

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

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. No. 1788 of 2025

With

CRAN 2 of 2025 & CRAN 3 of 2026

Vikas S. Rathee & Anr.

Versus

The State of West Bengal & Anr.

For the Petitioners : Mr. Meghajit Mukherjee, Adv.
Ms. Sonia Das, Adv.

For the IIFL : Mr. Debangana Bhattacharjee, Adv.
Mrs. Tutul Das, Adv.
Mr. Ranjit Singh, Adv.
Mr. Amar Singh, Adv.
Ms. Alivia Bhattacharjee, Adv.
Ms. Shweta Bali, Adv.

Heard on : 14.09.2026

Judgment on : 05.10.2026

Uploaded on : 05.10.2026

Ajay Kumar Gupta, J.: -

1. The instant Criminal Revisional application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (in short, 'BNSS') has been preferred by the petitioners/accused persons seeking quashing of the proceedings being Case No. CS/195772/2024 (corresponding to TR Case No. 14605 of 2024) pending before the Learned Judicial Magistrate, 16th Court, Calcutta under Section 318 of the Bharatiya Nyaya Sanhita (in short, 'BNS') and all orders passed therein, including the orders dated 13.11.2024, 04.01.2025 and 07.03.2025 passed in connection with the said proceeding.
2. The facts leading to the filing of this instant Criminal Revisional application are that in 2013, the petitioners, searching for a residential flat in Mumbai for their personal use, were approached by Pashmina Realty Private Limited (in short, 'PRPL'), developer of the "Pashmina Lotus" project at Chandivali.
3. PRPL represented that it had a tie-up with India Infoline Finance Limited (in short, 'IIFL') under a subvention scheme, where the petitioners would pay only 20% of the consideration upfront, with the balance 80% disbursed by IIFL as a home loan. Under the scheme, PRPL alone was liable to service interest on the disbursed loan until the possession was handed over.

- 4.** On this basis, the petitioners executed a registered Agreement for Sale dated 08.11.2013 with PRPL for the purchase of a residential flat bearing No. 802, Wing 'C' (8th floor, 1436 sq. ft.), with two car-parking spaces, in "Pashmina Lotus", for total consideration of Rs. 3,35,70,000/-, payable in the following manner as under:
- i. Rs. 16,25,718/- (Rupees Sixteen Lakh Twenty-Five Thousand Seven Hundred Eighteen only) as part consideration, paid prior to the execution of the Agreement;
 - ii. Rs. 31,52,891/- (Rupees Thirty-One Lakh Fifty-Two Thousand Eight Hundred Ninety-One only) as part consideration, paid on or before the date of execution of the Agreement;
 - iii. The balance amount of Rs. 2,87,91,391/- (Rupees Two Crore Eighty-Seven Lakh Ninety-One Thousand Three Hundred Ninety-One only) was to be paid in the manner and in instalments as stipulated under the terms and conditions of the said Agreement for sale.
- 5.** The Petitioners additionally paid Rs. 53,14,000/- to PRPL on 20.08.2013. As per the Agreement dated 08.11.2013, PRPL was to hand over possession by September 2016 or on receipt of the Occupation Certificate, failing which, under Clause 6.3, which expressly provided that in the event PRPL failed to deliver possession within the stipulated time, the Agreement would stand terminated,

and PRPL would be obligated to refund the entire amount received with applicable interest calculated from the date of receipt of such payments. Clause 6.3 of the aforesaid agreement has been set out hereinbelow:-

“6.3 Consequences of delay in handing over possession:

If the Promoters fails or neglect to give possession of the Premises to the Purchaser/s on the aforesaid date and/or on such date as may be extended automatically pursuant to the reasons setout in Clause 6.2 hereinabove, then the Purchaser/s shall have the option to terminate this Agreement after giving 30 days notice in writing, whereupon the Promoters shall be liable on demand to refund to the Purchaser/s amounts already received by it in respect of the Premises (save and except service tax, VAT) alongwith simple interest @ 9% per annum from the date of the receipt of the respective amounts by the Promoters till payment. It is agreed that, upon the termination of this Agreement by the Purchaser/s, the claim of the Purchaser/s shall be restricted to refund of monies paid with simple interest @ 9% p.a. thereon and that the Purchaser/s shall not be entitled to claim for loss and/or damages and/or mental trauma or otherwise howsoever. Till the entire amount alongwith interest thereon is refunded by the Promoters to the Purchaser/s the same shall subject to prior encumbrance if any, be a charge on the Premises but only to the extent of the amount so due to the Purchaser/s and the Promoters shall be entitled to allot, sell and/or deal with and dispose off the Premises to any third party without reference or recourse to the Purchaser/s. The amount so refunded shall be in full and final ender this Agreement. The Purchaser/s agrees that receipt of the said satisfaction and final settlement of all the claims of the Purchaser/s registered post acknowledgement due at the address given by the refund by cheque from the Promoters by the Purchaser/s by Purchaser/s in these presents whether the Purchaser/s accepts or encashes the cheque or not, will amount to the said refund.”

