IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 773 OF 2023

HABIBULLAH
-VS-
STATE OF WEST BENGAL & ANR.

For the Petitioner	: Mr. Jayanta Narayan Chatterjee Ms. Moumita Pandit Ms. Ritushree Banerjee Ms. Olivia Dutta Mr. Supravo Dey
For the Opposite Party No.2	: Mr. Ayan Bhattacharjee Ms. Ayesha Sultana Mr. Suman Majumder
For the State	: Mr. Gurudas Mitra Mr. Utsav Dutta
Reserved on	: 13.10.2026
Pronounced on	: 12.11.2026

UDAY KUMAR, J.: –

1. The instant criminal revisional application under Section 482 of the Code of Criminal Procedure, 1973 (for short, "Cr.P.C.") has been instituted by the petitioner, Habibullah, invoking the inherent jurisdiction of this Court for quashing the entire criminal proceeding arising out of Harwood Point Coastal P.S. Case No. 192 of 2022 dated 31.05.2022 under Sections 409 and 120B of the Indian Penal Code,

1860 (for short, "IPC"), corresponding to Special Case No. 13 of 2022, currently pending before the 7th Court of the learned Additional Sessions Judge, Alipore.

2. The instant criminal proceedings were initiated upon a formal written complaint lodged on May 31, 2022, by one Ganesh Halder, a resident of village Shib Kalinagar and a local betel vine farmer within the Kakdwip region of South 24 Parganas. The underlying substratum of the prosecution case is that during the financial year 2012–2013, the State Government of West Bengal through the Horticulture Department, under the National Horticulture Mission (NHM), launched an ameliorative agricultural infrastructure development scheme aimed at empowering marginalized betel-vine cultivators by providing financial assistance and subsidies ranging between ₹2,75,000 to ₹3,00,000 per unit for erecting durable Shade Net Houses (Pan Baroj) spanning 500 square meters.

3. To operationalize the said welfare initiative on the ground level, a local non-governmental organization bearing the nomenclature "Kamarhat Rural Welfare Society," spearheaded by its President/Secretary Sri Subhrangshu Kamar @ Babusona (who was concurrently a government-aided school teacher and a co-accused), acted as an intermediary coordinating between the agrarian populace and the administrative machinery. Simultaneously, commercial execution of the said development scheme and fabrication contracts were tied to specialized engineering entities, namely M/s. Aerotech Engineering Works and M/s. Nature Fresh Bio-Solution, proprietorship firms

managed by the petitioner Habibullah and his spouse, which were later consolidated into “Aerotech Engineering Works Pvt. Ltd.” in 2014.

4. According to the de-facto complainant, Subhrangshu Kamar persuaded local farmers to participate and following advice allegedly tendered by the then Director of Horticulture, A.K. Gupta, directed beneficiaries to hand over signed blank cheque books and passbooks to the NGO for proper fund management. Despite public funds being processed across an estimated 204 beneficiary projects quantified cumulatively by the prosecution at approximately ₹5,61,00,000, the promised Pan Baroj structures were allegedly not executed, leading to systemic financial deception and the registration of the FIR under Sections 409 and 120B IPC.

5. Following the registration of the FIR, the investigation was set in motion, initially by S.I. Tridib Saha and subsequently entrusted to a Special Investigation Team (SIT). During the probe, the Investigating Officer inspected the place of occurrence, prepared sketch maps, and recorded statements of agricultural supervisors, KVK scientists, and local farmers under Section 161 of the Cr.P.C. Custodial interrogation of Subhrangshu Kamar led to the seizure of sixteen beneficiary cheque books containing signed blank cheques from the NGO office and the accused's premises. The investigative net was subsequently cast toward the petitioner Habibullah on the strength of commercial agreements entered between Aerotech Engineering Works and Nature Fresh Bio-Solution on 19.12.2012 to carry out manufacturing, fabrication and

installation of the Shade Net House in furtherance of the development scheme.

