IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Rai Chattopadhyay

C.O. No. 221 of 2024

The State of West Bengal
Vs.
Gopal Dalapati & Ors.

For the petitioner	:	Joyjit Choudhury, Ld. AAG,
	:	Sourav Ganguly
For the Respondent No. 1	:	Mr. Sabir Ahmed
	:	Mr. Hillol Saha
	:	Ms. Mousumi Das
Hearing concluded on	:	10/09/2024
Judgment on	:	20/02/2025

Rai Chattopadhyay, J.

1. This revision is filed by the State to challenge an order of the Additional Sessions Judge, 3rd Court, Cooch Behar, **dated July 8, 2022**, in Special Case No. 3 of 2021, (corresponding to GR Case No.710 of 2014). The Special Case No. 3 of 2021 arises from the FIR being Kotwali Police Station Case No. 694 of 2014 dated

31/7/2014, under sections 406/420/120B/506 of the IPC.

2. The Chief Judicial Magistrate, while allowing the prayer of the prosecution, has added section 3 of the West Bengal Protection of Interest of Depositors in Financial Establishments Act 2013 [hereinafter referred to as the "Act of 2013"], to the said case, by its order dated **January 14, 2021**. Since thereafter, the said case was transferred to the Additional Sessions Judge, 3rd Court, Cooch Bihar, for adjudication. The question arose before the court, as to whether the relevant provision of the said Act of 2013 should attract in the present case or not. The court has determined the said question, though it negative, by dint of the impugned order dated **July 8, 2022**, negating and rejecting the prosecution's prayer for adding relevant provision of the Act of 2013, in the present case. Hence, this revision.

3. Let the facts in the background, as would be necessary for discussion for adjudication of this case, be narrated in a nutshell, as follows:

4. The Kotwali Police Station Case No. 694 of 2014 dated 31/7/2014, under sections 406/420/120B/506 of the IPC, was lodged by the complainant on the allegation inter alia that, he invested in debenture certificate with "Wired Industries Limited", to the tune of Rs.2,00,000/-, for 47 months. A monthly return of Rs. 4000/- was stipulated in the contract, along with the condition of return of the entire invested amount of Rs. 2,00,000/-, at the end of the contract period of 47 months. That, Rs.4000/- per month has been regularly paid by the said company from September 30, 2010, to the month of May, 2013. However, such monthly payment has been stopped with effect from June, 2013. The complainant has stated that his endeavour to contact and enquire in the office of the said company at Cooch Behar went in vain, insofar as, upon visiting there he found the office to be closed. Also, that the complainant did not get any redress even after getting into touch with the accused persons who were the portfolio holders of the said company. Hence, he has lodged the said FIR alleging the offences of cheating and criminal breach of trust, as mentioned above.

5. During investigation several other debenture certificates have surfaced in which the complainant has invested but not paid any return and those monies were allegedly siphoned off by the said accused persons. Those have been mentioned in details in the charge-sheet of the case. Let some of those, relevant for this case, be mentioned in a tabular form, as bellow:

Debenture Nos.	***Date of Redemption/Maturity***
(i) IMID 01686021	***June 18,2015***
(ii) 01692843	***June 26, 2015***
(iii) 01692852	***June 26, 2015***
(iv) F-CBH-20096416	***August 30, 2018***
(v) IFD-01715138	***April 24, 2024***

6. Charge-sheet has been submitted in this case on June 22, 2022, under sections 406, 420, 120B, 506 of the IPC and section 3 of the said Act of 2013, pursuant to the order of the magistrate dated January 14, 2021, thereby adding the relevant provision of the said Act of 2013, in the case and along with required sanction against the accused persons.

7. In the impugned order dated July 8, 2022, the Additional Sessions Judge has mentioned that date of occurrence of offence in accordance with the complainant and as mentioned in the complaint, is June 2013 and January 2, 2014. Whereas the West Bengal Protection of Interest of Depositors in Financial Establishments Act 2013 has come into force, with effect from **May 14, 2015**. The court has held that the said Act of 2013 does not have any retrospective operation and shall only be prospective in effect in accordance with the provisions under section 5 of the General Clauses Act. Therefore, according to the court, an offence, alleged to have been committed before coming into force of a particular enactment, cannot be tried under any provision of the said later enactment, that is, the Act of 2013, in the present case. For the reason as above, the court has found that section 3 of the Act of 2013, shall not be attracted in this case and dropped the said added provision of law to send back the case record before the magistrate for trial.

