GAHC010257052025

2026:GAU-AS:15688

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Crl.Pet./1445/2025

RANJIT KUMAR ROY
S/O LATE RASENDRA ROY
RESIDENT OF VILL- SIBUTTAR, PO.O. UJANKUPA
P.S. AND DIST. HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP BY THE PP, ASSAM

2:ROHIM UDDIN BARBHUIYA
S/O LATE TAJAMUL ALI BARBHUIYARESIDENT OF VILL- NARAINPUR
PART-II
P.S. AND DIST. HAILAKANDI
ASSAM
PIN-78815

Advocate for the Petitioner : MR. P K ROYCHOUDHURY, MR. A K AZAD,MR. S R BARBHUIYA,MR. N HAQUE

Advocate for the Respondent : PP, ASSAM, MS. A BEGUM (R-2),MS. S R MAZARBHUIYA (R-2),MR. A M BARBHUIYA (R-2)

BEFORE

HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

Advocate for the petitioner : Mr. P. K. Roychoudhury.

Advocates for the respondents : Mr. M. P. Goswami, Addl. P. P.,.
Mr. A. M. Barbhuiya

Date on which judgment is reserved : 16.07.2026.

Date of pronouncement of judgment : 14.10.2026.

Whether the pronouncement is of
the operative part of the judgment :

Whether the full judgment has been
pronounced : Yes

JUDGEMENT AND ORDER (CAV)

1. Heard learned counsel Mr. P. K. Roychoudhury for the petitioner; learned Additional Public Prosecutor, Mr. M. P. Goswami for the respondent No. 1(State of Assam) and learned counsel Mr. A. M. Barbhuiya for the respondent No. 2.

2. This petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS for short) read with Article 227 of the Constitution of India. The petitioner in this case is Ranjit Kumar Roy who has filed this petition with prayer to quash the impugned FIR and charge-sheet in connection with Hailakandi P.S. Case No. 886/2020 registered under Sections 409/406/420/34 of

the Indian Penal Code (IPC for short).

Factual matrix:-

3. The respondent No. 2, Rohim Uddin Barbhuiya lodged an FIR on 22.10.2020 with the police at Hailakandi P.S. *inter alia* that the election result dated 15.03.2020 declared the informant/respondent No. 2 as an elected candidate of one of the 15 Board of Directors of Batirkupa Samabai Samittee Limited, Hailakandi. The respondent No. 2 stated that as per Section 31 of the Assam Co-operative Societies Act, 2007, the 5 years term was to commence from the date of election held on 15.03.2020. The first meeting of the Board was held on 12.08.2020 in which the informant/respondent No. 2 was elected as Chairman of the said Samittee.

4. The respondent No. 2/informant has contended that after taking charge as Chairman of the Samittee, he could realize that the petitioner Nos. 1 and 2 named in the FIR (Secretary & Chairman of the Samittee) secretly misappropriated huge amount of funds from the bank account of the Samittee without the authority of the Samittee and without performing any work of the Samittee. Despite objection and resistance from the respondent No. 2 the accused Nos. 1 and 2 named in the FIR continued to withdraw and misappropriate the funds of the Samittee.

5. The amount of money misappropriated is mentioned herein below:-
On 21.04.2020- Rs. 1,00,000/-;

On 24.05.2020- Rs. 1,00,000/-;
On 29.04.2020- Rs. 1,00,000/-;
On 11.05.2020- Rs. 1,50,000/-;

On 13.08.2020- Rs. 5,00,000/-.

Thus, it is alleged that a total of Rs. 9,50,000/- was misappropriated from the bank account of the Samittee being A/C No. 371043020000361 of the Apex Bank of Hailakandi Branch.The respondent No. 2 apprised the departmental authorities but no action was taken against the accused Nos. 1 and 2 named in the FIR. The FIR was lodged and registered as Hailakandi P.S. Case No. 886/2022. Investigation commenced and during investigation, some documents were seized in connection with this case. The petitioner had also obtained an anticipatory bail order through AB No. 142/2022 as the police visited his house during the investigation.