- 6.** As construction deviated from approved plans and possession was not delivered, the petitioners emailed PRPL on 15.02.2016 raising these concerns. Petitioners had also issued post-dated cheques to IIFL as security for the loan; despite PRPL's obligation to service the interest, IIFL informed petitioners that PRPL had defaulted and that IIFL was presenting the security cheque for encashment. Petitioners issued stop-payment instructions to their bank, and their 15.02.2016 email had also called upon PRPL to refund all amounts paid with interest and clear all dues owed to IIFL.
- 7.** On 24.06.2019, PRPL sent an email to the petitioners with an undertaking to refund Rs. 76,26,037/- directly to the petitioners by 14.09.2019, and Rs. 1,80,81,348/- directly to IIFL, after which IIFL would issue a "No Dues" Certificate and a Deed of Cancellation would be executed. However, PRPL failed to honour this undertaking and instead made frivolous alternative proposals, all rejected by petitioners. IIFL, despite being asked, never furnished petitioners a copy of the loan agreement.
- 8.** Subsequently, with no other alternative, the Petitioners issued a demand notice dated 25.01.2024 to PRPL and a copy of the same to IIFL through learned counsel, seeking refund of the payment toward the consideration amount and also to clear the entire loan outstanding of IIFL as agreed and undertaken under the Cancellation

letter issued by PRPL under the Agreement for Sale dated 24.06.2019 within a period of seven days from the receipt of this notice. Despite receipt of the said demand notice, PRPL deliberately failed to take any steps in furtherance thereof.

- 9.** The Petitioners then filed a complaint before MahaRERA, Bandra, Mumbai (Complaint No. CC006000000570811), impleading PRPL as Respondent No. 1 and IIFL as Respondent No. 2; the said proceeding is still pending adjudication.
- 10.** During this pendency, IIFL, allegedly suppressing the existence of the subvention scheme and PRPL's exclusive liability for interest, filed a complaint before the learned CJM, Calcutta on 01.10.2024, alleging offences under Sections 316(2)/318/61(2) BNS against the petitioners (Case No. CS/195772/2024), alleging that petitioners had obtained a housing loan of Rs. 2,98,59,000/- on false representations and defaulted, evidencing dishonest intent to cheat IIFL and misappropriate public funds.
- 11.** On 01.10.2024, the CJM transferred the case to the learned Judicial Magistrate, 16th Court, Calcutta. By order dated 13.11.2024, the Magistrate issued a pre-cognizance notice, fixing 04.01.2025 for the petitioners' appearance. On 04.01.2025, the Magistrate issued process and took cognizance without following the mandatory procedure under Section 225 BNSS.

- 12.** On the next date, i.e., on 07.03.2025, despite no service return being received, the Magistrate issued a bailable warrant of arrest against the petitioners solely on counsel's submission, fixing 24.06.2025 for the execution return. As such, the petitioners were compelled to file this Revisional application seeking aforesaid reliefs.

SUBMISSION ON BEHALF OF THE PETITIONERS: -

- 13.** Learned counsel for the petitioners submitted that the petitioners are absolutely innocent and have been falsely implicated in the instant case. The impugned proceedings are an out-and-out abuse of the process of criminal law and have been initiated with an ulterior motive to coerce and harass the petitioners, despite the existence of undisputed and documented facts to the contrary and despite the dues handed over in the present case being wholly civil in nature and to give colour to a criminal offence for the purpose of recovery of loan amount. The petitioner did not purchase the property and subsequently approached for cancellation of the agreement for sale to the PRPL. PRPL acknowledged such cancellation of the deals by and between the Petitioners and PRPL as well as IIFL.
- 14.** It was further submitted that considering the allegation made by the IIFL, on its face value and going through the line in between the complaint, it is an admitted fact that the actual loan amount was Rs. 2,98,59,000/-.

