



**IN THE HIGH COURT AT CALCUTTA**  
**CRIMINAL REVISIONAL JURISDICTION**  
**APPELLATE SIDE**

Present: -

**The Hon'ble Justice SHEKHAR B. SARAF**

***C.R.R. No 1837 OF 2008***

***SHRI JAGANNATH GOSWAMI & ORS.***

***Vs***

***THE STATE OF WEST BENGAL & ANR.***

For the Petitioners:

Mr Biplab Mitra, Adv.

Mr Indranil Nandi, Adv.

Mr Sayak Konar, Adv.

For the State:

Mr Joydeep Roy, Adv.

Ms Sujata Das, Adv.

For the Opposite Party No.2:

Mr Pradip Kr. Roy, Adv.

**Last heard on: July 31, 2023**

**Judgement on: August 16, 2023**

**Shekhar B. Saraf J:**

1. The instant Criminal Revisional Application, being C.R.R. No 1837 of 2008, has been filed by the petitioners under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the 'CrPC') against the order dated March 4, 2008 passed by the Learned Judge, Special Court, Tamluk, Purba Medinipur, in connection with G.R. Case No. 226 of 1998 arising out of Tamluk P.S. Case No. 69 dated April 30, 1998, alleging commission of offences u/s 468/471/420/120B/406/409 of the Indian Penal Code, 1860 (hereinafter referred to as the 'IPC').
2. Before delving into the facts, it is required at the outset to adumbrate the identity of the parties involved in the instant application. Jagannath Goswami, being the petitioner no. 1, herein was holding the post of vice chairman of the Tamluk Ghatal Co-operative Bank (hereinafter referred to as the 'Bank'), Shri Ratan Chakraborty and Shri Tarun Samanta, being the petitioners no. 2 and 3 respectively, were holding the post of Directors in the said Bank. It is needed to be pointed out that the petitioner no. 2 has already passed away.
3. On the other side, Shri Pratik Banerjee, Deputy Registrar of Co-operative Societies, Western Zone, Burdwan, being the opposite party no. 2 is the one who had filed the said criminal complaint dated April 30, 1998 with Tamluk Police Station.

**Relevant Facts**

4. The germane facts which remain after eschewing the unnecessary are mentioned below:-
- a) A proposal was submitted by Sri Mata Prasad Jaiswal, proprietor of M/s Jaiswal Traders located in Durgachak, Haldia, to seek a loan for the purpose of constructing a hotel-cum-restaurant. The proposal was presented to the loan committee of the Bank under Memo No. HO/TME/4840 dated 02.02.1996 for their careful evaluation and consideration.
  - b) The proposal was subsequently accepted after a prolonged discussion and it was resolved that a loan amounting to Rs. 36,00,000 /- ( Rupees Thirty Six Lakhs Only) would be sanctioned from the Bank's own resources. It was further decided that interest at the rate of 18% per annum would be levied upon the said loan.
  - c) The term of the loan as agreed between the parties was that the borrower was required to repay the entire loan amount along with interest by six-yearly instalments. It was also agreed that the loan will carry interest at the rate of 18% per annum and the said interest shall be realised on half yearly basis. The penal interest which would be levied in the event of any default was set at the rate of 20% per annum till the entire loan is liquidated.



- d) In the same meeting, it had been further decided that as part of collateral security, a land and building, lien of fixed deposit and cash certificate, and LIC policy in favour of the Bank would be taken against the disbursement of the loan amount. At this juncture, it is relevant to point out that the National Bank for Agriculture and Rural Development ('NABARD') issued a letter informing the Chairman of the Bank that 'the said disbursement of loan by the Bank is not eligible for NABARD refinance assistance as the same exceeds the integrated loan limit of Rs. 10,00,000/- (Rupees Ten Lakhs only)'.
- e) On July 21, 1995, Mata Prasad Jaiswal, that is, the borrower became the nominal member of the Bank by depositing the requisite membership fees.
- f) The borrower made payments towards the repayment of the loan to the tune of Rs. 39,32,760 the September 3, 2003 out of the disbursed amount of Rs. 32,00,000/- whereof the sanctioned amount was Rs. 36,00,000/-. It is to point out that there were certain defaults of repayment of the loan amount committed by the borrower and recovery proceedings were also initiated. For the sake of brevity, it is not necessary to discuss that herein.
- g) On April 20, 1998, a complaint was registered by Sri Pratik Banerjee, Deputy Registrar of Co-operative Societies, Western



Zone, Burdwan, with the Tamluk Police Station bearing case no 69/1998 against the petitioners alleging the occurrence of the offences mentioned under 468/471/420/120B/406/409 of the I.P.C. Subsequently, criminal proceedings corresponding to G.R. No. 226/1998 were set into motion.