6. Upon finding the petitioner non-responsive to statutory notices under Section 41A of the Cr.P.C. regarding utilization certificates, the Investigating Officer submitted Charge Sheet No. 362/22 dated September 17, 2022, against both Subhrangshu Kamar and the petitioner Habibullah under Sections 409 and 120B IPC, leading to the registration of Special Case No. 13 of 2022. Confronted with the criminal prosecution, the petitioner has approached this Court under Section 482 Cr.P.C. seeking quashing of the proceeding.

7. Assailing the continuation of the criminal proceedings, Mr. Jayanta Narayan Chatterjee, learned senior counsel appearing for the petitioner, has earnestly contended that the cognizance taken by the prosecution is *ex-facie* barred by limitation under Section 468 of the Cr.P.C., given that the alleged transactions relating to the offences under Sections 409 and 120 B IPC pertain to the financial year 2012–2013, whereas the FIR was registered much belatedly, a decade later in 2022. Building upon this threshold legal bar, he augmented his submissions by incorporating landmark judicial authority on limitation and criminal intent, notably *Sarah Mathew v. Institute of Cardio Vascular Diseases & Ors.,* [(2014) 2 SCC 62] contending that a delayed criminal machinery cannot be permitted to bypass the statutory protective shield enacted by the legislature against stale prosecutions under Chapter XXXVI of the Cr.P.C.

8. Mr. Chatterjee urged that the petitioner's name is conspicuously absent from the initial FIR, and that as an independent commercial contractor, he executed the 204 shade net house projects strictly in pursuance of formal commercial agreements and approved government specifications (Annexure P-8). In support of his contention that civil contractual disputes or delayed commercial execution cannot be artificially dressed up in criminal attire simply to exert coercive pressure, he strongly relied upon the binding ratio of *Inder Mohan Goswami & Anr. v. State of Uttaranchal & Ors.,* [(2007) 12 SCC 1].

9. Mr. Chatterjee vehemently submitted that the foundational allegation of total non-execution of the scheme stands thoroughly demolished by contemporaneous official records (Annexure P-9), which demonstrate that the work was rigorously inspected, verified, and certified as successful by competent authorities, including the District Horticulture Officer, Betel-vine Supervisors, and senior agricultural scientists from the Ramakrishna Ashram Krishi Vigyan Kendra (KVK), Nimpith, prior to the release of funds. To lend further weight to this contention, he cited *Paramjeet Batra v. State of Uttarakhand & Ors.*, [(2013) 11 SCC 673] and *Maksud Saiyed v. State of Gujarat & Ors.,* [(2008) 5 SCC 668], emphasizing that vicarious or sweeping criminal liability cannot be fastened upon a corporate vendor or commercial partner in the absence of explicit, legally tenable material establishing a direct fraudulent nexus.

10. Mr. Chatterjee further highlighted that the de facto complainant, Ganesh Halder, was himself a direct beneficiary under the identical

scheme who successfully received his entitled financial disbursements (Annexure P-10). Relying on Bureau of Indian Standards specifications (IS 16008:2012, Annexure P-11) establishing that agro-textile shade nets have an expected operational lifespan of roughly two years, it is argued that inspecting a perishable agricultural installation a decade later and drawing an adverse inference from its natural deterioration is wholly untenable. In support of the contention that the core ingredient of a dishonest intent (*mens rea*) right from the inception of the transaction is completely missing, he relied on the ratio laid down by the Hon'ble Supreme Court in *Hridaya Ranjan Prasad Verma & Ors. v. State of Bihar & Anr.,* [(2000) 4 SCC 168].

11. Placing heavy reliance on the landmark rulings of the Hon'ble Apex Court in *State of Haryana & Ors. v. Bhajan Lal & Ors.* [1992 Supp (1) SCC 335], *Binod Kumar & Ors. v. State of Bihar & Anr.* [(2014) 10 SCC 663], the recent pronouncements in *Prof. R.K. Vijayasarathy & Anr. v. Sudha Seetharam & Anr.,* [(2019) 16 SCC 739], Mr. Chatterjee submitted that the essential ingredients of criminal breach of trust under Section 409 IPC (which necessitates clear entrustment or dominion over property in a fiduciary capacity) and criminal conspiracy under Section 120B IPC are entirely absent against a bona fide commercial entity.

