IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2747 of 2025

Prasanta Kumar Pahari
Vs.
The State of West Bengal

For the Petitioners	:	Mr. Jayanta Narayan Chatterjee, Sr. Adv Ms. Moumita Pandit Ms. Ritushree Banerjee
For the State	:	Mr. Dbajyoti Deb Mr. Ayan Mitra
Heard on	:	08.09.2026
Judgment on	:	20.11.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The instant Application has been preferred with a prayer for invoking the inherent jurisdiction of this court under section 528 of the BNSS for quashment of the proceeding being Special Case no. 11 of 2021 corresponding to Gaighata Police Station Case no. 918 dated 23.11.20219 under section 409 of the Indian Penal Code, presently pending before learned Additional Sessions Judge, 3rd Special Court at Barasat.

2. On the date of alleged occurrence, the petitioner was posted as superintendent under the West Bengal State Warehousing Corporation and was functioning as the officer in charge of the RIDF godown situated at Gaighata, Debipur. The prosecution case arises out of an incident dated 23.11.2019 concerning despatch of rice from the said gowown. The *de facto* complaint alleged that rice was being despatched against four delivery orders and that in one particular truck, an excess quantity of 64 quintal corresponding to approximately 128 bags of rice had been loaded illegally for despatch without the knowledge or sanction of the competent authority and such loading was made with *mala fide* intention to make personal gain by the petitioner.

3. Mr. Jayanta Narayan Chatterjee learned counsel appearing on behalf of the petitioner submits that the said allegation of excess loading constitutes the very substratum upon which the offence under section 409 IPC has been sought to be fastened upon the petitioner but the alleged occurrence did not concern removal of rice from the private possession of the petitioner or recovery of government property from petitioners personal custody.

4. According to Mr. Chatterjee the entire incident arose during a routine institutional despatch operation conducted within the RIDF godown, which process involved several subordinate officials, godown employees, loading personal, transporter/lorry personnel and mandatory weighment of the consignment. Therefore, the rice was being dealt with in the course of an organised official process and not by the petitioner in his individual capacity. Every outgoing consignment is required to undergo mandatory

weighment and if any discrepancy is detected the quantity is required to be rectified by addition or deduction in the presence of the concerned officials. Petitioner's specific case is that upon detection of the alleged excess loading during weighment he instructed that the excess bags be unloaded and returned to the godown stock.

5. Learned counsel for petitioner therefore submits, even if the allegations contained in the FIR and the charge sheet are accepted in their entirety and taken at their highest, the essential ingredients constituting an offence under section 409 IPC are conspicuously absent. Mere administrative responsibility, supervisory control or an alleged irregularity occurring within an establishment does not automatically constitute criminal breach of trust. Prosecution has failed to identify the precise nature of entrustment upon which the charge under section 409 is founded. The fact that the petitioner was superintendent and officer-in charge of the godown cannot by itself establish that the particular 128 bags allegedly found in excess in the truck were entrusted to him in such a manner that their subsequent dishonest conversion could be attributed to him. There is no material showing that the petitioner personally received the said 128 bags or separately assumed custody thereof for a specified purpose and thereafter dealt with the same dishonestly. In this context he relied upon the judgment of ***The State of Gujarat Vs. Jaswant Lal Nathalal***, reported in **AIR 1968 SC 700** which emphasised the necessity of establishing the relationship, contemplated by section 405 IPC. The existence of dominion over property cannot be presumed merely from status or office. The

prosecution must establish the factual foundation from which entrustment and subsequent dishonest dealing with the property can legally arise.

6. Mr. Chatterjee further argued that the second indispensable ingredient to constitute offence under section 409 is dishonest misappropriation or conversion of the entrusted property. In the present case there is no allegation that the petitioner sold the alleged 128 bags of rice nor it is the case of prosecution that there was any recovery of any sale proceeds from him nor there is any bank transaction demonstrating receipt of money showing wrongful enrichment. On the contrary the alleged rice itself was detected during the operational process before any completed dishonest diversion attributable to the petitioner.

7. He strenuously argued that even if alleged excess loading is accepted as true, there remains a substantial and legally indispensable gap between an "excess loading" and a "dishonest misappropriation". He argued that section 409 punishes the later and not the former and no offence could be made under that provision unless the prosecution materials bridges this gap by disclosing the petitioner's own dishonest act and *mens rea*. The prosecution materials also failed to disclose any motive or financial benefit accruing to the petitioner.