8. The prosecution/State is aggrieved with the said order. Mr. Choudhury, learned advocate**,** appearing for the State has contended that though the investigation has started in this case with the allegations of offences under the IPC, but during pendency of the same the 2013 Act has been promulgated, with effect from **May 14, 2015.** He has relied on the **sections 3(1) and (2)** thereof, to submit that the date of failure of the financial institution to make good the return on investment, is the relevant date, in accordance with the said enactment, of commission of offence thereunder.He says that, during investigation, some debenture certificates have been recovered, the maturity dates of which fall at a time post promulgation of the 2013 Act. He says that if the accused fail to repay the debenture certificates by the deadline, which is past the date the 2013 Act went into effect, they should be subject to the provisions of the Act, which was already in effect at the time of proposed maturity of the certificates, to create the '*cause of action*', whether or not it was in effect when the complaint was filed.

9. He elaborates that the cause of action, so far as the provision under section 3 of the Act of 2013 is concerned, arises on the date of failure of the accused to return the money with interest. So far as this case is concerned, according to the petitioner/State, such cause of action is duly available against the accused person in this case. Therefore, in accordance with and in due compliance of the constitutional provision under Article 2091) of the Constitution, the said enactment of 2013, is applicable in the present case.

10. Secondly, Mr.Choudhury, has stated that the order of the magistrate dated **January 14,** 2021 has never been challenged by the accused persons. Such prayer has been raised for the first time before the Additional Sessions Judge, vide a petition dated June 28, 2022.

11. During arguing the case **Mr. Ahmed** has relied on a judgment of this Court in ***Santosh Kumar Dwibedi vs State of West Bengal reported in 2019 SCCOnline Cal 996***(also in AIROnline 2019 Cal 326). He has relied on the following findings of the court in the said case;

> ***"28. An offence under Section 3(1)(a) of the Act, 2013 is committed as soon as the financial establishments fail to make repayment of deposit along with interest, etc. after the specified period. The words "failure to make repayment after a specified period" are significant here. It was alleged that the accused started to collect money from public since 2010 in the form of FD, RD, MIS, Savings with false assurance to repay the same with double interest after expiry of six years and four times of principal amount after expiry of ten years. Section 3(1)(a) of the Act of 2013 comes into play when the financial establishments fail to make any repayment of deposit along with benefit after a specified period i.e. after expiry of the period of six years or 10 years, etc. as the case may be. Though the alleged acts of collection of money with false assurance started since 2010, but an offence under Section 3(1)(a) of the Act of 2013 was completed in respect of those collection of money when the accused Companies failed to make repayment of the deposit with benefit in the form of interest etc. after the specified period. In the instant case, there was specific allegation in the FIR that the accused created various companies and collected money from the public with assurance of repayment with high rate of interest after specified period i.e. one year, three years, six years and 10 years. In the meantime, the Act of 2013 came into force with effect from 14.05.2015. When the specified period expired after the commencement of the Act of 2013, and the Companies failed to make repayment of such deposit along with interest etc. after specified period or on maturity or otherwise, then there is no bar to take action against the Companies under Section 3(1)(a) of the Act, 2013. The contention of the Learned Advocate for the***

> ***petitioners that the alleged offence was committed prior to commencement of the Act of 2013 cannot be accepted at this stage."***

12. The other point argued by **Mr. Choudhury** is that the FIR might not be a comprehensive record that describes the incident or offence in all of its details. He says that the FIR is a record that the law recognises as a means of reporting information about the commission of a crime that is subject to criminal prosecution. The statute grants the police broad investigative jurisdiction, and the results of that investigation should be the final reliance of the aforementioned authority when submitting the chargesheet. That, even a cryptic FIR is also maintainable in the eye of law. The following judgments have been relied on by him, to buttress his such submission, (i) ***Kirender Sarkar & Others vs State of Assam reported in (2009) 12 SCC 342***; and (ii) ***State of Uttarpradesh vs Naresh and Others reported in (2011) 4 SCC 324***.

13. By relying on the decision of the Supreme Court in ***T.T. Antony vs State of Kerala and Others reported in (2001) 6 SCC 181***, **Mr. Choudhury** has argued that since the prosecution does not have the right and liberty to initiate a fresh investigation by lodging a successive or second FIR and the alleged offence under section 3 of the Act of 2013 having been committed in the course of the same transaction with the other alleged offences, under the IPC, the only course left to it is to add the relevant provision of the 2013 Act, into this case.