12. He also relied on the three judges' Bench decision of the Hon'ble Supreme Court in *State of Karnataka v. L. Muniswamy & Ors.,* [(1977) 2 SCC 699] for the contention that criminal proceedings must be quashed under Section 482 Cr.P.C. when there is a patent insufficiency of

evidence on record to secure a conviction. In support of his contention that where no *prima facie* case is made out, the continuation of proceedings constitutes an abuse of the process of court, he referred to *Mahmood Ali & Ors. v. State of Uttar Pradesh & Ors.,* [(2023) 15 SCC 488]. Referring to *Preeti Gupta & Anr. v. State of Jharkhand & Anr.,* [(2010) 7 SCC 667], he underscored the principle that if materials-on-record are grossly insufficient to prove guilt and a trial would inevitably end in an acquittal, the proceedings deserve to be quashed, as facing an unmerited trial inflicts severe and irreparable social scars upon an individual's reputation.

13. Finally, he cited *Madhavrao Jiwajirao Scindia & Ors. v. Sambhaji Rao Chandroji Rao Angre & Ors.,* [(1988) 1 SCC 692], reiterating that where undisputed facts disclose at best a civil wrong and the essential ingredients of a criminal offence are lacking, criminal proceedings should not be permitted to continue.

14. *Per contra*, Mr. Gurudas Mitra, learned counsel appearing on behalf of the State, and Mr. Ayan Bhattacharjee, learned counsel for the de facto complainant (Opposite Parties), vehemently opposed the prayer for quashing, urging the dismissal of the revisional application at the threshold. Rebutting the primary contention raised by the petitioner on limitation, Mr. Mitra emphatically relied on Section 473 of the Cr.P.C. and equally on the authoritative ratio laid down in *State of Himachal Pradesh v. Tara Dutt & Anr.,* [(2000) 1 SCC 230] that offences involving economic depredation, public exchequer fraud, and criminal breach of trust regarding massive public funds carry a prolonged gestation of

unearthing, thereby warranting statutory condonation or exclusion where concealment and systemic collusion are writ large.

15. It was contended that public exchequer funds amounting to approximately ₹5,61,00,000 across 204 beneficiary units were siphoned off through a deeply entrenched, collusive nexus between Subhrangshu Kamar and the petitioner. The learned advocate for the Opposite Parties pointed out that the petitioner was not an isolated commercial vendor, and that coercive collections of blank signed cheque books from innocent farmers including the de facto complainant were funnelled directly into bank accounts controlled by the petitioner's firms, specifically Bank of Baroda Account No. 3868000000113 of Nature Fresh Bio-Solution. Countering the reliance placed on departmental inspection notes and KVK certifications, it is argued that these purported clearance certificates are vitiated by fraud, collusion, and administrative complicity, demanding a full-fledged trial rather than premature evaluation under Section 482 Cr.P.C. In support of this contention, they relied on the ratio laid down by the Hon'ble Supreme Court in *CBI v. Arvind Khanna* [(2019) 10 SCC 686].

16. Referring to the categorical statements of witnesses Sandip Das and Chandan Mandal (at pages 337 and 323 of the case diary) recorded by the investigating officers under Section 161 of the Cr.P.C., alongside contemporaneous seizure lists, Mr. Mitra submitted that *prima facie* sufficient and clinching materials are available in the case diary to substantiate the prosecution case. To fortify this contention, he cited *Central Bureau of Investigation v. Aryan Singh & Ors.,* [(2023) 18 SCC

399] and *State of M.P. v. Awadh Kishore Gupta & Ors.,* [(2004) 1 SCC 691], emphasizing that at the stage of quashing, the High Court cannot conduct a mini-trial or sift through evidence to evaluate its adequacy.