6. On conclusion of investigation, charge-sheet was also submitted against the petitioner who happens to be the accused No.2 named in the FIR.

Case of the petitioner:-

7. It is submitted that the respondent No. 2 had apprised the Assistant Registrar of Co-operative societies (ARCS for short) about the misappropriation of funds by the accused named in the FIR. The ARCS directed an enquiry of the matter. A Supervising Officer namely, Hibzur Rahman was entrusted to conduct an enquiry and accordingly the said Supervising Officer conducted the enquiry and submitted a detailed report of the enquiry to the ARCS, Hailakandi on 13.10.2020. In the report, the Enquiry Officer stated that the election of the society was held on 15.03.2020 and the result was declared on 17.03.2020, and thereafter, because of COVID-19, the first meeting of the Board was held on 12.08.2020.

8. From 17.03.2020 to 12.08.2020, the petitioner had to deal with the transaction and activities of the society without the Chairman and had to face financial hardship. The Officer discovered that the petitioner had withdrawn money from the bank account under unprecedented circumstances arising out of lockdown due to the pandemic. It is clear from the enquiry report that the

petitioner had withdrawn the money and utilized the same properly and no offence of misappropriation of funds was committed by the petitioner.

9. Charge-sheet was laid against the petitioner under Sections 409/406/420/34 of the IPC. It is contended that from the enquiry report dated 13.10.2020, it is amply clear that the petitioner had submitted an application for the amount of money required for allotment of PDS articles of the concerned Samittee. Moreover, the petitioner is neither a public servant, nor a banker, nor a merchant or an agent. So, the provisions of Section 409 of the IPC is not attracted and the FIR is thus liable to be set aside and quashed, so far as the petitioner is concerned.

10. It is averred that the respondent No. 2 lodged the FIR with the sole purpose to harass the petitioner and the other accused named in the FIR. It is also submitted through the petition and through the argument by the learned counsel for the petitioner that the conduct of the respondent No. 2 clearly reveals that he has left no stone unturned to harass the petitioner. Even after the complaint before the local authorities and after the enquiry report dated 13.10.2020, the respondent No. 2 lodged an FIR without any rhyme or reason. The petitioner was exonerated through the enquiry report, thus laying the case to rest. The respondent No. 2 however, pursued the petitioner through a concocted FIR.

11. It is further submitted that after the election of the Board of Directors of the Samittee held on 15.03.2020, the first meeting of the Board was held on 12.08.2020, in which the Chairman and the Vice-chairman were elected. The accused No. 1 was the earlier Chairman and the informant became the Chairman on 12.08.2020. The accused No. 1 as Chairman had Joint bank account with the petitioner who is the Secretary of the society.

12. Until and unless the election of the post of Chairman is held, one cannot accommodate Joint bank account with the Secretary. Though the election of the

Board of Directors was held on 15.03.2020, but the election of the Chairman of the aforesaid society was held on 12.08.2020, wherein the informant/respondent No. 2 became the chairman, but up to that time, the petitioner had Joint bank account of the aforesaid Samittee with the other accused (earlier Chairman). The petitioner as a Secretary of the aforesaid society had to meet the expenses for the allotment of the PDS articles of the Samittee during the pandemic. The petitioner had no alternative at that time than to withdraw the aforesaid amount to provide the benefit of PDS articles to the consumers because at that time, the informant/respondent No. 2 as a Chairman did not open the Joint bank account of the aforesaid Samittee with the petitioner.

13. It is further contended that no consumer made any complaint before any authority alleging that they had not received the PDS articles from the society or the petitioner and that the petitioner/accused had misappropriated the aforementioned amount without providing the benefits of the PDS articles during the pandemic. Therefore by considering these aspects, the petitioner has prayed to quash the aforementioned FIR and charge-sheet and the proceeding of PRC Case No. 2154/2020.