8. He further submits that during investigation there was no seizure or the production of relevant Stock Register, Despatch Register, Issue Register or Weighment Log Book, which could objectively demonstrate that the petitioner caused or authorized any dishonest diversion. In the absence of contemporaneous documentary material, establishing the petitioner's personal involvement, the prosecution seeks to infer criminality only from

his official designation and the oral allegation arising out of the incident, which is insufficient to constitute a serious offence like 409 of the IPC.

9. He also argued that it is not the allegation of the prosecution that the petitioner secretly removed government property and the same subsequently disappeared. The alleged excess quantity was detected within the operational environment of the godown. The vehicle remained there and the dispute arose among the officials concerning its movement. Such circumstances may conceivably give rise to question of administrative conduct, insubordination, supervision or procedural irregularity but they don't without further materials establish dishonest conversion by the petitioner. The materials also discloses that alleged excess rice was not removed from the control premises pursuant to any direction of the petitioner. On the contrary several persons including outsiders, political persons, police personnel and members of the media reached the godown shortly after the dispute arose and thereafter the situation escalated and the criminal complaint came to be lodged in the background of such confrontation.

10. He also argued that the investigation does not establish who dishonestly caused such excess loading. The alleged recovery answers only the question that the excess rice was found. It does not give answer to the question whether the rice had been criminally entrusted to the petitioner, in the manner contemplated by section 405 IPC and in the absence of such materials the alleged seizure cannot attract the offence under section 409 IPC against the petitioner. He further argued that admittedly the petitioner was functioning as public servant and the acts attributed to him have an

inseparable nexus with the discharge of his official functions but the petitioner had no independent or private role in relation to the stock and his involvement arose solely by virtue of the office held by him and therefore, trial court had erred in taking cognizance upon the offence without having obtained any sanction by the prosecution under section 197 Cr.P.C. In this context he relied upon the judgment of ***State of Orissa Vs. Gansh Chandra Jeu*** reported in **(2004) 8 SCC 40.**

11. Learned Senior counsel for the petitioner further argued that the instant criminal proceeding has its genesis in an incident of 23.11.2019. The petitioner was arrested on the very date of the occurrence and remained incarcerated for more than one month, before being enlarged on bail by this High Court. Thereafter charge sheet was submitted and cognizance was taken in the year 2021 and charge was framed in February 2023. The proceeding has thus, remained pending for several years notwithstanding the fundamental deficiency concerning the ingredient of the sole offence alleged against the petitioner. Therefore, prolonged continuation of a foundationally defective prosecution would amount to abuse of process.

12. He therefore concluded that for this reasons, the exercise of inherent jurisdiction under section 528 of BNSS is very much required in the present case to prevent the criminal process from becoming an instrument of oppression. Even if the entire prosecution case is accepted at its highest, what may conceivably emerge in an allegation concerning an irregularity in the process of loading, supervision or despatch, such an allegation may have administrative consequences but administrative irregularity cannot be transmuted into criminal breach of trust unless the statutory ingredients of

entrustment and dishonest misappropriation are independently disclosed. Therefore, relying upon the judgment passed in ***State of Haryana and Ors. Vs. Bhajan Lal*** **and Ors.** reported in **1992 Supp (1) 335**, he submits that the present case attracts the parameters laid down in the said case as even after accepting the allegation that 128 bags of rice were found loaded in excess, the prosecution materials do not disclose the indispensable ingredients of dishonest misappropriation or conversion attributable to the petitioner.

13. Mr. Dev learned counsel appearing on behalf of the State placed the Case Diary and submits that during investigation sufficient materials have been collected against the petitioner. He further submits that the act of the petitioner being criminal breach of trust is not part of his public work to get protection under section 197 of the Cr.P.C. Furthermore it is well settled that the necessity of sanction under section 197of Cr.P.C. for offences Committed under the IPC can be raised at any stage of proceedings, depending on trial evidence. He thereby relied upon the judgement of **Ram Sagar Vs. CBI** reported in **2025 Supreme Online SC 11814**. He further submits that the prosecution proposes to examine 8 witnesses, out of which one witness has already been examined in part and it would not take much time to conclude the trial. He further submits that departmental proceeding is not a bar to draw criminal proceeding against the accused petitioner. He further submits that in connection with the self-same incident one Disciplinary proceeding was started against the petitioner which culminated in an order dated 08.06.2022, imposing the penalty of withholding of two

increments with cumulative effect, which was affirmed in appeal by an order dated 29.09.2022.

