

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. No. 3280 of 2022
Tigerhill Vinimay Private Limited & Ors.
Versus
Pankaj Ladia

For the Petitioners : Mr. Sandipan Ganguly, Sr. Adv.
Mr. Anand Keshari, Adv.
Mr. Soumen Mohanty, Adv.
Mr. Ayan Poddar, Adv.
Mr. Ayaan Ahmed, Adv.

For the Opposite Party : Mr. Satadru Lahiri, Adv.
Mr. Safdar Azam, Adv.
Mr. Jyotirmoy Talukder, Adv.

Heard on : 31.07.2026

Judgment on : 16.09.2026

Uploaded on : 16.09.2026

Ajay Kumar Gupta, J.:-

1. By filing this Criminal Revisional application under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), the petitioners sought for

quashing the proceeding being complaint case being C.S. 4034 of 2019 instituted under Sections 420/473/120B of the Indian Penal Code, 1860 (Pankaj Ladia Vs. Tigerhill Vinimay Private Limited & Ors.) pending before the Learned Metropolitan Magistrate, 8th Court, Calcutta and setting aside all orders passed therein.

2. The Petitioner nos. 2 and 3 are Directors of Petitioner no. 1/Company, engaged in real estate business. Petitioner no. 4 is an advocate, working as a consultant for Petitioner no. 1. Brief facts of the case are that Petitioner no. 1, the absolute owner of 123.79 satak of land in J.L. No. 84, Mouza-Ramnagar, District Hooghly, sought to acquire by purchasing adjoining plots to render the holding contiguous. In August 2018, the Opposite Party represented himself as the owner of an adjacent 179.25 decimal agricultural land in the same Mouza and offered it for this purpose.
3. Petitioner no. 4 was instructed to conduct due diligence, where the Opposite Party furnished only photocopies of title deeds and the current ROR, failing to produce originals or the preceding 30 years' ROR. Pending verification, the Opposite Party sought part-payment to secure the land against other buyers, assuring full refund if the deal fell through. Relying on this, the petitioners

paid Rs. 1,58,45,971/- via post-dated cheque No. 816664 dated 03.09.2018 (Axis Bank, Dalhousie Branch), after refusing the Opposite Party's demand for cash.

4. On completing due diligence, the petitioners discovered the land was not as represented and would not achieve contiguity. They cancelled the transaction and demanded return of the cheque, which the Opposite Party initially agreed to but instead deposited it. As the petitioners had already stopped payment/withdrawn funds following cancellation, the cheque was dishonoured with the endorsement "Funds Insufficient." Efforts to reach the Opposite Party thereafter proved futile.
5. The Opposite Party then filed C.S. 107429 of 2018 under Sections 138/141 of the Negotiable Instruments Act, 1881, before the Learned Chief Metropolitan Magistrate, Calcutta, and cognizance was taken on 31.12.2018. A summon was issued by the Learned 3rd Metropolitan Magistrate, Calcutta, directing appearance on 21.02.2019, when the petitioners appeared and were released on bail on sureties of Rs. 10,000/- each.
6. Thereafter, the Opposite Party instituted the impugned proceeding under Section 200 of the Cr.P.C. before the Learned Chief Metropolitan Magistrate, Calcutta, being C.S. No. 4034 of 2019 under Sections 420/473/120B of the Indian Penal Code,

1860, on the self-same cause of action. The case was taken up on 24.01.2019, when cognizance was taken, and the record was transferred to the Learned Metropolitan Magistrate, 8th Court, Calcutta.