14. The learned counsel for the petitioner has submitted that the petitioner has admitted the fact that during that period, though the respondent No. 2 was elected as one of the Board of Directors, he was not the chairman of the Samittee and thus the petitioner has not disputed the cheques seized by the Investigating Officer. Election of the Board of Directors was held on 15.03.2020, and the informant/respondent No. 2 became chairman on 12.08.2020. During that period, the petitioner as a secretary of the Samabai Samittee had to manage the affairs of the Samittee until and unless the successor would take over the charge.

15. It is submitted that there are no necessary ingredients to constitute an

offence under Sections 409/406/420/34 of the IPC against the petitioner and the FIR is liable to be set aside and quashed.

Case of the respondents:-

16. It is submitted on behalf of the respondent State as well as on behalf of respondent No. 2 that at this juncture, the evidence of the enquiry report cannot be considered. The evidence of the enquiry report can be properly assessed and dealt with, at the stage of trial. It is submitted on behalf of respondent No. 2 that the petitioner is a secretary and not a Government employee appointed by the Samittee. He had good relation with the accused No. 1 who was the earlier Chairman. The accused No. 1 has passed away. In his lifetime, the accused No. 1 in connivance with the accused No. 2 as Secretary and Chairman had misappropriated huge amount of funds.

17. It is submitted that signatures were changed and within a very short period of time, just within a couple of days, money was withdrawn without any urgency. The plea of urgency during the pandemic has been falsely taken by the petitioner. It has been falsely stated that money was withdrawn under compelling circumstances.

18. It is also pertinent to note that money was withdrawn on the basis of signature of Ex-Chairman and not on the signature of the present Chairman. Departmental enquiry dated 13.10.2020 does not at all exonerate the petitioner. The enquiry report clearly establishes that money was withdrawn fraudulently by the petitioner. It cannot be ignored that public money was siphoned off within a very short period of time.

Analysis and conclusion:-

19. I have given my thoughtful consideration to the submissions at the Bar.

20. The petitioner has laid stress on the charge under Section 409 of the IPC. It is submitted on behalf of the petitioner that the petitioner is a Secretary of the Co-operative society and he cannot be charged under Section 409 of the IPC.

21. At this stage, it is pertinent to note that charges are yet to be framed. I have also scrutinized the scanned copies of the Trial Court Records.

22. Learned Additional Public Prosecutor Mr. M.P. Goswami has also laid stress in his argument that charges are yet to be framed and the petitioner cannot speculate that he has been wrongly charged under Section 409 of the IPC.

23. The court is to decide under which sections the petitioner will be charged. Charge-sheet has been laid by the Investigating Officer and charges are yet to be framed.

24. At this juncture, this Court will not scrutinize the documents and delve into the evidence. The argument on behalf of the petitioner that he is not a Government employee and Section 409 of the IPC has not been attracted in connection with this case can be best placed before the learned Trial Court to consider the submission of the petitioner and pass an order in accordance with law.

25. So far as the other sections incorporated against the petitioner is concerned, there does not appear to be a *prima facie* case at least, at this juncture, to decide and quash the FIR. The enquiry report can be considered by the Trial Court at the stage of framing of charges and the Court may pass an order in accordance with law.

26. At this juncture, this Court is not satisfied with the submission that further proceeding of this case will be an abuse of the process of the Court. This case

cannot be truncated at the threshold.

27. It is not disputed that charges are yet to be framed. Therefore, in view of the foregoing discussions, it is held that the case of the petitioner can best be decided by the Trial Court when the petitioner places his case before the Trial Court at the stage of consideration of charges.

28. Therefore, this petition at this stage is rejected and the petitioner may, if so advised place his case before the Trial Court at the stage of framing of charges and for consideration of charges, and the Trial Court may pass an order in accordance with law.

29. Petition at this stage stands rejected.

30. The order of interim stay passed by this Court on 24.11.2025 stands vacated.

JUDGE

Comparing Assistant