14. Learned counsel for the petitioner in reply submits that he challenged the said order before this High Court in WPA 394 of 2023 and this court has been pleased to keep the aforesaid penalty order in abeyance and therefore, the disciplinary action has not attained its finality and the adverse order arising therefrom are still sub-judice.

Decision

15. The prosecution case in a nutshell as appearing from the charge sheet is that on 23.11.2019 at 19.05 Hrs., the instant case was started over the written complaint made by one sub Inspector of Food and Supply Department, West Bengal against the petitioner, who was then posted as superintendent, West Bengal State warehousing corporation Devipur, to the effect that on 16.11.2019 they received an order from DCFSS of North 24 PGS for supplying rice bag in total 04 Delivery order (in short D.O) being (i) D.O. NO. 19BJ733-total quantity 499.62 quintal (ii) D.O. No. 19BJ792-total quantity 179.15 quintals, (iii) D.O. No. 19BJ735-total quantity 710.90 quintals (iv) D.O. No. 19BJ793-total quantity 181.33 quintals, grand total 1571.00 quintals from Gaighata Thana Agri. Primary MKT Co-operative and Gaighata Thana MKT. TA BCCMS. But, on 23.11.19 at 17.00 hrs he found that, said petitioner Prashanta Kumar Pahari loaded extra 64 quintals rice in truck for supplying without informing the Government Authority. Then, he and one Sushanta Kumar Roy confined said truck with rice, which was loaded by said Prashanta Kumar Pahari illegally.

16. Before going further let me state the essential ingredients to constitute offence under section 409 of the IPC

(1) Accused was a public servant.

(2) In such capacity accused was entrusted with certain property or he gained domain over such property which was not his own;

(3) Accused committed criminal breach of trust with respect to such property.

17. In the present case it is not in dispute that at the relevant point of time the petitioner were serving as public servant being posted as superintendent in the warehousing corporation and was functioning as the officer in charge of the concerned godown and it is also not in dispute that the seized subject matter property was not owned by the accused/petitioner. Now the question posed by the petitioner in the instant proceeding is that the seized property was never lawfully entrusted upon him, nor he committed any criminal breach of trust to attract section 409 IPC

18. While dealt with the term entrustment in the context of section 405 read with section 409 of the IPC, the Apex Court held that the expression has to be used in a wide sense. It was observed by the Apex Court in the case of ***N. Bhargaran Pillai (dead) by Irs. and another Vs. State of Kerala*** reported in **(2004) 13 SCC 217** as follows:-

> ***13.*** *It is fairly well-settled position in law that actual mode of entrustment or misappropriation is not to be proved by the prosecution. Once entrustment is proved, it is for the accused to prove as to how the property entrusted was dealt with. In Jiwan Dass case [(1999) 2 SCC 530 : 1999 SCC (Cri) 288] the factual position was entirely different. It was held that the undertaking given in that case could not be held to be confession or admission. In the present case, the factual scenario as noticed by the trial court and the High Court is different. It was not only on the basis of the undertaking that the conviction was recorded, but the other evidence on record also unerringly proved entrustment. Therefore, it was for the accused to prove as to how the property entrusted with him was dealt with. No material was placed in that regard. Therefore, the courts below correctly held entrustment to have*

been proved. The concurrent findings of fact recorded by the courts below relating to entrustment and misappropriation in our view are well merited and fully justified on the basis of evidence on record and do not suffer from any perversity or patent error of law to warrant interference.

19. Therefore, the expression "*entrusted with property*" and '*with any dominion over property*' includes all cases in which goods are entrusted i.e. voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The Apex Court in **CBI Vs. Dunkuns Agro Industries Ltd**. reported in **(1996) 5 SCC 591** held as follows:-

> ***27.*** *In the instant case, a serious dispute has been raised by the learned counsel appearing for the respective parties as to whether on the face of the allegations, an offence of criminal breach of trust is constituted or not. In our view, the expression "entrusted with property" or "with any dominion over property" has been used in a wide sense in Section 405 IPC. Such expression includes all cases in which goods are entrusted, that is, voluntarily handed over for a specific purpose and dishonestly disposed of in violation of law or in violation of contract. The expression 'entrusted' appearing in Section 405 IPC is not necessarily a term of law. It has wide and different implications in different contexts. It is, however, necessary that the ownership or beneficial interest in the ownership of the property entrusted in respect of which offence is alleged to have been committed must be in some person other than the accused and the latter must hold it on account of some person or in some way for his benefit. The expression 'trust' in Section 405 IPC is a comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, bailor and bailee, master and servant, pledger and pledgee. When some goods are hypothecated by a person to another person, the ownership of the goods still remains with the person who has hypothecated such goods. The property in respect of which criminal breach of trust can be committed must necessarily be the property of some person other than the accused or the beneficial interest in or ownership of it must be in the other person and the offender must hold such property in trust for such other person or for his benefit. In a case of pledge, the pledged article belongs to some other person but the same is kept in trust by the pledgee....."*