- h) Accordingly, the charge sheet no. 142/99 dated September 4, 1999 under the relevant sections was submitted in connection with the said criminal case, charging the petitioners under sections 468/471/406/409/420/120B of the IPC, and the same is pending before the Learned Special Judge at Tamluk, Purba Medinipur. It is further pertinent here to state that the Learned Judge by an order dated March 04, 2008 framed charges under section 409/120B of the I.P.C.
- i) The petitioners, at this juncture, filed this revisional application praying for quashing of the proceedings before Learned Special Judge at Tamluk, Purba Medinipur being T.R Case No. 7/99 in connection with G.R. Case No. 226/1998 arising out of Tamluk Police Station Case No. 69/1998.

### **Contentions**

5. The learned counsel appearing on behalf of the petitioners made the following submissions:



- a) The counsel submitted that the said loan was sanctioned and ultimately disbursed on the basis of collateral security furnished by the borrower. He contended that as of March 19, 2008, the borrower repaid/deposited a total of Rs. 39,32,760/-, which includes Rs. 10,00,000/- deposited after this Court's order dated September 06, 2006. The Court had stayed all further proceedings of the certificate case no. 4 of 2005-06 on the condition that the borrower deposits Rs. 30,12,540/-. Out of this amount, the borrower had already deposited the said Rs. 10,00,000/- which was held in a suspense account by the Bank.
- b) The counsel argued that there is no evidence to suggest that the petitioners have engaged in any misappropriation of funds entrusted to them by the Bank or misappropriated any of the Bank's property. The counsel emphasized that substantial collateral security, comprising land, building, fixed deposits, cash certificates, and a life insurance policy, was pledged in favour of the said Bank before the loan's approval.
- c) The counsel asserted that the petitioners promptly took appropriate legal measures immediately after the borrower defaulted on the said loan. Notably, the award rendered by the learned Certificate Officer was executed through the initiation of certificate proceedings. As such, it cannot be reasonably asserted that the petitioners were remiss in their duty regarding either the



sanctioning of the loan to the borrower or the timely pursuit of remedies for recovery of the said loan. The counsel further argued that the prosecution's assertion that the bank authorities failed to take appropriate measures for the recovery of the loan of Rs. 32,00,000/- along with interest is fundamentally erroneous.

- d) The counsel contended that the loan does not amount to an entrustment, as the Bank provided the loan to the borrower based on the borrower's undertaking to repay the loan along with interest in instalments. In the event of the borrower's failure to make timely repayments, the bank officials appropriately pursued legal measures for recovery. Therefore, it cannot be stated and/or observed on behalf of the prosecution that there is any ingredient of criminal breach of trust against the petitioners.
  
- e) The counsel asserted that for an offence under Section 409 of the IPC, the establishment of entrustment alone is insufficient; it is imperative to prove dishonest or criminal intent. As per legal requirements, materials indicating the conversion of the property for personal or dishonest use must be demonstrated by materials collected during the investigation. However, in the current case, there exists no such investigative material demonstrating any dishonest or criminal intent, nor any conversion of the property for the petitioners' use. To substantiate the abovementioned proposition, reliance was placed upon the decision of the Supreme



Court in ***Kailash Kumar Sanwalia -v- State Of Bihar*** reported  
in ***(2003) 7 SCC 399***.

