

Calcutta High Court - Appellate side

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Appellate side Case Details

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|---------------------|-----------------------------|--------------------|------------|
| Case Type | : WPA | | |
| Filing Number | : 18516/2024 | Filing Date: | 18-07-2024 |
| Registration Number | : 18655/2024 | Registration Date: | 22-07-2024 |
| CNR Number | : WBCHCA-035628-2024 | | |

Case Status

| | |
|--------------------|--|
| First Hearing Date | : 30th August 2024 |
| Next Hearing Date | : 03rd September 2024 |
| Stage of Case | : NEW MOTION 1 |
| Coram | : 265709HON'BLE JUSTICE RAJARSHI BHARADWAJ |
| Bench | : Single Bench |
| State | : West Bengal |
| District | : DINAJPUR UTTAR |
| Judicial | : MANDAMUS SECTION |
| Causelist Name | : Daily List |
| Not Before Me | : |

Petitioner and Advocate

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| 1) KRISHNAPADA @ KRISHNA PADA SARKAR Advocate- RANOJOY CHATTERJEE |
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Respondent and Advocate

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| 1) UNION OF INDIA AND ORS. |
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Acts

| Under Act(s) | Under Section(s) |
|--------------|------------------|
| | |

Subordinate Court Information

| | |
|-----------------------|-------|
| Court Number and Name | : --- |
| Case Number and Year | : 0 |
| Case Decision Date | : -- |
| state | : |
| District | : |

History of Case Hearing

| Cause List Type | Judge | Business On Date | Hearing Date | Purpose of hearing |
|-----------------|------------------------------------|----------------------------|--------------|--------------------|
| Daily List | HON'BLE JUSTICE RAJARSHI BHARADWAJ | | 30-08-2024 | NEW MOTION |
| Daily List | HON'BLE JUSTICE RAJARSHI BHARADWAJ | 30-07-2024 | 31-07-2024 | NEW MOTIONS |
| Daily List | HON'BLE JUSTICE RAJARSHI BHARADWAJ | 31-07-2024 | 01-08-2024 | NEW MOTIONS |
| Daily List | HON'BLE JUSTICE RAJARSHI BHARADWAJ | 01-08-2024 | 02-08-2024 | NEW MOTIONS |
| Monthly List | HON'BLE JUSTICE RAJARSHI BHARADWAJ | 02-08-2024 | 05-08-2024 | NEW MOTIONS |
| Monthly List | HON'BLE JUSTICE RAJARSHI BHARADWAJ | 05-08-2024 | 02-09-2024 | NEW MOTIONS |
| Daily List | HON'BLE JUSTICE RAJARSHI BHARADWAJ | 02-09-2024 | 03-09-2024 | NEW MOTION 1 |

Orders

| Order Number | Order on | Judge | Order Date | Order Details |
|--------------|----------------|------------------------------------|------------|----------------------|
| 1 | WPA/18655/2024 | HON'BLE JUSTICE RAJARSHI BHARADWAJ | 05-08-2024 | View |

Category Details

| | |
|------------------|------------------------------|
| Category | GROUP A (WRIT MATTERS) (1) |
| Sub Category | Police (19) |
| Sub Sub Category | POLICE INACTION/ACTION (1) |

OBJECTION

| Sr.No. | Scrutiny Date | OBJECTION | Compliance Date | Receipt Date |
|--------|---------------|--|-----------------|--------------|
| 1 | 19-07-2024 | All Objections are Complied | -- | -- |
| 2 | 19-07-2024 | Other Objection : LIST DATE 26/08/2024 IS A HOLIDAY | 08-08-2024 | -- |
| 3 | 22-07-2024 | All Objections are Complied | -- | -- |

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DISTRICT: UTTAR DINAJPUR

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. NO. 18655 OF 2024

IN THE MATTER OF:

An application under Article 226 of the
Constitution of India.

-AND-

IN THE MATTER OF:

Krishnapada @ Krishna Pada Sarkar,
son of Late Gourpada Sarkar, residing
at Raiganj Tulsipara, Post Office and
Police Station- Raiganj, District- Uttar
Dinajpur, West Bengal, PIN-733134.

...Writ Petitioner

-Versus-

1. Union of India, service through the
Secretary, Ministry of Home Affairs,
Government of India, Jai Singh Marg,
Hanuman Road Area, Connaught Place,
New Delhi, Delhi 110001.

2. State of West Bengal, service
through the Secretary, Department of
Home and Hill Affairs, Government of
West Bengal (Home Secretary), Home

Department, Nabanna 13th Floor, 325,
Sarat Chatterjee Road, P.S.- Shibpur,
District -Howrah, PIN-711102.

3. The Director, Central Bureau of
Investigation, having his office at Plot
No 5-B, CGO Complex, Lodhi Road,
New Delhi-110003.

4. The Additional Director General of
Police, Criminal Investigation
Department -West Bengal, having office
at Bhabani Bhawan,31, Belvedere
Road, Alipore Police Line, Alipore,
Kolkata, West Bengal, PIN -700027.

5. The Inspector, Anti Corruption Unit,
Uttar Dinajpur, having his office at
Karnajora, Raiganj, District- Uttar
Dinajpur, West Bengal, PIN-733130.

6. The District Magistrate-Cum-
Collector, District- Uttar Dinajpur,
having his office at Karnajora, Raiganj,
District- Uttar Dinajpur, West Bengal,
PIN-733130.

7. The Inspector-in-Charge,
Raiganj Police Station, having his office
at Thana Road, Raiganj, District- Uttar
Dinajpur, West Bengal, PIN-733134.

8. The Chief Medical Officer of Health, Uttar Dinajpur, having his office and Post Office at Karnajora Police Station- Raiganj, District- Uttar Dinajpur, West Bengal, PIN-733130.

9. The Secretary, Ministry of Health and Family Welfare, Government of India, Nirman Bhawan, Rajpath Area, Central Secretariat, New Delhi, Delhi 110001.

10. The Comptroller and Auditor General of India, Pocket-9, Deen Dayal Upadhyaya Marg, New Delhi- 110124.

..... Respondents

To

The Hon'ble T.S. Sivagnanam, Chief Justice and His Companion Justices of the said Hon'ble Court.

The humble petition on behalf of the petitioner named above,

MOST RESPECTFULLY SHEWETH:-

1. Your petitioner is a peace loving and law abiding citizen of this country and is having its office in the address mentioned in the Cause Title of this instant Writ Application. He is a Chartered Accountant by profession having his independent practice as the

Proprietor of a Chartered Accountant Firm namely M/S K.P. Sarkar and Co. having its office at 1 Number Mill Campus, Nisith Sarani, Raiganj, District- Uttar Dinajpur, West Bengal, PIN- 733134.

