

## Sukeshi Barui & Ors Vs Sree Tuhin Subhra Banerjee & Another

**Court:** Calcutta High Court (Appellate Side)

**Date of Decision:** Jan. 10, 2025

**Acts Referred:** Code of Criminal Procedure, 1973 â€” Section 39, 156(3), 482

Indian Penal Code, 1860 â€” Section 120B, 406, 420

West Bengal Societies Registration Act, 1961 â€” Section 23, 32

**Hon'ble Judges:** Ajay Kumar Gupta, J

**Bench:** Single Bench

**Advocate:** Dr. Parmeshwar Nath Mishra, Aritra Bhattacharya, D. Mukherjee, Madhu Sudan Sur, Manoranjan Mahata

**Final Decision:** Allowed

### Judgement

Ajay Kumar Gupta, J

1. This instant Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioners/accused

persons seeking for quashing of the proceeding being G.R. Case No. 2544/16 arising out of F.I.R. No. 714/16 dated 23.11.2016 of Uluberia Police

Station, District Ã¢â‚¬ Howrah under Sections 406/420/120B of the Indian Penal Code, 1860 pending before the Learned Additional Chief Judicial

Magistrate, Uluberia.

2. The brief facts are relevant for the purpose of disposal of this case, are as under:

3. Petitioner Nos. 1, 2, 3 and 4 are President, Treasurer, Founder Secretary and Director of Asha Bhavan Centre, a Society registered under the West

Bengal Societies Registration Act, 1961 having its registered Office at Village Ã¢â‚¬ Kathila, Post Office Ã¢â‚¬ Banitabla, Police Station Ã¢â‚¬ Uluberia,

District Ã¢â‚¬ Howrah, West Bengal, India, PIN Code No. Ã¢â‚¬ 711 316.

4. One Sree Tuhin Subhra Banerjee, the opposite party no. 1 herein, alleged, inter alia, that in or about 19.11.2016, the City of Joy Foundation France

has given donation to the Asha Bhavan Centre to establish 15 schools in the remotest corner of the Rural Bengal to provide education to the deprived

children of West Bengal by providing Primary and Middle Schools on LR Plot No. 3364 of Mouza Ã¢â‚¬ Paschim Jitpur. But, no schools were

established.

5. It was further alleged that the accused persons transferred Rs. 29,77,840/- as expenditure in the name of Sou Hardworks Proprietor "Tapan Sou

of Bakshi, Bagnan, who is also an employee of the Asha Bhavan Centre. The said amount was taken by the accused persons who are the petitioners

herein. The said non-governmental organization, namely, Asha Bhavan Centre received foreign and other donations in regular basis to serve the poor

downtrodden under privileged classes people of the society. The Honeymoon trip was also made to Switzerland by the son and daughter-in-law of the

Secretary of the said Centre at the cost of the Organization. Furthermore, the accused persons never attended the office of the Centre but withdrew

salary from the Organization by cheating the public at large for their personal gain and misappropriated the funds.

6. The said petition of complaint was filed under Section 156(3) of CrPC before the Court of Learned Additional Chief Judicial Magistrate at Uluberia,

Howrah being Misc. Petition Case No. 261/2016 with a prayer for direction upon the I.C. Uluberia P.S. to treat the said petition of complaint as FIR

and initiate investigate.

7. Upon direction of the Learned Additional Chief Judicial Magistrate, Uluberia, the said complaint was treated as an FIR on 23.11.2016 and

registered Uluberia P.S. Case No. 714/16 dated 23.11.2016 under Sections 406/420/120B of the Indian Penal Code, 1860 against the accused persons.

8. After completion of investigation, the Investigating Officer submitted Final Report, inter alia, as follows:

"During investigation, I visited Asha Bhavan Centre Kathila, ULB and made a rough sketch map and index with separate sheets. Recorded the statement of

witness U/S 161 CR PC and serve a notice U/S 41A CRPC to the accd named (i) Sukeshi Barui (58) (ii) Shyama Manna (45) (iii) Ambika Shaw (40) (iv) John

merry Barui (35) to meet with me at ULB PS within 10 day to help investigation. After (illegible) and clear investigation, I found that all the matter of complain is

false and baseless. The complainant and accd had personal problems and to take revenge the complainant lodged complain against them. The accd give me all

kind of proves to support their innocence and the complainant failed to produced such a strong and true proves to support their complain. Therefore, I consulted

to I/C ULB regarding the matter of the case and he advised me to submit final form of the case. Hence, I submit F.R.M.F vide ULB PS FRMF No. 159/17 dt 27/2/17

U/S 406/420/120B IPC and closed the investigation.