- 15.** Learned Counsel submitted that the question of mala fide/dishonest intention of the accused persons/ petitioners herein, since inception, to cheat and defraud the company does not and cannot arise. The Petitioners paid a huge sum of money to purchase the said flat. However, PRPL did not hand over the said flat to the petitioners as agreed in agreement for sale. Accordingly, they sent an email to PRPL for cancellation of the agreement for sale. No agreement for sale has been cancelled; neither was the flat handed over to the petitioners nor was sale deed executed between the parties. Therefore, the petitioners are not liable for commission of any offence alleged by the complainant.
- 16.** It was further submitted that IIFL only accused the present petitioners without handing over the flat. Accordingly, the proceedings is an absolute abuse of the process of law and to secure the ends of justice, the instant proceedings is liable to be quashed, and impugned orders passed by the learned Magistrate are also liable to be set aside.
- 17.** Finally, the learned counsel submitted that both the Petitioners reside outside the territorial jurisdiction of the learned Magistrate. However, process was issued by the learned Magistrate without complying with the mandatory provision of Section 225 of the BNSS, and a bailable warrant of arrest was issued against the petitioners.

So, this non-compliance with the provision stipulated u/s 225 of BNSS, this proceeding is liable to be quashed.

- 18.** Learned counsel placed reliance on two judgments passed in the cases of ***Hridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.***¹ to highlight the provisions of cheating. i.e., sections 415 and 420 thereof. He has further relied on the decision in the case of ***Satishchandra Ratanlal Shah v. State of Gujarat and Anr.***², on the same contention, which has, in turn, relied upon ***Hridaya Ranjan Prasad Verma (Supra)***.

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2/IIFL: -

- 19.** Learned counsel appearing on behalf of the IIFL, on the other hand, vehemently opposed the prayer of the learned counsel appearing on behalf of the petitioners and submitted that a Tripartite Agreement was executed by and between the petitioners, the Opposite Party No. 2, and PRPL, the Developer, for the purpose of availing the credit facility in question. Under the said Agreement, the Opposite Party No. 2 was obligated to disburse a sum of Rs. 1,80,81,348/- (Rupees One Crore Eighty Lakh Eighty-One Thousand Three Hundred Forty-Eight only), out of the total sanctioned amount, directly to the Developer on behalf of the petitioners, which obligation stood duly discharged.

¹ (2000) 4 SCC 168;

² (2019) 9 SCC 148.

- 20.** It has been contended that the petitioners/borrowers thereafter failed to make timely payments towards servicing the loan and breached the covenants of the Loan Documents, resulting in default in the loan account. On account of such continued non-payment, a communication for 'Cancellation of Allotment' was issued to the Developer on 18.11.2024, wherein it was explicitly recorded that the petitioners had intentionally breached the terms of the Loan Agreement and had deliberately failed to clear the outstanding dues payable to the Opposite Party No. 2.
- 21.** It has further been submitted that the loan account was classified as a Non-Performing Asset (NPA) on 03.01.2025.
- 22.** The Opposite Party No. 2 has contended that the petitioners possessed sufficient repayment capacity, having regard to the income declarations furnished at the time of sanction, the monthly income of Petitioner No. 1/Borrower being Rs. 8.79 lakh and that of Petitioner No. 2/Co-Borrower being Rs. 1.90 lakh, reflecting a combined household income of Rs. 10.69 lakh per month. Despite such financial standing, it is submitted that the petitioners committed a critical default, with total outstanding dues of Rs. 2,04,87,392/- as on 15.01.2025, which further escalated to Rs. 2,25,84,077/- as on 08.12.2025, thereby evidencing an intentional failure to honour the terms of the loan facility.