14. For all the reasons as stated above, Mr. Choudhury seeks that the impugned order of the Additional Sessions Judge, 3rd Court, Cooch Bihar, **dated July 8, 2022**, in Special Case No. 3 of 2021, may be set aside and the trial may be allowed to be proceeded with immediately, for the offences as mentioned in the charge-sheet.

15. **Mr. Ahmed** has represented the accused person in the case that is the opposite parties. He submits firstly, that a statute shall have only the prospective operation, unless expressed otherwise or by necessary implication retrospective operation of the same has been suggested. That, since in this case the 2013 ACT has been promulgated on a date after lodging of the FIR, therefore the same cannot be construed to be applicable with effect from a date, previous to its promulgation. He indicates that the alleged non refund of the investment of the complainant has started from June 2013, that is a date prior to the date of coming into force of the 2013 Act. He says that the 2013 Act has come into being after about 10 months from the date of lodging the FIR. He would say that application of the provisions of the said Act, in the present case would not only undermine the settled position of law as stated above but also be violative of the provisions under Article 20 of the Constitution of India. On the basis of the said provision he has argued that a man cannot be tried and convicted for the alleged violation of such a law, which was not in force at the time of commission of the said offence.

16. He submits that in accordance with the FIR, the accused persons have started defaulting in repayment, that is, started committing the offence, from the month of June, 2013, that is a date prior to promulgation of the Act of 2013, that being with effect from **May 14, 2015.** That, the FIR was lodged on July 31, 2014. Also that, since the 2013 Act therefore, was not in force on the said date, cannot be subsequently made applicable and the accused persons be booked, tried and/or convicted under the same, he says. In this regard, **Mr. Ahmed** has also referred to the definition of the word "**offence**" as enumerated in **section 2(n)** of the Code of Criminal Procedure, 1973, to submit that offence is only such act or omission, which has been made punishable by a law which is in force. He submits that Article 20(1) of the Constitution being read with the definition of "offence" as mentioned above, shall clearly suggest that the law which is in force, is only to be resorted to,in order to convict a person and not that law which has not been in force at the time of commission of the alleged offence.

17. **Mr. Ahmed** has relied on the judgment of ***G.J.Raja vs Tejraj Surana reported in (2019) 19 SCC 469***, in support of his argument that a law shall have only the prospective application, if not has been expressed or implied otherwise. Similar principle has been upheld in the judgment of ***Hitendra Vishnu Thakur and Others vs State of Maharashtra and Others reported in (1994) 4 SCC 602,*** which has also been relied on by the accused persons.

18. **Mr. Coudhury** has distinguished the judgment of ***Santosh Kumar Dwibedi (supra),*** as referred to by the State, for the reason that the factual background thereof has been different from the instant case. He says that unlike the present case, the FIR in the said case was lodged on January 29, 2016, after coming into force of the Act of 2013, on May 14, 2015. Hence, the ratio thereof shall not bear any relevance, in the present case as the two are based on entirely different factual background.

19. He insists that the instant revision be dismissed and the impugned order of the Additional District Judge Cooch Behar, be affirmed.

20. Let us first follow what Article 20(1) of the Constitution has provided for, by quoting the said provision:

> ***"20. Protection in respect of conviction of offences:***
> ***(1) 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, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence."***

** ** **

21. The fundamental right to freedom also envisages protection of a citizen from being convicted with specific category of offences. That, no person shall be convicted of any offence, except for violation of a law in force at the time of commission of the said alleged offence. The opposite party/accused persons have placed strong reliance as to the constitutional mandate as above and contended that adding in the case a provision of law which has not been there in force at the time of alleged commission of the same as per the FIR, is in violation of the said constitutional mandate.

22. Certain words of the Constitution are worth noticing, like, ***"except for violation of a law in force"*** and "***at the time of the commission of the act charged as an offence".*** Hence, the makers thereof, have not chosen words like '*law in force at the time of lodging the FIR*' etc., but has stressed that law in force at the time of commission of alleged violation thereof, should be the appropriate law under which the accused may be tried and convicted. The law on the point as to whether a person can be subjected to criminal proceedings under a particular statute which defines the acts committed by such person to be offences punishable thereunder would therefore depend upon the facts as to whether the said law has been in force or not at the time when the acts complained of are committed by the concerned person. Therefore, the time of commission of the alleged offence and not lodging of the FIR, is pivotal in considering as to whether the law, violation of which has been alleged, should be considered to be in force or not. The concept of a continuing offence or that committed in the course of the same transaction with that of the initial alleged act or omission, is intertwined in those words, chosen and employed by the Constitution makers, in the said provision.