17. They further emphasized that the petitioner deliberately adopted an uncooperative posture during the investigation by evading statutory notices under Section 41A of the Cr.P.C. and failing to produce lawful utilization certificates. Relying on the well-settled parameters governing the exercise of inherent powers under Section 482 Cr.P.C. as enunciated in *Zandu Pharmaceutical Works Ltd. & Ors. v. Mohd. Sharaful Haque & Anr.,* [(2005) 1 SCC 122] and *Chunduru Siva Ram Krishna & Anr. v. Peddi Ravindra Babu & Anr.,* [(2009) 11 SCC 203], the learned advocates for the Opposite Parties concluded that disputed questions of fact regarding the genuineness of execution, the validity of inspection reports, the applicability of limitation under economic offenses, and the existence of *mens rea* cannot be adjudicated at the pre-trial stage and must be subjected to rigorous testing during trial.

18. Upon a comprehensive evaluation of the pleadings, case diary, and rival submissions, the sole effective and core question that arises for determination by this Court is:

> *"Whether the present case warrants the extraordinary exercise of inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash the chargesheet and criminal proceedings at the pre-trial stage, or whether the materials on record disclose prima facie triable issues regarding criminal conspiracy, active connivance, and misappropriation of public funds that necessitate a full-fledged trial?"*

19. I have given my anxious and thoughtful consideration to the persuasive arguments advanced by Mr. Jayanta Narayan Chatterjee, learned senior counsel for the petitioner, as well as the robust resistance offered by Mr. Gurudas Mitra for the State and Mr. Ayan Bhattacharjee for the de facto complainant. I have also meticulously perused the case diary, the charge sheet, and the numerous judicial precedents cited across the bar.

20. First of all, I think it necessary to consider on the legal parameters governing the invocation of Section 482 of the Cr.P.C. This provision provides for the saving of inherent powers of High Court, which expounds that "*nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*"

21. The contours governing the exercise of inherent powers under Section 482 Cr.P.C. to quash criminal proceedings are well-settled by the Hon'ble Supreme Court in the judgment of *Bhajan Lal (supra)***,** wherein the Hon'ble Apex Court delineated illustrative guidelines where quashing is permissible. Relying upon Category (1) (where allegations do not disclose an offence) and Category (7) (where proceedings are manifestly *mala fide* or instituted with ulterior motives), the petitioner sought quashing of the pending criminal proceedings initiated against him.

22. Furthermore, the caution observed by the Hon'ble Supreme Court in *Binod Kumar (supra)* regarding the abuse of criminal process in commercial transactions is equally instructive:

> *".....In the present case, looking at the allegations in the complaint, we are satisfied that the allegations only make out a civil dispute. ... Expressing this view, we are fortified by the decision of this Court in Indian Oil Corpn. v. NEPC India Ltd. wherein it was held that a set of facts may give rise to civil remedies and also to criminal proceedings, and only when the civil remedy is a camouflage for criminal prosecution, the criminal proceedings are liable to be set aside."*

23. Similarly, the Hon'ble Supreme Court held in *L. Muniswamy (supra)*, that criminal proceedings must be quashed under Section 482 Cr.P.C. when there is a patent insufficiency of evidence on record to secure a conviction; in *Mahmood Ali (supra)*, held that where no *prima facie* case is made out, the continuation of proceedings constitutes an abuse of the process of court; and in *Preeti Gupta (supra)*, held that if materials are grossly insufficient to prove guilt and a trial would inevitably result in an acquittal, the proceedings deserve to be quashed, as facing an unmerited trial inflicts severe and irreparable social scars upon an individual's reputation.

24. But it is equally a settled position of law that the inherent power under Section 482 Cr.P.C. is to be exercised sparingly, with circumspection, and in the rarest of rare cases, as articulated in the decisions of *Aryan Singh (supra)* and *Awadh Kishore Gupta (supra).* A High Court, while examining a petition for quashing a charge sheet, does not sit as a trial

court to evaluate the probative value of defence exhibits or conduct a meticulous mini-trial.

