

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 239 of 2019

Md. Shirazuddin

Versus

The State of West Bengal and Another

For the Petitioner : Mr. Sandip Kr. Bhattacharya, Adv.
Mr. Dipta Dipak Banerjee, Adv.
Mr. Ishwar Aaditya, Adv.
Ms. S. Dhar, Adv.

For the O.P. No. 2 : Mr. Kaushik Chatterjee, Adv.
Mr. Tirthankar Dey, Adv.

For the State : Mr. Anand Keshari, Adv.
Ms. Janaki Saha, Adv.

Heard on : 26.08.2025

Judgment on : 24.09.2025

Ajay Kumar Gupta, J:

1. The petitioner filed this instant revisional application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (In short CrPC), challenging the legality, propriety and correctness of the impugned order dated 13.11.2018 passed by the Learned Judge, 2nd Special Court, Calcutta in Special Case No. 03 of 2017 arising out of Girish Park P.S./D.D. Case No. 307 dated 12.09.2015 under Sections 409/468/471 of the Indian Penal Code.
2. By the said impugned order, the Trial Court rejected the application filed by the petitioner praying for his discharge from the proceeding.
3. The brief facts of the case, relevant for the disposal of this case are to the effect that on 12.09.2015, one Manikantan Iyer, the Zonal Operations Head of IndusInd Bank Ltd. lodged a written complaint before the Girish Park Police Station, alleging inter alia therein that petitioner fraudulently encashed two Fixed Deposit accounts in the name of one Sushila Devi Bajaj amounting to Rs. 19.90 Lakhs by obtaining her signatures on blank Fixed Deposit Closure Vouchers and other documents.
4. On the basis of said signatures, the Petitioner further opened a bank account in Axis Bank, Vivekananda Road Branch, in the name of the depositor, Smt. Sushila Devi Bajaj, from where the money was withdrawn. Thus, the entire amount being allegedly siphoned off by

the petitioner as a bank employee resulted in registration of FIR being Girish Park P.S. Case No. 307 dated 12.09.2015 under Sections 420/406/468/469/471 of the IPC.

5. Upon culmination of investigation, the investigating officer has submitted a charge sheet under Section 409 of the IPC against the present petitioner.
6. The contention of the petitioner is that he is innocent and the investigating officer did not find any incriminating materials against the present petitioner. Therefore, a charge sheet was submitted under section 409 of the IPC against him leaving other sections, , as there was no element of cheating or forgery against the present petitioner. There is no ingredient of the alleged offence punishable under Section 409 of the IPC. Accordingly, the petitioner filed an application praying for discharge from the proceeding before the Trial Court, claiming that he is innocent and has been falsely implicated in the criminal case due to personal grudge.
7. During pendency of the discharge petition, an application was filed by the prosecution for adding charges under Sections 468/471 of the IPC against the present petitioner. Upon hearing the parties, the Learned Court below rejected the discharge application, observing therein that there is sufficient ground against the accused person for

commission of the offence punishable under Sections 409/468/471 of IPC. Hence, this application.

8. The learned counsel representing the petitioner denies all the allegations and further raised question in connection with frivolous allegation made against him for the withdrawal or siphoning money prior to 2019 though the FIR was lodged in the year 2024 almost elaped of five years without explaining such huge delay. It would seriously caused prejudice to the petitioner and delay in lodging FIR is a good ground for quashing the whole proceeding to prevent gross abuse of process of law.
9. The learned counsel appearing on behalf of the petitioner further vehemently argued and submitted that the petitioner is innocent and is, in no way, connected with the allegations levelled against him. It was further submitted that in the FIR and even during the investigation, the investigating officer did not find any sufficient materials regarding forgery or cheating. Therefore, the prosecution is unable to make out a case under Sections 409/468/471 of IPC against the petitioner.
10. Even then, the Learned Trial Court whimsically and capriciously rejected the petitioner's prayer for discharge without assigning any reasons. Therefore, the said impugned order lacking reason for rejection of prayer is required to be set aside, and prayer for

discharge from the instant case should be allowed. Continuation of such proceeding without fulfilling the ingredients of the offence as alleged would amount to abuse of process of law, warranting interference by this Hon'ble Court by exercising inherent power granted under Section 482 of the CrPC to secure the ends of justice.

11. Finally, it was submitted that when the petitioner has filed an application for discharge from the case, the prosecuting agency, at the same time, prayed for adding charges under Sections 468/471 of the IPC without explaining the purpose and basis. Adding charges without any material is not acceptable, and the same is liable to be set aside. To bolster his submission, the learned counsel has placed reliance on a judgment in the case of **Kailash Kumar Sanwatia v. State of Bihar and Anr.**¹ where the Hon'ble Court held in paragraph nos. 7 to 10 as under: -

“7. Section 409 IPC deals with criminal breach of trust by a public servant, or by a banker, merchant or agent. In order to bring in application of the said provision, entrustment has to be proved. In order to sustain conviction under Section 409, two ingredients are to be proved. They are:

(1) the accused, a public servant, or banker or agent was entrusted with property of which he is duty-bound to account for; and

(2) the accused has committed criminal breach of trust.

8. *What amounts to criminal breach of trust is provided in Section 405 IPC. Section 409 is in essence criminal breach of*

¹ (2003) 7 SCC 399 : 2003 SCC (Cri) 1649 : 2003 SCC OnLine SC 947

trust by a category of persons. The ingredients of the offence of criminal breach of trust are:

(1) Entrusting any person with property, or with any dominion over property.

(2) The person entrusted (a) dishonestly misappropriating or converting to his own use that property; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so as to do in violation—

(i) of any direction of law prescribing the mode in which such trust is to be discharged; or

(ii) of any legal contract made touching the discharge of trust.