23. The offence committed in the course of the same transaction means a series of acts, so closely connected that they can be considered a single event, allowing multiple related criminal charges, to be tried together in a single legal proceeding; essentially multiple offences arising from one continuous set of action. Neither the word "transaction" nor the phrase "same transaction" has been defined in the Code. As a matter of fact, both connote ideas so kaleidoscopic in character as to elude definition. A clue to what "same transaction" means is however furnished by the wording of section 220(1) of the Code, which lays down one of the rules of joinder of charges, when more offences than one are committed by the same person. Sub-sections (3) and (4) of section 220 are also relevant in this case, to understand as to when joinder of charges as per law is permissible. Let those be extracted as hereinbelow:

> ***" 220. Trial for more than one offence:***
>
> ***(1) If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.***
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> ** ** **
>
> ***(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.***
>
> ***(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts."***

24. Coming back to the facts of the instant case, one can see, that FIR has been lodged on **July 31, 2014**. In the

FIR date of offence has been mentioned to be **June 2013** and **January 2, 2014**. The nature of offence as alleged in this case is also worth notice. The complainant has stated in the FIR about his investment in one debenture certificate on September 30, 2010 and alleged default by the company to pay back the return along with the invested amount as per the contract, with effect from June 2013. However, during investigation, several other similar certificates were recovered, by dint of which on various following dates the complainant has invested money with the said company and not paid back. During the period when investigation of this case was in progress, the Act of 2013 has come into force, with effect from **May 14, 2015**. The said Act has made provision under section 3 thereof, as follows:

> ***" 3. Fraudulently default in payment of deposit after a specified period or otherwise by financial establishments.***
> ***(1) Where any financial establishment—***
> ***(a) fails to make any re-payment of deposit along with any benefit in the form of interest, bonus, profit or in any other form, after a specified period, that is, on maturity or otherwise; or***
> ***(b) fails to render service, product or asset promised against the deposit; or***
> ***(c) fails to render any specified service agreed against such deposit with intention of causing wrongful gain to one person or wrongful loss to another person; or***
> ***(d) commits such default due to its inability arising out of impracticable or commercially not viable promises made while accepting such deposit; or***
> ***(e) commits such default due to deployment of money or assets acquired out of the deposits in such a manner as it involves inherent risk in recovering the same when needed, such financial establishment and every person including the promoter, partner, director, manager, member, employee or any other person responsible for the management of, or for conducting the business or affairs of such financial establishment, shall be deemed***

to have committed a default in repayment of deposit fraudulently.

(2) Every person including the promoter, partner, director, manager, member, employee or any other person responsible for the management, or for conducting the business or affairs, of a financial establishment who has committed a default in repayment of deposit fraudulently within the meaning of sub-section (1), shall, on conviction, be punishable with imprisonment for life or imprisonment for either description for a term which may extend to ten years and such financial establishment shall also be liable to a fine which may extend to an amount equivalent to five lakh rupees, or where such deposit is quantifiable in terms of money, twice the money involved in such default, whichever is higher;

Provided that in the absence of special and adequate reasons recorded in the judgement of the Court, the imprisonment shall not be less than for three years and the fine shall not be less than twenty thousand rupees as against each individual and not less than one lakh rupees against such financial establishment.

(3) Every offence punishable under sub-section (2), shall be cognizable and nonbailable.

(4) No Court shall take cognizance of any offence under this section except with the previous sanction of the Competent Authority within six months from the completion of the investigation.

(5) No police official below the rank of Deputy Superintendent of Police or equivalent, having jurisdiction, shall investigate an offence under this Act.

(6) All the properties of the financial establishment committing a default in repayment of deposit fraudulently under the provisions of sub-section (1), and the properties of the persons mentioned in sub-section (2), shall be liable to be attached in accordance with the provision of section 5.