25. Now I have taken the issue of bar of limitation in initiation of this prosecution which has been raised by the petitioner. Let me first consider the provision of Section 468 of the Cr.P.C, which is reproduced hereinbelow: -

> ***"468. Bar to taking cognizance after lapse of the period of limitation.***
>
> *(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.*
>
> *(2) The period of limitation shall be—*
>
> *(a) **six months**, if the offence is punishable with fine only;*
>
> *(b) **one year**, if the offence is punishable with imprisonment for a term not exceeding one year;*
>
> *(c) **three years**, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*
>
> *(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which*

is punishable with the more severe punishment or, as the case may be, the most severe punishment.

26. Admittedly, the FIR was instituted on May 31, 2022 for the acts of financial transactions held in financial year 2012–2013. Apparently, prosecution was initiated *after three years*, which is the maximum period for taking cognizance of any offence, permitted under Section 468, otherwise the cognizance would be barred. In the given context, Mr. Chatterjee has correctly raised the argument that a delayed criminal machinery cannot bypass the statutory protective shield enacted by the legislature against stale prosecutions under Chapter XXXVI of the Cr.P.C. When I consider the issue of limitation in the light of the law settled by the supreme court in *Sarah Mathew* (supra), I find that the present offence involves the alleged siphoning of massive public welfare subsidies running into crores of rupees earmarked for marginalized farmers under the National Horticulture Mission.

27. At this juncture, consideration of the provision of Section 473 of the Cr.P.C. is relevant, which is reproduced hereinbelow: -

*"**473. Extension of period of limitation in certain cases.***

Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that

the delay has been properly explained or that it is necessary so to do in the interests of justice."

28. Under Section 473 of the Cr.P.C., courts are empowered to take cognizance beyond the period of limitation if it is satisfied that the delay has been properly explained or that it is necessary to do so in the interest of justice. Economic offenses and large-scale defalcations of public exchequer funds often involve layers of sophisticated concealment, systemic camouflage, and administrative complicity, which naturally take years to unearth, as is highlighted by the Hon'ble Supreme Court in *Tara Dutt (supra)*. Therefore, the question of whether the delay is fatal or whether the statutory interests of justice warrant extension or condonation under Section 473 Cr.P.C. is a mixed question of fact and law to be determined during trial, and cannot serve as a sole ground for pre-trial quashing under Section 482 Cr.P.C. Accordingly I do not find merit in the defence raised by the petitioner relating to the bar of the prosecution due to delay. As such this threshold point, is decided in favour of the Opposite Parties without prejudice to the substantive merits.

29. To appreciate the controversy, it is also apposite to examine the statutory provisions of the offences invoked against the petitioner, on of which, Section 409 of the Indian Penal Code provides:

*"**409. Criminal breach of trust by public servant, or by banker, merchant or agent.***

> *Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with [imprisonment for life], or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine."*

30. Further, Section 120A of the IPC defines criminal conspiracy as an agreement between two or more persons to do an illegal act, or an act which is not illegal by illegal means, punishable under Section 120B IPC. As expounded by the Hon'ble Supreme Court in *State of Kerala v. P. Sugathan & Anr.,* [(2000) 8 SCC 203], a criminal conspiracy is invariably hatched in secrecy, and its existence must be gathered from the surrounding circumstances, the conduct of the parties, and the flow of funds, rather than requiring direct ocular proof at the threshold, and has observed that a conviction for criminal conspiracy cannot be based on mere surmise and suspicion. There must be some nexus between the accused and the crime. To prove a criminal conspiracy, there must be evidence direct or circumstantial to show that there was an agreement between two or more persons to commit an offence. There must be a meeting of minds. Mere association or commercial dealings, without more, cannot be elevated to the status of a criminal conspiracy.