2. Your petitioner states that being a law abiding citizen, he had to face the untold sorrow of being falsely implicated in a case wherein he just rendered his professional services of a Chartered Accountant but he was forcefully crushed inside a case of corruption of wide amplitude without any fault of his. The facts of the case ran thus: There is a presence of a District Leprosy Society under the management of the respondent number 8 who is the Member Secretary of the said Society and the respondent number 6 is the Chairman of the said Society by virtue of his post. The respondent number 6 is also the District Vigilance Officer and under him the Anti Corruption Unit runs within the District of Uttar Dinajpur. The Society had received Rs. 48.25 lakh in 1994-95 and Rs.33.25 lakh in 1997-98 and so on as Special Grant-in-Aid from the Ministry of Health and Family Welfare (MOH & FW), Government of India with the specific terms and conditions imposed thereof in sanction letter regarding monitoring and utilization of fund for implementation project in compliance of the general financial rules of GOI, GFR-150, 151 and GFR-19A. As a result of which the respondent number 9 has also been made a party for the responsibility of monitoring the utilization sanctioned to Society as per the rules and term and condition thereof. The sanction of grant from any ministry of Government of India communicated to the concerned office of the Comptroller and Auditor General of India to discharges the duties of super impose audit applicable for grant above rupees twenty five lakh as per the provision of the section 14 of C & AG (DPC) Act read with Article - 149,150 and 151 of the constitution of India. It is within the power

and duties of C & AG auditor to review the financial statement audited by the Chartered Accountant and provide necessary instruction or direction thereof or made recommendation for penal measure to appropriate authority if required. There was a person namely Ramendra Nath Sanyal who was the UDC of the respondent number 8 and was entrusted with the job of maintaining Cash and Books of Account of the Society under the guidance and approval of both the respondent number 6 and respondent number 8 who are the Chairman and the Secretary of the said Society and the said UDC was in charge of the Cash Register from 27th March, 1995 to 30th October, 1998. There was some allegation of corruption in the management of the affairs of the said Society as a result of which the respondent number 5 under the management of the respondent number 6 started the enquiry. The then respondent number 8 was transferred to the Writer's Building as Deputy Director of Health Department. On 2nd August, 2001, the then in-charge of the respondent number 8 was called on by the respondent number 5 at Karnajora, Raiganj. On further scrutiny of the Cash Register of District Leprosy Society which was maintained by the said UDC, there appeared huge mal practice like over writing of amount, erasing of the amount and making some interpolation on the amount of the cash register on various pages without any authentication or initials of the respondent number 8 which amounts to defalcation of funds. It also appeared that some of the corrections in the entries in Cash Book were rectified with the initial of the then respondent number 8 which the said respondent number 8 denied by stating that the UDC forged his initials on the entries of the Cash Book.

3. Your petitioner further states that after summoning the respondent number 8, the then person in-charge of the respondent

number 8 lodged a complaint before the respondent number 7 against the then UDC which was treated as a First Information Report detailed Raiganj Police Station Case Number 258/2001 dated 04.08.2001 under Sections 467/468/471/477A/120B/420/409 of the Indian Penal Code, 1860 and as because the investigation involved allegations of corruption, the respondent number 5 under the aegis of the respondent number 6 took over the investigation of the First Information and the first thing which he did was that he arraigned the then respondent number 8 who was the de-facto complainant as an accused person. Therefore, the person who lodged the Complaint became an accused person in his own complaint that the respondent number 8 acted as both the de-facto complainant and accused person in the same case which is nothing but a farce and tainted the investigation as a malpractice in the first instance. After investigation the respondent number 5 filed a Charge Sheet against the then UDC of the respondent number 8, the then respondent number 8 and the petitioner of this instant writ application. Hence, the petitioner though was not an accused person initially but later on became the accused person and the allegation in the Charge Sheet was that the petitioner being the Chartered Accountant and auditor of the Account kept by the Society in conspiracy with the then UDC of the respondent number 8 made a contradictory Audit Report, Cash Book and Ledger Book with that as mentioned in the Cash Register of the District Leprosy Society of Uttar Dinajpur from 1995 to 1998. Excepting this allegation no whisper of any other allegation was made against the petitioner and solely based upon this report, the petitioner had to face the ignominy of a Trial which took an abnormal period of time to commence and end that is for close to twenty years the petitioner had to suffer. Finally, after recording

the evidence of close to six assigned witnesses, the Judgment was passed by the Court of Additional Sessions Judge, 1st Court at Raiganj, District- Uttar Dinajpur in T.R. Case No. 2 of 2010. After the Charge Sheet was filed under Section 409 of the Indian Penal Code, 1860 which involves an act of corruption by a Public Servant, the Case was committed for disposal before the aforesaid mentioned Court by the Court of Learned Chief Judicial Magistrate, Uttar Dinajpur. In the Judgment dated 26th June, 2020, the petitioner was held to be not guilty of the said offences and he was acquitted under Section 235 (1) of the Code of Criminal Procedure, 1973 which was not appealed against by the State of West Bengal which furthermore affirms the fact that the petitioner was indeed innocent and his involvement in the above mentioned case was on the basis of a larger conspiracy in order to shield the actual perpetrators who according to the petitioner is the office of the respondent number 6 and the respondent 5 whose complicity could not be thrown out of the window.

A copy of the relevant portion of the Charge Sheet wherein allegations against the petitioner has been mentioned and the Judgment dated 26th June, 2020 are annexed herewith and collectively marked as Annexure "P-1".

4. Your petitioner is aggrieved by the fact that he has been made a scapegoat in a case of corruption wherein there are various other stakeholders other than him. The facts on the basis of which the investigation was a sham and requires re-investigation are: Firstly, there is no whisper anywhere as to who filed the initial complaint of corruption on the basis of which the enquiry started, as per the Judgment it was mentioned that may be the respondent number 6 in the capacity of being the Chairman of the Society filed the

complaint but nowhere was the complaint produced as a result of which it was nothing but a mere perception. Secondly, the then respondent number 8 was made an accused person in a case wherein he was the de-facto complainant which is furthermore a travesty of justice and made the complaint a sham. Thirdly, implication of the petitioner in the said case was nothing but an eye wash, it is a trite that a Chartered Accountant being an independent practitioner is liable to give an opinion solely based upon the documents produced to him and it is the liability of the Management of a Society to truthfully render him all the accounts and prepare the financial statements and annual financial statements and if the same is not produced then solely the management is responsible and not the Chartered Accountant. The management includes both the respondent number 6 and 8 who are the Chairman and Secretary respectively. Moreover, the system of rendering of the accounts was faulty as because the book keeping was done in a Single System and not a double system (in a double system both credit and debit outflows are mentioned thereby making the procedure of auditing more transparent) as a result of which no annual financial statement could be prepared and no facts and figures of the annual financial statement even if prepared could be confirmed from the cash register. Fourthly, the allegation of the involvement of the respondent number 6 could not be thrown out of the window as because the allegation of corruption was against the Society which was under his Chairmanship and such allegations could not remove his complicity and also the investigation or enquiry was done by the respondent number 5 which was again headed by him. Therefore, the investigation of a Society which was under the Chairmanship of the respondent number 6 was done under his direct control which again makes the investigation a farce and a

perfunctory one and nestled with corruption. All these aspects were mentioned in a petition dated 8th March, 2021 filed by the petitioner for rectification of the Judgment dated 26th June, 2020 and the petitioner was furthermore shown as a UDC of the respondent number 8 which is incorrect to the core.

