

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

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 429 of 2025

Jai Chand Agarwala and Ors.

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Subhasish Misra
: Mr. Satyajit Paul
: Mr. Rounak Ghosh

For the P.F. Authority : Mr. Bhaskar Roy Mahasaya

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

Heard On : **18.12.2025**

Judgment On : **13.01.2026**

Rai Chattopadhyay, J.

1. In the instant revisions the four petitioners, who have stated themselves to be the directors of the tea plantation garden namely, "Green Way Agriculture (P) Limited", have prayed for quashing of the criminal proceeding against them in SPL No.3 of 2015 [in connection with GR Case No.5585 of 2014], pursuant to the Meteli Police Station Case No. 240 of 2014 dated 27.11.2014, under section 406 and 409 of

the IPC, now pending in the Court of the Additional Sessions Judge, 2nd Court at Jalpaiguri.

2. The allegations against the petitioners are with regard to non-payment of the employees' share of provident fund contribution by the said company, to the provident fund authorities, in accordance with the statutory provision. The Enforcement Officer has lodged a complaint dated 27.11.2014 alleging inter alia that on inspection held by him in the said company on 27.11.2014, the fact revealed that the company has deducted provident fund contribution from the salary/wages of the employees to the tune of Rs.9629/- as their share of provident fund contribution though the same has not been deposited with the statutory fund. It is mentioned that such inaction on part of the company amounts to be an offence under provisions of section 405 (Explanation-1) of the IPC. It is also mentioned that the present petitioners are responsible for the conduct of business of the company. Hence, upon revelation of an alleged cognizable offence, being carried out by the present petitioners, the said FIR has been lodged.
3. Mr. Subhasish Misra, learned advocate for the petitioners has submitted that the present petitioners being admittedly the directors of the said company, cannot be said to have committed offence under section 405 (Explanation-1) IPC, punishable under sections 406 and 409 of the IPC. In this regard Mr. Misra has referred to a judgment of the Supreme Court in ***Employees' State Insurance Corporation vs S.K.Agarwal & Others*** [1998 C Cr LR (SC) 396].

4. He has further submitted that the petitioners being admittedly the directors of the company are not the “employer”, within the meaning of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952 and cannot be treated like so. Hence, that they cannot be prosecuted under the above stated provisions of the penal law. Several judicial precedents have been mentioned to buttress the submission that prosecution against the directors of the establishment, under section 406, and 409 of the Indian Penal Code, for non-payment of employees, provident fund contribution is completely illegal and bad in law. That, such criminal proceeding should be quashed. He mentions judgment of this Court in **Satish Kumar Jhunjhunwalla vs State of West Bengal** in **(2008) 3 CALLT 484 (HC)**. According to Mr. Misra, learned advocate therefore, continuation of the criminal proceeding against the instant petitioners amounts only to gross abuse of the Court’s process.
5. He mentions that initiation of a criminal proceeding against the directors and not citing the company as one of the accused there, is not only violative of the statutory provision but also violates the host of Court’s judgments in which the Court for the said reason, has quashed criminal proceedings which were lodged against the directors of the company only.
6. For all the grounds as mentioned above, the petitioners have sought for quashing of the said proceeding GR Case No.5585 of 2014 [in connection with SPL No.3 of 2015], pursuant to the Meteli Police

Station Case No. 240 of 2014 dated 27.11.2014, under section 406 and 409 of the IPC.

7. Mr. Bhaskar Roy Mahasaya, learned advocate has appeared on behalf of the Opposite Parties No 2 and 3 that is the provident fund authority and Mr. Sarkar, learned advocate has represented the State. All the Opposite Parties have raised objection to the contentions and prayer of the petitioners, though have stated that the alleged defaulted amount of money has already been deposited by the said company with the respondent authority.
8. The Supreme Court in **S.K. Agarwal's case (supra)** has held that in ordinary parlance it is the company which is the employer and not its directors, either singly or collectively, in terms of 'Explanation-2' to section 405 IPC.
9. As per section 14A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, every person who at the time of commission of the offence was in charge of and responsible for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. Evidently it is on record that the FIR has been lodged against the present petitioners, without incorporating the company in which they are directors, as one of the accused. This appears to be gross error and violative of the statutory provision as mentioned above. Therefore, the proceeding which has been initiated in violation of the mandatory statutory provision as

above cannot be held as sustainable. So far as the criminal law is concerned, vicarious liability is unknown to the same unless specifically provided by the statute itself. This necessitates incorporation of the company as the accused person or otherwise the trial may stand as vitiated.

10. In the instant case the proceedings against the petitioners therefore have been grounded on statutory violation and erroneous process undertaken. In such view of the fact, sending the petitioners to face the rigours of trial in a criminal Court, shall amount to be gross abuse of the process of the Court. For the reason as above, this Court finds the present revision should succeed.

11. Hence, the revision **CRR 429 of 2025** is allowed. The criminal proceeding against the present petitioners in SPL No.3 of 2015 [in connection with GR Case No.5585 of 2014], pursuant to the Meteli Police Station Case No. 240 of 2014 dated 27.11.2014, under section 406 and 409 of the IPC, now pending in the Court of the Additional Sessions Judge, 2nd Court at Jalpaiguri, hereby stands quashed.

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

(Rai Chattopadhyay, J.)