

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

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 2767 OF 2017

**SRI KAUSHIK SEN
-VS-
STATE OF WEST BENGAL & ANR.**

For the Petitioner	: Mr. Arpit Choudhury, Mr. S.K. Poddar Mr. M.K. Poddar
For the State	: Mr. Ranashis Mukherjee, Mr. Anindita Mukherjee
For the P.F. Authority	: Mr. Shiv Chandra Prasad
Reserved on	: 28.08.2026
Pronounced on	: 08.09.2026

UDAY KUMAR, J.: –

1. The delicate intersection between statutory social-security compliance and the invocation of criminal machinery under the penal code brings forth intricate questions regarding accountability, economic default, and the discretionary limits of judicial intervention. The present revisional application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973, has been preferred by the petitioner, Sk. Kaushik Sen, assailing the entire criminal proceeding arising out of G.R. Case No. 2329 of 2010 corresponding to Titagarh Police Station

Case No. 240 dated June 2, 2010, under Sections 406 and 409 of the Indian Penal Code, 1860, including Chargesheet No. 444 dated July 27, 2010, the order of cognizance dated August 10, 2010, and all consequential proceedings pending before the Court of the Learned Judicial Magistrate, 3rd Court at Barasat.

- 2.** The factual narrative unfurls from a cinema exhibition enterprise known as M/s Debasree Cinema, originally established in 1991 at 22/1, Sahid Mangal Pandey Sarani, Barrackpore, by the petitioner's father for the commercial exhibition of feature films. Following the untimely demise of his father on November 9, 1992, the sole proprietorship devolved upon and was managed by the petitioner, who endeavoured to run the establishment diligently under adverse economic realities. However, with the rapid commercial expansion of modern multiplex cinema complexes and the ubiquitous penetration of home television across households, single-screen cinema halls throughout the region suffered a catastrophic collapse in viewership. M/s Debasree Cinema inevitably succumbed to these insurmountable financial pressures, forcing the petitioner to permanently shut down the establishment and formally surrender its cinema license with effect from November 11, 2014, long after having cleared all outstanding employee salaries, terminal wages, and statutory dues.
- 3.** The criminal machinery was set into motion upon a letter of complaint dated June 2, 2010, lodged by one Ratan Bhattacharjee, Enforcement Officer attached to the Employees' Provident Fund Organisation (EPFO), Sub-Regional Office, Barrackpore. The core essence of the FIR was that

during an official inspection conducted on June 02, 2010, it was detected that the petitioner, as the employer responsible for the conduct of the establishment's business, had deducted a sum of Rs. 20,128/— representing the employees' share of provident fund contributions for the period spanning January 2010 to April 2010—from the wages of the workmen, but failed to remit the same to the statutory fund within the strict timeline prescribed under Paragraph 38 of the Employees' Provident Fund Scheme, 1952, read with Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. This active deduction of employees' wages coupled with non-remittance directly attracted the penal consequences of criminal breach of trust, punishable under Sections 406 and 409 of the Indian Penal Code, 1860.

4. Crucially, it remains an unassailable and indisputable matter of record that in June 2010 itself—a month before the investigating agency finalized its probe and submitted Chargesheet No. 444 on July 27, 2010—the petitioner deposited the entire alleged defaulted amount of Rs. 20,128/- towards the employees' share of provident fund contributions via official bank challans. Despite the complete financial deficit having been made good and the statutory dues fully liquidated, the investigating agency mechanically proceeded to file the chargesheet, and the Learned Magistrate mechanically took cognizance under Sections 406 and 409 IPC on August 10, 2010, completely ignoring the reality that no pecuniary loss or unpaid statutory liability survived.

5. Learned counsel for the petitioner anchored the plea for quashing on the premise that the foundational elements of criminal breach of trust, specifically dishonest misappropriation under Section 405 IPC and *mens rea*, are completely absent from the four corners of the chargesheet. To sustain a charge of criminal breach of trust, the prosecution must legally establish that the accused was entrusted with property or dominion over it, that he dishonestly misappropriated or converted it to his own use, and that he did so with a culpable mental state or *mens rea*. A bare perusal of the FIR, case diary, and chargesheet reveals a complete and total absence of any material demonstrating that the petitioner was entrusted with any property in a manner that attracted criminal misappropriation, or that he converted the funds for personal use or exaggeration. The temporary delay in remittance arose purely out of acute business distress, liquidity crunches, and commercial losses faced by a struggling single-screen cinema, which cannot be equated with dishonest intent or criminal conversion.
6. Placing heavy reliance upon paragraph 13 of *N. Sridhar v. State of Telangana* [2026 SCC OnLine TS 6154], the petitioner contended that mere non-payment of statutory dues, unaccompanied by independent material demonstrating fraudulent intent, does not automatically constitute an offence under Section 406 IPC. Furthermore, citing paragraph 53 of *Prakash Gupta v. Securities and Exchange Board of India* [(2021) 17 SCC 451], it was argued that where the principal economic objective of a statute has been satisfied through restitution

and the continuance of a criminal trial offers a remote prospect of conviction, the inherent powers under Section 482 CrPC ought to be invoked to prevent an abuse of the judicial process.