20. Therefore, though initial burden in on the prosecution to prove entrustment of the property to the accused but actual manner of misappropriation of the property by the accused need not be proved by the prosecution. Once the initial burden is discharged by the prosecution, the onus would be on the accused to prove, how the property entrusted to him

was dealt with by him. In this context reliance has also been placed upon the judgment of **State Vs. Kamavir, (2006) 5 SCC 381.**

21. In Indian Oil corporation Vs. NEPC reported in **(2006) 6 SCC 736,** it was held that the expression 'trust' in section 405 IPC is comprehensive expression and has been used to denote various kinds of relationships like the relationship of trustee and beneficiary, balor and bailee, master and servant, pledger and pledgee etc.

22. Looking at the complaint and the grievance made by the complainant therein and having regard to the materials collected during the investigation it appears that the petitioner was posted as superintendent who received orders for supplying rice bag in total 4 D.O. on the alleged date of occurrence. It was found that he allegedly loaded extra 64 quintal of rice in truck for supplying without informing the government authority. The witnesses who were examined during investigation have also supported prosecution case that the petitioner has committed the mischief being in charge of the said godown. In ***Jaswantari Manillal Akhnue Vs. State of State of Bombay***, reported in **AIR 1956 SC 575** the supreme Court held that the first ingredient to be proved in respect of a criminal breach of trust is entrustment. However, it clarified the term as follows:-

> *".....But when Section 405 which defines "criminal breach of trust" speaks of a person being in any manner entrusted with property, it does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of property makes it over to another person to be retained by him until a certain contingency arises or to be disposed of by him on the happening of a certain event....."*

23. The other criteria to be fulfilled to constitute offence under section 409 is that accused committed criminal breach of trust with respect to such

property. According to section 405 of IPC criminal breach of trust involved following ingredients

(i) A person should have entrusted with property or entrusted with dominion over property

(ii) That persons should dishonestly misappropriate or convert to his own use that property or dishonestly use or disposed of that property or wilfully suffer any other person to do so and

(iii) That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged or of any legal contract which the person has made, touching the discharge of such trust.

24. Therefore, there are two distinct part which involved in the commission of the offence of criminal breach of trust. The first part consist of the creation of an obligation in relation to the property over which dominion or control is acquired by the accused and the second is the misappropriation of dealing with the property dishonestly and contrary to the terms of the obligations created. The entrustment of the property creates a trust which is only an obligation annexed to the ownership of the property and arises out of a confidence reposed and accepted by the owner. I have also quoted from the authorities that section 405 IPC does not contemplate the creation of a trust with all the technicalities of the law of trust. It contemplates the creation of a relationship whereby the owner of the property makes it over to another person to be retained by him, until a

certain contingency arises or to be disposed of by him on the happening of a certain event.

25. In the instant cases the specific allegation against the petitioner in respect of alleged criminal breach of trust is that the petitioner had made the offence by loading extra 64 quintals rice in truck for supplying without informing the government authority, when the complainant and one Sushanta Kumar Roy confined said truck with rice which was loaded by the petitioner illegally. Witnesses also stated that the petitioner was trying to misappropriate a huge amount of rice violating government norms.

26. On the contrary the petitioners case is that the alleged occurrence did not concern removal of rice from the private possession of the petitioner but the entire incident arose during a routine institutional despatch operation conducted within the godown through a process which involved several subordinate officials, godown employees loading personal, transporter personal and weighment of the consignment and an alleged irregularity occurring within an establishment, does not give rice to offence under section 409 IPC, on the basis of the mere fact that the petitioner was superintendent and officer in charge of the godwon. However, all these are the petitioners defence which he will certainly be at liberty to prove as to how the property entrusted to him was dealt with by him but obviously such defences cannot be taken as a ground for quashment of the proceeding.

27. No doubt gravamen of the offence under section 409 IPC is dishonest intention on the part of the accused but to establish dishonest intention, it is not necessary that the prosecution should establish an intention to retain permanently the property misappropriated. An intention to wrongfully

deprive the owner of the use of the property for a time and to secure the use of that property for his own benefit for a time would be sufficient. It is settled law that FIR is not expected to be an encyclopaedia, particularly in a matter involving criminal breach of trust in the course of the administration of a public service. Final report submitted by prosecution discloses commission of offence.