5. Your petitioner states that seventhly, in the judgment dated 26th June, 2020, it was mentioned in a paragraph that the Cash Register, Inventory List, Pass Book, Copy of Treasury Challan, Copy of Treasury Challan were all seized from the office of the Anti Corruption and Vigilance Unit and not from the Office of the respondent number 8 wherein it was ordinarily kept thereby making huge chances of tampering and contamination of the evidences at the behest of the respondent number 5 who is acting under the supervision of the respondent number 6 as a result of which the investigation could be termed as an outright false one. Based upon these facts and circumstances, the petitioner is filing this instant writ application before this Hon'ble Court so that a reinvestigation takes place of the First Information Report detailed Raiganj Police Station Case Number 258/2001 dated 04.08.2001 under Sections 467/468/471/477A/120B/420/409 of the Indian Penal Code, 1860 by the respondent number 3 or 4 by exploring all angles. It is furthermore important to mention herein that whenever any audit is conducted of an account of a Society like the one which is involved in this writ petition, the same needs to be doubly/cross checked by the pro forma respondent number 2 who is the respondent number 10 but the same was not done by the respondent numbers 5 to 8 which furthermore was the reason for which the petitioner was implicated wrongly in the case.

A copy of the petition dated 6th March, 2021, the documents relating to audit are annexed herewith and collectively marked as "P-2" and the petitioner also craves leave to submit the necessary rules and regulations relating to the role of the respondent number 10 at the time of hearing.

6. Your petitioner states that based upon these facts a writ application was filed before this Hon'ble Court detailed W.P.A. Number 27262 of 2023 but the same was dismissed by This Hon'ble Court vide Order dated 9th May, 2024 on the ground that if the petitioner has to allege the role of a third person in acts of corruption due to which he was falsely implicated in a case from which he had got his acquittal then he had to challenge his acquittal first and secondly on the ground that if the petitioner knew that someone was responsible for defalcation of funds then he ought to have filed a complaint against that person and the complaint would have been taken to its logical conclusion. Through this second writ application, the petitioner wants to ventilate his further grievance which was communicated to the trial court through his petition dated 20.01.2018 which was heard on 09.04.2019 after submission of another petition on 25.03.2019 stating the issues for delaying and denying of justice but not yet responded appropriately. The petitioner wants to ventilate his further grievances regarding the observation given thereon during the course hearing of the case W.P.A. Number 27262 of 2023 on 09/05/2024 by the learned counsel being a representing state and union Government as "misconceived prayer for reinvestigation" and "prayer made by the petitioner is absurd and vague" respectively. That aforesaid observations from the public servants as government representatives without applying judicious mind to uphold and apply the law in the protection public interest

and for prevention of corruption of public servants are undesirable and prejudicial for justice and against the views of the Government and policy thereof for zero tolerance towards corruption which is also the commitment to the public as per the demand thereof. Further the lawyers in private practice have primary obligation to serve their clients within the bounds of law. The aforesaid observation and mindset of legal counsel is undesirable, unethical, unprofessional and against public interest and confidence due to the fact of delaying and denying of justice which only provide the space and opportunity of growing the syndicate of corrupt public servants. To explain the duties, responsibilities and authority of the petitioner as auditor and respondent number 6, 8, 9 and 10 of this petition, point number 9 to 15 and other unlawful issues in brief of aforesaid petition dated 20.01.2018 are stated in the subsequent paragraphs.

7. Your petitioner states that the Ministry of Health & Family Welfare, Government of India released the grant-in-aid sanctioned by the President of India to the District Leprosy Society, Uttar Dinajpur in the year 1994-95-Rs.48.20 lacs, 1997-98-Rs.33.25 lacs, 1998-99- Rs.5.00 lacs, 1999-2000-Rs-15.03 lacs, 2000-01-Rs.11.00 lakhs and in 2001-02 Rs.14.28 lakhs. The government grant and interest earned thereon from bank account are the sources of fund the society for carrying on its activity and objectives.
8. Your petitioner states that as per the usual procedure, the sanction letter for each grant along with the condition and guideline applicable thereon is issued addressing to District Magistrate & Chairman of the District Leprosy Society and the copy of the same are forwarded to the respective field offices

headed by the Accountant General of the State and the Director of Audit, AGCR Building, New Delhi.

9. Your petitioner states that as per the provision of section 15 of the West Bengal Societies Registration Act 1961 and also as per the condition of the grant to follow guideline of the Government of India for accounting procedure revised and drawn up in 1984 based on the recommendation of an inter-ministerial working group and approved by the C & AG of India, the society has to maintain proper books of accounts, prepare the annual financial statements and get it approved at governing body meeting by putting the signature with seal of the respective Chairman and Member Secretary of the society and thereafter get it audited by the Chartered Accountants duly appointed as per rules applicable thereon. The copy of the Audit Report along with the annual financial statement certified by the Auditor, Chairman and Member Secretary are furnished to the Government of India. A separate fund utilization certificate in Form GFR-19A duly signed by Chairman/Member Secretary with stamp is also furnished thereto. The term proper books of accounts has been well defined in section 209 of the companies Act, 1956 which means, the account books maintained in double entry system and accrual basis. The double system recognizes the fundamental fact that a transaction is double-sided affairs debit and credit. Due to recording of both the aspect of each transaction, the debit part of transactions will always be found balanced by the credit part of the transactions. This system of accounting is defined as art of recording, classifying and summarizing in a significant manner and in terms of money transactions and event which, in part at least, of a financial character, and interpreting the result thereof. Cash Book, Ledger Accounts Books, Journal and Trial Balance

and Annual Financial Statement are the output of the double System of book keeping. Annual Financial Statement includes mainly Balance Sheet, Income & Expenditure Accounts and Receipt & Payment Account.

10. Your petitioner states that, as per the Accounting Standards Board (ASB) of the Institute of Chartered Accountants of India (ICAI), the responsibility for preparation of financial statements and for adequate disclosure is that of the management of the enterprise. The Auditor's responsibility is to form his opinion and report on such financial statements. It is to be stated that ICAI is one of the member of the International Accounting Committee (IASC) Further the International Standards on Auditing (ISA) "Objective and Basic Principles Governing Audit" issued by the International Auditing Practices Committee (IAPC) categorically states that –"While the auditor is responsible for forming his opinion on the financial statements, the responsibilities for preparation of financial statements are that of management of the entity. Management's responsibilities include the maintenance of accounting records and internal controls, the selection and application of accounting policies and safeguarding the assets of the entity. The audit of the financial statements does not relive management of its responsibilities". Section 209, 210 & 217 (2AA) of the Companies Act, 1956 also explained clearly maintenance of proper books of accounts and the responsibility of the management in this regard.
11. Your petitioner states that the Articles 149,150 & 151 of the Constitution of India read with the section 14 of the Comptroller and Auditor Generals (Duties, Power and Condition of Service) Act, 1971 specifies the duties and power to provide and approve the procedure and guideline of accounting and conduct the audit of

the society or body avail grant in aid for Rs 25 lakhs or more from consolidated fund of the Government of India or from any state. Further, the C & AG of India have the right to lay down the guideline for selection of Chartered Accountant (CA) for financial audit of that society or body, issue of directives to CAs about each audit if it think necessary on their review of the financial audit report and taking action for professional misconduct by blacklisting that CA firm from the panel of C & AG to debar from audit and report to Institute of Chartered accountants of India, New Delhi for initiating action as per the code of conduct of the Institute.

