

**(1998) 03 CAL CK 0037**

**Calcutta High Court**

**Case No:** Criminal Rev. No's. 1664 and 2036 of 1996

Prabir Chowdhury

APPELLANT

Vs

State of West Bengal

RESPONDENT

**Date of Decision:** March 11, 1998

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 197
- Penal Code, 1860 (IPC) - Section 120B, 21, 409, 420, 468
- West Bengal Criminal Law Amendment (Special Courts) Act, 1949 - Section 5

**Citation:** (2000) 1 ILR (Cal) 72

**Hon'ble Judges:** D.P. Sircar I, J

**Bench:** Single Bench

**Advocate:** Milan Kumar Mukherjee and Mintu Kumar Goswami, for the Appellant; D.P. Sen Gupta, for complainant and Alokananda Basu, for State, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

D.P. Sircar I, J.

These two revisional applications arising from the same -train of incidents over the same facts and circumstances in respect of the same organisation, filed by two of its officers with the same contention, have been taken up and heard together as similar questions of laws and facts are involved and this judgment covers both the revisional application.

2. In both the petitions the order dated May 14, 1996 passed by the Ld. S.D.J.M., Durgapur in G.R. Case No. 146 of 1995 of that court arising out of Durgapur New Township P.S Case No. 21 of 1995 has been challenged. There is a co-operative society called Durgapur Ex-Servicemen's Co-Operative Housing Society Ltd. since 1989-90 of which the present Petitioners in these two revisional applications were the office bearers. After change of the Board the incumbent Secretary in the succeeding Board lodged complaint against some other three persons for

embezzlement of huge amount of money belonging to that Co-operative Society and lodged complaint before the O.C., New Township P.S., Durgapur Sub-division which case arise to the G.R. case as above.

3. Although the present Petitioners were not named in the FIR, after investigation, police submitted some charge-sheets against each of them u/s 409/420/468/471/477A/120B etc. of I.P.C. Prior to that a petition was filed before the Registrar, Co-operative Society, West Bengal u/s 95 of that West Bengal Co-operative Societies Act, hereinafter referred to as the Act, against some persons other than the Petitioners. Both the Registrar and the Co-operative Tribunal before whom appeal was preferred, dismissed that petition and the appeal. But the Ld. S.D.J.M., Durgapur took over cognizance against the persons Petitioners among others in the same case that is G.R. Case No. 146 of 1995, issued warrant of arrest and proclamation against them. Both the Petitioners pray for quashing that proceeding and impugned order.

4. The State of West Bengal is the only Opposite Party and it contests the case.

5. The Ld. advocate M.K. Mukherjee arguing for the Petitioners relies on Section 2(31) of the Act read with Section 8 thereof and submits that being officers of the Cooperative society concerned they were public servants and as such being public servant, they are entitled to protection u/s 197 Code of Criminal Procedure and no court can take cognizance without previous sanction of the State Government u/s 197 Code of Criminal Procedure or the Registrar, Co-operative Society u/s 139(3) of the Act. The petition before the Registrar having been rejected and the appeal before the Tribunal having been dismissed, it must be presumed that no sanction from the Registrar was taken. No sanction was ever taken from the State Government and as such the cognizance having been taken legally, proceedings must be quashed. The Id. advocate further argues that even in case of misappropriation of the property of the Cooperative Society the case must come within Section 142(d) of the Act and not u/s 409 of the Indian Penal Code the Act having its overriding effect. The offence as alleged is clearly non-cognizable as provided u/s 139(2) of the Act and as such neither the Police can take cognizance nor the Court can take cognizance on police papers. It has been argued further that even if the offence was u/s 409/420 etc. of the Indian Penal Code as claimed by the prosecution the Petitioner being public servant, cannot be tried by any Court other than the Special Courts Durgapur, in terms of the provision of West Bengal Criminal Law Amendment (Special Court) Act, 1949, Schedule, read with Section 5 of the same. So the cognizance was taken wrongly and the trial cannot proceed before the Learned Sub-Divisional Judicial Magistrate and for that the proceedings must be quashed. At best, he argues, the case can proceed under the relevant provisions of the Act which has been assented by the president of India conferring overriding effect on other laws.

6. I have considered the argument but, I am constrained to differ respectfully the present Petitioners are no doubt public servants as contemplated u/s 21 of the Indian Penal Code but that does not mean that these officers of the Co-operative Society are entitled to the protection u/s 197 Code of Criminal Procedure which protection is provided only for the persons who are Judges, Magistrates or Public servants not removable from the offices save by or with the order of sanction of the Government. The Petitioners being officers of the Co-operative society alleged to have made misappropriation and other offences in respect of the fund and papers of the Co-operative Society do never come within the protection of Section 197 Code of Criminal Procedure. [K. Ch. Prasad Vs. Smt. J. Vanalatha Devi and Others, , Dr. Laksmansingh Himatsingh Vaghela Vs. Naresh Kumar Chandrashanker Jha and others,](#)

7. The copy of the orders of the Registrar and the Tribunal and a petition before the said authorities not having been filed we cannot ascertain the contentions thereof. From the petition it appears that the said matter was over the petition attracting the notice of the Registrar about overstaying of the Petitioners and not about the alleged offences.

8. This G.R. case not having been filed under any provision of the Act, that is Co-operative Societies Act, the question of prior sanction of the Registrar is obviously not required which relates only to cases filed under the Act and not under I.P.C. In a case filed with the allegation of commission of offences attracting the provisions of the Indian Penal Code the benefit provided u/s 139(2) of the Co-operative Societies Act cannot be attracted.

9. The present Petitioners have been accused of embezzlement and misappropriation of the property belonging to the Co-operative Society and not of any Government money. Under this circumstance as the provision of Section 409 etc. Indian Penal Code may be attracted the protection provided u/s 139(3) of the Act cannot be attracted to the benefit of the present Petitioners and accordingly also prior sanction of the Registrar is not required. The provision of the Act do not debar applicability of Indian Penal Code in appropriate case.

10. The present Petitioners having been accused of the offence u/s 409 Indian Penal Code etc., learned advocate for the Petitioners argues that they are triable only by the Special Court in terms of the provision of West Bengal Criminal Law Amendment (Special Court) Act, 1949 as this Act is applicable for trial of the public servants. I do not agree with the Id. advocate for the Petitioner. The provision of the Special Court Act, 1949 apply only to the like offences committed by public servants under the Government as an agent of the Government in respect of the property when person might have been entrusted with or conferred dominion over in his capacity as a public servant. The crux of the problem is that in case of any such offence of misappropriation etc. attracting the provision of the Special Court Act the property must belong to the Government and not to any such non-Government institution or

private person. Accordingly the question of trial before the special Court does not arise.

11. Both the revisional applications, therefore, do not appear to have any merit. I find no ground to interfere with the proceeding involved in these revisional applications.

12. The revisional applications are, therefore, dismissed. The stay order in connection with those applications are vacated. Let this order be communicated to the Ld. S.D.J.M., Durgapur for proceeding with the case before him at the earliest.

13. No observation in this judgment, if made, about the merit of the case shall have any binding effect on the trial of the case and the judgment in connection therewith before any of the Ld. Lower Courts.