31. Now I have taken up the question that whether the present case falls within the recognized parameters for quashing, or whether the

materials collected during the police investigation disclose triable issues that preclude interference at the threshold. On this point, the learned advocate for the petitioner has strenuously urged that as an independent commercial contractor, the petitioner's firms executed the 204 shade net house projects strictly in accordance with approved government specifications and that contemporaneous inspection reports and completion certificates issued by the District Horticulture Officer and KVK Nimpith agricultural scientists completely absolve the petitioner of any wrongdoing. However, the prosecution has squarely challenged these very certificates and inspection notes as being vitiated by fraud, administrative collusion, and systemic complicity. The charge sheet and supporting case diary materials reveal that public exchequer funds amounting to approximately ₹5,61,00,000 were funnelled through accounts controlled by the petitioner's dual proprietorship firms (Aerotech Engineering Works and Nature Fresh Bio-Solution) following the collection of signed blank cheque books from gullible, illiterate farmers by the NGO.

32. Unlike cases where a purely private commercial dispute is clothed in criminal garb with absolute absence of foundational ingredients, the instant matter involves the alleged defalcation of massive public welfare subsidies earmarked for development of the marginalized betel-vine cultivators. The questions concerning how the NGO managed to persuade farmers to part with signed blank cheques under alleged administrative guidance, whether the petitioner acted in active connivance with the primary accused (Subhrangshu Kamar) to siphon

off public funds, and whether the departmental clearances were a product of fraudulent collusion are classic mixed questions of fact and law.

33. It is a well-established principle of criminal jurisprudence that criminal conspiracy is invariably hatched in secrecy, and direct ocular evidence of a pre-planned meeting of minds is rarely available. As observed by the Hon'ble Supreme Court in *P. Sugathan (supra)*, the existence of a criminal nexus or common intention must be gathered from the surrounding circumstances, the conduct of the parties, and the flow of funds. The active corporate-NGO linkages, the interchanging roles across the petitioner's proprietorship firms, and the systematic routing of funds into Bank of Baroda Account No. 38680000000113 standing in the name of one of the petitioner’s firms, create a web of circumstantial facts that cannot be brushed aside as a mere *bona fide* commercial transaction at a pre-trial stage.

34. Similarly, the petitioner's reliance on technical lifespans under Bureau of Indian Standards specifications (IS 16008:2012) and the question of delay in setting the criminal machinery in motion constitute evidentiary matters to be tested during a full-fledged trial through cross-examination. This Court, while exercising revisional jurisdiction under Section 482 Cr.P.C., cannot conduct a mini-trial or weigh the probative value of defence documents to subvert a police report under Section 173 Cr.P.C. that discloses *prima facie* materials in support of the allegations charged against the petitioner. The charge sheet submitted

by the Investigating Officer discloses sufficient grounds to proceed against the petitioner under Sections 409 and 120B IPC.

35. Consequently, upon a holistic appraisal of the rival contentions, the case diary materials, and the settled legal position, this Court is of the firm view that the present case does not fall within the parameters of the rarest of rare cases warranting the invocation of inherent quashing powers under Section 482 of the Cr.P.C**.** The disputed questions of fact concerning *mens rea*, the validity of completion certificates, the exact role played by the petitioner, and the existence of a criminal nexus must be left for adjudication by the learned trial court upon adducing legal evidence.

36. In light of the aforesaid discussions and findings, the criminal revisional application being **C.R.R. No. 773 of 2023** is found to be devoid of merit and is accordingly **dismissed**.

37. The interim order of stay, if any operating, stands vacated.

38. Pending Connected Application(s), if any, are disposed of accordingly.

39. There shall be no order as to costs.

40. The learned trial court (7th Court of the learned Additional Sessions Judge, Alipore) is directed to proceed with Special Case No. 13 of 2022 expeditiously and in accordance with law, uninfluenced by any observations made on the merits of the case herein, ensuring that both parties are afforded full opportunity during trial.

41. Let a copy of this judgment along with the Trial Court Records (T.C.R.) be transmitted to the learned Trial Court forthwith for necessary information and compliance.

42. Case diary, be returned to the Learned Counsel for the State.

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

(Uday Kumar, J.)