12. Your petitioner states that that the General Financial Rule (GFR) of the Government of India, Rule-150 specified that all grantee institution shall be open to inspection by the sanctioning authority and the accounts shall be audited by C & AG under section 14 of the C & AG (DPC) Act, 1971. As per Rule 151 of that GFR, the grantee institution shall submit the actual fund utilization certificate the prescribed Form- GFR-19A and annual audited financial statement are to be submitted to the concerned department within the prescribed time which along with the internal audit/inspection report of the department and the report received from C & AG are to be examined while sanctioning further grant to the grantee institution. In the case of irregularities or non-compliance of the laws, rules, regulation, and Govt. guideline, the department will be at liberty to take action for blacklisting such institution from future grant.
13. Your petitioner states that the audit report on the financial statements comprising Balance Sheet, Income and Expenditure Accounts and Receipt & Payments Account for each year for

alleged period of the District Leprosy Society, Uttar Dinajpur are absolutely correct which are in agreement with the proper books of accounts and authenticated records and document maintained and produced during the course of audit and annual financial statement reflect true & fair view of the state of affair of the Society.

14. Your petitioner states that the cash register, the very basis of this false case written after issue of vigilance investigation order on 30/04/2001 without following the principle of double system was seized by the vigilance inspector on 23/05/2001 as stated in the Charge Sheet of the case dated 30.09.2001. That said cash register was handed over to the accounts clerk and sent by official order of the then CMOH to the residence of Ex-CMOH at Barasat by office vehicle No -WB-60/ 428 on 26/05/2001 for addition, alteration, authentication whatever required in back date. The fact has been confirmed in the complaint cum FIR made by Ex-CMOH through the district magistrate on 02/08/2001 at the time while he was under the garb of vigilance investigation after seventeen of handing over his charges in January, 2000 to his successor Dr. Shyamal Kumar Jha appropriately without any question thereof as he was posted at Writers Building, Kolkata as Deputy Director of jail. The complaint was registered with Raiganj police station on 04.08.2001 as another case F.I.R-No-258/2001 as outcome of that vigilance investigation and that the said vigilance inspector having vested interest thereof was often appointed as I.O. of this case no GR-623/2001 and filed his charge sheet as 30.09.2001. So the facts and figure of Income & Expenditure and Balance Sheet cannot be confirmed or co-related with the cash register prepared or manipulated after three years or more from the date of audit from the point of view of accounting principle and timing difference

of the incidents. The facts of charge-sheet is self-explanatory to the reason of appointment of own subordinate staff having no technical knowledge, competency and independency for internal audit termed as local audit in the charge sheet, Signature verification and witness instead of appointing independent expert and framing of charge sheet of that false and unlawful prosecution without any communication or interrogation for hearing the views of auditor and the then Chairman of that society. Further, as stated in aforesaid charge sheet and F.I.R cum Complaint letter that the charges of cash and accounts including so called cash register handed over from Ramendra Nath sanyal, accused number-1, to Niranjn Das on 30.10.1998 as per the order of the management of the society (i.e respondent number 6 and 8) satisfactorily without any question thereof. Interestingly said Niranjn Das was appointed as one of three members of the local audit team as per the order of the respondent number-6 to create another document called Local Audit Report to support the charge sheet of aforesaid case. He was examined by the court as a witness of the case.

15. Your petitioner states that no copies of documents seized by the investigating agency as per the seizer list have been supplied to the accused, neither the same was produced before and obviously destroyed all including that so called cash register and local audit report build up as per direction of the DM/DVO for the purpose of false prosecution. It is also interesting DM/DVO in one hand silently charge sheeted the auditor of the District Leprosy Society on other hand being the Chairman of other societies appointed the same auditor without following guideline of GOI regarding audit and C.A Firms. Consequence of which case no.G.R-623/2001 has been developed without informing the same to C & AG and

concerned department of Ministry of Health and Family Welfare of the Government of India and state Government. No action from the end of C & AG and concerned ministry of Government of India as per GFR 150 & 151 and state Government as section 23 of the W.B Society Registration Act, 1961 has been found due to this fact. Foul playing on the part of the chairman is very prominent. Therefore no justice to the case can be provided without interrogating all the chairman of that period.

The copy of the order of This Hon'ble Court dated 9th May, 2024 is annexed herewith and marked as "P-3.

16. Your petitioner states that as soon as he came to know that he was falsely implicated in a case, he filed an application under Section 482 of the Code of Criminal Procedure, 1973 before This Hon'ble Court which was not entertained as per the Order dated 20th December, 2001. The Hon'ble High Court passed the order dated 16.10.2001 against application 1st accused u/s 439 of Cr. P.C and orders dated 26.11.2001 and dated 20.12.2001 were passed by same bench against petition filed by the 2nd and 3rd accused respectively under Section 482 of the Code of Criminal Procedure, 1973 as it then was. It is to be stated that as per the order dated 26.11.2001, the warrant of arrest of 2nd accused Ex-C.M.O.H and Member Secretary of the Society then posted at Writers Building, Kolkata as Deputy Director of jail was stayed with direction to serve notice to public prosecutor to list the same after two weeks. The case appeared in the list up to March, 2002 but nothing happened thereon and that stay order was in force in the trial court up to the year, 2012. Interestingly in the order dated 20.12.2001 for disposal of the petition filed on 14.12.2001 by undersigned petitioner, the 3rd accused, on same matter, direction

was given to surrender before trial court within three weeks knowing very well the consequences thereof. The aforesaid orders create serious doubt in the mind of every prudent person about the fairness, integrity and intention in the light of the principle and objective to provide natural justice to the citizen. Thereafter the bail petition under Section 438 of the Code filed before the trial court was rejected on 11.03.2003 and thereafter from the Hon'ble High Court on 24.06.2003. Ultimately the bail has been granted by the Supreme Court of India on 24.09.2004 and prior to that the warrant of arrest was stayed on the date of hearing of S.L.P on 13.02.2004 and accordingly the bail bond was executed on 29.11.2004. That a notice was issued to petitioner u/s 22 of the R. P. Act, 1950, vide memo no 1512(26)/610 dated 31.10.2005 for deletion of his name from voter list considering him absconding and not appearing before the court in spite of the aforesaid fact which are nothing but an incident of the disobeying of the order of the apex court. Copy of correspondence with the office of C.E.C.I, MOH & FW, D.M, and court orders are enclosed herewith which itself speak about the truth in the matter of fundamental rights of citizen for equality before law and the syndicate of corrupt public servants as biggest beneficiary corrupt system.