- 7.** The learned Court examined the opposite party, and one Manik Ghosal, and on 20.06.2019 passed an order issuing summons against the petitioners. Petitioner Nos. 2 and 3 subsequently surrendered and were granted bail on 21.09.2019, followed by Petitioner No. 4, who was granted bail on 18.10.2019.
- 8.** The petitioners' case, in essence, is that no transaction, debt, or liability ever crystallized between the parties, given the cancellation of the deal prior to encashment, and that the impugned complaint under Sections 420/473/120B of IPC represents a retaliatory and mala fide proceeding, instituted with an ulterior and oblique motive to harass the petitioners, upon a concocted version of the facts.
- 9.** Mr. Sandipan Ganguly, learned senior counsel appearing on behalf of the petitioners, submitted that the whole case is false, frivolous, concocted and factually incorrect. While filing the complaint case under Section 200 of the Cr.P.C., the opposite party/de-facto complainant also suppressed the actual material

facts and circumstances with the ulterior motive to either extort the petitioners or to harass and/or tarnish their reputation.

- 10.** It was further submitted that the opposite party had filed this instant case for offences punishable under Sections 420/473/120B of the IPC. However, the actual fact of the petitioners' case is that there were ongoing negotiations between the petitioners and the opposite party for selling the opposite party's land. At the time of negotiation, the opposite party had displayed and handed over the photocopies of the title deeds and the ROR of the Land for the purpose of examining the same before purchase without showing the original title deeds. The opposite party had also failed to provide the ROR and a copy of the previous ROR, i.e., CS and RS. It is further alleged that the opposite party had deliberately chosen to suppress the fact that the cheque dated 03.09.2018 amounting to Rs. 1,58,45,971/- was issued as a result of mutual understanding between the parties and with assurance given by the opposite party, and that he would refund or return the entire sum paid by the petitioners without any demur in case the petitioners were not satisfied with the right, title and interest of the opposite party over the land and the transaction did not materialise.

11. Subsequently, upon searching and verifying the documents, the petitioners found that the opposite party is not the actual owner of the property which was under negotiation between the petitioners and the opposite party. As such, the petitioners refrained from entering into any arrangement or written agreement with the opposite party pertaining to the said land and asked the opposite party to cancel the deal and return the cheque which was just given to him. There was no agreement for sale, sale deed and/or transfer of any title deed or original documents between the petitioners and the opposite party. The negotiation did not materialise due to the ownership dispute. Subsequently, despite the opposite party's assurance, he did not return the post-dated cheque to the petitioners; rather, he submitted the said cheque before the bank for its encashment. The said cheque was returned with the endorsement "FUNDS INSUFFICIENT". No offence punishable under Sections 420/473/120B of the IPC is attracted. No ingredients are also fulfilled, even *prima facie*, towards those sections. Therefore, this proceeding is frivolous and malicious, and if it were allowed to continue, it would prejudice the petitioners and be an absolute abuse of process of law. To secure the ends of justice, the proceeding is liable to be quashed.

- 12.** Learned senior counsel finally submitted that the learned Magistrate took cognizance mechanically without assessing the materials and in a casual manner. Learned senior counsel has further contended that when no agreement for sale or sale deed was executed between the parties of any land, the question of liability or handing over the original deed does not arise, and the offence cannot be said to be committed by the petitioners.
- 13.** Learned counsel, Mr. Satadru Lahiri, on the other hand, appearing on behalf of the opposite party, opposed the prayer of the petitioner and further submitted that the complainant is the absolute owner of the plot of land measuring about 179.25 Satak at Ramnagar, Hooghly. The petitioner nos. 2, 3 and 4 came to the office of the opposite party with a proposal to purchase his land and demanded his original documents. After being satisfied in the month of September 2018, the accused persons came to his office and handed over a cheque of Rs. 1,58,45,971/- to the opposite party and requested for the sale deed to be completed within a fortnight without entering into an agreement for sale. On such assurance, the opposite party handed over all the original documents in the presence of some witnesses and presented the cheque, which was dishonoured due to insufficient funds.

14. It was further submitted that the opposite party went to the office of the accused persons and requested them to either make payment or hand over all documents, but they refused to return the documents. Accordingly, he made a complaint to the Hare Street P.S. and the Deputy Commissioner of Police, but no action was taken. Accordingly, he filed a criminal case against the present petitioners. It is an undisputed fact that there was no execution of an agreement for sale or sale deed between the parties. However, they retained the original deeds, including other documents which were still lying with the petitioners. Therefore, this instant criminal Revisional application is liable to be dismissed with a direction upon the Trial Court to proceed with the proceedings against the petitioners to uncover the truth and punish the instant petitioners.