- f) The counsel highlighted that the borrower had made payments up to Rs. 39,32,760/- until September 2003, out of the actual disbursed amount of Rs. 32 lakhs. This payment receipt is supported by documents from the Bank's books of account, issued by the Chief Executive Officer on 19th March 2008, in relation to the loan account of the Borrower of M/s. Jaiswal Traders. These documents are admissible in evidence and can be duly considered in any legal proceeding, as per the provisions of the Banker Book of Evidence Act, 1891. The referenced document indicates that the Bank received the aforementioned sum from the loanee until 2003. The counsel also observed that both the First Information Report (FIR) and the Charge Sheet do not make any mention of the Bank's receipt. Additionally, the learned Judge of the Special Court, Tamluk, Purba Medinipur, did not have an opportunity to assess the legal implications of such receipt by the Bank.
- g) The counsel noted that due to the loanee's default in making timely loan payments with interest, the said Bank initiated civil proceedings by filing a Dispute Case under Section 95 of the West Bengal Co-operative Societies Act, 1983. In the aforementioned Dispute Case, an award dated February 2, 1999 was passed in favour of the Bank and against the loanee amounting to Rs.



24,98,804. The counsel contended that the facts presented above clearly demonstrate that a dispute, inherently civil in nature, has been intentionally portrayed as a criminal case by the Deputy Registrar of Co-operative Societies, Western Zone, Burdwan, in the form of Tamluk Police Station Case No. 69 dated April 20, 1998.

- h) The counsel contended that a significant portion of the sanctioned loan amount was repaid by the borrower during the pendency of the case, which should have been duly considered as it substantially weakens the allegation of criminal breach of trust under Section 409 of the I.P.C. Consequently, the current criminal proceedings merit quashing.
- i) The counsel asserted that the materials collected during the investigation fail to indicate any conspiracy leading to the sanctioning of the loan or any pecuniary benefit received by the petitioners from the loan transaction. In the absence of such evidence, the sanction of a loan cannot form the basis of any criminal proceeding for which the instant proceedings deserve to be quashed.
- j) The counsel asserted that the materials collected during the investigation do not establish any dishonest or criminal intention, nor do they demonstrate the conversion of the property for the petitioners' personal or dishonest use. Instead, the materials



suggest that the petitioners' actions were within the scope of their official duties as public servants. Consequently, they are entitled to the protection of Section 197 of the CrPC, and the cognizance taken by the learned Special Court without any sanction under Section 197 is liable to be set aside.

- k) The counsel submitted that pursuant to Section 21(1) of the NABARD Act, the National Bank is empowered to provide refinance, loans, and advances to State Co-operative Banks, Central Co-operative Banks, Regional Rural Banks, and approved Financial Institutions. At the relevant time, NABARD offered a refinance scheme catering to hotel businesses and related ventures, with a maximum loan limit of Rs 10 lacs. Borrowers seeking benefits from this scheme were required to ensure that their total project cost remained within this limit. However, in the present case involving the Borrower, the project cost amounted to Rs 36 lacs, surpassing the permissible limit of Rs 10 lacs. As a result, the borrower did not qualify for the NABARD refinance scheme. The counsel highlighted that the benefits under various NABARD schemes are typically routed through Cooperative Banks, such as Tamluk Ghatalal Central Cooperative Bank (TGCCB), to their members or nominal members. The counsel further contended that since the Borrower was a nominal member of the Bank, he was otherwise eligible to obtain/get the said loan from the said Bank.



- l) The counsel argued that as per Section 2(7) of the West Bengal Co-operative Societies Act, 1983, the term "Central Co-operative Bank" is defined in accordance with the NABARD Act, 1981. According to Section 2(d) of the NABARD Act, 1981, "Central Co-operative Bank" refers to the primary co-operative society in a District within a State, whose main objective is to provide financial support to other co-operative societies in that particular district. Section 24(1) of the said Act states that the ultimate authority of a cooperative society lies with its general body of members convened in a General Meeting. Alternatively, the authority may also be vested in delegates elected by the members in a prescribed manner and gathered in the General Meeting, subject to the provisions of the said Act and the accompanying rules.
  
- m) The counsel contended that under the provisions of the 1983 Act, its accompanying rules, and the bye-laws of the Bank, the Board of Directors has significant authority to grant loans to nominal members using the bank's own funds. The counsel submitted that since the Bank carries on banking business, in order to earn profits, it has to invest its funds by way of loans to its members/nominal member.
  
