

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

Present:

The Hon'ble Justice Jay Sengupta

**CRR 466 of 2020
Gaurav Upadhyay & Anr.
Vs
State of West Bengal & Anr.**

For the petitioner : Mr. Rajdeep Majumder, Sr. Adv.
Mr. Rudrajit Sarkar
Mr. Aditiya Kanodia
Mr. Soumya Raha
Ms. S. Ahmed
.....Advocates

For the State : Mr. Madhusudan Sur, Ld. APP
Mr. Dipankar Paramanick
.....Advocates

For the de facto complainant : Mr. Satadru Lahiri
Mr. Safdar Azam
.....Advocates

Heard lastly on : 08.04.2026

Judgment on : 07.07.2026

Jay Sengupta, J:

1. This is an application for quashing of a proceeding in G.R. Case No. 2676 of 2017 presently pending before the Learned Chief Judicial Magistrate, Paschim Bardhaman and arising out of Jamuria Police Station Case No. 326 of 2017 under Section 420 of the Penal Code.

2. Learned senior counsel appearing on behalf of the petitioner has submitted and has relied on the written notes as follows. The petitioners have preferred the instant revisional application seeking for quashing of the proceedings of G.R. Case No. 2676 of 2017 which arose out of Jamuria Police Station Case No. 326 of 2017 dated 11.11.2017 under Section 420 of the Indian Penal Code, pending before the Court of the Learned Chief Judicial Magistrate, Paschim Bardhaman. The Bengal EMTA Coal Mines Ltd. is a joint venture project of the West Bengal Power Development Corporation Ltd., the Durgapur Projects Ltd. and EMTA Coal Ltd. (erstwhile Eastern Minerals and Trading Agency). In the said joint venture company the Secretary of Department of Power is the Chairman of the company, apart from him the Board consists of nominees from West Bengal Power Development Corporation Ltd., nominees from Durgapur Projects Ltd., District Magistrate, Burdwan, MLA, Jamuria and nominees from EMTA Coal Ltd. Directors of Bengal Emta Coal Mines Ltd. were a) Bikash Mukherjee, b) Ujjal Kumar Upadhyay, c) Gaurav Bagaria. But, the Directors of EMTA were a) Nitai Mishra, b) Gaurav Bagaria, c) Gaurav Upadhyay, d) Aditya Keshri, e) Ambika Kumari, f) Arpita Dey (Company Secretary). The present petitioners are neither the Directors of the Joint venture company nor do they have any active control over the business or affairs of

Bengal EMTA Coal Mines Ltd. in any manner whatsoever. The allegations leveled by the opposite party were that the opposite party No. 2 was engaged by Eastern Minerals Trading Agency (EMTA) who was in charge of operation of Tara East-West Coal Mine for the purpose of supply of coal transportation and carrying out civil work at the said mine. That the opposite party No. 2 raised ten invoices from time to time against EMTA on account of the aforesaid work/supply and submitted the claim before EMTA on April 2015 which are alleged to have not been cleared. After completion of the purported investigation charge sheet was submitted bearing No. 202/2019 dated 30.06.2019 under Section 420 of the Indian Penal Code against the Petitioners and three others. The Hon'ble Supreme Court in the case of "Manohar Lal Sharma Vs. Principal Secretary & Others (Writ Petition (CRL) 120 of 2012)" by a judgment and order dated 25.08.2014 and 24.09.2014 respectively cancelled 204 Coal blocks including Tara East-West Coal Mine (under jurisdiction of Jamuria Police Station) and the origin of the purported cause of action of the instant dispute. Subsequent to the said cancellation of 204 Coal Blocks including Tara East-West Coal Mine, the Government of India promulgated "The Coal Mines (Special Provisions) Act, 2015 and the Coal Mines (Special Provisions) Rules 2014 to deal/administer/regulate the Coal Mines in India including the aforesaid cancelled Coal Blocks. Thus, Bengal EMTA Coal Mines Ltd was forced to forthwith stop all commercial activity in the said mines leading to a complete stoppage of revenue. The entity responsible for payment of bills of vendors is Bengal EMTA Coal Mines Limited and not EMTA. The bills in dispute and the