- 23.** It has also been urged that as per the records available with the Opposite Party No. 2, all other credit trade-lines/borrowings in the name of the petitioners stand closed, leaving no bona fide justification for the default. It is submitted that this establishes a deliberate non-payment despite the capacity to repay, on account of which the petitioners have been classified as 'Wilful Defaulters', subject to due process and an opportunity of being heard.
- 24.** In this regard, it has been submitted that a Show Cause Notice dated 22.12.2025 was issued to the petitioners in compliance with the RBI Master Directions on Treatment of Wilful Defaulters and Large Defaulters dated 30.07.2024 (effective from 31.10.2024), bearing reference no. RBI/DoR/2024-25/122 DoR.FIN.REC. No. 31/20.16.003/2024-25.
- 25.** It has further been contended that as per the Title Search Report dated 12.12.2013, the mortgaged property stood duly registered in favour of the petitioners vide the Agreement for Sale dated 08.11.2013, registered with the concerned Sub-Registrar of Assurances as Serial No. KRL-1/9439/2013, thereby establishing the petitioners as the lawful owners of the mortgaged property who have enjoyed the benefit of the credit facility while deliberately ignoring repayment of the dues payable jointly and severally to the Opposite Party No. 2. It has also been pointed out that a 'No Objection

Certificate' in respect of the said mortgaged property was issued by the Developer, PRPL, on 30.10.2013, in favour of the petitioners.

- 26.** It was further submitted that despite service of several communications, no steps have been taken by the petitioners towards regularisation or closure of the loan account, and that the petitioners have continued to remain in default notwithstanding their realisation of the benefits of the mortgaged property and their financial capacity to discharge the outstanding dues.
- 27.** It was finally submitted that the allegation against the present petitioners is required to be proved after full-fledged trial. Therefore, this instant application is liable to be dismissed. Learned counsel has placed reliance of a judgment passed in the case of ***Kailash Kumar Sanwatia Vs. State of Bihar & Anr.***³ to bolster his contention that proving an accusation under section 405 of the IPC requires the establishment of two factors, firstly, entrustment of property to the accused, and secondly, whether the accused, having been entrusted, was actuated by the dishonest intention to misappropriate it or convert it to his own use, to the detriment of the persons who entrusted it. It has been submitted, that since the question of dishonest intention is seldom a matter of direct proof, the Court in ***Kailash Kumar Sanwatia (Supra)*** laid down certain broad tests as

³ (2003) 7 SCC 399.

furnishing useful guidance in determining whether, on the facts of a given case, the accused possessed the requisite *mens rea* for the offence.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT: -

- 28.** Heard the submissions made by the learned counsels appearing on behalf of the respective parties and having gone through the materials available on records, this Court finds it is an undisputed fact that the Registered Agreement for sale dated 08.11.2013 had been executed by and between the parties. For the purpose of purchase of the flat bearing Flat No. 802, Wing 'C', "Pashmina Lotus," Chandivali, Mumbai, the petitioners availed a loan amount of Rs. 2,98,59,000/- from the financial institution IIFL.
- 29.** It is a further undisputed fact that a few instalments were paid to IIFL out of the loan amount. A sum of Rs. 2,03,55,484/- is pending as on 1st October, 2024, when IIFL filed the complaint before the Chief Judicial Magistrate, Calcutta. Apart from this, IIFL has also declared the loan account as a Non-Performing Asset on 03.01.2025, and the petitioners have been declared "Wilful Defaulters" pursuant to a Show Cause Notice dated 22.12.2025, issued purportedly in terms of the RBI Master Directions on Treatment of Wilful Defaulters and Large Defaulters dated 30.07.2024.

- 30.** This Court notes that none of the parties have indicated whether the flat involved in the agreement for sale has finally reached the stage of registration of the conveyance Deed or not. No documents, whatsoever filed by any of the parties, despite giving opportunity to file their affidavits. The petitioners have drawn some emails communicated by and between the Petitioners and PRPL to indicate that the Petitioners had approached the PRPL to cancel the deals and they are not interested in buying the said flat due to various reasons such as 1) non-delivery of possession within the stipulated period; 2) deviation of construction from the sanctioned layout plan; 3) PRPL's default in servicing the interest component under the subvention scheme, resulting in encashment of the security cheques.
- 31.** Now, the question arises under the above facts and circumstances, whether the petitioners have committed offence as alleged by the IIFL or they are entitled to their prayer for quashing of the proceedings and setting aside the orders passed therein in the said proceedings?
- 32.** The penal section 318 of the BNS, 2023 is involved in these proceedings.

318. (1) Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or

harm to that person in body, mind, reputation or property, is said to cheat.

(2) Whoever cheats shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

(3) Whoever cheats with the knowledge that he is likely thereby to cause wrongful loss to a person whose interest in the transaction to which the cheating relates, he was bound, either by law, or by a legal contract, to protect, shall be punished with imprisonment of either description for a term which may extend to five years, or with fine, or with both.

