

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

Present:

The Hon'ble Justice Shampa Dutt (Paul)

C.R.R. 1477 of 2020

Lalit Kumar & Ors.

-Vs-

The State of West Bengal & Anr.

For the Petitioners : Mr. Sabyasachi Banerjee, Sr. Adv.
Mr. Anirban Dutta, Adv.
Ms. Priyanka Mukherjee, Adv.

For the State : Mr. Joydeep Roy, Adv.
Ms. Sujata Das, Adv.

Hearing concluded on : 14.01.2025

Judgment on : 22.01.2025

Shampa Dutt (Paul), J.:-

1. The present revisional application has been preferred praying for setting aside of the order dated 13/02/2020 passed by the Additional Chief Judicial Magistrate, Barrackpore in M.P. Case No.180 of 2020, whereby, the learned Magistrate was pleased to direct investigation under the provision of Section 156(3) of Cr.P.C. to the officer in Charge of Khardah Police Station and thereby resulting in registration of a First Information Report being Khardah Police Station Case No.89 of 2020.

2. The complainant in the present case is a trade union. The contention in the written complaint which has been filed under Section 156(3) of Cr.P.C., and initiated for the offences punishable under sections 379/406/417/420/426/34 I.P.C. against the present petitioners, is it that when the employees and workers retired and applied for gratuity, they were given cheques for their dues which on being presented were dishonoured and as such the present case has been initiated for non-payment of the said gratuity after having put in number of years in service with the accused Company.
3. **Admittedly, the complainants/aggrieved party has not approached the appropriate authority being the Labour Commissioner, West Bengal.**
4. Written notes have been filed by both the parties.
5. Memo of evidence and **status report have been filed by the State.**
6. The petitioner has relied upon a judgment **dated December 5, 2013**, passed by a coordinate Bench of this Court in **C.R.R. 2150 of 2013** wherein the learned Single Judge has held as follows:-

“.....I have considered the submission of the parties. Essential ingredient of the offence of criminal breach of trust is entrustment of the property of an individual in the hands of another resulting in control or dominion over such property of the latter. When such "estrusted property" is misappropriated, the offence of criminal breach of trust can be said to be committed. The uncontroverted allegations in the complaint depicts a failure on the part of the employer to pay the gratuity dues of the complaint as computed and certified by the Controlling Authority under Payment of Gratuity Act. Nowhere in the length and breadth of the petition of complaint, a case of entrustment of property of the opposite party in the hands of the petitioner is alleged. In

the absence of such essential ingredient, the offence of criminal breach of trust cannot be said to be disclosed. Mere failure to pay his statutory dues, in my considered opinion would not constitute such offence. In Rajendra Singh Lodha (supra) a Single Judge of this Court held that failure to pay dues from the Staff Superannuation Fund created by the employer would not constitute an offence of criminal breach of trust. It has been held that the word 'entrustment' has to be understood in its generic sense and the statutory presumption in respect thereof created in Explanation 1 and Explanation 2 to Section 405 of Indian Penal Code would not relate to any fact situation other than what is expressly provided therein. Admittedly, this is not a case of failure of payment of dues under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 or Employees' State Insurance Act, 1948 and hence the opposite party cannot take advantage of the presumptions created under the aforesaid explanations.

Although the uncontroverted allegations disclose the ingredients of the offence punishable under Section 9 (2) of the Payment of Gratuity Act, 1972, the opposite party though an aggrieved person, is not the competent authority to institute the proceeding in the manner as provided in the aforesaid Act, namely, Section 11 thereof.

Section 11 of the Payment of Gratuity Act, 1972 reads as follows:- "11. Cognizance of offences. - (1) No court shall take cognizance of any offence punishable under this Act save on a complaint made by or under the authority of the appropriate Government.

Provided that where the amount of gratuity has not been paid, or recovered, within six months from the expiry of the prescribed time, the appropriate Government shall authorise the controlling authority to make a complaint against the employer, whereupon the controlling authority shall, within fifteen days from the date of such authorisation, make such complaint to a Magistrate having jurisdiction to try the offence.

(2) No court inferior to that of a 'Metropolitan Magistrate or a Judicial Magistrate of the first class] shall try any offence punishable under this Act."

A perusal of the said provision would show that no court can take cognizance of an offence punishable under the said Act except on a complaint made by or under the authority of the appropriate government or the Controlling Authority. The opposite party is not duly authorised by the appropriate government nor is the impugned proceeding initiated by the Controlling Authority under the said Act.

For the aforesaid reason the impugned proceeding of complaint cannot survive at the behest of the opposite party. Accordingly the impugned proceeding being C. R. Case No. 888 of 2012 pending before the learned Judicial Magistrate, 3rd Court, Serampore, Hooghly is quashed. This order, however, shall not stand in the way of the appropriate government or Controlling Authority initiating appropriate penal action in accordance with law....."

7. In the present case, admittedly, the effective parties have not approached the appropriate authority/Government claiming the relief of gratuity.
8. As admittedly the complaint has been filed by persons other than the controlling authority under the authority of the appropriate authority/government, the opposite party herein is not duly authorised to initiate the present proceedings.
9. Offences for **cheques being dishonoured** are to be initiated under the Negotiable Instruments Act and other applicable provisions of law.
10. **C.R.R. 1477 of 2020 is accordingly allowed.**
11. Thus, the order under revision being order dated 13th February, 2020, passed by the Additional Chief Judicial Magistrate, Barrackpore in M.P. Case No.180 of 2020, being **not in accordance with law and is hereby**

set aside and the proceeding/investigation in M.P. Case No. 180 of 2020, dated 13.02.2020 **is also quashed.**

- 12. Present order shall not stand in the way of the appropriate authority/government or controlling authority to initiate appropriate penal action in accordance with law against the persons responsible.**
13. All connected applications, if any, stands disposed of.
14. Interim order, if any, stands vacated.
15. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
16. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]