statement of accounts as well as the ledgers of the complainant were addressed to Bengal EMTA Coal Mines Limited and not to EMTA. Therefore, the arraignment of the Private Partner in the Public Private Partnership is non-est and bad in law. The present petitioners are neither the Directors of the joint venture company nor do they have any active control over the business or affairs of Bengal EMTA Coal Mines Ltd. in any manner whatsoever. There have been regular payments from Bengal EMTA Coal Mines Ltd. to the complainant. It was never the intention of Bengal EMTA Coal Mines Limited to cheat and/or defraud and/or misappropriate any or part of the sums of money payable to the complainant and there have been regular payments to such effect. Therefore, the basic mens rea to commit an offence is lacking in the present set of facts and no criminality can be attached to the same. This admittedly civil dispute has been given a criminal color by the complainants in conspiracy with the Jamuria Police Station where there already exists evidence of part payment and alternative forum for payment of dues. Similar frivolous prosecution has been quashed by this Hon'ble Court in another instance. In similar circumstances, a criminal complaint had been lodged by one M/s G.S. Atwal & Company against EMTA Coal Ltd. (the company), the petitioners and one Ujjal Kumar Upadhyay, wherein the said proceedings had been challenged by the petitioners before this Hon'ble Court being CRR No. 4999 of 2023 and this Hon'ble Court has been pleased to pass an order dated 25.06.2024 quashing the proceeding mentioned therein. Delay in filing of complaint and filing of multiple FIRS pertaining to the same set of facts. The opposite party No. 2 also failed to explain the delay

towards filing of the said complaint which is filed on 11.11.2017 against an alleged default of 2015. Moreover, Jamuria Police Station has also initiated multiple proceedings pertaining to the same set of facts arising out of the same facts in dispute which is per se, bad in law. The multiple proceedings being - 1) Jamuria PS Case 301/2017, 2) Jamuria PS Case 325/2017, 3) Jamuria PS Case 326/2017, 4) Jamuria PS Case 327/2017, 5) Jamuria PS Case 328/2017, 6) Jamuria PS Case 329/2017, 7) Jamuria PS Case 330/2017, 8) Jamuria PS Case 331/2017, 9) Jamuria PS Case 406/2019, 10) Jamuria PS Case 407/2019, 11) Jamuria PS Case 445/2019. Your petitioners submit that the dispute is totally civil in nature and cannot be colored as criminal acts being death with Jamuria Police Station. Your petitioners submit that non-payment of dues to factors beyond the control of the petitioners and government policies cannot be termed as cheating or misappropriation of property. Under such circumstances, it would be just and proper for this Hon'ble Court to quash the impugned proceedings or else would cause severe miscarriage of justice. Your petitioners submit that from the bare perusal of the complaint, it would transpire that no overt act has been attributed to any of the petitioners against any of the offences alleged against them. The charge under Section 420 of the Indian Penal Code cannot be substantiated in absence of any evidence to show that the said representation by the accused was false to the knowledge of the accused at the time it was made. However, subsequent act of non-fulfilment of such promise cannot be brought under the purview of cheating as provided under Section 420 of the Indian Penal Code. To attract 420 the complainant or

