

In the High Court at Calcutta
Circuit Bench at Jalpaiguri
Criminal Revisional Jurisdiction

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 554 of 2025

Madan Mohan Jha

Vs.

The State of West Bengal

For the petitioner : Mr. Arnab Sengupta
: Mr. Deborshi Dhar
: Mr. Rajat Ch. Singha

For the State : Ms. Aditi Shankar Chakraborty, Ld. APP
: Mr. Abhijit Sarkar

Heard On : **16.12.2025**

Judgment On : **22.12.2025**

Rai Chattopadhyay, J.

- 1.** The instant criminal revision has been filed challenging an order of the Additional Sessions Judge, 2nd Court, Jalpaiguri (Special Court under Section 409, I.P.C) dated May 16, 2023 in Special Case No. 10 of 2023.
- 2.** By dint of the said order, the Special Court under Section 409, I.P.C has taken cognizance of offence of the present petitioner as alleged in the charge-sheet, under sections 406 and 409 of the Indian Penal Code.

3. Learned advocate, Mr. Arnab Sengupta has appeared for the petitioner. He has argued that, taking cognizance of an offence as above by a Special Court, alleged to have been committed by a private entity which is not a Government company or an agent of the Government, stands in violation of the statutory provisions. He submits that the Special Court derives power from the provisions of the West Bengal Criminal Law Amendment (Special Court's) Act, 1949, which has provided in the 'Schedule' thereof as follows:-

"3. An offence punishable under Section 417 or Section 420 of the Indian Penal Code, if committed by a public servant or by a person dealing with property belonging to Government as an agent of Government [or by a person dealing with property belonging to a Government company as defined in Section 617 of the Companies Act, 1956 as an agent of such Government company] while purporting to act as such public servant or agent."

4. He has further referred to the First Schedule of the Code of Criminal Procedure. He submits on the basis of the same that, as per the statute, an offence under Section 406 and/or 409, I.P.C. shall be triable by a Magistrate.
5. Mr. Sengupta, learned advocate for the petitioner has relied on the following judgments to buttress his argument as above –

- i. ***Srikanta Patra Vs. State of West Bengal dated March 20, 2008*** reported in ***(2008) Supreme (Cal) 318;***

ii. ***Swarup Mazumdar Vs. The State of West Bengal &Anr.***
reported in ***2015 (1) CalCriLR 429;*** ***and***

iii. ***Monoranjan Roy Vs. The State of West Bengal and Anr.*** in
CRR 1643 of 2022 dated 30.06.2022;

6. Therefore, he has submitted that, trial of an accused under Section 409, I.P.C, who is not a public servant or dealing with any Government property and is a private individual/entity only, as it is in the present case, is to be done by the Magistrate and not by the Special Judge as empowered under the said Amendment Act of 1949.
7. Ms. Aditi Shankar Chakraborty, learned Additional Public Prosecutor has raised objection to the submission and prayer of the petitioner as above. His argument is based on the grounds that, in this particular case, the present petitioner has acted as the agent of the Government in collecting the workers' contribution of provident fund but has committed default and offence in accordance with the statutory provision by not depositing the said amount to the Government. Hence, therefore, the provision under the Schedule, Clause 3 of the West Bengal Criminal Law Amendment Special Court's Act, 1949 is squarely applicable in case of the present petitioner.
8. I have heard the submissions made on behalf of each of the parties carefully and perused materials on record meticulously. To adjudicate

the issues involved in the present case that, whether the Special Court established under the West Bengal Criminal Law Amendment Special Court's Act, 1949 and the provision under the Schedule thereof in particular, would be applicable in case of the present petitioner in order to enable the said Special Court to take cognizance in the instant matter, it is necessary that the relevant provision as quoted above, be understood in its proper perspective.

- 9.** The Court finds that, Clause 3 of the Schedule of the Amendment Act of 1949 has been compartmentalized in three parts. The Schedule discusses about the offences triable by the Special Judge. In Clause 3 thereof it has been provided that an offence i) if committed by a public servant or, ii) by a person dealing with property belonging to as an agent of Government or, iii) by a person dealing with property belonging to a Government company as defined in Section 617 of the Company's Act, 1956 as an agent of such Government company, while purporting to act as such public servant or agent, shall be triable by the Special Judges.
- 10.** The first schedule of the Criminal Procedure Code has provided that, an offence alleged to have been committed by a private entity under Section 409 has to be tried by the Court of Magistrate.
- 11.** The Court is faced with the question whether the petitioner who is representing a company which is a private entity and has no

connection or relationship or trapping of a Government company, would be amenable to jurisdiction of the Special Court under the Amendment Act of 1949 or not.

- 12.** In this regard, the Court is inclined to take into account the second criteria as provided under the Schedule, Clause 3 of the Amendment Act of 1949 that is, a person would be triable by the Special Judge who deals with property belonging to the Government as an agent of the Government. The Court considers that, the company represented by the present petitioner is alleged to have committed violation of the statutory provision by collecting the employee's share of provident fund but not remitting that to the Government fund for which it was entrusted. By virtue of the statutory provision in case of provident fund contribution the company acts as an agent of the Government in so far as it is entrusted on behalf of the Government with the duty to collect the employee's share of provident fund, also, entrusted with the money and the duty to deposit the same along with its own contribution, to the Government. By operation of law, the relationship between the company represented by the present petitioner and the Government as the principal and the agent is thus established.
- 13.** Employers are mandated by law to deduct provident fund contributions from the employees and remit those to the appropriate fund authorities. The employer's role is that of a statutory agent with

specific responsibilities and liabilities for compliance. Default or delay in depositing contributions attracts penalties and damages which are to be transferred to the employee's fund, emphasizing the employer's fiduciary duties.

- 14.** The legal responsibility of a company collecting provident fund contributions are established through the statutory provisions under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The Act explicitly makes the employer responsible for deducting contributions from the employees' wages and depositing the amount timely and regularly into the provident fund etc. This role effectively positions the employer as a Government agent tasked with ensuring the collection and proper transfer of provident fund contributions. Similarly, various judicial pronouncements also reinforce that the employer's obligation as above is statutory and fiduciary, acting as an agent of the Government to collect and deposit the provident fund contributions of the employees.
- 15.** The factual aspects of the case are not disputed here. Therefore, the law as provided, should be understood to have rendered the petitioner as an agent of the Government, to be entrusted and deal with the property belonging to the Government. This squarely brings the petitioner within the purview of Clause 3 of the Schedule of the Act of 1949 as quoted and discussed above.

- 16.** That be so, the Court finds no illegality or impropriety in the impugned order passed by the learned Trial Court dated May 16, 2023 in special Case No. 10 of 2023 taking cognizance of the case against the present petitioner. Also, that for the reasons as discussed above, in case of the present petitioner, the First Schedule of the Criminal Procedure Code, would not be attracted.
- 17.** The judgments relied on by the petitioner is not found to be applicable in this case due to the difference of factual background in the respective cases. In all the judgments referred to by the petitioner as mentioned above, the Courts have come to a finding that there was no entrustment of any Government property to the company/person in those cases and that the same is not acted as an agent of the Government. The fact of the present case is different in so far as that entrustment of the provident fund accumulation in the form of employee's contribution with the company represented by the petitioner their dominion and control over the same have been duly found in the instant case. Hence, the ratio of the judgments as above, would not be applicable in the instant case.
- 18.** On the basis of the discussion as made above, this Court finds no merits in the revision as filed by the present petitioner and no

infirmity as to the said impugned order. Hence, the revision No. CRR 554 of 2025 is dismissed.

- 19.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)