9. The said FRMF No. 159/17 dated 27.02.2017 was submitted in the Court of Learned Additional Chief Judicial Magistrate, Uluberia on 06.03.2017.

Pursuant to which, notice was issued to the de-facto complainant. After appearance, he filed a Narazi Petition (Protest Petition) against the

investigation of the police and prayed for further investigation whereupon vide its order dated 15.09.2018, the Learned Court took cognizance of the

offence u/s 406/420/120B of Indian Penal Code, 1860, inter alia, observing as follows:

“It is seen from the record that the I/O has visited the P.O., prepared a rough sketch map and recorded the statement of the witnesses and also relied upon an

Enquiry Report by the B.D.O. in concluding his investigation.

The defacto complainant still is unsatisfied and make allegation of defective investigation by the I/O for otherwise consideration. The materials as available with

the C.D. reveals of huge financial transaction and defacto complainant himself claimed that he is in possession of the sufficient materials to prove it. Accordingly,

this Court finds it just to take cognizance of the offence u/s 406/420/120B of the I.P.C.

The defacto complainant is directed to submit the list of witnesses.

Let the case be taken into my personal file for disposal after registering it as complaint case.

10. In pursuance of the cognizance taken by the Learned Additional Chief Judicial Magistrate, Uluberia vide his order dated 20.06.2019, process was

issued against the petitioners by fixing a date on 23.09.2019. Upon receipt of the said summons, the petitioners appeared before the Learned Court on

17.12.2019 and obtained bail.

11. It is the contention of the petitioners that the de-facto complainant is a stranger who cannot lodge complaint. The Learned Additional Chief Judicial

Magistrate, Uluberia is also not competent to take cognizance on the allegations made against the Society as the complainant is not competent

authority and without previous sanction of the State Government. No prosecution shall be instituted for any offence under the West Bengal Societies

Registration Act, 1961.

12. The de-facto complainant is not the person aggrieved and Section 39 of the Cr.PC does not confer authority upon any person who is not aggrieved

person to lodge FIR against the commission of offences punishable under Sections 420/406/120B of IPC and further the Learned Additional Chief

Judicial Magistrate, Uluberia had neither authority nor jurisdiction to issue orders to treat the complaint of the de-facto complainant as FIR and to

cause investigation and to summon the petitioners. Hence, this Criminal Revision application.

SUBMISSION ON BEHALF OF THE PETITIONERS:

13. Learned counsel appearing on behalf of the petitioners submitted that the petitioners are totally innocent and they were never misappropriated or

cheated any person alleged by the de-facto complainant. The allegations of the de-facto complainant are vague, vexatious and only to harass the

petitioners. The act itself provides the competent person who can investigate the affairs of the society under Section 23 of the West Bengal Societies

Registration Act, 1961 and prosecution is subjected to prior sanction of the State Government.

14. It was further submitted that the Investigating Officer earlier investigated the case and finally submitted FRMF when found no sufficient materials

against the accused persons. Accordingly, the complaint was baseless, false and without any merit. If the proceeding continued against the petitioners,

it would be a sheer abuse of process of law.

Learned counsel has placed reliance of two judgments, to support of his contention that no proceeding can be started under Sections 420/406 of the

IPC against the accused when no ingredients fulfil or initiated by competent authority, as under:

i. Delhi Race Club (1940) Ltd. & Ors vs. State of Uttar Pradesh & Anr. AIR 2024 SC 4531 : AIR Online 2024 SC 612

ii. Prem Chand Jain and Another Vs. State of West Bengal and Another 2024 SCC OnLine Cal 9834.

#### SUBMISSION ON BEHALF OF THE STATE:

15. Per contra, learned counsel appearing on behalf of the State submitted that after investigation, the Investigating Officer finally submitted Final

Report as Mistake of Fact. The Learned Trial Court can proceed with the said case treating as a complaint case under Sections 420/406/120B of the

IPC. There are sufficient materials and fulfil all ingredients of the offences as alleged in the written complaint. Therefore, the instant case has no

merit and is liable to be dismissed.

