

**Special 43 of 2024**

CNR No.WBHW01-00-1047-2024

Present: Sonia Majumdar

1<sup>st</sup> Special Judge, Howrah

J.O. Code – WB01128

Order no. 24 dated 24.01.2025.

1. The is fixed for order.

Accused Vikash Mundhra is produced through V.C. from Howrah District Correctional Home.

2. The application U/s.227 of the Code of Criminal Procedure, 1973 (hereinafter, the Code) taken out praying for an order of discharge the accused/petitioner Vikash Mundhra from the instant case i.e. from Special Case no.-43 of 2024 arising out of M. P. Ghora P.S. case no.-155 of 2023 dated 17.07.2023, is taken up for hearing.

3. In this application, it has been recited that the accused/petitioner has been implicated as an accused on the basis of a written complaint filed by one Niranjana Mundhra, one of the partners of 'Q' Bazar India L.L.P. having registered office at 6 & 6/1 Gurgola Ghat Road, 1<sup>st</sup> floor, M.P. Ghora P.S., alleging commission of offence by the petitioner punishable U/s.420/406/468/471/409 of the I.P.C.

4. The brief fact of the case is that the complainant Niranjana Mundhra, one of the partners of 'Q' Bazar India L.L.P. having registered office at 6 & 6/1 Gurgola Ghat Road, 1<sup>st</sup> floor, M.P. Ghora P.S., had employed and entrusted the accused/petitioner with the management of the finances of his company as a Manager. By taking advantage of the post, entrusted to the petitioner, the petitioner has misappropriated and defalcated huge amount of money and surreptitiously transferred the said amount from the accounts of the said company to other bank accounts through various false transactions. The accused/petitioner dishonestly and fraudulently transferred money to his personal account siphoning off an amount exceeding Rs.1,00,00,000/- (rupees one crore). Subsequently, on the basis of such written complaint, M. P. Ghora

P.S. case No.155 of 2023 dated 17.07.2023 was started. After completion of investigation the concerned I.O. submitted charge sheet vide no.-243/2023 dated 31.12.2023 U/s.420/406/468/471/409/409 of the I.P.C. In this case, the bail application of this accused person was rejected by the Hon'ble High Court Calcutta as well as by this court. After commitment, when the case was posted for consideration of charge, the accused person filed the application for discharge U/s.227 of the Cr.P.C.

5. During argument, Ld. Lawyer for the accused person has submitted that the accused/petitioner was employed in 'Q' Bazar India L.L.P. which is Limited Liability Partnership being private in nature and not a government company and being an employee of the said LLP, the accused/petitioner was supposed to handle specific affairs of the said company as per direction of the Directors who were in actual control of the accounts and finance of the company. Ld. Advocate for the accused has further argued that according to Section 409 it is an offence of criminal breach of trust by public servant and this accused/petitioner is not a public servant but an employee of a Limited Liability Partnership company. So, this accused person does not come within the purview of Section 409 of the I.P.C. Therefore, it is contended by the Ld. Advocate for the accused that this accused must be discharged from the Section 409 of the I.P.C.

It is further submitted by the Ld. Advocate for the accused/petitioner that the accused does not fall within the definition of "Public Servant" as envisaged U/s.21 of the I.P.C. and therefore, the charge U/s.409 I.P.C. is unsustainable and to constitute an offence U/s. 409 of the I.P.C., the essential ingredients are the entrustment of property and the contents of the complaint filed by the complainant nowhere discloses or reflects any evidence to show that the petitioner was the authorized signatory. The accused person is simply an employee of a private firm and not a public servant under any government. Ld. Defence counsel has argued that in paragraph-3 of the written objection, filed by the de facto complainant it is submitted that "Q" Bazar India LLP is a Limited Liability Partnership firm and is a private company and therefore, Section 409 is not applicable. He has argued that "Q" Bazar India LLP is a

public limited company and it should be guided by the companies Act and not under LLP and therefore, Section 409 is not applicable and rest of the Sections under I.P.C. are Magistrate triable. Thus, Ld Lawyer for the accused person has now prayed for discharge of the accused person.

6. Ld. Spl. P.P. in charge has argued that the accused person was the Manager of “Q” Bazar India LLP i.e. Limited Liability Partnership firm which is registered under Limited Livability Partnership Act, 2008 and as a Manager he was entrusted to deal with financial matters of the company which includes working as an agent of the said LLP by taking loan from bank, invest the share in the share market and employ person involved in it. He has argued that by taking advantage of his position, he used to make false entries in the books of accounts and has manufactured several fraud documents and transferred crores of money to several other accounts which are related to him and therefore, manipulated the same to make wrongful gain for himself and his such act of misappropriation was revealed during audit by the said LLP.

He has further argued that a Limited Liability Partnership Firm is under Central Act and thus administration and rules of this company are governed under Central Act – 6 of 2009 passed and enacted by Parliament of Republic of India. Admittedly, the accused was an employee of the company which was established under LLP which is under Central Act and he has used his power and post to misappropriate Rs.3,05,58,551.66 by forging documents and accounts and cheating and by way of criminal breach of trust. As against the question raised by the defence that the accused is not a public servant and thus this court has no jurisdiction to try this case, he has submitted that Section 21(12) (b) of the I.P.C. provides that Public Servant denotes – every person – b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Govt. company as defined in Section 617 of the Companies Act, 1956. Here, “Q” Bazar India LLP which is established under the Limited Liability Partnership Act governed by the Central Act 6 of 2009. Therefore, he prays for rejection of the petition of the accused for discharging from Section 409 of I.P.C.

