IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 2619 OF 2021

PRAHLAD ROY @ PRAHALAD ROY

VS

THE SATE OF WEST BENGAL & ANR.

For the Petitioner	:	**Mr. Debarshi Brahma, Adv.**
		Mr. Samrat Chowdhury, Adv.(VC)
		Mr. Subarna Banik, Adv.
		Mr. Sayantan Maity, Adv.
		Ms. Aarzu Sahani, Adv.
For the State	:	**Mr. Kallol Mondal, Adv.**
		Ms. Samira Grewal, Adv.
Reserved On	:	**11.09.2026**
Judgement on	:	**18.09.2026**
Uploaded on	:	**18.09.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. This revisional application has been filed by the petitioners for quashing of the criminal proceeding pending before the learned chief judicial magistrate, Howrah being GR no. 513 of 2021 arising out of Police Station case number

111 of 2021 dated January 25, 2021, under section 420/406/120 B of the Indian Penal code.

2. The case of the petitioner in brief is that complaint has been lodged before Shankrail Police Station on 25 January 2021, alleging against the board members of the cooperative Society for committing an offence under section 420/406/120 B of the Indian Penal Code, 1860. Allegations made by the opposite no.2 inter alia are that he used to maintain a bank account in the state co-operative society since 2012, and it was maintained time to time and was updated in the year 2019 and as per the last update, the account had a balance of ₹23, 51, 8011. In the next year when the passbook was further updated, the balance amount was shown only about ₹4000. The petitioner tried to enquire about the matter from the chairman and other members who did not pay any heed hence, the written complaint had to be lodged.

3. On the basis of such complaint the investigation started and the statement of the witnesses were recorded, but nowhere the name of the petitioner transpired for which the petitioner can be held guilty for commission of offence as alleged. However, without having any legitimate intimation or evidence against the petitioner, his name was arraigned as an accused in the charge sheet submitted and after that he surrendered voluntarily before the court.

4. It is his specific contention that the petitioner was terminated from the Directorship from the board effective from 26th September, 2016, due to a false allegation of non-payment of loan amount. It is specifically contented by the learned advocate representing the petitioner that it is evident from the written complaint that the bank passbook was lastly, updated in the year 2019, when the account had a balance of ₹23, 51, 80 811 when the petitioner was no longer attached with the said Bank. Pursuant to the letter of complaint in the year 2020, it is clearly visible the role attributed by the present petitioner was not mentioned. It is further submitted that the allegations made in the written complaint and from the investigation made by the police authorities, it is Crystal clear that no such offence was committed by the petitioner and no ingredients to attract Section 420/406/120 B Of the Indian penal code can been established against him, hence, allowing the criminal prosecution to continue further against the petitioner will be an abuse of process of court and is not maintainable. The petitioner has relied upon the decision of ***Sunil Bharti Mittal vs CBI***[1]**.**

5. The petitioner has filed a supplementary affidavit incorporating the written complaint and the documents and statements collected in course of investigation after filing of charge sheet. The learned advocate relied upon a notice dated 4.4.2017 issued by the secretary in the year April 10, 2017, where by the petitioner was notified that as per decisions taken at the last annual general meeting held on 25.9.2016, that Directorship and Delegate ship of the petitioner stood terminated with effect from 26.9.2016, and he was debarred from attending any meeting of the present board as well as general meetings to be held in future during tenure of the present Board.

6. The learned Advocate argued banking upon this notice that long back when the complainant found in his bank statement that the entire amount has been reduced only Rs. 4000/-, this petitioner was terminated and was not connected with the said Cooperative Society. Therefore, by no stretch of imagination, he can be made accountable when he was not attached with the

[1] AIR 2015 Supreme Court 923

society since 2017. Accordingly, prays for dismissal of the proceeding pending against him.

7. The advocate representing the state on the other hand raises strong objection and submit that the document which is relied upon by the petitioner was not collected in course of investigation by the investigating authority. The charge sheet has been submitted and the petitioner must face the trial since a person has lost his hard earned money, which was deposited with the said cooperative society.

8. Having heard both the learned counsel and going through the materials on record it transpired that the complaint was lodged by the opposite party no. 2, before the Officer-in-charge Nazir Ganj investigation Centre, Sankrail , Howrah on 25.1.2021. The Opposite Party no. 2 had one savings bank account bearing S/B Account no. 5209 at Bakultala extension branch of Howrah Co-operative Bank Limited. The account was opened in the year 2012, and on his request, the current account being AC number 2214 was transferred gradually to the savings bank account being A/C no. 5209. His both passbooks were updated together, which indicated that the amount so debited from the current account was credited in his savings account being A/C number 5209. He was confirmed that on 2019 said savings bank account was carrying ₹23, 51, 811 when he updated the passbook, lastly.

