

**IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

C.R.R. No. 1419 of 2012

With

CRAN No. 1 of 2012

(Old No. CRAN 1258 of 2012)

Tapan Co-operative Agricultural Marketing

Society Limited

Versus

Nazrul Islam

- **None appears on behalf of any of the parties.**

Hearing Concluded On : 21.11.2025

Judgment on : 12.12.2025

Krishna Rao, J.:

1. This Revisional Application under Section 401 of the Code of Criminal Procedure, 1973, is filed by the complainant against the order of acquittal passed by the Learned Special Judge and Additional Sessions

Judge-I, Dakshin Dinajpur, Balurghat in Special Case No. 03 of 2008 dated 30th July, 2011, under Section 409 of the Indian Penal Code, 1860. The revisional application is filed along with an application under Section 5 of the Limitation Act, 1963 being CRAN No.1 of 2012 (Old No. CRAN 1258 of 2012) for condonation of delay of 127 days in preferring the revisional application.

2. The applications are pending since the year 2012 but none has come forward to move the applications. Though the main application is under Section 401 of the Code of Criminal Procedure, 1973, this Court has taken up both the applications together to decide on merit.
3. The case is initiated by the Police of P.S. Tapan being FIR No. 193/07 dated 9th December, 2007, under Section 409 of the Indian Penal Code, 1860 against the respondent Nazrul Islam on the written complaint of the Chairman, Tapan Co-operative Agricultural Marketing Society Limited dated 9th December, 2007. As per the complaint, the accused Nazrul Islam misappropriated 232 quintal, 54 kilograms and 946 grams of rice of mid-day-meal of school and Sishu Siksha Kendra, approximately valued at Rs. 2,31,130/-. On 9th December, 2007, on the basis of the written complaint, an FIR being No. 193/07 dated 9th December, 2007, under Section 409 of the IPC was initiated at the Tapan Police Station. On completion of investigation, police has submitted charge-sheet for the offence under Section 409 of the IPC.

4. To prove the case, the prosecution has examined altogether 9 witnesses. The accused has not adduced any evidence on his behalf. After considering all the materials on record, the Learned Special Judge and Additional Sessions Judge-I, Dakshin Dinajpur, Balurghat has passed the judgment on 30th July, 2011 and held that the accused Nazrul Islam is not found guilty to the charge punishable under Section 409 of the IPC and the accused has been acquitted from all the charges on account of benefit of doubt under Section 235 of the Cr.P.C. Being aggrieved and dissatisfied with the order of acquittal, the complainant, namely, Tapan Co-operative Agricultural Marketing Society Limited has filed the present revisional application under Section 401 of the Cr.P.C.
5. As per the case of the prosecution, the accused was a godown keeper of the society wherein the rice of mid-day-meal was stored. On the basis of the complaint, the police has initiated the case for the offence under Section 409 of the IPC. To establish the case against the accused for the offence under Section 409 of the IPC, the accused must be public servants, bankers, agents, brokers, factors and merchants are attorneys. There must have an entrustment of the property, there must have been mens rea and there must have been committed a breach of trust regarding the property entrusted. Public servants are defined under Section 21 of the IPC. Section 21 refers to individuals who perform public duties for the Government. The employees of the Co-operative Society are not public servants under Section 21 of the IPC, which applies to Government employees or those working for

Corporations established directly by Central or State Act. A Society registered under Cooperative Societies Act is considered a body brought into existence by an act of individuals, not a Corporation established by the legislature itself.

6. In the present case, though the prosecution has examined altogether 9 witnesses including the complainant and the Investigating Officer but there is no document produced or exhibited by the prosecution to establish that the accused was entrusted with the property i.e. the godown wherein the rice for the mid-day-meal was stored. There is no evidence on record to prove that any quantity of rice was available at the godown and on inspection, the said quantum of rice was found short. There is no evidence on record to say that the accused has received rice and has kept the said rice in his possession and subsequently, it was found short.
7. It is the case of the prosecution that on 1st December, 2007, during inspection, shortage of 232 quintal, 54 kilograms and 946 grams of rice was found short but the prosecution has neither produced the inspection report nor any Stock Register to prove that there is shortage of rice as alleged in the complaint.
8. Admittedly, the complainant is a society. It is the case of the prosecution that the accused was working as a godown keeper. The prosecution has not produced any document that the accused was appointed as a godown keeper of the society. During the evidence, the

P.W.9 being the Investigating Officer has also stated that he did not get any document which shows that the accused was entrusted to deal with the rice of mid-day-meal and he has also admitted that he did not seize the job card or duty card of the employees of the Co-operative Society.

9. The Learned Special Judge and Additional Sessions Judge-I by considering all the materials on record and the evidence of the witnesses, has rightly come to the conclusion that the prosecution failed to prove the case against the accused for the offence under Section 409 of the IPC.
10. In view of the above, this Court did not find any illegality in the judgment passed by the Learned Special Judge and Additional Sessions Judge-I, Dakshin Dinajpur, Balurghat in Special Case No. 03 of 2008 dated 30th July, 2011 by acquitting the accused for the offence under Section 409 of the IPC. There is no ground to review the Judgment dated 30th July, 2011. The judgment passed by the Learned Special Judge and Additional Sessions Judge-I dated 30th July, 2011, is upheld.
11. **CRR No. 1419 of 2012 is dismissed. CRAN No. 1 of 2012 (Old No. CRAN 1258 of 2012) is disposed of.**
12. The "Trial Court Record" sent to the Learned Trial Court immediately.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)