IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 3415 OF 2022

IA NO: CRAN 2 OF 2024

PROSENJIT MONDAL @ PRASENJIT MONDAL AND ANOTHER
-VS-
TILAK MITRA AND ANOTHER

For the Petitioners	: Mr. Sourav Chatterjee, Ld. Sr. Adv. Ms. Namrata Chatterjee, Ld. Adv.
For the Union of India	: Mr. Kallol Kumar Basu, Ld. Adv. Mr. Sagar Saha, Ld. Adv.
Reserved on	: 09.10.2026
Pronounced on	: 12.11.2026

UDAY KUMAR, J.: –

1. By way of this revisional application under Section 482 of the Code of Criminal Procedure, 1973, the petitioners, namely, Prosenjit Mondal and Kushal Majhi, have invoked the inherent and supervisory jurisdiction of this Court seeking quashing of the criminal proceeding arising out of C.R. Case No. 106 of 2019, pending before the Court of the learned Additional Chief Judicial Magistrate, Kalna, Purba Burdwan, corresponding to RPF/Post/Nabadwip Dham Case No. 1 of 2019 dated March 9, 2019, instituted under Sections 3(a) and 4 of the Railway Property (Unlawful Possession) Act, 1966 (hereinafter referred

to as the "RPUP Act") against one Abdul Sheikh and the petitioners respectively.

2. The foundational genesis of the prosecution case traces back to March 9, 2019, when pursuant to source information, a raid was conducted by the Railway Protection Force (RPF) team led by SI Tilak Mitra at the residential premises of one Abdul Sheikh at Paruldanga. During the said raid, although the principal occupant Abdul Sheikh managed to flee, the RPF officers allegedly recovered 315 pieces of 12-core signal cables, stripped cable skin weighing 25 kgs, an electric wall cutter, an extension board, and cutting wheels from the space attached to his house. Upon examination by railway engineering officials, the seized materials were certified to be exclusive Indian Railway signalling cables. Consequently, RPF Case No. 1 of 2019 was registered under Section 3(a) of the RPUP Act against the absconding Abdul Sheikh.

3. The investigation subsequently drifted toward the present petitioners. The co-accused Abdul Sheikh was arrested on March 13, 2019, and during his interrogation, he purportedly disclosed that the seized materials were unlawfully procured from the petitioner No. 1, Prosenjit Mondal, who was working as a supervisor/employee of *Perfecto Electricals*, by paying a sum of Rs. 20,000/-. Following a protracted inquiry spanning several weeks wherein summons were issued to various contractors, railway engineers, and site supervisors, the Enquiry Officer ultimately submitted a Prosecution Report on September 12, 2019, before the learned Additional Chief Judicial Magistrate, Kalna, seeking cognizance under Section 3(a) against Abdul

Sheikh and under Section 4 of the RPUP Act against the present petitioners for abetment, conspiracy, and connivance.

4. Assailing the legality and sustainability of the said proceeding, Mr. Sourav Chatterjee, learned senior counsel for the petitioners strenuously argues that the continuation of the criminal proceeding against the petitioners is an absolute abuse of the process of Court on several distinct and formidable grounds. *Firstly*, it is an admitted and undisputed position that not a single piece of railway property was recovered either from the physical possession, personal search, or residential premises of the petitioners. The entire recovery was effected exclusively from the dwelling house of the co-accused Abdul Sheikh. *Secondly*, it is submitted that Section 3(a) of the RPUP Act deals with actual theft, dishonest misappropriation, or unlawful possession of railway property, which can by no stretch of imagination be fastened upon the petitioners in the total absence of any physical recovery. *Thirdly*, as regards Section 4 of the RPUP Act which penalizes abetment, conspiracy, and connivance by importing the definitions under Section 107 and Section 120A of the Indian Penal Code, learned counsel contends that the prosecution report is completely bereft of any tangible material or legal foundation demonstrating a prior meeting of minds, active instigation, or illegal omission on the part of the petitioners. *Fourthly*, drawing the attention of this Court to the prosecution's own relied-upon documents (specifically the official letters of Sri A. Sinha and Sri D.K. Singh, Senior Section Engineers), it is urged that the possibility of incurring any financial or material loss to the railway

