IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 4309 OF 2024

DHOOT REALTORS PVT. & ANR.
VS.
APURBA KUMAR JANA

For the Petitioner	**:**	**Mr. Ayan Bhattacharjee, Sr. Adv.**
		Mr. Shounak Mondal, Adv.
		Ms. Moumita Bhattacharjee, Adv.
For the Opposite Party	**:**	**Sk. Mainuddin, Adv.**
Heard On	**:**	**17.11.2026**
Judgement on	**:**	**17.11.2026**
Uploaded on	**:**	**17.11.2026**

CHAITALI CHATTERJEE DAS, J.:-

1. This revisional application is filed under Section 482 of code of Criminal Procedure, 1973 corresponding to Section 528 of BNSS, 2023 by the petitioners for quashing of the proceedings of complaint case no. 3407/2022, under Section 406/420 of the Indian Penal Code, 1860 pending before the Court of Learned Judicial Magistrate, 1st class, Bidhannagar,

North 24 Parganas, including the order dated August 24, 2022 and April 9, 2024.

2. Factual matrix of the case, demonstrate that the petitioner No.1 is a company and petitioner no. 2 is the director of petitioner no. 1 .On August 24, 2022 by the complaint was filed by the opposite party alleging against them for commission of offences under Section 406/420 of the Indian Penal Code against the petitioners herein. Vide an order dated August 24, 2022 the learned ACJM took cognizance and transferred the case to the court of learned Judicial Magistrate, 1st class, Bidhan Nagar, North 24 Parganas. After a number of intervening dates on April 9, 2024, the opposite party was examined on solemn affirmation in terms of section 200 of the Cr.P.C and vide an order dated April 9, 2024 on the basis of purported petition of complaint, pre-summoning evidence, and other materials passed and order to issue process under section 406/420 of the IPC for appearance of the petitioner on July 9, 2024.

3. The petitioner no. 2 entered appearance and filed an application in terms of section 205 of Cr.P.C seeking exemption from personal appearance and such prayer was allowed and fixed the matter on November 7, 2024 for evidence before charge. According to the petitioner, the proceedings has been instituted by suppressing material facts and the Opposite Party has not acted *uberimma fides* and has not disclosed material facts in the purported petition of complaint.

4. The Genesis of the complaint pertains to non-payment of the balance amount in connection with a work order issued in favour of the complainant. The work order was dated 7.1.2024 for landscaping work at

their project Prathama at 26, B.T Road, Kolkata 700058 and a subsequent work order issued on 14.1.2020 . The grievance of the de-facto complainant is that though the entire work was completed and the bill raised on completion of the entire work of ₹27, 77, 840, the petitioners paid an amount of ₹17, 50, 000 keeping a balance amount of ₹10, 27, 840. Despite several request made to them to pay the balance amount, the petitioners failed and neglected to pay the same. A demand notice was served upon the company on 26.8.2020 through their advocate, but even on receipt of the same, they failed and neglected to pay the unpaid due. Another notice was also sent on 3.12.2020 and lastly, a legal notice was sent on 19.7.2021 and thereafter on 10.5.2022 the complainant made the complaint to the Officer-in-Charge, electronics complex Police Station to take appropriate legal action against the accused persons. Since no action was taken by the concerned police station, the opposite party had to move before the court by filing the written complaint.

5. The learned Senior Advocate Mr. Ayan Bhattacharya on behalf of the petitioners submits that it is evident from the content of the written complaint that there was a commercial transaction between the parties and accordingly a work order was issued and after the bill was raised by the Opposite party ,a considerable amount was paid in terms of the bill so raised. Therefore, in view of the settled proposition of law, there cannot be any intention or *mens rea* to deceive the opposite party. The charge under Section 420 of the IPC is a misnomer and the definition of cheating and dishonestly inducing delivery of property as enactment defines, is absolutely not applicable in the instant case. The Opposite Party no. 2 has tried to

convert a civil dispute into a criminal prosecution, which is notable in the eye of law. Mere use of the expressions like cheating, deception and inducement is of no consequence. The story projected by the opposite party has no relevance to attract offence of cheating by the petitioner and hence no proceeding could have been initiated against them. In addition the charge under Section 406 of IPC, the penal provisions apropos the offence of criminal breach of trust as defined under section 405 of the IPC is again misplaced. The essential requirement to constitute an offence of criminal breach of trust is absolutely missing in the instant case since on bare perusal of allegations, it is apparent that the petitioners had not been entrusted with any property of the opposite party, which could have been misappropriated by the petitioners. In absence of the element of entrustment in favour of the petitioners and misappropriation thereof, no case for commission of the offence of criminal breach of trust can at all be said to have been committed.