17. The petitioner furthermore states that after proper audit he has signed and delivered his audit report for the year 1994-95 and 1995-96 dated 14.06.1996, 1996-97 dated 17.09.1997, 1997-98 dated 13.11.1998, 1998-99 dated 17.06.1999, 1999-2000 dated 20.05.2000 ad 2000-01 dated 19.04.2001. As per the news published in local newspaper namely PRACHER dated 22/09/1999, the Comptroller and Auditor General of India conducted the Special Audit in September, 1999. No adverse comment on audit of Chartered Accountant firm up to the year

1998-99 or thereafter was informed to the concerned Chartered Accountant Firm or any other action as per C & AG (DPC) Act was taken thereof which shows that there was no anomaly in the audit report of the firm of the petitioner. There were some allegation as well as agitation in the locality regarding corruption of District Health Department which were published in several local newspapers such as Dainik Basumati dated 11th October, 1999, Pracher dated 22nd September, 1999, 30th September, 1999, 31st January, 2000 and onward. The main issues were cash for staff recruitment, supply of medicine, etc which were collected unlawfully to favour the candidates. To divert the attention of public from issue of corruption, the District Magistrate cum DVO issue the vigilance enquiry order against the Ex-CMOH on 30/04/2001 and appointed the vigilance inspector to undertake that investigation from the year 1995-01. The vigilance inspector is the subordinate staff of DM/DVO/Chairman of the society and that person was ordered to investigate the work and duties discharged by himself as a chairman of the Society who was joint signatory with the member secretary to operate bank account, annual financial statement and other documents of the society. In true sense the vigilance enquiry order was a conspiracy to divert the public attention from the allegation of corruption. The aforesaid case matter is very similar to the case of Association for Protection of public right and interest vs. State of Bihar, Patna High Court dated 26/03/1990.

18. Your petitioner states that the corruption in public administration dealt with the fund for public benefit is very common and serious issue. In the 1980s Rajiv Gandhi, then the Prime Minister of India, had said that for every rupee targeted towards welfare and poverty alleviation only a fraction, 15 paise, reached the intended

beneficiary. The Chief Vigilance Commissioner of India later added that of the remaining, "40 paise perhaps can be accounted for administrative overheads and 45 paise is pure corruption" In 2007, in the same context, deputy chairman of the Planning Commission Montek Singh Ahluwalia said that the amount that reaches the poor has reached 50.

19. That your petitioner refer another example of corruption from the book of the author Mr Naresh Chandra Saxena, IAS 'What Ails the IAS and Why it Fails to Deliver a case of blatant corruption is described below. "While working as Secretary, Rural Development, in GOI I wrote the following letter in 1998 to the R. S. Mathur, chief secretary, UP, which is self-explanatory: My dear Ravin, Two days back, I had gone to deliver a lecture at the IIPA, New Delhi for vertically integrated programme of Indian Forest Service Officers (all belonging to UP cadre and working in different districts of UP). During discussions, they complained that in many districts in UP, the Employment Assurance Scheme (EAS) funds are 'auctioned' by Collectors and DRDA authorities. Since EAS funds are not earmarked for any particular department and the nature of work is such that projects can be prepared by many departments, such as PWD, Agriculture, Horticulture, Soil Conservation, Forests, Minor Irrigation, etc., there is an informal 'bidding' among these departments, and whichever department is able to offer the highest amount of bribe to the Collector, is able to get EAS funds for the project. The bribe money is around 30 per cent of the total funds, according to the participants in the Course. It was also alleged that this money is shared with local politicians, intermediaries and officials of DRDAs. This does not include bribes and commissions which have to be shared internally between different officers of the department that gets the contract. The

general feeling among the participants was that between 50-60 per cent of EAS funds are thus spent on bribes and corruption and the real benefit to the people is thus reduced at least by 50 per cent. Since these are very serious allegations, levelled by officers working in the field, I thought I would bring it to your notice. You may like to organise technical teams to do cent per cent verification in a few randomly selected blocks. Yours sincerely, (N. C. Saxena)". This letter somehow got leaked to the press and was published as the front page top news in The Pioneer dated 10 February 1998, with the shocking headline, 'Corrupt officers auction public funds'. Hitting hard on the system, the article said, 'This is an auction no one has heard of. The auctioned item here is public funds running into several thousand Crores meant for the use of the rural poor. Both the auctioneers and the bidders are same: bureaucrats and politicians.' The article also quoted from CAG's report, 'the practice of fund auctioning was prevalent in other states as well. In an exhaustive investigation carried out last year, the auditors found that district collectors, BDOs and local politicians have been lining their own pockets with the project funds'. For better understanding of corruption of IAS Officials holding top most post, a list of top ten controversial issues and charges of corruption thereof shall be provided at the time of hearing of this instant Writ Application.

20. Your petitioner states further that a complaint letter was given to the respondent number 6 dated 13th July, 2004 which was not responded even though the same was received on 15th July, 2004. Further, in response to application dated 17.03.2006 seeking information under RTI Act the Ministry of Health and family Welfare (MOH & FW), GOI, about grant released to the society during the year from 1995 to 2000, the Ministry of Health and

family Welfare (MOH & FW), GOI, vide their letter dated 21.04.2006 informed that "no record are available in this ministry pertaining to said period in respect of DLS, Uttar Dinajpur. Another complaint letter was given to the Joint Secretary and Chief Vigilance Officer, MOH & FW, GOI on 28th November, 2018 which still remains un-responded. A number of petitions were filed in the Trial Court which were also not fruitful instead the case was dragged on like a chewing gum due to which the petitioner was highly prejudiced. Moreover, the prosecution was itself illegal and unlawful and therefore there was no question of challenging the judgment of acquittal of the petitioner given on 26.06.2020. The petitioner cannot be expected to challenge his own release as it shall make him a witness against himself which is against his Fundamental Rights as enshrined in Article 20 (3) of the Constitution of India. However certain apparent mistakes in the judgment of acquittal regarding the professional identity of the petitioner as Government employee as UDC of the CMOH, Raiganj instead of independent practicing Chartered Accountant rendered his professional services as auditor and furnished his audit report on the basis of examination of proper books of accounts and relevant documents duly authenticated by the management of the society. The aforesaid judgment was based on the wrong identity of the petitioner and the unlawful documents not related with his audit report called cash register which placed the perpetrator of the crime as public servant in safe side. Accordingly a petition filed on 06.03.2021 praying for permission to produce relevant documents before the court to establish that the petitioner was falsely and purposefully implicated in unlawful means. The dates fixed for hearing on 23.06.2021, 18.11.2021, 22.04.2022, 28.06.2022, 03.09.2022, 29.11.2022 and 17.11.2023 but not yet heard in spite several petition filed thereof next date hearing often

fixed on 30.09.2024. Based upon these further facts this writ application is filed before this Hon'ble Court.

21. Being aggrieved by and dissatisfied with the over action on the part of the respondent authorities particularly the respondent numbers 5, 6, 7, 8, 9 and 10 your petitioner beg to move this application under Article 226 of the Constitution of India, inter alia on the following:-

GROUND:

- I. For that the entire inactions of the respondent authorities (particularly the respondent numbers 5 to 7) are arbitrary and against the provisions of the Constitution of India.

- II. For that there has been violation of the Fundamental Rights: Article 14 for Equality Before Law (i) Bias included in Malice or ill-will, (ii) Permissible Classification, (iii) Doctrine of Natural Justice (Principle of Natural Justice) && (iv) Judicial Review-Policy decision of Union of India in respect of economic matters cannot be interfered with in the court of law. Article 19 is in relation with Freedom in various forms as enshrined therein. To life and personal liberty of the petitioner as enshrined in Article 21 of the Constitution of India as its right to live a life nestled with liberty has been violated through such motivated investigation.

- III. For that within the purview of the constitutional obligation the State has the bounden duty to protect the rights of the petitioner which it has failed to protect through such inaction.