#### DISCUSSIONS AND FINDINGS BY THIS COURT:

16. Heard the arguments and submissions of the rival parties and on perusal of the record, it appears initially in pursuant to the direction passed by the

Learned Additional Chief Judicial Magistrate at Uluberia, Howrah in Misc. Petition Case No. 261/2016 on the basis of a petition of complaint, filed

under Section 156(3) of CrPC, a case was registered being F.I.R. No. 714/16 dated 23.11.2016 of Uluberia Police Station, District "Howrah" under

Sections 406/420/120B of the Indian Penal Code, 1860 against the accused persons and initiated investigation. However, after completion of

investigation, the Investigating Officer submitted Final Report as Mistake of Fact (FRMF) No. 159/17 dated 27.02.2017. Subsequently, a Narazi

petition was filed on behalf of the de-facto complainant with a prayer for further investigation of the case. But, the Learned Magistrate vide Order

dated 15.09.2018, was pleased to take cognizance of offences under Sections 406/420/120B of the Indian Penal Code, 1860 and issued process after

being satisfied with the examination of Solemn Affirmation and fixed for appearance on 23.09.2019. In compliance with the summons, the petitioner

appeared before the Learned Court and obtained bail.

17. From the facts of the instant case, this Court has to decide whether the Magistrate can take cognizance in the instant case on the basis of

complaint lodged by a stranger i.e. Sree Tuhin Subhra Banerjee, the opposite party no. 1 or not?

18. Before deciding the merits of the case, this Court would like to refer Section 39 of the Code of Criminal Procedure, 1973 and Sections 23 and 32

of the West Bengal Societies Registration Act, 1961 as under:-

Section 39 of the Code of Criminal Procedure, 1973 reads as under:-

“39. Public to give information of certain offences.—(1) Every person, aware of the commission of, or of the intention of any other person to commit, any

offence punishable under any of the following sections of the Indian Penal Code (45 of 1860), namely:—

(i) sections 121 to 126, both inclusive, and section 130 (that is to say, offences against the State specified in Chapter VI of the said Code);

(ii) sections 143, 144, 145, 147 and 148 (that is to say, offences against the public tranquillity specified in Chapter VIII of the said Code);

(iii) sections 161 to 165A, both inclusive (that is to say, offences relating to illegal gratification);

(iv) sections 272 to 278, both inclusive (that is to say, offences relating to adulteration of food and drugs, etc.);

(v) sections 302, 303 and 304 (that is to say, offences affecting life);

(va) section 364A (that is to say, offence relating to kidnapping for ransom, etc.);]

(vi) section 382 (that is to say, offence of theft after preparation made for causing death, hurt or restraint in order to the committing of the theft);

(vii) sections 392 to 399, both inclusive, and section

402 (that is to say, offences of robbery and dacoity);

(viii) section 409 (that is to say, offence relating to criminal breach of trust by public servant, etc.);

(ix) sections 431 and 439, both inclusive (that is to say, offences of mischief against property);

(x) sections 449 and 450 (that is to say, offence of house trespass);

(xi) sections 456 to 460, both inclusive (that is to say, offences of lurking house trespass); and

(xii) sections 489A to 489E, both inclusive (that is to say, offences relating to currency notes and bank notes),

shall, in the absence of any reasonable excuse, the burden of proving which excuse shall lie upon the person so aware, forthwith give information to the nearest

Magistrate or police officer of such commission or intention.

(2) For the purposes of this section, the term “offence” includes any act committed at any place out of India which would constitute an offence if committed in

India.

Section 23 of The West Bengal Societies Registration Act, 1961 reads as under:-

“23. Investigation of affairs of a society.

(1) Where on information received, the State Government is of opinion that there are circumstances suggesting that the business of a society is being conducted

with intent to defraud its creditors, members or any other person, or that the society is guilty of mismanaging its affairs or of any fraudulent or unlawful act, the

State Government may appoint a competent person as [Commissioner for Enquiry] to investigate into the affairs of the society or inspect any institution managed

by the society and report on such matters as the State Government may direct.

(2) It shall be the duty of every officer of the society when so required by the [Commissioner for Enquiry] to produce any books and papers of or relating to the

society which are in his custody, and otherwise to give to the [Commissioner for Enquiry] all assistance in connection with the investigation or inspection which

he is reasonably able to give.