administration has been categorically ruled out and eliminated, thereby destroying the foundational bedrock of a property-related offence. *Fifthly*, Mr. Chatterjee raises a grave procedural objection, pointing out that the alleged confessional statements relied upon by the prosecution were neither included in the statutory list of relied-upon documents forwarded to the learned Magistrate nor were the mandatory procedural safeguards, pre-requisites, and precautions ordained under Chapter 1, Regulation 26.2 of the RPF Crime Manual (such as recording of the confession in the accused's own handwriting, maintaining a non-uniformed peaceful atmosphere, prior medical examination, and attestation by independent witnesses) complied with.

5. *Per contra*, Mr. Kallol Basu, learned counsel representing the opposite parties (Railway Authorities and the State) stoutly defends the continuation of the proceeding and submits that a strong *prima facie* case for trial has been well established against the petitioners. It is contended that an inquiry conducted under Section 8 of the RPUP Act partakes a judicial character by virtue of Section 9(4) of the Act, and the statements recorded therein are signed judicial records carrying distinct evidentiary value compared to statements recorded under Section 161 Cr.P.C. Placing reliance on the confessional statement of the co-accused Abdul Sheikh, who did not file any retraction petition before the learned Magistrate, coupled with the corroborative statements of independent witnesses and railway personnel such as Pritam Kumar, Amitava Sinha, Lalit Kothari, and Uttam Ghosh, the opposite parties argue that the petitioners actively managed material dispatches and site registers for

Perfecto Electricals. Relying upon the authoritative pronouncements of the Hon'ble Supreme Court in *Yogesh @ Sachin Jagdish Joshi v. State of Maharashtra,* [(2008) 10 SCC 394] and *Mahammad Khalid v. State of West Bengal,* [(2002) 7 SCC 334], learned counsel for the opposite parties submits that in cases of criminal conspiracy, direct proof of an agreement is rarely available, and its existence and objectives are to be inferred from surrounding circumstances, conduct, and *inter-se* association. Furthermore, it is contended that physical presence at the spot of recovery is not a *sine qua non* for establishing a conspiracy under Section 4 of the RPUP Act, and since the proceeding before the learned Magistrate since has progressed to the stage of recording of evidence, this Court ought not to interfere at this juncture to quash the proceeding.

6. Having heard the learned counsels for the contesting parties at length and upon a meticulous perusal of the application, the prosecution report, the supplementary affidavits, and the judicial precedents cited at the Bar, this Court must now weigh the rival submissions on the touchstone of settled principles governing the quashing of criminal proceedings under Section 482 of the Code of Criminal Procedure to decide the instant revisional application.

7. At the very threshold, it is apposite to examine the exact contours of the penal provisions invoked against the petitioners. The prosecution report seeks to rope in the petitioners under Section 4 of the RPUP Act, while the principal recovery was made from Abdul Sheikh, who alone stands charged under Section 3(a). Section 4 of the RPUP Act reads as follows:

> *"4. Punishment for abetment, conspiracy or connivance at offences —Whoever abets or conspires in the commission of an offence punishable under this Act, or any owner or occupier of land or building, or any agent of such owner or occupier in charge of the management of that land or building, who wilfully connives at an offence against the provisions of this Act, shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both.*
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> *Explanation. – For the purposes of this Section, the word "abet" and "conspire" shall have the same meanings as assigned to them respectively in sections 107 and 120A of the Indian Penal Code (45 of 1860)."*

8. A plain reading of aforesaid Section 4 makes it luminously clear that the statute penalizes three distinct modes of secondary participation: (i) abetment, (ii) criminal conspiracy, and (iii) wilful connivance by owners/occupiers of land or buildings. Since the petitioners are admittedly neither owners nor occupiers of the land/building where the recovery was effected, their culpability must stand or fall on the touchstone of abetment (defined under Section 107 IPC) or criminal conspiracy (defined under Section 120A IPC).

