

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 700 OF 2023

HAIER APPLIANCES INDIA PVT. LTD.

VS

GANESH DEVCON PRIVATE LIMITED

For the Petitioner : Mr. Sandipan Ganguly, Sr. Adv.

Mr. S. Chowdhury, Adv.

Ms. Ashika Daga, Adv.

Mr. Raunak Das Sharma, Adv.

Ms. U. Chawla, Adv.

Mr. Aditya Mukherjee, Adv.

For the Opposite : Mr. Rachit Lakhmani, Adv.

Party Mr. Mohammed Amin, Adv.

Mr. Ghulam Muztaba, Adv.

Ms. Monjabeen, Adv.

Md. Iqbal, Adv.

Reserved On : 24.06.2026

Judgement on : 28.08.2026

Uploaded on : 28.08.2026

CHAITALI CHATTERJEE DAS, J.:-

1. The Revisional application has been filed for quashing of the proceeding in Complaint Case no. 348 of 2020 pending before the learned Judicial Magistrate, 4th Court, Howrah under Section 406 and 420 of the Indian Penal Code, 1860 and all orders passed therein , including orders dated 8th September, 2020, 19th December, 2020, 21st January, 2021, and 2nd April, 2022.

Brief fact of the case

2. Haier Appliances India Private Ltd., the petitioner company in the instant case is a manufacturer and is engaged in the business of providing home and electrical appliances, entered into an agreement for lease with SMCG warehousing LLP on January 20, 2020 in respect of the property situated at Sankhrail Industrial Park, for a period of three years with provision of extension of six years. In mid of June 2020, the petitioner company was informed that the property will be sold to a third- party and the lease deed would have to be terminated. Thereafter the property was sold to the Opposite Party on 22nd July, 2020 and the petitioner company vacated the said property on 30th July, 2020 and issued a letter intimating the same to SMCG Warehousing LLP and received the refund of the security deposit pursuant to the lease deed. The petitioner company contacted SMCG to take possession of the keys of the aforesaid property. Sometime in July 20,2022, the petitioner company came to know that about the pending complaint against the petitioner and its Directors and other employees before the court of Judicial Magistrate, 4th Court at Howrah, where a warrant of arrest

has been issued against the petitioner company on the basis of a complaint filed against the company by the opposite party, herein alleging that with the assurance given to Opposite Party to continue as a lessee during the entire duration of the lease agreement ,the Opposite Party decided to buy the property solely on such representation made by the petitioner company but in gross violation of the same the petitioner company and as per terms and condition of the agreement the petitioner company violated the assurances given and vacated the premises. On the basis of complaint the learned Magistrate took cognizance and issued summons against the petitioner company and its Directors some of whom surrendered and released on bail.

3. The petitioner company being aggrieved by the continuation of the impugned proceedings in Complaint Case no. 348 of 2020 and the orders passed therein filed this application for quashing of the entire proceeding.

Submissions

4. The learned Senior Advocate representing the petitioner Company argued that the petitioner has been falsely implicated and even if the case of the opposite party/complainant is accepted on face value, the same makes out a purely civil dispute and failed to attract any ingredients of the offences. Moreover, there was no privity of contract between the petitioner and the opposite party/complainant as no fresh lease agreement was executed between them. The allegations do not disclose the essential ingredients of cheating and criminal breach of trust under any stretch of imagination. It is further submitted that no lease agreement was executed between the petitioner and

the opposite party/complainant excepting the document existed between SMCG and the petitioner dated January 7, 2020. The email dated June 25, 2020 was issued by one Madhumay Panigrahi on behalf of the petitioner as the representative of SMCG accordingly there was no ambiguity about the fact that the petitioner was clear from the beginning that first the existing lease agreement would be terminated and then only the question of entering into the new agreement at all with any other party will arise upon a confirmation email from both sides. The email dated July 15, 2020 was issued by SMCG would manifest that the proposal was made by SMCG about the existing rental agreement to be terminated and a fresh agreement to be considered with the buyer of the said property. It is palpably clear from the email dated July 17, 2020 issued by the representative of SMCG that they asked about the confirmation of the calculation on refund of security deposit upon adjustment of the expenses and rent to the petitioner. In this email, the refund of security deposit of ₹26, 52, 309, the rent for July 2020 was adjusted along with GST and the net amount refundable was ₹16, 75, 375.81, which was confirmed by the petitioner in the email dated July 18, 2020. In none of the documents there was any privity of contract created with the Opposite Party/complainant.

5. It is further argued that the process has been issued under Section 406 and 420 of the Indian Penal Code when none of the aforesaid offences are made out in the circumstances of the case. Secondly, the ingredients of section 406 of the Indian Penal Code, 1860, palpably not made out as no property belonging to the opposite party/complainant was entrusted with the petitioner since admittedly, the property was vacated by the petitioner and the

complainant is in possession of the said property. The offence under section 420 of the Indian penal code is also not made out and merely because a fresh lease agreement was not executed by the petitioner with the Opposite Party does not make out any case of deception since inception of the transaction as narrated. There is no question of wrongful loss or wrongful gain by any of the parties accordingly, prayed for quashing of the entire proceeding, along with the orders passed by the Learned Magistrate.

