does not override the compelling need to prevent a clear abuse of process. The fact that a writ petition concerning the same incident was previously filed also does not *per se* preclude the

present revisional application; the remedies, while related, are distinct in their objectives and legal pathways. In conclusion, while noting the procedural objection, I find that it does not serve as an absolute bar to exercising the inherent powers under Section 482 Cr.P.C., especially when there are substantive grounds demonstrating a clear abuse of the legal process and a strong case for quashing the proceedings on merits.

19. Synthesizing the foregoing analysis, it is evident that the continuation of criminal proceedings against the petitioner amounts to a manifest abuse of the process of law. The charges under the Aadhaar Act are legally unsustainable due to their impermissible retrospective application. The charges under the IPC and IT Act lack the fundamental ingredient of criminal *mens rea*, which is conspicuously negated by the petitioner's consistent and diligent efforts to rectify the inadvertent error. The factual narrative, corroborated in part by the UIDAI's own admissions, points towards an operational anomaly rather than a deliberate criminal act. Subjecting the petitioner to the rigors and stigma of a criminal trial, when the very foundational elements of the alleged offenses are absent and the initial act appears to be an innocent mix-up diligently sought to be rectified, would cause grave injustice. This Court is satisfied that the present case squarely falls within the categories identified by the Hon'ble Supreme Court in *Bhajan Lal* where the inherent powers under Section 482 Cr.P.C. ought to be exercised to prevent the perversion of the criminal justice system and to secure the ends of justice.

20. In view of the above deliberations I conclude that :

- (a) Penal statutes operate prospectively unless expressly stated otherwise, and prosecuting an act committed before the enactment of a penal statute violates Article 20(1) of the Constitution of India. The date of the alleged offense, not its detection, is paramount for the applicability of criminal law.
- (b) For offenses of cheating (IPC Sections 419, 420) and forgery (IPC Section 468), the element of dishonest inducement of property delivery or a specific intent to defraud (*mens rea*) at the time of the act is indispensable. Similarly, for identity theft and cheating by personation under the IT Act (Sections 66C, 66D), a "wilful" criminal intent must be established.
- (c) The subsequent conduct of an accused, particularly diligent efforts to rectify an alleged error, can be a crucial factor in negating criminal *mens rea*.
- (d) The High Court's inherent powers under Section 482 Cr.P.C. can be invoked to quash criminal proceedings that are based on an impermissible retrospective application of law, lack essential ingredients of the alleged offenses, or otherwise constitute a clear abuse of the process of the Court, thereby ensuring justice.
- (e) While disclosure is paramount, a procedural lapse, such as non-disclosure of a prior discharge application, may not be an absolute bar to exercising inherent powers under Section 482 Cr.P.C. if exceptional circumstances (e.g., global pandemic)

are credibly explained and there are substantive grounds for quashing the proceedings on merits.

- 21.** In light of the detailed analysis and findings I am of the opinion that the criminal proceedings initiated against the petitioner, Dulal Kumbhakar, are legally untenable and constitute a manifest abuse of the process of law. Allowing these proceedings to continue would be an exercise in futility and would cause undue hardship and injustice to the petitioner.
- 22.** Therefore, the Criminal Revision Petition No. 1739 of 2022, is hereby allowed.
- 23.** The First Information Report bearing Manbazar Police Station Case No. 47 of 2018, dated September 7, 2018, and all subsequent proceedings arising therefrom, including G.R. Case No. 1187 of 2018, presently pending before the Learned Chief Judicial Magistrate, Purulia, are hereby quashed and set aside.
- 24.** Any bail bonds furnished by the petitioner in connection with this case shall stand cancelled.
- 25.** Any property seized in connection with the aforementioned case, if any, shall be forthwith returned to the rightful owner.
- 26.** Interim order/orders, if any, passed by this Court during the pendency of this revisional application, stand vacated.
- 27.** There shall be no order as to cost.
- 28.** Let a copy of this judgment and order be sent forthwith to the Learned Chief Judicial Magistrate, Purulia, for necessary action, record, and compliance.

- 29.** All parties shall act on the server copy of this judgment and order duly downloaded from the official website of the High Court.
- 30.** Urgent photostat certified copy of this judgment and order, if applied for, be supplied to the parties upon compliance with requisite formalities.

(Uday Kumar, J.)