9. He did not withdraw any amount from his savings bank account and the account is being maintained for almost 8 years. He deposited some amount periodically from time to time and bank authority time to time yearly updated by certifying the accrued amount on periodical payment of interest on principal amount. On October 9, 2020 when he went to bank to update the passbook, they refused to update without any reason, and after repeated request, he was informed that there was only ₹4000 left. He immediately sent a letter to the chairman on the same date with the request to arrange for updating the passbook and also with the request to arrange for payment of ₹5 lacs, since it was urgently required. However, he did not receive any communication from the chairman or from any other authority of the bank.

10. The complainant specifically mentioned that he did not withdraw any amount from the said savings bank account because of global pandemic as well as partial lockdown and when on 28.11.2025 and 05.12.2020 sent two intimations, the same could not be served. The bank and chairman maintained silence and did not reply to his letter. Accordingly, he filed the complaint Admittedly, the written complaint do not contain the name of the present petitioner as an accused person since he did not complaint against any specific person, but against the entire bank where his amount was lying deposited and the account was maintained for long eight years.

11. Direction was passed by this court to verify the said notice which has been relied upon by the petitioner in order to show that he was terminated long back in the year 2017. Report was submitted on behalf of State, which revealed that an official requisition was served upon the competent authority of the said society to verify their records and to provide a formal report to the police station. The requisition was duly acknowledged and received by the society on 18.2.2026. A formal written reply was received via email from branch in charge of South Howrah cooperative credit Society Limited, which states that no acknowledgement receipt or corresponding documentary evidence is available in the official records of the society pertaining to the purported letter submitted by the petitioner. That apart the petitioner was never an employee of the South Howrah co-operative credit Society Limited. His association with the society was strictly limited to serving in the capacity of a director for a specific tenure.

12. Therefore, for the present accepting the fact that the petitioner was attached with the society in the capacity of a Director for a specific period, nothing could be transpired in support of the contention of the petitioner regarding his termination. Given a cursory glance to the said notice it is seen that he was found defaulter in respect of mortgage loan accounts on the date of filing nomination paper and concealed these fact from the concerned election authority. It was revealed from the charge sheet that it has been submitted under section 420/406,120 IPC, but in terms of the judgement of the ***Delhi Race Club (1940) Ltd. vs The State Of Uttar Pradesh***[2] both the offences under section 420 and 406 IPC cannot run simultaneously and it was observed-

> *"…….Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or*

[2] 2024 INSC 626

dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously."

13. However, the Learned Magistrate issued summons on perusal of the case Diary and the charge sheet when found the accused was absconding but did not express any reason to believe that prima facie materials are available to proceed against the petitioner. On perusal of the charge sheet, the investigating officer served notice under Section 41A Cr.P.C to the accused persons involved in this crime, but they did not turn up. Held raid at the house of the accused persons, but the accused persons was found absconded. Several documents were seized in course of investigation.

14. The learned Advocate had relied upon the case of ***Sunil Bharti Mittal (supra)*** where it was held that when the company is the offender, vicarious liability of the director cannot be imputed automatically, in absence of any statutory provision to this effect.

15. The case of ***Pepsi Foods Limited versus Special Judicial Magistrate***[3] it was held that summoning of an accused in criminal case is a serious matter. The order of Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable there too. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. In this case, they learned Magistrate perused the charge sheet and the case diary, which means the necessary documents were assessed and

[3] (1998) 5 SCC 749

found that accused petitioners absconding and thereafter issued the summon against him.

16. The complaint was lodged against the authorities of the South Howrah cooperative Bank Limited, which is not a company. A person has lost his hard earned money while depositing it before the bank and no explanation was given to him. If it is found that the present petitioner was terminated in the year 2017, and he had no role attributed that would be a good case for him for acquittal, but at this stage when the charge sheet has been submitted and he the investigating officer who, after seizing good number of forged documents from the bank, found the present petitioner along with the other involved in the crime issued the notice under Section 41A CPC and in spite of receipt he did not turn up, and cognizance was taken by the Magistrate . Throughout the investigation, the petitioner did not cooperate the investigating agency and never appeared before them and absconded and hence this court do not find, it would be fit and proper to quash the entire proceeding at the threshold and or permitting the proceeding to continue would be an abuse of the process of law.

17. However the Learned Magistrate since not applied his mind in consonance with the decision of the Hon'ble Supreme Court and hence this court is of the view that the order passed by the Learned Magistrate is not sustainable in the eye of law. Hence it is set aside.

18. The matter is hereby remanded back before the Learned Magistrate to hear and decide afresh in the light of the above mentioned judgement on the point of issuance of summons under both 420 and 406 IPC . The Learned Magistrate is further directed to dispose of the same at an earliest preferably within a period of 6 weeks from the date of communication of this order, without being influenced by any of the observation made by this court if any with regard to the merit of the case.

19. Hence, this Criminal Revisional application is allowed .

20. All other connected applications, if any, hereby stand disposed of.

21. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]