the prosecution must show that there is deception from the very inception. It is only the Hon'ble Supreme Court of India judgment and order dated 25.08.2014 and 24.09.2014 respectively, cancelling the 204 coal blocks including the Tara (East & West) Coal Mines operated by Bengal EMTA Coal Mines Ltd. ('BECML). Owing to the aforementioned cancellation of the above Coal Mines, the situation became worse and as such BECML could not pay the rest of the money which is pending. Even if we take the entire allegation to be true, it will not attract the element of cheating. In conspectus of facts of the instant case, there exists no allegation against the petitioners of any wrongdoing. The rudimentary ingredient of a criminal offence of 'actus reus', far less of 'mens rea' do not exist in the allegations of the instant case, qua the petitioners. It is most respectfully submitted that the absurdity and implausibility of the allegations leveled in the petition of complaint emanate from the fact that no offences have been committed by the petitioners. Moreover, it is apparent that the instant case is manifestly attended with mala fide and the proceeding has been maliciously instituted by the opposite party no. 2 with an ulterior motive for wreaking vengeance on the petitioners and with a view to spite them due to private and personal grudge. It is a well settled principle of the Indian Penal Code that no person can be held vicariously liable for an act of his employee or agent or subordinate, unless specifically mentioned in the Code. It would be apparent from the materials on record that the inducement, if any, as alleged therein concerns the executives of Bengal EMTA Coal Mines Ltd. The Directors of the joint venture company would be liable for any dispute raised by any creditor in

the course of their commercial transactions. In order to compel the directors to clear dues by arraigning their relatives in criminal prosecution is per se illegal and continuing of such proceeding would be a gross abuse of the process of law. Reliance is placed on - (2000) 4 SCC 168 [Hridaya Ranjan Prasad Verma & Ors. -Vs- State of Bihar & Anr.]; (2005) 10 SCC 336 [Uma Sankar Gopalika -Vs- State of Bihar & Anr]; (2009) 3 SCC 78 [Y.Y. Jose & Anr. -Vs- State of Gujarat & Anr]; (2011) 13 SCC 412 [Thermal Limited -Vs- K.M Johny & Ors]; (2015) 8 SCC 293 [Vesa Holdings -Vs- State of Kerala]; (2019) 9 SCC 148 [Satish Chandra Ratanal Singh -Vs- State of Gujarat]; (2022) 7 SCC 124 [Vijay Kumar Ghai & Ors. -Vs- State of West Bengal]; (2022) 14 SCC 572 [Mitesh Kumar J. Sah - Vs- State of Karnataka & Ors]; (2023) 5 SCC 360 [Sarbjit Kaur -Vs- State of Punjab & Anr].

3. Learned counsel appearing on behalf of the opposite party No. 2 has submitted that a prima facie case is made out against the petitioners. EMTA Coal Ltd. was very much involved in the relevant transactions. Huge dues were kept unpaid.

4. Learned Additional Public Prosecutor representing the State has submitted and has relied on the written notes as follows. Fact of the case is that on 11.11.2017 Jamuria Police Station received a written complaint of Ganga Prasad son of Late Bisweswar Prasad, Proprietor of M/s. Trackon Earth Movers, Kulti College More, Police Station - Kulti, District – Paschim Bardhaman against i) Ujjal Upadhyay (MD),, ii) Gourav Upadhyay (Director), iii) Saugata Upadhyay

(Director), iv) Biswanath Dutta (Chief Executive Office), v) Nimai Chandra Mukherjee (Executive Director), vi) Pradip Mazumdar (Finance Manager), all of Bengal EMTA Coal Mines Ltd. to the effect that the complainant's Company was engaged by Eastern Minerals Trading Agency (EMTA) at Tara East West Coal Mines for supply of coal transportation and carrying out civil work at the said mine. A total claim of Rs. 10,62,180/- against EMTA was due for the said work. Since 2 years 06 months back the complainant was unable to realize the claim as the EMTA has left the said mine all of a sudden, keeping outstanding dues of Rs. 10,62,180/- of the complainant's company unpaid till date. On the basis of the written complainant Jamuria Police Station Case No. 326 of 2017 under Section 420 of the Indian Penal Code was registered for investigation. During investigation I.O. examined all the available witnesses and recorded their statements under Section 161 Cr.P.C. and send notice under Section 41A Cr.P.C. to all the FIR named accused persons on several occasions, but none turn up. During investigation the investigating officer collected the Xerox copy of the bills which were issued by the complainant's company against the claims. During investigation, as per the contents of the FIR and the statements of witnesses recorded under Section 161 Cr.P.C. and materials so collected by the Investigating Officer it is revealed that petitioner No. 1 Gourav Upadhyay and petitioner No. 2 Saugata Upadhyay both are Directors of Bengal EMTA Coal Mines Ltd. It is evident from the materials on record collected during investigation a prima facie charge under Section 420 IPC has been well established against all the FIR named accused persons and accordingly after