- n) The counsel submitted that thus there was no infirmity and/or illegality on the part of the Bank in granting the said loan, in



respect of which a substantial amount to the tune of Rs 39 lacs was subsequently recovered.

6. The learned counsels appearing on behalf of the opposite party propounded the following submissions: -
  - a. The counsel pointed out that after a detailed and thorough inquiry by the police authority on the basis of the complaint on April 20, 1998, the charges were put under the abovementioned sections of the I.P.C and subsequently, the Charge Sheet/Final Report was also submitted.
  - b. The counsel also argued that the foremost reason why the petitioners of the instant case were being prosecuted is due to the fact that they had issued a loan to the tune of Rs. 36,00,000/- to the borrower which was outside the prescribed limit of Rs. 10,00,000/-. It is in this regard that the act of the petitioners violated the West Bengal Co-Operative Banks Guidelines.
  - c. The stand taken by the petitioners is that the valuation of the project which was to be constructed on the land allegedly given as collateral was higher than the sanctioned amount. In response, the counsel submitted that such an argument, when made before this court, is not appropriate and would be properly suited before the



trial court. It is also added that the borrower has been timely paying off the debt is also an argument/submission to be made before the trial court.

- d. The counsel further submitted that the valuation of the land given as collateral, according to the registered deed dated July 7, 1994 was a paltry Rs. 1.27 Lakhs only which is, he argued, considerably lower than the sanctioned amount. It is further argued that the petitioner not only sanctioned a loan amount which is higher than the prescribed limit but also disbursed the amount against a security the value of which is lower than the sanctioned amount. In addition to this, it is further argued that the loan was sanctioned by the petitioners even before the borrower deposited the cash certificate with the bank to which the counsel argued that such action ostensibly shows a collusion between the borrower and the petitioners.
- e. To support its contentions, the counsel placed reliance on several judgements of the Supreme Court namely ***State of Haryana and Ors -v- Bhajan Lal*** reported in ***1992 Supp (1) SCC 335*** and ***R.P Kapur -v- State of Punjab*** reported in ***AIR 1960 SC 866***.



## Analysis

7. I have heard the learned counsel appearing on behalf of the respective parties and have thoroughly perused the materials on record.
8. The Supreme Court in the ***State of Haryana and Ors –v- Bhajan Lal, reported in 1992 Supp (1) SCC 335*** had elaborated on the powers of the High Court and the parameters that need to be kept in mind while adjudicating a petition, filed under Section 482 of the Criminal Procedure Code, 1973, praying for quashing of the F.I.R. The relevant portion has been extracted below:

*“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

*(1) 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.*

*(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*



(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

(4) *Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*

(5) *Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*

(6) *Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

9. Again in **Pepsi Foods Ltd. -v- Special Judicial Magistrate**, reported in **(1998) 5 SCC 749**, the following observations was made by the Court :-

*“The Apex Court with reference to the **Bhajan Lal case (Supra)** observed that the guidelines laid therein as to where the court will exercise jurisdiction under Section 482 of the Code could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise, to secure the ends of*



*justice. It is well settled that these powers have no limits. Of course, where there is more power, it becomes necessary to exercise utmost care and caution while invoking such powers.*”

*(Emphasis Supplied)*

10. In another recent decision in ***Arnab Goswami v. State of Maharashtra*** reported in **(2021) 2 SCC 427**, the Supreme Court opined that while adjudicating a quashing petition, the High Court is duty-bound to undertake a *prima facie* evaluation of whether the ingredients of the alleged offence have been established in the FIR.
  