- IV. It is submitted that more employees/office bearers of the society/ Dist. Health Department are involved in the present case and apparently there is a deliberate attempt on part of the Investigation Officer Mr. P.C. das, who happens to be a subordinate to the Dist. Vigilance officer i.e. the chairman of the Society, to shield them.
- V. A vital and material fact that admittedly as per charge sheet is that the cash register etc. were seized by the investigating officer on 23.05.2001 and per the contents of F.I.R these seized articles specially the cash register was admittedly in possession of the remaining two co-accused i.e. the main accused Ramendra Nath Sanyal and Mr. Anuj Kumar Bhattacharjee. The entire charge sheet is silent about this fact as to how these two main accused got access to and took into possession a case property which was already seized.
- VI. For that the impugned order is bad in as much as the Hon'ble High Court failed to consider that admittedly as per charge sheet the alleged forged signatures were verified by the employees of the Society /C.M.O.H office instead of an independent and scientific agencies further the local audit was done by the employee of the same society /Dist. Health Department instead of getting the same done by independent and scientific agencies and such audit was done by independent ,competent and qualified audit agencies ,it would definitely have proved the innocence of the petitioner and have brought to the book the real culprits and therefore the impugned order overlooking this fact is bad .
- VII. For that the Hon'ble High Court failed to see that the said society has received more than Rs. 25 lacks (Rs. twenty-five

lacks) towards grant alone in the financial year 1994-95 from the central govt., ministry of health. It is submitted that where a society/agency gets grants/ loans not less than Rs. 25 lakhs in a financial year, it is mandatory that C.A.G. shall audit the account for the relevant financial year and for a further period of two years. The C.A.G. has recommended any rectification in the audit report of the society. C.A.G. can also give direction to the auditor of the entity for future course of action. No direction from the end of C.A.G. on any information from the end of management of the society about any irregularities has been communicated to the petitioner till completion of financial audit for the year 2000-01 in the month of April, 2001.

- VIII. For that the impugned order is bad in as much as the Hon'ble High Court failed to consider that alleged cash register is not under double entry system of accounting and random entries made therein even after two to three year after audit during the course of Vigilance Investigation in May, 2001 cannot be basis for making income and expenditure account, balance sheet etc. as these are prepared on the basis of primary books of account maintain under double entry system of accounting.
- IX. For that the impugned order is bad in as much as the Hon'ble High Court failed to consider that audit report prepared by a qualified Chartered Accountant after proper verification of annual financial statement including balance Sheet, income and expenditure account etc., with the books of account, records and documents and which was provided and duly approved by the concerned authority is an

authenticated and valid document and cannot operate against the petitioner.

- X. For that a register society as per section 15 of the West Bengal Societies Registration Act, 1961 are required to maintain proper books of accounts (double entry system on accrual basis) and such society cannot be permitted to operate a cash register under single entry system in violation of section 15 of the West Bengal Societies Registration Act. Therefore also the impugned order is perverse.
- XI. For that the addition alteration, false entries over writings and cross- writings etc, as alleged to have been made in the cash register has been committed without the knowledge of the petitioner and that too after the completion and submission of the audit report and the said acts, if committed, were post audit manipulations and that the petitioner has no role directly or indirectly with tampering of records after submission of the audit report based on proper books of accounts in which transaction are recorded from documents authenticated by the management of the Society. Hon'ble High Court failed to consider this fact while passing ine impugned order.
- XII. Moreover, as per provisions of section 15 of the West Bengal Societies Registration Act, nothing is mentioned about the process of adoption of cash register in a particular and specific form. Thus, the veracity of the of the transactions entered in the cash register as would appear from the charge sheet has not and cannot in any way be interconnected with the audit report as both of them are considered to be separate entities. The cash register, therefore, cannot be

treated as proper book of accounts which have been so prepared without following the principle of double entry system of announcing and for all intents and purposes the same will be deemed to have made in contravention with the provisions of West Bengal Societies Registration Act and Accounting Standard (AS-1). Hon'ble High Court failed to consider this fact while passing the impugned order.

- XIII. For that the impugned order is bad in as much as it failed to take not of the fact that the same Hon'ble High court has passed an order staying arrest of the Ex. C.M.C.H. and member secretary of the society against whom there are serious allegations in the Charge Sheet.
- XIV. For that the impugned order is non speaking order and been passed without application of judicious mind.
- XV. For that the Hon'ble High Court while passing the impugned order did not consider the fact that name of the petitioner was not there in the FIR which lodged after a gap of five years in the year 2001 by the member secretary (Ex-C.M.O.H.) of the society and later Charge Sheeted and against whom a vigilance enquiry was pending in respect of the same matter. It is submitted that there is no prima facie evidence against the petitioner nor there is any disclosure statement on the basis of which the petitioner could have been made an accused.
- XVI. For that even as per the charge sheet filed the petitioner should have been made a witness to the case and not an accused since the cash book and ledger book allegedly prepared by him and audit report submitted were not verified

with the basic and primary documents by the prosecution and more over the audited accounts i.e. audited financial statement viz. balance sheet, income and expenditure account was authenticated and approved by the chairman and member secretary of the society by putting their respective signatures and seals thereon and audit report thereon prepared by the petitioner. Therefore there is no question of petitioner having committed any offence alleged.

XVII. For that the Hon'ble High Court failed to take note of the fact that cash book and ledger book allegedly prepared by the petitioner book contained only those entries which were approved by the office bearers of the society including the chairman and the member secretary: These entries were based on valid, authenticated document and approved by the office bearers of the society. These entries were found to be reconciled with the bank statement of the society: Moreover the audit report prepared by the petitioner was to be submitted with the Registrar of the society and income tax department secondly neither the chairman of the society nor registrar of society nor Ministry of Health, Govt. of India nor C.A.G. audit nor state legislature nor Public Account Committee found any discrepancy in the audit report prepared by the petitioner and therefore there is no question the petitioner having committed any offence as alleged and should have been granted anticipatory bail.

XVIII. For that the petitioner submits that the petitioner, at no point of time, had any fraudulent and mala fide intention to resort to conniving and colluding for gross misappropriation of funds as alleged in the said charge sheet as because if at

all the petitioner had any such intention then the audit report so prepared by the petitioner and the cash register of the District Leprosy Society prepared fabricated by the officials at the office of the C.M.O.H., Raiganj and would not have been contradictory to one another, which fact has already been specifically and clearly stated in the said charge sheet. The variance and/or manipulation, if any as has been alleged makes it amply clear beyond any shadow of doubt that all were made after completion of audit report and that your petitioner is totally innocent and has never resorted to commission of any offence as has been leveled against the petitioner in the charge sheet. This fact was also not taken into consideration by the Hon'ble High Court.

XIX. For that impugned order is bad and erroneous in as much as the Hon'ble High Court failed to consider that That, no copies of documents seized by the investigating agency as per the seizer list have been supplied to the petitioner neither important witness have been produced including the I.O. of the case. Further the petitioner has been referred to as a Government. Employee, U.D.C, C.M.O.H. office, Raiganj, ignoring his independent professional identity as a practicing Chartered Accountant, purposefully.