15. Learned counsel has also placed reliance on the following judgments: -

i. *Ghanshyam Sharma v. Surendra Kumar Sharma &*

Ors.¹ Particularly paragraph no. 8:

“8. Whether the respondents are guilty under Section 379 IPC or not is a matter of evidence. The fact that the police chose to file a charge-sheet under Sections 406 and 420 IPC is not conclusive regarding the offences for which the respondent-accused are to be tried. The trial court can always frame an appropriate charge

¹ (2014) 13 SCC 401;

if there is sufficient material from the report of the police available before it. In case where the material is insufficient to frame a charge, the trial court may either discharge the accused or may direct further investigation in the matter. Before deciding as to which one of the three courses of action mentioned above is to be resorted to, the trial court must examine the content of the complaint, the evidence gathered by the investigating agency and also scrutinise whether the investigating agency proceeded in the right direction.”

ii. Sesami Chemicals Pvt. Ltd. Represented by Director v.

State of Meghalaya & Ors.² Particularly paragraph no.13:

“13. We are of the opinion that the petition filed by the contesting respondents under Section 482 of the Code of Criminal Procedure, 1973 is an abuse of the process of the Court. As already noticed, the facts are seriously in dispute. The truth or otherwise of such facts can only be established by evidence at the trial. We are, therefore, of the opinion that the High Court erred in quashing FIR No. 43(10) of 2011 dated 12-10-2011. We, therefore, set aside the order [Sanjay Kabra v. State of Meghalaya, 2013 SCC OnLine Megh 24] of the High Court. The first respondent is directed to proceed with FIR No. 43(10) of 2011 dated 12-10-2011 in accordance with law.”

- 16.** Before advertng to the merits, it is necessary to recapitulate the settled parameters within which the inherent power under Section 482 of the Cr.P.C. is exercised to quash a criminal proceeding. The categories enumerated in **State of Haryana v. Bhajan Lal**³, remain the guiding principles. Of these, categories (1) and (7) are directly attracted to the facts of the present case, namely, where the allegations made in the complaint, even if

² (2014) 16 SCC 711

³ 1992 Supp (1) SCC 335

taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out a case against the accused; and where the criminal proceeding is manifestly attended with mala fide and/or has been instituted with an ulterior motive for wreaking vengeance, to spite the accused due to private and personal grudge.

- 17.** The essential ingredients of the offence of cheating under Section 420 of the IPC require the existence of a fraudulent or dishonest intention at the very inception of the transaction, i.e., at the time the inducement was made and the property or valuable security was parted with. It is well settled that a mere breach of contract, or the failure of a civil transaction to fructify, does not, by itself, translate into the offence of cheating unless dishonest intention at the outset is discernible from the record.
- 18.** Tested on this touchstone, the facts placed before this Court do not disclose the essential ingredient of dishonest inducement from inception. It is an admitted position, accepted by both sides, that no agreement for sale, and no sale deed, was ever executed between the petitioners and the opposite party. What existed between the parties was, at best, a negotiation for the purchase of land, conditional upon the petitioners' satisfaction as to title. The negotiation never matured into a concluded

contract. The cheque in question was admittedly handed over during the course of such negotiation, and its dishonour occurred only after the petitioners, upon completion of their due diligence, found the representations as to title unsubstantiated and accordingly cancelled the proposed transaction. On these facts, the essential attribute of cheating, dishonest inducement inducing delivery of property, coupled with an intention not to perform from the very outset, is absent. What is disclosed, at best, is a civil dispute as to non-performance of a negotiated understanding, which does not colour of the character of a criminal offence.