11. As authored by Arijit Pasayat, J., in ***State of A.P. v. Golconda Linga Swamy*** reported in **(2004) 6 SCC 522** and to summarise the law relating to Section 482 of the CrPC, the relevant paragraphs have been reproduced below:-

“5. *Exercise of power under Section 482 of the Code in a case of this nature is the exception and not the rule. The section does not confer any new powers on the High Court. It only saves the inherent power which the Court possessed before the enactment of the Code. It envisages three circumstances under which the inherent jurisdiction may be exercised, namely: (i) to give effect to an order under the Code, (ii) to prevent abuse of the process of court, and (iii) to otherwise secure the ends of justice. It is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction. No legislative enactment dealing with procedure can provide for all cases that may possibly arise. Courts, therefore, have inherent powers apart from express provisions of law which are necessary for the proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in the section which merely recognises and preserves the inherent powers of the High Courts. All courts, whether civil or criminal, possess in the absence of any*



*express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in the course of the administration of justice on the **principle quando lex aliquid aliqne concedit, conceditur et id sine quo res ipsa esse non potest (when the law gives a person anything, it gives him that without which it cannot exist)**. While exercising powers under the section, **the Court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself**. It is to be exercised **ex debito justitiae** to do real and substantial justice for the administration of which alone courts exist. The authority of the court exists for the advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent the promotion of justice. **In the exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice**. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.*

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*7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is a legal evidence which, on appreciation, may or may not support the accusations. **When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge**. The judicial process, no doubt should not be an instrument of oppression, or, needless harassment. The court should be circumspect and judicious in exercising discretion and should take all relevant facts*



*and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly.”*

**(Emphasis Supplied)**

12. In the wake of aforesaid decisions, the Apex Court has consistently underscored the guidelines governing the exercise of inherent powers under Section 482 of the CrPC and/or under Article 226 of the Constitution of India, especially concerning the quashing of FIRs/complaints. With this in mind, it now becomes incumbent upon this Court to delve into the charges levied upon the accused.
13. Keeping in mind the Learned Judge’s order dated March 04, 2008 wherein charges were framed under section 409/120B of the IPC, it is essential to discuss the relevant provision of the penal code.
14. The Supreme Court, while interpreting section 409 of the IPC, has laid the following ingredients in the case of ***Kailash Kumar Sanwalia –v- State of Bihar*** reported in **(2003) 7 SCC 399** :-

*“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 the application of the said provision, **entrustment has to be proved. In order to sustain a 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 the property of which he is duty-bound to account for; and (2) the accused has committed a criminal breach of trust.***



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

***(Emphasis Supplied)***

15. Ergo, to bring forth accusations under Section 409 of the IPC, certain fundamental requirements must be proven together :-

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 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 such trust.



**Conclusion:-**

16. As per the dictum of ***Bhajan Lal (supra)***, this Court needs to tread carefully and satisfy itself whether the facts and circumstances are such that it requires a quashing of the proceedings and to see if the facts fall under the exception laid down.
  
17. In the first instance, the allegations outlined in the FIR do indeed amount to an offence against the accused individuals and reveal the presence of a cognizable offence. Secondly, it is evident that the accusations are neither ludicrous nor implausible, as there exist substantial reasons to proceed with the case against the accused parties. Lastly, this Court is of the view that there is no justifiable cause to quash the proceedings, as they are not tainted with malicious intent or motivated by any ulterior motive seeking retribution against the accused, driven by personal animosity or private grudges.
  
18. In addition to this, it is imperative to comprehend that the term "entrustment" in this context denotes the delegation of the authority to sanction loans to the customers of the cooperative bank, subject to adhering to the guidelines duly established by the competent authority. It is my considered view that such authority was vested in the petitioners. Consequently, allegations of irregularities arising during the disbursement of loan amounts have been brought to my attention,



and I firmly opine that these issues necessitate thorough examination by the lower court.

19. It has been brought to the attention of this Court that the value of the land, as indicated in the registered deed dated July 07 1994, which was provided as collateral security, appears to be lesser in comparison to the amount of the sanctioned loan. Such a circumstance undoubtedly raises concerns and warrants careful scrutiny by the appropriate court, i.e., the Tamluk Court where the ongoing proceedings are being conducted.
20. It is also alleged that while sanctioning the loan amount, the guidelines and the bye-laws of the Bank were not properly followed by the petitioners, and in my opinion this factual nature is to be decided by Trial Court concerned.
21. As a response to the argument suggesting that no actual loss has been suffered and that the loan amount has been nearly or substantially recovered, it becomes imperative to delve into the *ratio decidendi* of a pertinent judgment delivered by the Bombay High Court. The case in reference is ***Dagadu Shamrao Deshmukh -v- State of Maharashtra*** reported in ***1982 Cri LJ 1866***. In this judgment, the court pronounced that the concept of 'zero ultimate loss' does not serve as a shield against conviction under Section 409 of the IPC.



