GR number 1613 of 2015

03.04.25

Accused no. 2 Dibya Lal is present. As per the order passed on the earlier date, she has filed an affidavit. Let this be kept with the record. Another accused, Debabsish Mukhopadhyay, is absent and represented by his learned Advocate.

Today is fixed for further hearing in respect of the petition dated 27th February 2025, wherein a prayer for the discharge of the accused, Dibya Lal, was filed and also for passing order.

On the previous dates, the matter was heard in part. Parties have been given the opportunity to hear.

Heard Ld. Advocate for the accused Dibya Lal and Ld. APP for the prosecution.

Upon reviewing the record, it appears that this accused previously, on 29th November, 2017, knocked the door of this court with a prayer for discharge under Section 239 of the CrPC, and the same was disposed of vide order dated 07/06/17. In the said order, this court, after considering all the facts and circumstances of the case, declined to allow the prayer, and the record was posted for consideration of the charge. Being dissatisfied with the order passed by this court, the accused/petitioner prefers a Criminal Revision before the Hon'ble High Court. Hon'ble High Court also declined to discharge her on the ground that the case is pending for consideration charge and this court at the time of consideration of charge would point out the complicity of the petitioner in a case where there are charges under section 409 of the Indian Penal Code but arising out of Criminal discord/ dispute. The Hon'able Court was also pleased to direct this Court to consider the observations made in the revisional order while deciding the issue of framing charges.

With reference to the order passed by the Honourable High Court, the accused, Dibya Lal, has preferred this application. In the said application, the accused prayed for discharge from the alleged charges under Sections 409, 420, 468, 469, 472, and 120B of the IPC.

Ld. Advocate on behalf of the accused/petitioner argued on the following points:

1. This accused person has no connection with the matrimonial dispute between accused number 1 and the de facto complainant.
2. The accused person was employed at Dena Bank (now Bank of Baroda) and was posted as a Bank Manager, while accused number 1 was posted as a clerk.
3. Being the Bank Manager and Credit Officer, accused number 2 (Dibya Lal) passed one Fixed Deposit, resulting in an error in crediting the amount to the account of accused number 1.
4. There was no intention to commit any offence or to get any benefit out of such transaction.

5. There was no conspiracy between accused no.1 (Debabsish Nukhapadhyay) and accused no.2(Dibya Lal) to deprive the actual beneficiaries or to misappropriate any portion of the amount by causing wrongful loss to the beneficiaries and making wrongful gain for her.

While making the argument on behalf of the accused, Ld. Advocate tried to impress this court by arguing certain provisions of law that the accused number 2 is not a 'banker' and no entrustment of money was made to the employees of the bank. It is argued that if the beneficiary suffers any loss due to the act or omission of the bank employees, the bank is liable to compensate. It is argued that this bank employee is not a 'banker' and no money was entrusted to her. She had no dishonest intention and did not misappropriate any money for her own use or benefit. The argument was extended by citing Section 2(2) of the Bankers' Books Evidence Act 1891. It is argued that as per the definition of 'banker' and 'bank', this accused person neither fits the definition of a 'banker' nor the 'bank' and thus charges under section 409 of IPC cannot be framed against her. Ld. Advocate for the petitioner/accused relied on the judgement of Hon'ble Supreme Court delivered in **N. Raghavender vs State of Andhra Pradesh (2021)18 SCC 70** and argued that *"the money that customer deposits in a bank is not held by the later on trust for him. It becomes a part of the banker's fund who is under a contractual obligation to pay the sum deposited by a customer to him on demand with the agreed rate of interest. Such a relationship between the customer and the bank is one of creditor and debtor"*.

There is an argument that fixed deposits cannot be construed as entrustment and therefore cannot be charged under Section 409 of the IPC.

In respect of framing charges under Section 120B of the IPC, Ld. The advocate for the accused/petitioner argued that the investigating agency was unable to establish any agreement to commit an offence jointly by Accused Number 1 and Accused Number 2. The investigating agency presented no evidence, including any confession, of a conspiracy between accused number 1 and accused number 2 for wrongful gain at the expense of the beneficiary.

In respect of the offence under section 420 of IPC, it doesn't apply to the accused number 2 as she has not acted dishonestly. She has not gained wrongfully or caused wrongful loss. Immediately after knowing about the fact of the transfer of money in favour of the accused number 1, the bank account of accused number 1 was freezed.

With respect to the allegations of offences under Sections 468, 469, and 471 of the IPC, the investigating officer was unable to seize any document showing that any entry, signature, seal, or writing was forged. No evidence shows that a forged document was used to cause wrongful loss or gain. Since there was no forgery, the question of harming reputation by committing forgery is also baseless.

Ld. Advocate for the accused number 2 is praying for the discharge of the accused from the offences mentioned in chargesheetunder section 409/420/468/469/472/120 B of IPC.

I have also heard the submission of Ld. APP for the prosecution. I do not find any significant submission on the part of the prosecution in support of the case.