6. Per Contra, the summary of the submission made by the Learned Counsel representing the opposite party that the accused company and its Directors and representatives are guilty of the offence punishable under Section 420 read with 120B of IPC. Upon SMCG intimating Haier about the proposed sale of the warehouse to the complainant and the complainant having undertaken to replace SMCG as Haier's lessee and be bound by the lease, Haier could not have objected to the complainant purchasing the property and stepping into the shoes of SMCG in terms of the specific clause of the said agreement. Upon reasonably objecting to the aforesaid, Haier would have had to forgo its security deposit of ₹26, 52,309 being equivalent to 3 months' rent lying with SMCG. Upon purchase of the warehouse from SMCG, the security deposit was to be transferred by SMCG to the complainant. This was confirmed by SMCG to the Haier by its email dated 22.6.2020. By virtue of purchase of the Warehouse from SMCG the complainant would have stepped into the shoes of SMCG vis-à-vis the lease with Haier and forfeited the security deposit, if Haier withdrew from the lease. In order to avoid its liability pertaining to forfeiture of security deposit, the petitioner made dishonest representations before SMCG

and the complainant that it intends to terminate its existing lease with SMCG, take back its security deposit from SMCG, transfer such security deposit thereafter to the complainant and enter into a new lease with the complainant, thereby dishonestly and fraudulently inducing the complainant to agree with the security deposit being transferred from SMCG to the complainant. The Learned Magistrate after considering the materials and that the complainant invested huge amount of money on the basis of false assurance directed to issue process and hence the petitioner company must face the trial. The learned Advocate has relied upon decision of ***State versus Maridoss and Another*¹, *S.M Datta versus state of Gujarat and another*², *Hridaya Ranjan Prasad Verma and Others vs State of Bihar and Another*³**. Accordingly prayed for dismissal of the Revisional application.

Analysis

7. Heard the submissions of both the learned advocates. The factual matrix of the case, as discussed above clearly demonstrate that the dispute pertains to refusal by the petitioner company to enter into a fresh lease with the complainant company who purchased the property from the original lease holder of the property only on the assurance that the present petitioner company would continue with the lease. The demand draft towards security deposit has been handed over by SMCG to the complainant company in accordance with the terms of the agreement but the petitioner company successfully induced the complainant company to handover such draft before

¹ (2023) 4 SCC 338

² (2001) 7 SCC 659

³ (2000) 4 SCC 168

the new lease agreement was executed between them and thereafter completely cut off the communication. It is not in dispute that Petitioner Company was not a party to the lease agreement executed between SMCG and Complainant company and there was no privity of contract between the petitioner and the Opposite Party/complainant. The SMCG warehousing LLP was the original owner of Howrah Warehouse and let out to the petitioner company after executing a lease with a monthly rental of Rs 8,84,103 and an amount of security deposit was made of Rs 26,52,309/- .The lease was for a period of three years which could be further extended to 9 years . A clause was incorporated therein whereby it was agreed that if SMCG sold to any third party during the lease, such third party would have to undertake to subject itself to all the terms and condition of the lease with the complainant company. The Lease agreement further contained that SMCG could assign the lease to third party with the consent of the petitioner company. It is the claim of the complainant that despite such agreement and the consent given by the petitioner company they did not continue with the lease causing severe financial hardship to the complainant company. On careful consideration of the materials on record and on close scrutiny of the written complaint no written assurance can be found on behalf of the present petitioner in favour of the original owner or the subsequent purchaser being the present opposite party. The only agreement is admittedly existed between SMCG and the petitioner dated January 7, 2020. There is no ambiguity left after the email dated June 25, 2020 issued by Madhumay Panigrahi on behalf of the petitioner to the representative of SMCG that it was decided between the parties that the existing lease agreement would be terminated and then the

question of entering into new agreement upon a confirmation mail from both sides would arise which never arose.

8. The complaint lodged by the present Opposite Party before the learned Chief Judicial Magistrate at Howrah against the present petitioner company and its Director alleges of offences committed under Section 406 and 420 IPC only on the ground that the petitioner company failed to keep the assurances given to continue as Lessee for the entire duration of the said lease agreement and abide by all terms of the sale agreement even after such proposed sale of property in favour of the complainant

9. On close scrutiny of the written complaint nothing is found to substantiate that any communication was made after the complainant purchased the property on the contrary it discloses that on 22nd July, 2020 SMCG handed over a copy of a termination letter dated 20th July, 2020 terminating the lease agreement with SMCG and handed over a demand draft dated 21st July, 2020 of ₹16, 75, 375. The averments made in the written complaint to that extent that the opposite party under the impression of continuing to receive a sum of ₹8, 84,103 towards the monthly rentals from the petitioner company, purchased the property which was not followed by the petitioner company can never attract the basic ingredients of constituting offence under section 420 IPC.