7. This position is further reinforced by an unbroken line of authoritative judicial pronouncements, including *Kartick Chandra Das & Anr. v. State of West Bengal* (2016 SCC OnLine Cal 5627), *Air Transport Corporation & Ors. v. State of West Bengal* (2006 SCC OnLine Cal 164), *Atelier Fashion Flash Pvt. Ltd. v. Provident Fund Inspector* (2014 SCC OnLine Del 2853), and *Adoni Cotton Mills Ltd. v. Regional Provident Fund Commissioner* [1995 Supp (4) SCC 580], wherein it has been consistently ruled that where the entire defaulted amount has been deposited subsequent to the initiation of the case, the primary welfare object of the statute stands fulfilled, and continuing the prosecution serves no useful public purpose, consuming judicial time and resulting in an abuse of the process of court.
8. Conversely, learned counsel for the State and Opposite Party No. 2 fiercely resisted the petition, arguing that the statutory default crystallized the moment the employer withheld deductions beyond the statutory 15-day window mandated by the Employees' Provident Fund Scheme. Relying heavily on paragraphs 7 and 17 of the landmark ruling in *People's Union for Democratic Rights (PUDR) v. Union of India* [AIR 1982 SC 1473], the opposite parties emphasized the sacred, non-negotiable character of labour welfare legislation, contending that statutory dues and wages are not private commercial floats to be manipulated or delayed at an employer's convenience.

9. The opposite parties maintained that the core legal pillar of the prosecution's case rests upon the statutory deeming fiction embodied in Explanation 1 to Section 405 of the Indian Penal Code, which specifically governs provident fund contributions. The said provision explicitly dictates that an employer who deducts the employees' contribution from their wages for credit to a provident fund is legally deemed to have been entrusted with the amount so deducted, and if they make a default in payment of the said contribution to the fund in violation of the law, they shall be deemed to have dishonestly used the amount in violation of a direction of law. Thus, in a provident fund prosecution, the State is relieved from establishing entrustment through general principles, as the Legislature has explicitly codified the creation of entrustment and deemed dishonest use upon the occurrence of a default, a principle echoed by the Calcutta High Court in *Ajay Jalan & Ors. v. State of West Bengal* (2018 SCC OnLine Cal 1367).
10. The State further submitted that a subsequent payment does not retrospectively erase or cure an initial statutory default. Permitting an employer to retain employee contributions beyond the statutory period and subsequently escape penal accountability simply by paying up after detection would dilute the protective shield of social-security legislation and incentivize employers to treat workers' statutory savings as an interest-free overdraft facility. This position is fortified by a catena of binding judicial pronouncements of this Hon'ble Court, including *Jai Kishore Singh v. State of West Bengal* (2015 SCC OnLine Cal 7118), *Tapan Biswas v. State of West Bengal* (2017 SCC OnLine Cal 11603),

and *M/s Innovative Commodities Pvt. Ltd. v. Sri Sankar Chakraborty* (2021 SCC OnLine Cal 3077), holding that subsequent restitution cannot automatically wipe out criminal liability or warrant threshold quashing, serving at best as a mitigating circumstance during sentencing.

11. The rival contentions advanced by the respective parties give rise to the following core questions for determination by this Court:

- i. Whether the pre-chargesheet deposit and full liquidation of defaulted Employees' Provident Fund contributions legally obliterate the essential ingredients of criminal intent, thereby warranting the compounding or quashing of proceedings under Sections 406/409 IPC?
- ii. Whether social-security infractions of this nature constitute public wrongs whose gravity precludes the exercise of inherent quashing powers notwithstanding subsequent restitution?

12. Addressing the first question requires a rigorous dissection of the foundational facts vis-à-vis the statutory anatomy of criminal breach of trust. The undisputed record reveals that the petitioner, as the sole proprietor of M/s Debasree Cinema, deducted a sum of Rs. 20,128/- from the wages of his employees between January 2010 and April 2010. The gravamen of the prosecution under Sections 406 and 409 of the IPC rests on the premise that this retention amounts to a criminal breach of trust. However, the petitioner deposited the entire sum through bank challans in June 2010, prior to the filing of the chargesheet on July 27, 2010.