9. It is a cardinal principle of criminal jurisprudence, as authoritatively expounded by the Hon'ble Supreme Court in *Gurcharan Singh v. State of Punjab*, [(2020) 10 SCC 200], that abetment involves a positive mental process of instigation, intentional aiding, or illegal omission. The Hon'ble Supreme Court in the said decision, has further observed that to constitute the offence of 'abetment' as defined under Section 107 IPC, there must be a direct instigation or intentional aiding or a positive act

on the part of the accused. Without a positive act of incitement or active facilitation, no criminal liability for abetment can be fastened.

10. Similarly, in *S.S. Chheena v. Vijay Kumar Mahajan & Anr.,* [(2010) 12 SCC 190], the Apex Court in paragraph 25 of the said report, has held:

> *"25. Abetment involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing offence, a conviction cannot be sustained."*

11. Furthermore, in *Ramesh Kumar v. State of Chhattisgarh,* [(2001) 9 SCC 618], a three-judges' Bench of the Hon'ble Supreme Court underscored that instigation must have a direct nexus with the consequential act.

12. Adverting to the factual matrix of the present case, this Court finds an absolute vacuum of any material demonstrating a positive act of instigation or intentional aiding by the petitioners *qua* Abdul Sheikh. Apart from a vague, perfunctory, and conclusionary assertion at the tail-end of the prosecution report stating that the petitioners "have connived by committing abet and conspire," the prosecution has failed to bring forth any independent, reliable material indicating how, when, or in what manner the petitioners incited, goaded, or provoked the principal accused to commit the offence punishable under Section 3(a) of the RPUP Act. A bald, recycled formula of words in police or RPF report cannot substitute for legal proof or provide a foundation for criminal trial.

13. Turning to the alternative limb of Section 4 namely, criminal conspiracy, the opposite parties have placed heavy reliance on the

decisions of the Hon'ble Supreme Court in *Yogesh @ Sachin Jagdish Joshi (supra)* and *Mahammad Khalid (supra)* to contend that direct proof of a meeting of minds is not necessary and that conspiracy can be inferred from surrounding circumstances. This Court is fully conscious of the legal proposition that criminal conspiracies are hatched in secrecy and direct evidence is seldom available. The relevant paragraphs 20 and 25 of *Yogesh @ Sachin Jagdish Joshi (supra)* aptly lay down:

> *"**20.** The basic ingredients of the offence of criminal conspiracy are: (i) an agreement between two or more persons; (ii) the agreement must relate to doing or causing to be done either (a) an illegal act; or (b) an act which is not illegal in itself but is done by illegal means. It is, therefore, plain that meeting of minds of two or more persons for doing or causing to be done an illegal act or an act by illegal means is sine qua non of criminal conspiracy. …… a conspiracy is always hatched in secrecy and it is impossible to adduce direct evidence of the common intention of the conspirators. Therefore, the meeting of minds of the conspirators can be inferred from the circumstances proved by the prosecution, if such inference is possible.*
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> *….*
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> ***25.** Thus, it is manifest that the meeting of minds of two or more persons for doing an illegal act or an act by illegal means is sine qua non of the criminal conspiracy but it may not be possible to prove the agreement between them by direct proof. Nevertheless, existence of the conspiracy and its objective can be inferred from the surrounding circumstances and the conduct of the accused. But the incriminating circumstances must form a chain of events from which a conclusion about the guilt of the accused could be drawn. It is well settled that an offence of conspiracy is a substantive offence and*

renders the mere agreement to commit an offence punishable, even if an offence does not take place pursuant to the illegal agreement.

However, even while acknowledging this principle, the law is equally well settled by the Constitution Bench of the Hon'ble Supreme Court in *Haricharan Kurmi & Anr. v. State of Bihar,* [1964 SCC OnLine SC 28], and subsequently reiterated in *Dipakbhai Jagdishchandra Patel v. State of Gujarat & Anr.,* [(2019) 16 SCC 547], that the incriminating circumstances must form a coherent, unbroken chain of events pointing unerringly toward the guilt of the accused, and the confession of a co-accused cannot form the sole substantive basis for conviction without independent corroborative evidence. In the instant case, the prosecution report does not even specify whether the petitioners are sought to be hauled up for abetment, for conspiracy, or for both simultaneously, thereby exposing the patent vagueness, frivolity, and non-application of mind in drafting the report.