25. During investigation it has revealed further that some of the certificates of the complainant, as written in the tabulated form above, have its maturity date, past the date the 2013 Act has come into effect. Since the date of commission of offence as per the said statute is the date of failure to make repayment of deposit, the State has immediately made a prayer for adding the relevant provision of the said law, in the present case, which was allowed by the magistrate, vide its order dated **January 14, 2021.** The Additional Sessions Judge, 3rd Court, Cooch Behar, has however found in the impugned order dated **July 8, 2022**, the date of commission of offence to be that as mentioned in the FIR and says that the Act of 2013 was not there in force, on the date of commission of the alleged offence hence cannot be made applicable in this case.

26. Needless is to mention that so far as the default in respect of the debenture certificates, which are to be matured after coming into force of the 2013 Act are concerned, offence as regards the said debenture certificates, not being a counter-case of the case related to other debenture certificates, cannot be successively reported in a second FIR. Rather offence related with the same has been committed in the course of the same transaction with the connected cognizable offences committed since from June 2013. Since the date of default has been stipulated as the date of commission of offence under the 2013 Act, therefore, so far as the investments which were to mature after coming into force of the Act of 2013, the date of commission of offence should be when the said Act of 2013, was in force. Therefore, series of default allegedly committed by the accused persons, who are so closely connected as if as a single event and are the outcome of one continuous set of actions, should be considered to have been committed in the course of the same transaction and to be tried together.

27. An alleged economic offence and its investigation stands on a different footing altogether, than that in any other offence. Such offences are treated a class apart and for obvious reasons and needs to be visited with different approach. The trait of economic offence is its trail or continuity, which generally comes as a matter of obvious climax or denouement. A situation arises, as it is in the present case, when during investigation of an economic offence, various subsequent defaults, over and above the default as alleged in the FIR, have been uncovered, thereby all are considered to have happened in the course of the same transaction. The investigation has started alleging violation of the law in force, on the date of alleged commission of offence, as mentioned in the FIR. But the investigation culminates recovering evidence of several other defaults, therefore a series of individual offences, in violation of the law in force forming part of the same transaction. In the meantime, some special statute comes into force, which specifically addresses the typical kind of economic offence and provides for more severe punishment. Those however, having been one of the series of acts so connected together as to form the same transaction, cannot be classified separately, by lodging a successive FIR. Or else the same shall be hit vide provision under section 220(1) of the Cr.P.C. Instead, as per section 220(3) of the Code, the series of acts being connected together, when fall within two or more definitions of the law in force for the time being, including the special statute of 2013 in the present case, the accused persons may be charged with and tried in one trial, for each of such offences. Given that the alleged offence is covered by the special statute that was in force at the time, the court may then not limit its application of the statute's provision to the case.

28. Though having no difference of opinion as to the findings of the Additional Sessions Judge 3rd Court Cooch Behar, in the said impugned order that there shall not be any retrospective operation of a statute, unless provided for the same either expressly or by necessary implication, the court finds infirmity as to the said impugned order to the extent of that being in defiance of the settled law, as it has failed to consider that the matter relates not to a single but a series of economic offences, forming part of same transaction and some of those, in the series of offences, having been allegedly committed when the Act of 2013 was already in force. The said court has misdirected itself and erred in understanding that the dates mentioned in the FIR are the only dates of commission of the offence, thereby completely ignoring the evidence collected during investigation. On the contrary the series of alleged offences have been committed on various dates up to such when the Act of 2013 has been in force already and the alleged acts by the accused persons would come within the definition, under the said law.

29. The entire discussion as above prompts the Court to find the impugned order of the Additional District Judge, 3rd Court at Cooch Behar, **dated July 8, 2022**, in Special Case No. 3 of 2021, (corresponding to GR Case No.710 of 2014), to be unjust, unreasonable, without application of judicious mind and not in conformity of the settled law. Hence the same is found liable to be set aside.

30. Therefore, the present revision is allowed thereby setting aside the impugned order of the Additional District Judge, 3rd Court at Cooch Behar, **dated July 8, 2022**, in Special Case No. 3 of 2021, (corresponding to GR Case No.710 of 2014). Let the case record be immediately transferred to the court of the Additional District Judge, 3rd Court at Cooch Behar, if not has been done yet. Let the Additional District Judge, 3rd Court at Cooch Behar proceed with the trial of the case, as expeditiously as possible.

31. CRR No. 221 of 2022 is allowed and disposed of.

32. Since no affidavit is invited, the allegations contained in the petition are deemed to have been denied by the respondents including the private respondents.

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

(Rai Chattopadhyay, J.)