6. The learned Senior Advocate further submits that the order issuing process in the nature of summons is bad in law in as much as the learned Trial Magistrate failed to record the reasons which weighed with the opinion formed by learned Magistrate regarding existence of sufficient and prima facie ingredients of the concerned offences. In this regard to put reliance in the decision of ***Sunil Bharti Mittal versus CBI*** reported in[1]**,** that order issuing process must be a reasoned order sufficiently reflecting as to what actually weighed with the concerned court in deciding the commission of a prima facie offence by the accused. Further relied upon the decision of

[1] (2015) 4 SCC 609

***State of Haryana versus Bhajanlal and others*[2].** The other point raised is the long delay in lodging the written complaint and further no explanation or reasoned explanation can be found in the written complaint which was also not considered by the learned magistrate while taking cognizance.

7. On behalf of opposite party, the learned advocate raises objection and submits that their conduct of the petitioners clearly demonstrate, they had an intention from the very inception to deceive the opposite party, since they induced the opposite party and issued work order in favour of the complainant. It is for subjects that the entire work was completed by the complainant and he submitted the bill for payment to the accuse persons on 3.1.2020 of an amount of ₹27, 77, 840 out of which accused person paid only ₹17.50, 000 and refuse to pay the balance amount of ₹10, 27, 840. The complainant had to run from pillar to post and several communications were made to the petitioners who, despite having full knowledge and even after receiving the letters and the legal notice did not give any reply and this act on their part, manifest their intention to defer the opposite party.

8. It is his further contention that the learned Magistrate rightly took cognizance after examining the proprietor of M/S Agro consultancy services on solemn affirmation. He has specifically stated on affidavit that he personally visited to the office of the petitioners with a request to pay the balance amount, but despite their repeated request, the accused persons failed and neglected to pay the balance amount to him. The recent ecision of Hon'ble Supreme Court in ***V. Ganesan versus State represented by the***

[2] 1992 Supp (1) SCC 335

Sub- Inspector of police in[3]**.** Supreme Court took note of the decision of ***Iridium India telecom Limited versus Motorola Inc.[4],*** the ingredients of an offence of cheating as defined in section 415 of IPC was laid down.

9. Having heard the submissions of the learned Counsels representing the respective parties and considering the brief facts of the case it appears that the provisions of the Indian Penal Code are to be revisited .In the decision as relied upon by the Learned Advocate of the opposite party, it has been observed that section 415 of IPC has two parts. (a) The first part makes it necessary that the deception by the accused of the person deceived, must be fraudulent or dishonest. Such deception must induce the person to either a delivered property to any person or b) consent that any person shall retain any property.

Section 415 IPC reads as:

> *Cheating— 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 to do anything which he would not do automate if he were not so deceive, and we act or omission causes is likely to cause damage or harm to that person in body, mind, repetition, or property, is said to cheat.*

The Hon'ble Court further observed that that deception is a necessary ingredient for the offence of cheating under both parts of this section. In the

[3] 2026 INSC 265
[4] 2011 (1) SCC 74

case before the Hon'ble Supreme Court, was that the initial payment of money by the complainant to the appellant was for a movie project, on promise of a share in profits. Additional money was paid later for its completion under promise of an enhanced share in the profits. The letter issued to refund the principal amount because of an objection taken by de-facto complainant to the release of the movie. Since no denial was there about completion of the movie and ultimately it was released, what was cleared that the promise to make a movie was not false, so it cannot be said that applicant made a false promise.

10. Similarly in the case of ***Vijay Kumar ghai vs the state of West Bengal***[5] a commercial transaction was there between the parties and it was held and observed in paragraph 21 that, time and again the Supreme Court has questioned about converting civil disputes into criminal cases. In Indian oil Corporation, the Supreme Court noticed the prevalent impression that civil court remedies are time consuming and do not adequately protect the interest of lender creditor. It was further observed that any effort to settle civil disputes and claim which do not involve any criminal offence, by applying pressure through criminal prosecution, should be deprecated and discouraged. It was held that there can be no doubt that mere breach of contract is not in itself, a criminal offence and gives rise to the civil liability of damages.

11. The Supreme Court of the case of **Hriday R*anjan Prasad, Verma, and other state of Bihar***[6] discussed the distinction between breach of contract

[5] MANU/SC/0348/2022
[6] (2000) 4 SCC 168

and cheating, which is a criminal offence and is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or designed intention is the basis of the offence of cheating which was not disclosed in the written complaint.