(3) [A Commissioner for Enquiry] may call upon and examine on oath any officer of the society in relation to the affairs of the society and it shall be the duty of

every officer when so called upon to appear before the [Commissioner for Enquiry] for such examination.

(4) On the conclusion of the investigation or inspection, as the case may be, the [Commissioner for Enquiry] shall make a report to the [State Government] on the

matters on which he was directed by the State Government to report.

(5) For refusal to comply with the provisions of sub-section (2) or sub-section (3), the officer in default shall be punishable with fine which may extend to two

hundred and fifty rupees.

(6) [On perusal of the report made by the Commissioner for Enquiry] the State Government may give such directions as it may think fit to the society for the

removal of any defects or irregularities within such time as may be specified and on the society making any default in taking action according to such directions

the State Government may direct the Registrar to move the Court for dissolution of society.

(7) If on a perusal of the report [made by the Commissioner for Enquiry], it appears to the State Government that any person has, in relation to the formation,

promotion, management or conduct of the business of the society, been guilty of any offence for which he is criminally liable, the State Government may direct the

prosecution of such person for the offence.

(8) The expenses of, and incidental to, an investigation by [Commissioner for Enquiry] appointed by the State Government shall be defrayed by the State

Government.

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Section 32 of The West Bengal Societies Registration Act, 1961 reads as under:-

Ã“32. No prosecution to be instituted without previous sanction. Ã- (1) No prosecution shall be instituted for any offence under this Act except with the

previous sanction of the State Government.

(2) Nothing in Sub-section (1) shall apply to any prosecution mention in section 21.

19. Upon careful perusal of the aforesaid provisions, it is very much clear that the investigation of affairs of the society may be done by a competent

person i.e. Commissioner of Enquiry appointed by the State Government upon receiving a complaint.

20. Upon further perusal of Sub-Section (7) of Section 23 of The West Bengal Societies Registration Act, 1961, it reveals if on a perusal of the report

made by the Commissioner for Enquiry, it appears to the State Government that any person has, in relation to the formation, promotion, management

or conduct of the business of the society, been guilty of any offence for which he is criminally liable, the State Government may direct the prosecution

of such person for the offence. Therefore, sanction of the State Government is essential for prosecution of the proceeding against the accused. Even,

no prosecution shall be instituted for any offences under the Act except with the previous sanction of the State Government in view of Section 32 of

The West Bengal Societies Registration Act, 1961.

21. But, in the present case, initially a petition of complaint was filed by the de-facto complainant before the Learned Magistrate. In pursuance of the

direction of the Learned Magistrate, an F.I.R. No. 714/16 dated 23.11.2016 of Uluberia Police Station, District "Howrah under Sections

406/420/120B of the Indian Penal Code, 1860 was registered and initiated investigation. Even then, no sufficient materials were collected during the

investigation and finally the Investigating Officer has submitted the Final Report as Mistake of Fact though such power is not vested upon the police

officer to investigate the case.

22. The Learned Magistrate was pleased to direct to register FIR on the basis of petition of complaint under Section 156(3) of the CrPC which is

strictly prohibited under Sections 23 and 32 of The West Bengal Societies Registration Act, 1961.

23. Even after filing Final Report as Mistake of Fact, the Learned Court took cognizance under Sections 420/406/120B of the IPC treating the

compliant case without applying judicious mind and ignoring the provisions as aforesaid as such same appears bad and not permissible in law.

24. Accordingly, the proceedings, if not be quashed, it would be a sheer abuse of process of law and for securing the ends of justice, the entire

proceeding is deserved to be quashed under the inherent power granted under Section 482 of the CrPC .

25. Accordingly, CRR No. 3511 of 2019 is allowed. Connected applications, if any, are also, thus, disposed of.

26. Consequently, proceeding being G.R. Case No. 2544/16 arising out of F.I.R. No. 714/16 dated 23.11.2016 of Uluberia Police Station, District "Howrah under Sections 406/420/120B of the Indian Penal Code, 1860 pending before the Learned Additional Chief

Judicial Magistrate, Uluberia is

hereby quashed.

27. Let a copy of this Judgment be sent to the Learned Trial Court for information.

28. Interim order, if any, stands vacated.

29. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.