9. *The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not; misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime.*

10. *In the instant case even if it was proved as contended by the learned counsel for the appellant, that money was entrusted which fact is borne out by the admitted case about missing of money from the cash counter of the bank, one factor which needs to be decided is whether the accused had dishonestly misappropriated or converted to his own use the property entrusted or dishonestly used or disposed of that property. As presented by the prosecution, the money was taken away from the cash counter. It is not the case of the prosecution that money which was given to the accused Gautam Bose and the cash peon to obtain bank drafts was taken away by accused Gautam Bose or the cash peon Ganaori Sao. Because of an intervening situation, the disappearance of the cash due to theft by somebody else, the bank drafts could not have been prepared and handed over to the appellant. Even*

if there is loss of money, the ingredients necessary to constitute criminal breach of trust are absent. If due to a fortuitous or intervening situation, a person to whom money is entrusted is incapacitated from carrying out the job, that will not bring in application of Section 405 IPC or Section 409 IPC, unless misappropriation, or conversion to personal use or disposal of property is established. Unfortunately, the courts below have not looked at the issues from these vitally relevant angles. The inevitable conclusion is that the accused persons cannot be convicted under Section 409 IPC. This, however, will not stand in the way of the appellant getting such relief as available in law otherwise by pursuing a suitable remedy.”

12. Per contra, the learned counsel appearing on behalf of the opposite party no. 2 submitted that on good faith and mis-using good acquaintance and his official capacity, the Petitioner obtained the signature of the old lady and misutilised the fixed deposit funds for his own benefit, and therefore he is liable for adequate punishment; otherwise the reputation of other staffs will be at stake. Therefore, such a prayer should not be allowed. The Petitioner should be put on trial to unearth the truth and punished accordance with law.
13. Learned counsel appearing on behalf of the State produced the case diary and also opposed the prayer of the learned counsel for the petitioner and submitted that the Trial Court rightly rejected his prayer for discharging him from the instant case. Sufficient material was collected during investigation, and the same was scanned by the Trial Court while rejecting his prayer for discharge. This court should also not enter into and embark upon the evidence collected during

investigation. He should be faced trial because there are sufficient material available in the case diary to established prima facie case.

14. It was further submitted that the offence is cognizable and serious in nature. An old lady was cheated. Her signature was obtained by practising fraud and misrepresentation by the Bank's employee on good faith. During investigation, huge incriminating materials have been collected against the present petitioner. Therefore, the prosecution had prayed for adding Sections 468/471 of IPC to justify recovering the further scope of offences committed by the petitioner, including Section 409 of IPC. The Learned Trial Court has rightly rejected his prayer for discharge, considering the materials available in the record against the present petitioner. Therefore, this case is a fit case to put on trial for punishing the actual culprit.
15. Having heard the argument and submissions advanced by the learned counsels for the respective parties and on perusal of the case diary, particularly statements recorded under Section 161 of CrPC of Sushila Devi Bajaj, Sandip Bajaj, Shankar Bajaj and many others, this Court finds that they have disclosed the facts as alleged by the de-facto complainant against the present petitioner. The statements clearly indicate that the petitioner was an employee of IndusInd Bank and he had good relations with Sushila Devi Bajaj. She had many fixed deposits in the said bank. The petitioner informed her that he

would arrange a fixed deposit for a large amount by breaking her small fixed deposits to single fixed deposit in the said bank for her future convenience.

16. He obtained a few signatures of the old lady on good faith, and she signed on the blank vouchers and other documents when he asked for. When she signed, she was in front of the table of the present petitioner and, on good faith, handed over the signed documents to the petitioner. Subsequently, she came to know that her fixed deposits amounting to Rs. 19.90 Lakhs, consisting of two fixed deposits, were transferred to a fake account of Sushila Devi Bajaj opened at Axis Bank, Vivekananda Road Branch and from there, the amount has been withdrawn.
17. Ultimately, during investigation, the investigating officer prima facie found the petitioner, using her financial capacity, misappropriated a sum of Rs. 19.90 Lakhs from the account of the fixed deposits of the bank by two fraudulent transactions viz. Rs. 6,08,861.41/- on 28th March, 2014 and Rs. 13,85,313.96/- on 3rd April, 2014, after obtaining the signatures of the victim on a few blank vouchers. By using those documents, the accused person transferred the entire amount to a fake bank account, opened in the name of Sushila Devi Bajaj in Axis Bank, Vivekananda Road Branch, and thereafter the money was withdrawn therefrom. Thereafter, upon detection of fraud,

the de-facto complainant, being the Zonal Operations Head / opposite party no. 2, lodged an FIR against the accused person.

18. Considering the above facts and circumstances and upon perusal of case diary, this Court finds there are sufficient incriminating materials to establish prima facie case against the present petitioner.
19. When there is sufficient material to establish his prima facie involvement, this court cannot embark upon materials without trial, and it would be very difficult to assess the same without fulflaged trial.
20. In view of the above, the Learned Trial Court rightly rejected the petitioner's prayer for discharge vide order dated 13.11.2018. This Court does not find any infirmity, illegality or impropriety in the said order.
21. Accordingly, **CRR 239 of 2019** is **dismissed**. Connected applications, if any, are also, thus, disposed of.
22. Case Diary, if any, be returned to the learned counsel for the State.
23. Interim order, if any, stands vacated.
24. Let a copy of this judgment be communicated to the learned Court below for necessary information.
25. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

26. Urgent Photostat certified copy of this judgment, if applied for, is to be given expeditiously to the parties upon compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)