12. The decision relied upon by the Ld. Advocate representing the Opposite Party, passed by Ld. Single Judge, High Court at Calcutta in ***CRR 2997 of 2019***, ***Rupayan Bhattacharya vs State of West Bengal & Anr.*** Wherein it was held that-

> "*Accordingly the aforesaid proceeding from the stage of examination of complainant under section 200 and issuance of process against accused persons under section 204 of the code i.e. order dated 19.08.2019 and all subsequent orders stands quashed..... Liberty is given to the complainant to appear before the Magistrate for sworn statement along with his witnesses, if any."*

In the decision of ***M.N.G Bharateesh Reddy vs Ramesh Ranganathan[7],*** where a contract styled as a Consultancy Agreement was entered into between the first respondent and the hospital on 1 April 2013 containing his terms of engagement. One of the terms of the engagement was that either party may terminate the agreement, with or without cause, by giving a prior notice of thirty days. Hon'ble Apex Court discussed the offence of Cheating as spelt out in Section 415, IPC and took note of ***Hridaya Ranjan Prasad Verma v. State of Bihar (supra)*** and held-

[7] Crl. A. 1273/2022

> *"In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."*

Hon'ble Apex Court further took note of ***Dalip Kaur v. Jagnar Singh***[8] regarding presence of elements of Section 420 IPC in a dispute arising out of a breach of contract and held that-

> *"Applying the above principles, the ingredients of Sections 415 and 420 are not made out in the present case. The grievance of the first respondent arises from the termination of his services at the hospital. The allegations indicate that there was an improper billing in respect of the surgical services which were rendered by the*

[8] (2009) 14 SCC 696

complainant at the hospital. At the most, the allegations allude to a breach of terms of the Consultancy Agreement by the Appellant, which is essentially in the nature of a civil dispute."

It was further held that-

"The allegations in the complaint are conspicuous by the absence of any reference to the practice of any deception or dishonest intention on behalf of the Appellant. Likewise, there is no allegation that the complainant was as a consequence induced to deliver any property or to consent that any person shall retain any property or that he was deceived to do or omit to do anything which he would have not done or omitted to do if he was not so deceived. The conspicuous aspect of the complaint which needs to be emphasized is that the ingredients of the offence of cheating are absent in the averments as they stand."

13. On the contrary, the latest decision made by the Apex Court relied upon by the petitioner in ***Yogesh Premjibhai Suvariya & Anr. vs State Of Gujarat & Anr.***[9], it was held that-

"*The sine qua non for attracting Section 415 IPC is 'fraudulence', 'dishonesty' or 'intentional inducement'. Absence of the aforesaid elements would debase the offence of cheating."*

[9] 2026 SCC OnLine SC 2211

In this case, the ownership of Hans Ispat Ltd. was earlier with the Barnala Group with its Head Office at Muzaffarnagar, Uttar Pradesh. From the Barnala Group, Electrotherm India Pvt. Ltd. had purchased the company with effect from 01.06.2010. From the aforesaid company, Hans Ispat Ltd. took over the ownership. An amount of Rs.2,00,00,000/- was paid by the appellants to the aforesaid company during the period from 01.12.2006 to 15.02.2007 when the Barnala group owned the company and such amount deposited by the appellants were required to be taken care of by Barnala Group and not by the new owners of the company. It was observed that-

> *"……it is evident that the money was paid by the appellants to the company when the Barnala group owned the company. Appellants are insisting on repayment, failing which they have adjusted the dues of Respondent No. 2. According to respondent No. 2 this amount should be 8 repaid by the Barnala group and not by the present owners. Therefore, the amount due to him should be paid by the appellants. Thus, the dispute raised by Respondent No.2 is pre-eminently a civil one."*

14. Therefore, on careful perusal of entire facts and circumstances of this case, it is evident that the work order was issued and accordingly work was completed, bill was raised by the complainant of Rs₹27, 77, 840. The present petitioner paid total amount of Rs.17,50,000/- keeping a balance of Rs. 10,27,840/- which was not paid later on, giving raise to lodging of the present complaint.

Therefore in the touchstone of the law laid down by Hon'ble Apex Court in the catena of decisions, it can be averred that necessary ingredients to constitute offence under Sections 420 IPC is missing from the complaint.

15. It is true that in the given circumstances, a civil remedy may be available to the complainant and that itself cannot be a ground for criminal trial. The real test lies with allegation in the complaint if disclosed any criminal offence at all. Having gone through the complaint/ FIR, no such averment in the FIR can be found, which can constitute an offence under Section 420 IPC. It is clear that payment was not fully paid, keeping a balance due and hence civil remedy is the appropriate forum. It is also evident that no entrustment of property or dominion was not in existence to constitute an offence under section 406IPC.

16. Hence this criminal Revisional application is hereby allowed.

17. The entire proceeding of complaint case no. 3407/2022, under Section 406/420 of the Indian Penal Code, 1860 pending before the court of Learned Judicial Magistrate, first class, Bidhannagar, not 24 Parganas is hereby quashed against the petitioners .

18. All other connected applications, if any, hereby stand disposed of.

19. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]