- 19.** It is also significant to note that the opposite party had already invoked the remedy available under Section 138 of the Negotiable Instruments Act, 1881, being C.S. 107429 of 2018, in respect of the self-same cheque and the self-same transaction. Cognizance in that proceeding was taken on 31.12.2018. The institution of a subsequent proceeding under Sections 420/473/120B of the IPC on the very same cause of action, i.e., the same cheque, the same transaction, and the same set of facts, without any additional element being disclosed to elevate the dispute from the civil/quasi-criminal realm of cheque dishonour into the realm of cheating, lends considerable weight

to the petitioners' contention that the impugned complaint constitutes an unnecessary proceeding, calculated to multiply the petitioners' harassment rather than to vindicate any distinct wrong.

- 20.** As regards Section 473 of the IPC, which penalises the making or possession of a document resembling a forged document with the requisite knowledge, no material has been placed on record, nor is any such case set out in the body of the complaint, to indicate the existence, fabrication, or use of any forged document by the petitioners. The provision, on the facts alleged, has no application whatsoever, and its invocation appears to have been made without appreciation of its constituent ingredients.
- 21.** The charge under Section 120B of the IPC, being one of criminal conspiracy, is by its very nature dependent upon the existence of an agreement to commit an offence which is itself made out. Once the substantive offence under Section 420 IPC is found, on prima facie reading of the complaint and the materials on record, not to be attracted, the derivative charge of conspiracy cannot survive independently and must fall along with it.
- 22.** To constitute cheating, there must be deception coupled with fraudulent or dishonest inducement at the inception of the

transaction. The complaint, however, does not contain specific averments to demonstrate that, at the time of negotiation, the petitioners had any dishonest intention rather he himself admits that the petitioners had issued a post-dated cheque in favour of the petitioner but subsequently, the said negotiation for purchase of the subject land does not fructify. Consequently, no stretch of imagination it come to an aid of cheating.

23. The principles laid down in ***Murari Lal Gupta v. Gopi Singh***⁴, ***Uma Shankar Gopalika v. State of Bihar***⁵ and ***Vijay Kumar Ghai v. State of W.B.***⁶, to the effect that breach of contract simply does not constitute cheating in the absence of initial dishonest intention, are directly attracted to the facts of the present case. The ratio of these decisions fortifies the conclusion that the essential ingredients of Section 420 of IPC are not disclosed. However, in the present case no memo of receipt of earnest money, agreement for sale or conveyance deed admittedly executed by and between the parties prior to issuance of cheque. The complaint appears to be an attempt to impart a criminal colour to what is essentially a civil dispute or not at all disputes between the parties.

⁴ (2005) 13 SCC 699 : 2005 SCC OnLine SC 1541;

⁵ (2005) 10 SCC 336;

⁶ (2022) 7 SCC 124 : 2022 SCC OnLine SC 344.

- 24.** Having regard to the foregoing, this Court is of the considered view that the allegations contained in the complaint, even if accepted in their entirety and taken at face value, do not disclose the essential ingredients of the offences under Sections 420/473/120B of the IPC. The continuation of the impugned proceeding, being C.S. 4034 of 2019 pending before the Learned Metropolitan Magistrate, 8th Court, Calcutta, would accordingly amount to an abuse of the process of the Court and would occasion manifest injustice to the petitioners. The proceeding is, therefore, liable to be quashed.
- 25.** Accordingly, **CRR No. 3280 of 2022** is **allowed**. Connected applications, if any, are also, thus, disposed of.
- 26.** Consequently, the proceeding being complaint case being C.S. 4034 of 2019 instituted under Sections 420/473/120B of the Indian Penal Code, 1860 (Pankaj Ladia Vs. Tigerhill Vinimay Private Limited & Ors.) pending before the Learned Metropolitan Magistrate, 8th Court, Calcutta is quashed and all orders passed therein are hereby set aside insofar as the petitioners are concerned.
- 27.** Let a copy of this Judgment be sent to the Learned Trial Court for information and taking necessary steps in accordance with law.

- 28.** Interim order, if any, stands vacated.
- 29.** All parties will act on the server copies of this Judgment uploaded from the official website of this Court.
- 30.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J.)

(P.A.)