14. What further demolishes the prosecution's superstructure is the documentary evidence emanating from the railway authorities themselves. Enclosure "B" to the petition and the Supplementary Affidavit contain official communications from Senior Section Engineers (Sri A. Sinha, SSE/Sig/Con/HWH dated May 27, 2019, and Sri D.K. Singh, SSE/ Sig/Con/BDC dated May 20, 2019).

15. A bare perusal of Sri A. Sinha's letter and Sri D.K. Singh's letter addressed to the Enquiry Officer categorically records that '*the possibility of incurring any financial or material loss to the railways is ruled out and eliminated*'. When the foundational essence of a property-

related penal statute namely, wrongful loss, deprivation, or deficiency of railway property is completely negated by the prosecution's own relied-upon official documents, the continuation of criminal proceedings against these petitioners is nothing short of an abuse of the process of Court.

16. Moreover, this Court cannot shut its eyes to the serious procedural infractions surrounding the alleged confessional statements. While the opposite parties rely heavily upon statements recorded during the inquiry under Section 8 of the RPUP Act, it is not disputed that the purported statement of Petitioner No. 2, Kushal Majhi, does not even form part of the statutory list of relied-upon documents furnished to the learned Magistrate. More importantly, Chapter 1, Regulation 26.2 of the RPF Crime Manual lays down mandatory, meticulous safeguards for recording confessions—including recording in the accused's own handwriting, maintaining a non-coercive and non-uniformed atmosphere, securing independent witness signatures, and conducting mandatory prior medical examinations. A bare comparison of the record reveals a flagrant, wholesale breach of these departmental safeguards. A statement extracted in patent violation of departmental manual instructions cannot be countenanced in a court of law to imperil the liberty of citizens.

17. The judicial parameters governing the exercise of inherent powers under Section 482 CrPC for quashing criminal proceedings are well-established, as classically articulated in the landmark decision of the Hon'ble Supreme Court in *State of Haryana & Ors. v. Bhajan Lal & Ors.,*

[1992 Supp (1) SCC 335], where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety, do not *prima facie* constitute any offence or make out a case against the accused, or where the proceeding is manifestly attended with mala fide and/or is maliciously instituted with an ulterior motive, the High Court is duty-bound to exercise its inherent jurisdiction to prevent an abuse of the process of any court.

18. In the light of the comprehensive evaluation of facts, law, and judicial precedents, this Court has no hesitation in holding that the continuation of the criminal proceeding in C.R. Case No. 106 of 2019 arising out of RPF/Post/Nabadwip Dham Case No. 1 of 2019 dated March 09, 2019, pending before the Court of the learned Additional Chief Judicial Magistrate, Kalna, Purba Burdwan, *qua* the present petitioners, Prosenjit Mondal and Kushal Majhi, would result in a gross miscarriage of justice.

19. Accordingly, the revisional application being **C.R.R. No. 3415 of 2022** stands **allowed**.

20. The impugned criminal proceeding being **C.R. Case No. 106 of 2019** pending before the Court of the learned Additional Chief Judicial Magistrate, Kalna, Purba Burdwan, arising out of **RPF/Post/Nabadwip Dham Case No. 1 of 2019 dated March 09, 2019**, under Sections 3(a) and 4 of the Railway Property (Unlawful Possession) Act, 1966, along with all orders passed therein, are hereby **quashed so far as the**

present petitioners, Prosenjit Mondal and Kushal Majhi, are concerned.

21. It is, however, made clear that this Court has not expressed any opinion on the merits of the case insofar as the remaining principal accused, Abdul Sheikh, is concerned, and the learned Trial Court shall be at liberty to proceed with the trial against him independently in accordance with law, uninfluenced by any observations made in this judgment.

22. The interim order of stay, if operating, stands vacated.

23. CRAN 2 of 2024, an application for extension of interim order, is also disposed of accordingly.

24. There shall be no order as to costs.

25. 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.

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

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

(Uday Kumar, J.)