

Criminal Revision  
Present:  
The Hon'ble Justice Ashim Kumar Roy  
C.R.R. No. 257 of 2010  
Kalyan Saha  
versus  
State Of West Bengal & Ors.  
Judgment On: 08-02-2010.

**Point:**

QUASHING: Commission of offence is complete- Misappropriated amount has been repaid to the Bank- It would be a mitigating circumstance in imposition of sentence but cannot be the ground for quashing of a trial- On a point of pure question of fact cannot be the ground for quashing of a trial- Code of Criminal Procedure, 1973, S. 482.

**Fact:** By filing the instant application the accused/petitioner person has sought for quashing of his trial relating to the offence punishable under Sections 465/467/468/471 of the Indian Penal Code on the ground that the amount which the petitioner allegedly took from the Bank as loan has been repaid and the story that the signature of the Headmaster in the loan application form whereby he recommended for grant of loan is forged cannot be sustained as without verifying the signature, no Bank can grant loan.

**Held:** If it is found that after the commission of offence is complete, the misappropriated amount has been repaid to the Bank, at least that would be a mitigating circumstance in imposition of sentence but cannot be the ground for quashing of a trial. The other point raised on behalf of the petitioner is a pure question of fact and is a matter of evidence and that cannot also be the ground for quashing of a trial. Moreover, the trial has already commenced and examination of witnesses is on progress, as such it is not desirable for this Court to enter into such debatable area. For the reasons stated above the question of quashing of the trial does not at all arise.

For Petitioner : Mr. Himadri Barua  
Mr. Madhusudhan Sur  
Mr. Biswajit Das

For State : Mr. Kallol Mondal

**The Court:**

This is a case where the accused person has approached this Court for quashing of his trial relating to the offence punishable under Sections 465/467/468/471 of the Indian Penal Code. The ground that has been urged for quashing are as follows;

(a) That the amount which the petitioner allegedly took from the Bank as loan has been repaid, the story that the signature of the Headmaster in the loan application form whereby he recommended for grant of loan is forged cannot be sustained as without verifying the signature, no Bank can grant loan. The disputed signature has not been verified.

On the other hand, it was contended on behalf of the State that already trial has commenced by framing of charge in February, 2008 and by now the recording of evidence of the P.W. 1 has been completed and so far as P.W. 2 is concerned, his examination-in-chief is already over. Therefore, the question of quashing of the trial does not at all arise.

2. I have given my anxious and thoughtful consideration to the rival submissions of the parties. I am of the opinion, if it is found that after the commission of offence is complete, the misappropriated amount has been repaid to the Bank, at least that would be a mitigating circumstance in imposition of sentence but cannot be the ground for quashing of a trial. The other point raised on behalf of the petitioner is a pure question of fact and is a matter of evidence and that cannot also be the ground for quashing of a trial. Moreover, the trial has already commenced and examination of witnesses is on progress, as such it is not desirable for this Court to enter into such

debatable area. For the reasons stated above the question of quashing of the trial does not at all arise.

This application stands dismissed.

The Learned Trial Court is directed to conclude the trial as expeditiously as possible in accordance with law.

Criminal Section is directed to deliver urgent Photostat certified copy of this Judgement to the parties, if applied for, as early as possible and to communicate this order to the Trial Court.

**( Ashim Kumar Roy, J.)**