28. The petitioner made an attempt to dilute the case that it was pre planned which is evident from the fact that media person on the spot appeared immediately and responded to that extent and it discloses complainant's *malafide.* I am not convinced with such argument made on behalf of the petitioner. Law on the point of High Court's inherent power is well settled in view of ***State of Orissa and Ors Vs. Saroj Kumar Sahoo*** reported in **2005 13 SCC 540,** which states as follow:-

> *11. As noted above, the powers possessed by the High Court under Section 482 CrPC are very wide and the very plenitude of the power requires great caution in its exercise. The court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material. Of course, no hard-and-fast rule can be laid down in regard to cases in which the High Court will exercise its extraordinary jurisdiction of quashing the proceeding at any stage. [See Janata Dal v. H.S. Chowdhary [(1992) 4 SCC 305 : 1993 SCC (Cri) 36] and Raghubir Saran (Dr.)v. State of Bihar [(1964) 2 SCR 336 : AIR 1964 SC 1 : (1964) 1 Cri LJ 1] .] It would not be proper for the High Court to analyse the case of the complainant in the light of all probabilities in order to determine whether a conviction would be sustainable and on such premises arrive at a conclusion that the proceedings are to be quashed. It would be erroneous to assess the material before it and conclude that the complaint cannot be proceeded with. When an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in the court which decides the fate of the accused person. The allegations of mala fides against the informant are of no consequence and cannot by themselves be the basis for quashing the proceedings. [See Dhanalakshmi v. R. Prasanna Kumar [1990 Supp SCC 686 : 1991 SCC (Cri) 142] , State of Bihar v. P.P. Sharma [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] , Rupan Deol Bajaj v. Kanwar Pal Singh Gill [(1995) 6 SCC 194 : 1995 SCC (Cri) 1059 : AIR 1996 SC 309] , State of Kerala v.*

O.C. Kuttan [(1999) 2 SCC 651 : 1999 SCC (Cri) 304] , State of U.P. v. O.P. Sharma [(1996) 7 SCC 705 : 1996 SCC (Cri) 497 : AIR 1996 SC 2983] , Rashmi Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397 : 1997 SCC (Cri) 415] , Satvinder Kaur v. State (Govt. of NCT of Delhi) [(1999) 8 SCC 728 : 1999 SCC (Cri) 1503] and Rajesh Bajaj v. State NCT of Delhi [(1999) 3 SCC 259 : 1999 SCC (Cri) 401] .]

29. Therefore for the purpose of exercising of its power under section 482 Cr.P.C/section 528 BNSS, the High Court would have to proceed basically on the allegations made in the complaint and the documents and evidence collected during investigation and it has no jurisdiction to examine the correctness or otherwise of the allegations.

30. In the instant case the sine qua non for attracting the offence is the entrustment of the property to the accused which has been prima facie shown. The provision would also be attracted if accused dishonestly used or disposed of the property or made an attempt to dispose of the property in violation of any direction of law or government rules. The parameters of interference with a criminal proceeding at the trial stage by the High Court in exercise of its jurisdiction under section 528 of the BNSS are well known. The main ground on which such interference is permissible at this stage is that the allegation made in the complaint and the materials collected during investigation even if given face value and taken to be correct in their entirety, commission of a cognizable offence is not disclosed.

31. On a careful reading of the materials available in the record I am of the view that it cannot be said that the same does not disclose the commission of an offence or that the ingredients of section 409 of the IPC is totally absent in the materials available in the record including written complaint. However, I must add that whether or not the allegations in the complaint are otherwise correct or not has to be decided on the basis of the

evidence to be led at the time of trial. While entertaining such application under section 528 BNSS, the materials furnished by the defence cannot be looked into unless they are unimpeachable in character and the defence materials can be entertained only at the time of trial. It is well settled position of law that when there are prima facie materials available and the parties are facing trial, a petition for quashing the criminal proceeding cannot be entertained. The defence case as pleaded by the petitioner can certainly be raised during trial, when the trial court would have the opportunity to analyse and scrutinize such evidence.

32. Having considered the overall facts and circumstances of the case **CRR 2747 of 2025** thus stands dismissed. However, the trial court is directed to expedite the trial since the matter is pending since 2019 and he is further requested to make every endeavour to conclude the trial preferably within a period of six months from the next date of hearing. It is made clear that the observations made herein are confined only for the purpose of disposal of petitioner's present prayer for quashment of the proceeding.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)