XX. the petitioner has followed the basic accounting standard while preparing the audit report it is submitted that textbooks on Advanced Accounts lays the Accounting Standards wherein it states about the Responsibility. Based on the recommendations of an inter-ministerial working group a revised accounting procedure was drawn up in 1984 and was approved by the C & AG of India. The main

modifications brought about in the revised procedure for SFDA and approved for the DRDA in 1984 provided that the accounts should be maintained on commercial principle on Double Entry System. The Agencies should maintain annually among others the following which are Receipt and Payment Account, Income and Expenditure Account and Balance Sheet. Specific time limits were incorporated for compilation and submission of annual accounts. They are to be after approval by the compiled by the DRDA by 30th June. Governing body the accounts shall be got audited by the Chartered Accountants or any other Auditor as envisaged under the Rules by 31st August. A copy of such Audit Report along with annual statement of Accounts certified by the Auditor and the Chairman of the Agency shall be furnished simultaneously to the Government of India and the State Government not later than 30th September (Accounting procedure for district rural agencies/societies as amended in 2001). Article 150 of the Indian Constitution - Form of Accounts of the Union and of the States. The accounts of the Union and of the States shall be kept in such form as the President may, on the advice of the Comptroller and Auditor-General of India, prescribe. Article 149 relating with the preparation of financial statements and adequate disclosure is that of the management of the enterprise. The Auditor's responsibility is to form his opinion and report on such financial statements. It is absolutely necessary to rely upon double entry system for preparing Annual Account and auditor's report thereon.

22. The records of the case are lying with the respondents within the appellate jurisdiction of this Hon'ble Court.

23. Your petitioner further state that any further letter of demand for justice would be nothing but an empty formality.
24. The relief sought for herein, if granted will afford complete justice to the petitioner.
25. There is no other alternative or efficacious remedy available to your petitioner than to prefer this application and the relief(s) prayed for herein, if granted will give your petitioner full and complete relief.
26. On the self same facts and cause of action no other application has been filed by your petitioner before this Hon'ble Court, or any other appropriate Court.
27. This application is made bona fide and for the ends of justice.

In the aforesaid circumstances it is most respectfully prayed that Your Lordships may graciously be pleased to issue:-

a) A writ of or in the nature of mandamus directing the State Respondents specifically the respondent numbers 3 or 4 to investigate the fact of the First Information Report detailed Raiganj Police Station Case Number 258/2001 dated 04.08.2001 under Sections 467/468/471/477A/120B/420/409 of

the Indian Penal Code, 1860 again by exploring all the possible angles particularly the aspect of the complicity of the office of the respondent number 6 in the entire alleged acts of corruption of defalcation of public funds wherein the petitioner was unlawfully arraigned as an accused person by the respondent number 5 through the Charge Sheet based upon the further facts as mentioned in the subsequent paragraphs and also to enquire as to the fact of conspiracy between the respondent numbers 5 and 6 in framing the petitioner in the above mentioned case thereby saving their own skin and file a report before This Hon'ble Court.

(b) A writ of or in the nature of certiorari directing the respondents to produce all records of the instant case before this Hon'ble Court so that the same may be perused and appropriate orders be passed so that conscionable justice may be done.

c) Rule Nisi in terms of prayers (a) and (b) above;

d) Costs of and incidental to this application;

e) Such further order(s), direction(s) as to this Hon'ble Court may deem fit and proper.

And for this act of kindness, your petitioner as in duty bound shall ever pray.

The statements contained in paragraphs 1 to 21 are true to my knowledge and belief and are my respectful submissions before this Hon'ble Court.

The Applicant is known to me

Address

7/322/737/2018

July 11, 2024

COMMISSIONER

AFFIDAVIT

I, Krishnapada @ Krishna Pada Sarkar, son of Late Gourpada Sarkar, aged about 68 years, by faith- Hindu, by occupation- Self Employed, permanently residing at Raiganj Tulsipara, Post Office and Police Station- Raiganj, District- Uttar Dinajpur, West Bengal, PIN-733134 do hereby solemnly affirm and say as follows:-

1. That I am the petitioner in this instant case and am well acquainted with the facts and circumstances of this case. I am competent to affirm this affidavit.

2. The statements contained in paragraphs 1 to 21 are true to my knowledge and rests are my respectful submissions before this Hon'ble Court.

Prepared in my office,

The deponent is known to me

Advocate.

Advocate.

Enrolment Number: F/828/757/2018

Solemnly affirmed before me,

On this day of July, 2024.

COMMISSIONER

I certify that all Annexures
are legible.

Advocate.

DISTRICT : UTTAR DINAJPUR
IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P. A. NO. OF 2024

IN THE MATTER OF:
An application under Article 226 of the Constitution
of India.

-AND-

IN THE MATTER OF:
Krishnapada @ Krishna Pada Sarkar,
...Writ Petitioner.

-Versus-

Union of India & Ors.
...Respondents.

PETITION

Ranojoy Chatterjee
Advocate
High Court, Calcutta
Chamber: EE-121/2, Sector-II, Salt
Lake, Kolkata- 700091.
Mob: 6290415247
Email: advranojoy@gmail.com
Enrolment No: F/828/757/2018

DISTRICT: UTTAR DINAJPUR

IN THE HIGH COURT AT CALCUTTA
 CONSTITUTIONAL WRIT JURISDICTION
 APPELLATE SIDE

W.P. A. NO. OF 2024

IN THE MATTER OF:

An application under Article 226 of the
 Constitution of India.

-AND-

Subject matter relating to:

Under Group - IX, Head (Nil) of the
 Classification List under The Police Act,
 1861

CAUSE TITLE

Krishnapada @ Krishna Pada Sarkar,

.....Writ Petitioner

-Versus-

Union of India and Others.

...Respondents.

ADVOCATE ON RECORD:

Ranojoy Chatterjee
 Advocate

High Court, Calcutta
 Chamber: EE-121/2, Sector-II, Salt Lake,
 Kolkata- 700091.

Mob: 6290415247

Email: advranojoy@gmail.com

Enrolment No: F/828/757/2018

DISTRICT: UTTAR DINAJPUR

IN THE HIGH COURT AT CALCUTTA
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| 1. | List of dates | | |
| 2. | Points of Law | | |
| 3. | Writ Petition with affidavit | | |
| 4. | Copy of the relevant portion of the Charge Sheet wherein allegations against the petitioner has been mentioned and the Judgment dated 26 th June, 2020. | "P-1" | |
| 5. | Copy of the petition dated 6 th March, 2021, the documents relating to audit. | "P-2" | |
| 6. | Copy of the Order of This Hon'ble Court dated 9 th May, 2024. | "P-3" | |

LIST OF DATES

- 4th August, 2001 The First Information Report was registered.
- 26th June, 2020 The final Judgment was passed acquitting the petitioner from the case.
- 6th March, 2021 A petitioner filed a petition before the Learned Court which passed the Order for rectification of the Order passed by him.
- 9th May, 2024 The Order as passed by This Hon'ble Court dismissing the writ application bearing number WPA/27262/2023.

POINTS OF LAW

- I. Whether the petitioner's right to life violated by the inaction of the respondent authorities?
- II. Whether the respondent numbers 5 to 7 committed overaction by hatching a conspiracy through implication of the petitioner as the accused person?
- III. Whether the respondent numbers 3 or 4 can be directed to reinvestigate the First Information Report by exploring all angles and bringing the truth to light by also enquiring the role of the respondent number 6 in the alleged acts of corruption as well as the alleged conspiracy hatched against the petitioner?
- IV. Whether the inaction/ non-action of the respondent authorities are otherwise bad in law?

