

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

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 1892 of 2022

**Arko Deep Saha @ Arkadeep Saha
-Vs-
State of West Bengal & Anr.**

For the Petitioner	: Mr. Sataroop Purkayastha
For the State	: Mr. Arijit Ganguly Mr. Bibaswan Bhattacharya
Hearing concluded on	: 13.02.2026
Judgment on	: 20.02.2026

UDAY KUMAR, J.: –

1. By way of this petition under Section 482 of the Code of Criminal Procedure, 1973, the Petitioner seeks to quash Charge Sheet No. 368/2021 and the resulting prosecution in G.R. Case No. 2248/17 (arising out of Harishchandrapur P.S. Case No. 901/17). The proceedings, currently pending before the Learned Additional Special Court, Malda, involve charges under Sections 406 and 409 of the Indian Penal Code. The Petitioner seeks total exoneration, contending that his implication constitutes judicial harassment and a manifest abuse of the process of court, as it lacks the foundational legal requirements of "entrustment" and "criminal intent."

- 2.** The genesis of the present criminal proceeding is rooted in a First Information Report (FIR) lodged on November 9, 2017, by the Block Development Officer (BDO), Harishchandrapur Block-II. The complainant acted upon a grievance ventilated by a local resident, one Habibur Rahman, alleging a systematic and large-scale misappropriation of public funds earmarked for the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS). The allegations specifically pertain to five horticulture and land development projects within the Malior-II Gram Panchayat, which were purportedly executed only on paper.
- 3.** A preliminary administrative enquiry preceded the registration of the FIR, unearthing a disturbing pattern of "ghost works." It is the case of the prosecution that while the allotted budgets for these projects were fully depleted and funds withdrawn, subsequent physical inspections revealed a total absence of execution on the ground. The investigation suggests a calculated siphoning of the public exchequer via a conspiratorial nexus involving the Gram Pradhan, the Supervisor, and the Gram Rojgar Sevak (GRS).
- 4.** The Petitioner herein was engaged as a Skilled Technical Person (STP) for a specific and limited tenure, from August 22, 2016, to August 28, 2017. The gravamen of the prosecution's case rests on a "theory of technical oversight," contending that the Petitioner's "technical eyes" were an indispensable component of the fraud, and his silence amounted to criminal connivance and a deliberate omission of statutory duties.
- 5.** However, a microscopic examination of the records reveals a significant and perhaps fatal lacuna in the prosecution's narrative. It is undisputed that the

projects in question were sanctioned and the primary tranches of funds were disbursed in the year 2015—a period that substantially predates the Petitioner's appointment to the post of STP. Furthermore, the Petitioner's signature is conspicuously absent from the Measurement Books (MB) and Completion Reports, which are the mandatory technical instruments required to trigger the release of MGNREGS funds.

6. The present petition pivots on three fundamental legal queries that this Court is called upon to adjudicate:

- a) Whether the mandatory ingredients of "Entrustment" and "Dishonest Misappropriation" under Section 409 of the Indian Penal Code can be legally sustained in the absolute absence of a document-linked overt act, financial dominion, or signed certification by the accused?
- b) Whether a technical officer can be held criminally liable for a "culpable omission" or "strategic silence" regarding projects that were sanctioned and initiated prior to his appointment, and where he was effectively bypassed in the fund-release hierarchy?
- c) Whether the continuation of a criminal trial founded solely on the "nexus of official designation," as opposed to specific evidentiary material, constitutes an abuse of the process of law warranting the inherent intervention of this Court under Section 482 of the Code of Criminal Procedure?

7. Mr. Sataroop Purkayastha, Learned Counsel for the Petitioner vehemently argues that the prosecution of the Petitioner is an exercise in both temporal and logical impossibility. It is submitted that since the projects in question

were conceptualized, sanctioned, and the primary tranches of funds were disbursed in 2015—a period during which the Petitioner was not in service—he cannot, by any stretch of legal imagination, be termed a conspirator. There could be no "meeting of minds" under Section 120B IPC for an offense that had reached its financial culmination before the Petitioner assumed his charge.

8. It is further contended that the Petitioner never exercised "dominion" over the property in question. Under the MGNREGS framework, funds flow through a Direct Benefit Transfer (DBT) mechanism. The Petitioner's counsel emphasizes that the prosecution has failed to produce a single Measurement Book (MB), Valuation Report, or Completion Report bearing the Petitioner's signature.
9. In the absence of such technical attestation—which serves as the mandatory "gatekeeper" for fund release—the allegation of "entrustment" fails the primary legal test. Mr. Purakayastha concludes that the Petitioner is being made a scapegoat for the systemic failures of his predecessors and the primary administrative offenders who bypassed the technical verification process entirely.
10. Per contra, Mr. Arijit Ganguly, the Learned Counsel for the State argues that the Petitioner's role as a Skilled Technical Person (STP) was not merely clerical but was intended to provide critical technical oversight as the "eyes and ears" of the administration. The State's case is built on the theory of "Willful Blindness." It is contended that while the projects were "live" on paper during the Petitioner's tenure, his failure to report the total absence of physical work on the ground facilitated the ongoing siphoning of public money.