(4) Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

33. On a plain reading of Section 318(1), the following ingredients must be established to constitute the offence: -

- i. Deception of a person by the accused;
- ii. Such deception must fraudulently or dishonestly induce the person deceived either (a) to deliver property to any person, or to consent to the retention of property by any person; or (b) intentionally (though not necessarily fraudulently or dishonestly) induce that person to do or omit to do an act which he would not otherwise have done or omitted;

iii. The act or omission so induced must cause, or be likely to cause, damage or harm to that person in body, mind, reputation, or property.

- 34.** It is well settled that where the case falls in the first limb, the inducement itself must be shown to be fraudulent or dishonest; mere intentional inducement, without fraud or dishonesty, does not suffice for that limb.
- 35.** The ingredients necessary to sustain a charge under this provision are: (i) entrustment of property, or of dominion over property, to the accused; and (ii) dishonest misappropriation or conversion of that property by the accused to his own use, or its use or disposal in violation of a legal direction or contract governing the discharge of the trust, to the detriment of the person who effected the entrustment.
- 36.** It is not the case of IIFL that any property was induced to be delivered directly to the petitioners by deception; rather, the allegation is that the petitioners, having availed the loan facility, subsequently defaulted in repayment. Based on the facts of the instant case, the alleged deception has a retrospective inference from default, rather than of any misrepresentation shown to have preceded, or accompanied the disbursal of the loan. As regards the third ingredient, this Court notes that IIFL has, in fact, suffered pecuniary loss by reason of the default; however, the mere fact of loss, without

proof of fraudulent or dishonest inducement at inception, does not, by itself, complete the ingredients of Section 318 of BNS.

37. Applying the ratio in ***Hridaya Ranjan Prasad Verma (Supra)*** and ***Satishchandra Ratanlal Shah (Supra)***, this Court is of the view that mere default in repayment, without more, does not establish the fraudulent or dishonest intention required to sustain a charge of cheating under Section 318 of BNS. Equally, applying the test in ***Kailash Kumar Sanwatia (Supra)***, the ingredient of dishonest misappropriation necessary to sustain a charge of criminal breach of trust under Section 316 of BNS is not made out merely from the fact of default, in the absence of anything establishing that the petitioners diverted or misapplied the disbursed amount in violation of the terms on which it was entrusted, rather than having applied it towards the very purchase for which it was sanctioned.
38. Applying the aforesaid principles to the facts of the instant case, this Court finds that the transaction between the parties was structured as a tripartite arrangement between the petitioners, PRPL, and IIFL under a subvention scheme, whereunder the primary obligation to service the interest on the disbursed loan amount, until handover of possession, rested upon PRPL and not upon the petitioners. It is not in dispute that possession of the flat was never handed over, that no Deed of Conveyance has been executed, and that the petitioners had

approached PRPL, the Developer, and not IIFL, seeking cancellation of the transaction on account of PRPL's own default, well before the account came to be classified as an NPA or the Wilful Defaulter proceedings were initiated. The complaint, examined on its own averments, does not disclose any representation or concealment attributable to the petitioners at the time of availing the loan; the allegation of dishonest intention rests entirely on the petitioners' subsequent default in servicing the instalments, a default which, in the petitioners' case, is directly traceable to PRPL's own failure to honour its obligations under the subvention scheme.

- 39.** Accordingly, **CRR No. 1788 of 2025** is, thus, **allowed. CRAN 2 of 2025** and **CRAN 3 of 2026** are also, thus, disposed of.
- 40.** Consequently, the proceedings being Case No. CS/195772/2024 (corresponding to TR Case No. 14605 of 2024) pending before the Learned Judicial Magistrate, 16th Court, Calcutta under Section 318 of the BNS is quashed insofar as the petitioners are concerned and all orders passed therein, including the orders dated 13.11.2024, 04.01.2025 and 07.03.2025 passed in connection with the said proceeding are hereby set aside.
- 41.** Case diary, if any, be forwarded to the learned counsel for the State.
- 42.** Let a copy of this Judgment be sent to the Learned Court below for information.

- 43.** Interim order, if any, stands vacated.
- 44.** All parties will act on the server copies of this Judgment uploaded on the official *website* of this Hon'ble High Court.
- 45.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal and necessary formalities.

(Ajay Kumar Gupta, J.)

(P.A.)