22. In addition, I am inclined to be swayed by the verdict pronounced by the Apex Court in the case of ***Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others*** reported in ***2021 SCC OnLine SC 315***. The pertinent paragraphs of the said judgment are hereby extracted below:

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i) ***Police has the statutory right and duty under the relevant provisions of the Code of Criminal Procedure contained in Chapter XIV of the Code of Criminal Procedure to investigate into a cognizable offence;***

ii) ***Courts would not thwart any investigation into the cognizable offences;***

iii) ***It is only in cases where no cognizable offence or offence of any kind is disclosed in the first information report that the Court will not permit an investigation to go on;***

iv) ***The power of quashing should be exercised sparingly with circumspection, as it has been observed, in the ‘rarest of rare cases (not to be confused with the formation in the context of the death penalty).***

v) ***While examining an FIR/complaint, quashing of which is sought, the court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR/complaint;***

vi) ***Criminal proceedings ought not to be scuttled at the initial stage;***

vii) ***Quashing of a complaint/FIR should be an exception rather than an ordinary rule;***

viii) ***Ordinarily, the courts are barred from usurping the jurisdiction of the police, since the two organs of the State operate in two specific spheres of activities and one ought not to tread over the other sphere;***



**ix) The functions of the judiciary and the police are complementary, not overlapping;**

**x) Save in exceptional cases where non-interference would result in the miscarriage of justice, the Court and the judicial process should not interfere at the stage of investigation of offences;**

**xi) Extraordinary and inherent powers of the Court do not confer an arbitrary jurisdiction on the Court to act according to its whims or caprice;**

**xii) The first information report is not an encyclopaedia which must disclose all facts and details relating to the offence reported. Therefore, when the investigation by the police is in progress, the court should not go into the merits of the allegations in the FIR. Police must be permitted to complete the investigation. It would be premature to pronounce the conclusion based on hazy facts that the complaint/FIR does not deserve to be investigated or that it amounts to an abuse of the process of law. After investigation, if the investigating officer finds that there is no substance in the application made by the complainant, the investigating officer may file an appropriate report/summary before the learned Magistrate which may be considered by the learned Magistrate in accordance with the known procedure;**

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**xv) When a prayer for quashing the FIR is made by the alleged accused and the court when it exercises the power under Section 482 Cr. P.C., only has to consider whether the allegations in the FIR disclose commission of a cognizable offence or not. The court is not required to consider on merits whether or not the merits of the allegations make out a cognizable offence and the court has to permit the investigating agency/police to investigate the allegations in the FIR;'**

**(Emphasis Supplied)**



23. Based on the aforesaid judicial pronouncements and the reasons elucidated above, I am of the opinion that the criminal complaint in the present matter does make out a prima facie case against the petitioners/ accused persons. Moreover, the instant revisional application is not a rare case that justifies the Court's interference, and for this reason, the said FIR and proceedings before the Trial Court concerned should not be quashed. Thus, this criminal revisional application is hereby disposed of with a caveat that no pronouncement has been made by this Court on the merits of the case, as I firmly believe that such deliberation falls squarely within the purview of the Trial Court.
24. I hereby direct the Learned Judge, Special Court, Tamruk, Purba Medinipur, to conduct expeditiously the ongoing proceedings being T.R Case No. 7/99 and conclude the same within a period of 6 months from the date of receipt of this order. This instruction is deemed necessary to ensure a swift and efficient resolution of the matter at hand, promoting the principles of prompt justice delivery and safeguarding the interests of all concerned parties.
25. The Registry is directed to serve a copy of this judgment to the Learned Judge, Special Court, Tamruk, Purba Medinipur for necessary compliance.



26. Pending interlocutory applications before this Court, if any, stands dismissed. There shall be no order as to costs.

27. Urgent Photostat certified copy of this judgment, if applied for, should be made available to the parties upon compliance with the requisite formalities.

**(Shekhar B. Saraf, J.)**