DISTRICT: UTTAR DINAJPUR

IN THE HIGH COURT AT CALCUTTA
 CONSTITUTIONAL WRIT JURISDICTION
 APPELLATE SIDE

W.P.A. NO. OF 2024

IN THE MATTER OF:
 Krishnapada @ Krishna Pada Sarkar

...Writ Petitioner

-Versus-

Union of India and Others.

...Respondents.

BRIEF OF LIST OF DATES

| Date | Events |
|------------------------------|---|
| 4 th August, 2001 | The First Information Report was registered. |
| 26 th June, 2020 | The final Judgment was passed acquitting the petitioner from the case. |
| 8 th March, 2021 | A petitioner filed a petitioner before the Learned Court which passed the Order for rectification of the Order passed by him. |
| 9 th May, 2024 | The Order as passed by This Hon'ble Court dismissing the writ application bearing number WPA/27262/2023. |

SYNOPSIS

The case of the petitioner is that he is aggrieved by the motivated investigation as made by the office of the respondent number 5 who is acting under the control of the office of the respondent number 6 as because he was initially not named in the First Information Report detailed Raiganj Police Station Case Number 258/2001 dated 04.08.2001 under Sections 467/468/471/477A/120B/420/409 of the Indian Penal Code, 1860 but later on named in the Charge Sheet on the ground that being a Chartered Accountant his audit report did not match with the cash register of the District Leprosy Society which is under the Chairmanship of the respondent number 6 but in reality he did the audit based upon the documents provided to him. The allegation against the Society was that the respondent number 8 who was the Secretary of the said Society committed defalcation of funds given to the Society with the active help and support of the Cashier at that time who was his UDC of the then respondent number 8 and the petitioner conspired with him even though the First Information Report was registered by the respondent number 8 who was also arraigned as an accused person. Later on vide Order dated 26th June, 2020, the petitioner and the other accused persons were acquitted based upon benefit of doubt but the petitioner is sanguine that the office of the respondent number 6 has conspired with the office of the respondent number 5 in order to falsely implicate the petitioner in the case and he is furthermore certain that if a reinvestigation of the said First Information is conducted by the respondent number 3 or 4 then the entire truth can be brought to light as to who committed the acts of defalcation of funds and/or who conspired against the petitioner by falsely implicating him in the case and on these grounds the petitioner is filing this instant writ application before This Hon'ble Court.

GIST OF THE IMPUGNED OVER ACTION

Through Order dated 26th June, 2020, the petitioner and the other accused persons were acquitted based upon benefit of doubt but the petitioner is sanguine that the office of the respondent number 6 has conspired with the office of the respondent number 5 in order to falsely implicate the petitioner in the case and he is furthermore certain that if a reinvestigation of the said First Information is conducted by the respondent number 3 or 4 then the entire truth can be brought to light as to who committed the acts of defalcation of funds and/or who conspired against the petitioner by falsely implicating him in the case and on these grounds the petitioner is filing this instant writ application before This Hon'ble Court.

Calcutta High Court - Appellate side**Appellate side
Case Details**

| | | | |
|---------------------|----------------------|--------------------|------------|
| Case Type | : WPA | | |
| Filing Number | : 27376/2023 | Filing Date: | 05-12-2023 |
| Registration Number | : 27262/2023 | Registration Date: | 05-12-2023 |
| CNR Number | : WBCHCA-057085-2023 | | |

Case Status

| | |
|--------------------|--------------------------------------|
| First Hearing Date | : 05th January 2024 |
| Next Hearing Date | : 05th January 2024 |
| Stage of Case | : NEW MOTION |
| Coram | : 265700HON'BLE JUSTICE JAY SENGUPTA |
| Bench | : Single Bench |
| State | : West Bengal |
| District | : DINAJPUR UTTAR |
| Judicial | : MANDAMUS SECTION |
| Causelist Name | : Daily List |

Petitioner and Advocate

| |
|--|
| 1) KRISHNAPADA @ KRISHNA PADA SARKAR Advocate- RANOJOY CHATTERJEE |
|--|

Respondent and Advocate

| |
|----------------------------|
| 1) UNION OF INDIA AND ORS. |
|----------------------------|

Acts

| Under Act(s) | Under Section(s) |
|------------------|------------------|
| Police Act ,1861 | NA |

History of Case Hearing

| Cause List Type | Judge | Business On Date | Hearing Date | Purpose of hearing |
|-----------------|------------------------------|------------------|--------------|--------------------|
| Daily List | HON'BLE JUSTICE JAY SENGUPTA | | 05-01-2024 | NEW MOTION |

Orders

| Order Number | Order on | Judge | Order Date | Order Details |
|--------------|----------|-------|------------|---------------|
| | | | | |

Category Details

| | |
|------------------|------------------------------|
| Category | GROUP A (WRIT MATTERS) (1) |
| Sub Category | Police (19) |
| Sub Sub Category | POLICE INACTION/ACTION (1) |

OBJECTION

| Sr.No. | Scrutiny Date | OBJECTION | Compliance Date | Receipt Date |
|--------|---------------|-----------------------------|-----------------|--------------|
| 1 | 05-12-2023 | All Objections are Complied | -- | -- |

WPA 27262 of 2023

***Krishnapada @ Krishna Pada Sarkar
Vs.
Union of India & Ors.***

Mr. Ranojoy Chatterjee
Mr. Tamal Singha Roy
...for the petitioner

Mr. Asish Kumar Guha
Ms. Benazir Ahmed
... for the State

Mr. Arun Kumar Maity (Mohanti)
Mr. Ayanabha Raha
... for the Union of India

Affidavit of service filed on behalf of the petitioner is taken on record.

Report filed on behalf of the State is also taken on record.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner is an accused in the instant case being Raiganj Police Station case No. – 258 dated 04.08.2001 under Sections 467/468/471/477A/120B/420/409 of the Indian Penal Code. The respondent Nos. 5 and 6 who are the actual culprits had initiated and/or actuated the proceeding so that the petitioner can be falsely implicated in the same. The concerned District Magistrate, who is one of the persons involved, could not have investigated the case. Proper action should be initiated to have the real culprits punished.

Learned counsel appearing on behalf of the State relied on the report and submits as follows. Upon investigation, a charge-sheet was submitted in the said

case being Charge Sheet No. 403 dated 30.09.2001. The accused faced trial. The petitioner was acquitted after being found not guilty. At present he has made a misconceived prayer for reinvestigation.

Learned counsel appearing on behalf of the Union of India submits that the prayer made by the petitioner is absurd and vague.

It appears that the petitioner was an accused in a case where he got an acquittal. If he was of the view that someone else was responsible for the crime, it was for him to file a complaint earlier. The same could have been investigated into and taken to its logical conclusion. All these long, since 2001, the petitioner had chosen not to do so. Now, if he had to ask for a reinvestigation in the case that had become pending, then he has to challenge his own acquittal first.

The application is inordinately delayed and totally misconceived. Accordingly, the same is dismissed.

However, there shall be no order as to cost.

Urgent Photostat certified copy of this order be supplied to the parties expeditiously, if applied for.

(Jay Sengupta, J)