There is a regular objection raised by the prosecution and a reference to the order passed by this court earlier regarding rejection of a similar prayer. It was submitted that the prosecution needs the opportunity of a trial to prove the charges against the accused persons. Ld. APP for the prosecution prays for framed charges against both the accused persons for committing the offence as mentioned in the chargesheet. It is submitted that the cognizance has already been taken and there is no reason to reassess the material in the case diary at this stage in favour of the accused persons.

After hearing both the parties perusing the case record including the order passed by this court earlier on 07/06/17, order dated 08/12/22 passed by honourable High Court in CRR 1722 of 2021, the statements recorded under section 161 of CrPC of the bank employees, other witnesses, perusing the seized document, statement of the accused I conclude with the following:-

1. That the de facto complainant and accused Debasish Mukhapadhyay of the husband-and-wife. During their peaceful and healthy marital relationship, they had invested money in Fixed Deposits in Dena Bank in joint names. Accused Debasish Mukhapadhyay and accused Dibya Lal, who were employees of Dena Bank and worked in the same branch. Out of a good relationship as colleagues and at the request of Accused Number 1, Accused Number 2 withdrew the Fixed Deposit on Bearing Number 024766025270, which was in the names of Ananya and Arka on 21-04-2014. The maker of the Fixed Deposit was accused Debasish Mukhapadhyay, and the same was due for maturity on 20.10.14.
2. No doubt, accused number 2 helped accused number 1 in withdrawing the premature Fixed Deposit lying in the joint name of Ananya and Arka without following due process of banking rules, but I do not find any bank transactions or any other material collected by the investigating officer from which it can be said that the accused number 2 received benefit either from accused number 1 or from the actual beneficiaries of the Fixed Deposits.
3. During the investigation of the case, the investigating officer did not seize any question document for verification of the forgery allegedly committed by accused number 2. The document in which accused number 2 signed for withdrawing the Fixed deposit was not seized. No document was sent to the expert for verification of signature handwriting or thumb impression, as the case may be. May all the allegations of the complainant, impleading sections 468, 469, and 471 read with Section 120B of the IPC, appear to be a tailoring job by an unprofessional tailor without having sufficient cloth to do it.
4. Hatching a conspiracy is itself a crime. In the chargesheet, the investigating officer claimed that accused number 1 and accused number 2 had conspired between them in order to encash the premature Fixed Deposits of Ananny and Arka. Behind every conspiracy there is a motive. In the chargesheet the investigating officer was unable to make it clear under four circumstances and to achieve what fruit from the crime accused number 2 has participated in the conspiracy particularly when he unable to substantiate that accused number 2 has received any fruit or benefit out of such crime and conspiracy.

5. In the same line, the investigating officer could not substantiate the claim that the accused has committed the offence of cheating with the de facto complainant and her son. No primary document of forgery was seized, and the same was sent to examination to find out what kind of forgery was committed. Without forgery, impersonation and with a motive offence under section 420 of IPC, cannot be labelled against accused number 2.

I find that the entry of this accused person is merely an incidental. The main dispute between the de facto complainant and accused number 1 is a matrimonial dispute. This accused, number 2, was impleaded as an accused due to the encashment of one of the Fixed Deposits of the maker prior to its maturity without obtaining the consent of the holder of the said Fixed Deposit. There may be allegations of negligence on the part of the accused number 2 in carrying out her duty, but such an act or omission does not fall under the definition of a crime. The bank may, by taking appropriate action, identify and punish the relevant person as per banking rules and the employment contract to compensate for the loss caused to the de facto complainant. The enquiry report of the banking authority is entirely indicative that there was no negligence on the part of the accused 2 in passing such a fixed deposit for withdrawal, depriving the de facto complainant and transferring the money in favour of the accused no.1.

Be that as it may, I think the accused, number 2, Dibya Lal, should be discharged from the offences charged in C.S. No. 291/15 dated 31/10/15 under Sections 409, 420, 468, 469, 471, and 120 B of the IPC.

After considering all the facts presented before me, assessing the material in the case diary, the point of law regarding the responsibility of a bank employee towards the deposited money and its handling and also considering the actual matrimonial dispute, I am of the opinion that there is insufficient material and ground against the accused Dibya Lal (accused no.2) to frame the charge under Section 409, 420, 468, 469, 471, and 120 B of the IPC.

Hence, the prayer made by accused Dibya Lal (accused no.2) for her discharge under section 239 of Cr.P.C from the alleged offence under Sections 409, 420, 468, 469, 471, and 120 B of the IPC is allowed on contest and thereby accused Dibya Lal (accused no.2) is discharged under section 239 of Cr.P.C.

The surety is also discharged from its liability of bond.

Accused no1 Debabsish Mukhapadhyay is directed to appear on the next date fixed.

Fix 17.06.25 for framing Charge against Accused no1 Debabsish Mukhapadhyay.

D/C

CJM, Asansol

Chief Judicial Magistrate
Asansol.