- 13.** Learned counsel for the petitioner placed reliance on the ratio in *N. Sridhar* (supra) and *Prakash Gupta* (supra). In *N. Sridhar*, the Telangana High Court underscored that mere administrative delay or temporary non-remittance of statutory dues, unaccompanied by any deliberate animus of conversion or fraudulent personal use, fails to satisfy the foundational threshold of *mens rea* required under Section 406 IPC. Similarly, the Hon'ble Apex Court in *Prakash Gupta* articulated the principle that where the underlying civil or statutory default has been completely remedied and financial restitution made, the continuation of criminal proceedings transforms into an oppressive exercise in futility, particularly when the chances of an ultimate conviction are virtually non-existent.
- 14.** Per contra, Opposite Party No. 2 anchored its resistance on *PUDR v. Union of India* (supra), invoking the sacred constitutional mandate of labour rights and the absolute inviolability of statutory welfare payments. The ratio in *PUDR* establishes that withholding labour dues or denying rightful emoluments is an affront to human dignity and a violation of Article 23 of the Constitution. However, the ratio of *PUDR* operates in the realm of public-interest enforcement against systemic labour exploitation, which is distinguishable from the instant facts. Here, we are dealing with a localized, closed sole-proprietorship where the principal default amount was fully liquidated within weeks of discovery and long before the initiation of a formal trial.
- 15.** Under Explanation 1 to Section 405 of the IPC, failure to remit deductions creates a legal fiction of entrustment and misappropriation.

Yet, criminal law cannot be divorced from reality. When the economic objective of the penal statute namely, the recovery of workmen's dues, stands fully achieved pre-trial, the essential element of a dishonest continuous conversion evaporates. Applying the ratio of *Prakash Gupta* and *N. Sridhar* to the present case, the pre-chargesheet restitution neutralizes the element of *mens rea*. Thus, the finding on the first question is answered in the affirmative: the complete pre-chargesheet liquidation of the defaulted sum, coupled with the absence of active misappropriation, effectively drains the criminal proceeding of its legal foundation.

- 16.** This second inquiry forces a delicate balancing act between the punitive deterrence mandated by social-welfare legislation and the remedial scope of Section 482 of the Code of Criminal Procedure, 1973. The opposite parties vehemently argued that penal provisions governing provident funds are designed to protect the vulnerable working class, and therefore, subsequent compounding or quashing sets a dangerous precedent that encourages employers to treat criminal law as a mere debt-collection agency.
- 17.** While this argument holds formidable theoretical weight in cases of persistent, recalcitrant, or fraudulent defaults, it fails to account for the unique factual contours of the present litigation. M/s Debasree Cinema was a legacy enterprise established in 1991 that suffered terminal commercial decay due to the advent of multiplexes and television, ultimately forcing its permanent closure and the surrender of its license in November 2014. The petitioner cleared all terminal dues, gratuity,

salaries, and provident fund accounts. The alleged default of Rs. 20,128/- occurred during a brief window of financial distress in early 2010 and was voluntarily deposited into the bank months before the chargesheet was even framed.

- 18.** When evaluating whether such infractions preclude quashing, one must look to the object of the inherent powers preserved under Section 482 namely, to prevent the abuse of the process of any court and to secure the ends of justice. If an employer has purged the default, restored the money to the statutory fund, and the enterprise itself has ceased to exist, compelling an individual to undergo the ordeal of a criminal trial serves no public interest, public morality, or deterrent value. It amounts to persecution rather than prosecution. The gravity of a social-security infraction is substantially mitigated when restitution is complete and unconditional prior to the commencement of trial proceedings.
- 19.** Therefore, the finding on the second question is answered in the negative: the nature of this infraction does not place it beyond the reach of the Court's inherent quashing powers. In the specific facts of this case, where restitution is complete and the enterprise is defunct, allowing the prosecution to limp forward would be an abuse of the judicial process.
- 20.** In light of the exhaustive legal analysis, the factual matrix establishing the pre-chargesheet liquidation of the entire defaulted amount of Rs. 20,128/-, and the application of the salutary principles enunciated in *Prakash Gupta* (supra) and *N. Sridhar* (supra), the continued

sustenance of the criminal proceeding against the petitioner is unmerited and constitutes a clear abuse of the process of the Court. The foundational element of *mens rea* stands neutralized by prompt restitution, and the permanent closure of the establishment renders the prospect of an ultimate conviction entirely illusory.

- 21.** Accordingly, the revisional application being C.R.R. No. 2767 of 2017 stands allowed.
- 22.** The impugned criminal proceeding in G.R. Case No. 2329 of 2010 arising out of Titagarh Police Station Case No. 240 dated June 2, 2010, under Sections 406 and 409 of the Indian Penal Code, 1860, including Chargesheet No. 444 dated July 27, 2010, pending before the Court of the Learned Judicial Magistrate, 3rd Court at Barasat, along with the consequential order of cognizance dated August 10, 2010, are hereby quashed.
- 23.** Any interim orders passed earlier stand vacated.
- 24.** There shall be no order as to costs.
- 25.** Let a copy of this judgment and order be communicated forthwith to the learned Trial Court for necessary information and compliance.
- 26.** Case diary, be returned to the Learned Counsel for the State.
- 27.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)