11. The State maintains that a technical officer's "strategic silence" constitutes a triable issue of tacit conspiracy. The prosecution argues that as a technical supervisor, the Petitioner had a statutory duty to inspect these sites; his "inaction" while the projects were listed as "ongoing" suggests a meeting of minds with the Gram Pradhan and GRS.
12. Finally, it is submitted that whether the Petitioner's conduct was a result of mere administrative negligence or a deliberate act of connivance is a disputed question of fact. Such nuances, the State argues, must be tested in the crucible of a full-fledged trial rather than being truncated at this preliminary stage through the exercise of inherent jurisdiction.
13. Upon a meticulous synthesis of the statutory framework and the Case Diary, this Court finds the prosecution's theory of "connivance by omission" to be legally unsustainable. To attract the rigors of Section 409 IPC, the prosecution must first establish "Entrustment."
14. "Entrustment is the lifeblood of an offense under Section 409. If no property or money was ever handed over to the accused, or if he had no dominion over such property, the question of misappropriation is legally dead at its inception."
15. To sustain a conviction under Section 409 IPC, the prosecution must prove "Entrustment" and "Dishonest Misappropriation." There must be a transfer of dominion over property. In the present case, a significant "Dominion Gap" is evident. As a Skilled Technical Person (STP), the petitioner's role was strictly limited to technical oversight and advisory verification. He may have possessed Technical Dominion (the authority to certify work quality) but lacked any

"Financial Dominion" regarding the movement of funds. Funds move via a Direct Benefit Transfer (DBT) mechanism managed by the BDO and the Pradhan. The records demonstrate that the Petitioner never held the "purse strings" of the project. Furthermore, the absence of the Petitioner's signature on the technical triggers proves that the disbursing authorities bypassed the technical layer entirely. Logically, if the thief bypasses the lock, the locksmith cannot be charged with the theft.

16. The prosecution's narrative further founders on the rock of "Temporal Impossibility." The administrative enquiry and the official tenure records establish that the "ghost works" and the primary siphoning of public funds reached their financial culmination in 2015. The petitioner, however, assumed his duties as STP only in late 2016. In the realm of criminal conspiracy under Section 120B IPC, a "meeting of minds" is a sine qua non. Logic dictates that a newcomer cannot be a conspirator in a fraud that was architected, funded, and siphoned before he even entered the portal of the office. To hold a successor vicariously liable for the institutionalized malfeasance of a pre-existing system—simply because he inherited a technical designation—would be to convert a service lapse into a heinous crime.
17. This Court must draw a sharp distinction between Administrative Negligence and Criminal Intent. As observed by the Apex Court in *N. Raghavender v. State of Andhra Pradesh (2021)*, "even 'grave suspicion' regarding negligence cannot substitute for proof of dishonest misappropriation." While the petitioner's failure to act as a "whistle-blower" regarding stagnant or non-existent projects might warrant a departmental inquiry for dereliction of duty, it falls far short of the threshold of mens rea required for a criminal conviction.

18. In fact, if the petitioner did not sign the fraudulent valuation reports, he effectively performed his duty by refusing to certify false work. The fact that money was released regardless of his certification is a systemic failure of the disbursing office, for which a technical officer cannot be made a criminal scapegoat.
19. Furthermore, the principles established in *Sushil Sethi v. State of Arunachal Pradesh* (2020) and the landmark guidelines in *State of Haryana v. Bhajan Lal* (1992) guide the intervention of this Court. Where the allegations in the FIR and the material in the Case Diary, even taken at face value, do not disclose the essential ingredients of the offense, the High Court must exercise its inherent powers. To force the petitioner to undergo the rigors of a protracted trial where the temporal alibi is absolute and the documentary nexus is non-existent would be to convert the criminal process into a tool of harassment.
20. Consequently, this Court finds that the prosecution is attempting to fasten criminal liability based on a "Nexus of Designation" rather than a "Nexus of Deed." In the absence of any financial trail, kickbacks, or forged signatures belonging to the petitioner, the trial would be a mere exercise in futility and a manifest abuse of the process of law.
21. In the final analysis, having navigated the complex intersection of administrative technical oversight and the rigors of criminal jurisprudence, this Court arrives at conclusive findings that: "In a technical-administrative audit chain, an 'Omission to Certify' (the act of not signing) is fundamentally and legally distinguishable from 'False Certification' (the act of signing a lie). Where a technical officer is bypassed by the disbursing authority, his failure to

proactively act as a whistle-blower regarding projects that were architected, funded, and essentially concluded prior to his tenure remains within the realm of 'Gross Administrative Negligence' and cannot be elevated to 'Dishonest Misappropriation' under Section 409 IPC in the absolute absence of a document-linked overt act or financial trail."

22. The attempt to link the Petitioner to a fraud that was "architected, funded, and finished" before his appointment is a legal fallacy. Accordingly, it is ordered:

- i. The petition C.R.R. 1892 of 2022 is allowed.
- ii. The FIR (Harishchandrapur P.S. Case No. 901/17) and Charge Sheet (No. 368/2021) are quashed exclusively insofar as they relate to the Petitioner, Arko Deep Saha.
- iii. The Petitioner is stood discharged from his bail bonds, and the sureties are released from their obligations.
- iv. This order shall not act as a bar for the Department to initiate a departmental enquiry for administrative negligence, should they deem it necessary.
- v. The Trial Court shall proceed against the remaining accused with utmost expedition.

23. The Registry is directed to communicate this order to the Learned Trial Court and the concerned Police Station within one week.

24. All consequential Interim order/orders, if any, shall stand vacated.

25. There shall be no order as to costs.

26. The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.

27. Case diary, if any, be returned forthwith.
28. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)