10. The entire allegations of the opposite party, even if is to be considered in its entirety, it would demonstrate that the lease agreement existed between SMCG and the petitioner stood terminated on July 20, 2020 and demand draft towards security deposit was handed over to the complainant, but not the

present petitioner. Any assurance given verbally being not a party to any agreement entered into between the opposite party no. 2 and SMGCG per se cannot be said to be an inducement by the present petitioner from the very inception for which the opposite party no. 2 purchased the property. The assurance, even if considered to be true and correct, which was not reduced to writing can never make a person accused for commission of any offence to the extent of cheating. The present petitioner company being a lessee never acquired any such right over the property for which it can be said that the disputed property was entrusted to the petitioner Company which they have failed, and there is any breach of trust. It is palpable from the email dated July 17, 2020 issued by the representative of SMCG that they asked about confirmation of the calculation on refund of security deposits upon adjustment of the expenses and return to the petitioner and the total amount of security deposit of Rs. 26, 52, 309 /- was adjusted along with GST and net amount refundable was of Rs. 16, 75, 375.81 /- was confirmed by the petitioner in their email dated July 18, 2020.

11. The learned Magistrate issued the summons to the petitioner company mechanically even without considering that the charges under Section 420 and 406 of the Indian Penal Code, 1860 cannot be made simultaneously in terms of the decision of ***Delhi race club(1940) Limited and others versus State of Uttar Pradesh and other⁴***. The Learned Magistrate failed to consider that there was no privity of contract between the complainant company and the petitioner and as per terms of the lease agreement SMCG could assign only with the consent of the petitioner company .Moreover the allegation at best can

⁴ 2024 INSC 626

be said to be breach of terms and condition hence civil remedy lies but cannot be said to be inducement from the inception or has any element of cheating.

In the decision of **Hridaya Ranjan Prasad Verma (Supra)** the Supreme Court discussed Section 415 IPC, which defines cheating and its essentials ingredients and observed that-

“The section requires-

1) deception of any person;

2) (a) fraudulently or dishonestly inducing that person

(i) to deliver any property to any person, or

(ii) to consent that any person shall retain his property; or

b) intentionally inducing that person to do or omit to do anything which he would not do or 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.”

12. It was further observed that in the first place he may be induced fraudulently or dishonestly to deliver any property or to any person. In the instant case, the present petitioner company was not the owner of the property and neither any agreement was entered into between the petitioner company or any of their representatives with the opposite party no. 2 the petitioner company or any of their representative was a party in the contract executed between the Opposite Party no. 2 and SMGC. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In this type of act, the inducing must be intentional, but not fraudulent or dishonest.

So this is evident in the instant case that there was no inducing or inducement by the present petitioner company as he was only a lessee and further the contention of the complainant if assumed to be correct also demonstrate that no such approach was made on behalf of the Opposite Party to the present petitioner for entering into any fresh lease agreement even after the termination of the agreement which was prevailing between the petitioner and SMGC. On the contrary, the security deposit after adjusting the amount towards rent and other purposes was reduced from Rs. 25 lakhs to Rs. 16 lakhs and the draft was issued in favour of the petitioner company which was handed over to the complainant company. In the above mentioned decision, the Supreme Court in paragraph 15 observed that-

“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 the 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 a promise, subsequently, such a culpable intention right at the beginning that is when he made the promise cannot be presumed.”

13. On the touch stone of the principles noted above, the present case in the considered view of this court is that the basic ingredients of the offence of cheating under Section 420 and Section 406 of the Indian Penal Code, 1860 are missing in the complaint. That being the position it comes within the guidelines framed by the Supreme Court in the case of **State of Haryana & Ors. Vs Bhajanlal & Ors.**⁵ in clause 1 of paragraph 102 – “*where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out cases against the accused*” and in clause 5 “*where the allegations made in the FIR or written complaint are so absurd and inherently improbable on the basis of which no prudent person can even reach just conclusion that there is any sufficient ground for proceeding against the accused*”.

14. Therefore, the dishonest intention in order to deceive the complainant is not made out in the written complaint even if taken on their face value and in such situation, continuing the criminal proceedings against the accused Company/Petitioner in the considered opinion of the court would be an abuse of process of the court and therefore is liable to be quashed.

⁵ 1992 (Supp) 1 SCC 335

Conclusion

15. Hence, This Criminal Revisional Application stands allowed. The proceeding in Complaint Case no. 348 of 2020 pending before the learned Judicial Magistrate, 4th Court, Howrah under Section 406 and 420 of the Indian Penal Code, 1860 is hereby quashed against the petitioner company.

16. All other connected application, if any, hereby stand disposed of.

17. 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.]