7. Ld. Lawyer appearing on behalf of the de facto complainant has submitted that the accused/petitioner was entrusted with the management of finance of the said company including unhindered access to the various bank accounts and funds of the said company of an amount exceeding rupees three crore (30,000,000/-) was defalcated by him to eleven other accounts which were all seized and sealed. He was also authorized to make payments on behalf of the said company and when the de facto complainant conducted enquiry, it is revealed that the accused person, taking the advantage of his position as Manager, had siphoned off the huge amount. He used to make false entries and forge books of accounts. He regularly made false entries in the books of accounts and manipulated the same to make wrongful gains for himself. He was arrested, all the accounts were seized and sealed and charge sheet has been submitted against him after proper investigation. So, he has prayed for rejection of the application of the accused for discharge. In this connection he has referred to the case of Narindra Kumar Jain Vs State of Madhya Pradesh AIR 1996 Supreme Court 2213 and C.R.R. 3417 of 2022 Anuj Sharma Vs State of West Bengal and Another.

8. In reply, Ld. Advocate for the defence has stated that “Q” Bazar India is a partnership firm and the accused is a Manager and not a public servant or government agent and the referred cases are not applicable here.

9. Heard all sides. Perused the application as well as the record and the decisions. Considered.

On consideration of the same, it appears from the record that the written complaint was lodged by Sri Niranjan Mundhra, one of the partners of ‘Q’ Bazar India L.L.P. on 17.07.2023 before O.C., M. P. Ghora P.S. against the accused person Vikash Mundhra and accordingly, a case U/s.406/420 I.P.C. was started against him. It also comes out that there is allegation of misappropriation of money of exceeding of Rs. 1 crore from the said company by the accused person in pursuance of taking advantage of his position. It also appears that after due investigation, charge sheet has been submitted against

this accused person U/s.420/406/468/471/409 of the I.P.C. after observing due course of law. It also comes out that the bail application of this accused person has been rejected by this court as well as by the Hon'ble High Court, Calcutta.

10. According to Section 409 of I.P.C. "Whoever, being in any manner entrusted with property, or with any dominion over property in his capacity of a public servant or in the way of his business as a banker, merchant, factor, broker, attorney or agent, commits criminal breach of trust in respect of that property, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years and shall also be liable to fine.

Now the word "Public Servant" has been defined U/s. 21 of I.P.C. According to Section 21 – the word "Public Servant" denotes a person falling under any of the description hereinafter following namely - .....

Twelfth, - Every person -

(b) in the service or pay of a local authority, a corporate established by or under Central, Provisional or State Act or a Government Company as defined U/s.617 of the Companies Act, 1956 (1 of 1956).

11. Here, in the present case, admittedly "Q" Bazar India LLP is a Limited Liability Partnership which is registered under the Limited Liability Partnership Act, 2008 under the purview of Central Act of 6 of 2009. According to Section 2(d) of the said Act, body corporate means a company as defined in Section 3 of the Companies Act 1956 and includes a Limited Liability Partnership registered under this Act.

Admittedly, this accused person worked as a Manager of the "Q" Bazar India LLP. and accordingly he was entrusted to act as agent of the said LLP. and accordingly, he worked as a Public Servant within the meaning of Section 21 (12) (b) of I.P.C.

Moreover, there are sufficient ground to presume that the accused person has committed the offence and here, prima facie case has been made

out against the accused person. In the case of State of Rajasthan Vs Ashok Kr. Kashyap reported in 2021 SCC online 314, the Hon'ble Court has opined that-  
Court should not hold mini trial at this stage.....

Now, before going to delve into the contour of the controversy, it would be wise to quote the provisions of S. 239 of the Code which is as follows :

S. 239. When accused shall be discharged : - If , upon considering the police report and the documents sent with it under section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being, the Magistrate Considers the charge against the accused to be groundless, he shall discharge the accused and record his reasons for so doing.

Now, admittedly, while taking dealing with application either U/s. 227 or U/s. 239 of the Code or while taking up the matter for consideration of framing charge, Judge cannot act merely as a post office or mouthpiece of the prosecution and the court has to consider the broad probabilities of the case, total effects of the statements (recorded U/s. 161 of the Code) and documents produced placed before the Court and basic infirmities appearing in the case and so on but it does not mean that the Judge shall make roving enquiry into the pros and cons of the matter and he shall not hold mini trial.

Court has power to sift and weigh the evidence for the limited purpose of finding out whether or not a prima facie case against the accused has been made out, whether material placed before the court discloses grave suspicion against the accused person which has not been properly explained and in this regard, judgments of Profulla Sonal reported in AIR 1979 SC 366, Dilawar Babu reported in AIR 2002 SC 564, S Ajjan Kumar reported in (2010) 9 SCC 368, Sonu Gupta reported in (2015) 3 SCC 424, Arun Kumar reported in (2015) 2 SCC 417 and also the judgment of Ashok Kr. Kashyap (supra) may be referred to.

Hence, on consideration of the facts and circumstances of the case and on scrutiny of the prima facie documents on record, this court has to hold that prima facie case against the accused person has been made out and there is no

cogent reason before the court to hold that the charge against the accused is groundless and hence, it is held that this court does not find any merit in the application of the accused person taken out under section 227 of the Code.

Consequently, it is held that the application taken out by and/or on behalf of the accused person being devoid of merit cannot be entertained.

Hence, it is

Ordered

That the application taken out by and/or on behalf of the accused person U/s. 227 of the Code is hereby dismissed on contest.

To 12.02.2025 for consideration of the charge.

Dictated & Corrected by me

Spl. J.

1<sup>st</sup> Special Judge, Howrah.