completion of investigation, Investigating Officer submitted charge sheet in this case vide Jamuria Police Station Case No. 202 of 2019 dated 30.06.2019 under Section 420 IPC against i) Ujjal Kumar Upadhyay, ii) Gourav Upadhyay, iii) Saugata Upadhyay, iv) Biswanath Dutta showing absconding in the said case with a prayer for issuing warrant against all the above noted absconding accused persons.

5. I heard the learned counsels for the parties and perused the revisional application, the case diary and the written notes of submissions.

6. It appears that the concern where the petitioners were Directors was one EMTA Coal Ltd. (the erstwhile, the Eastern Minerals and Trading Agency). In the entity being Bengal EMTA Coal Mines Ltd, a joint venture project of the West Bengal Power Development Corporation Ltd, the Durgapur Projects Ltd. and the EMTA Coal Ltd., the Secretary of Department of Power was the Chairman of the company. Apart from him, the Board consisted of nominees from the West Bengal Power Development Corporation Ltd., Durgapur Projects Ltd., a District Magistrate, Burdwan, MLA, Jamuria and the nominees of EMTA Coal Ltd. The present petitioners, as claimed by them, apparently were not the Directors of the joint venture company and claimed that they did not have any active control over the business affairs of the said company. Therefore, the present petitioners cannot be held vicariously liable for any act or omission committed by the said joint venture company.

7. It is an admitted fact that by judgement and order dated 25.08.2014 and 24.09.2014 passed by the Hon'ble Apex Court in the case of Manohar Lal Sharma (supra), the allocation of 204 coal blocks were cancelled, including at the concerned mine. Consequently, the Government of India promulgated the Coal Mines (Special Provisions) Act, 2015 and the corresponding Rules to deal with, administer, regulate the Coal Mines of India including the cancelled coal blocks. This prompted the joint venture company to stop all commercial activities in the said mines leading to a complete stoppage of revenue, as claimed by the petitioners. In other words, there were reasonable grounds for the joint venture company or a related associate to plunge into financial trouble and thus, any non-payment of dues after the cancellation of such coal blocks can hardly be attributed to a deliberate guilty mind.

8. Moreover, the business with the de facto complainant was going on for some time and part payments were allegedly made.

9. In view of the above, it cannot be said that there was necessary mens rea to commit an offence of cheating.

10. A criminal proceeding can hardly be invoked merely for recovering money.

11. Additionally, there is the issue of vicarious liability as canvassed on behalf of the petitioners.

12. Reliance has been placed on several decisions in this regard as also in respect of matters where part payments were made.

13. Reference may also be made to the decisions in *Vir Prakash Sharma*, (2007) 7 SCC 373 on whether non-payment or under-payment of price of goods amounts to cheating or criminal breach of trust; *Binod Kumar*, (2014) 10 SCC 663 on the deprecation of efforts to settle civil disputes and claims, which do not involve criminal offence, by applying pressure through criminal prosecution; *Medmeme LLC*, (2018) 13 SCC 374 and *Vinod Natesan*, (2019) 2 SCC 401 on whether offences of cheating or criminal breach of trust would be attracted if an accused merely fails to pay the dues; and *Sk Alagh*, (2008) 5 SCC 662 regarding vicarious liability.

14. There is also a significant delay in lodging the FIR.

15. In a matter involving similar issues, a Co-ordinate Bench of this Court was pleased to quash the proceedings in G.R. Case No. 1742 of 2022 under Sections 406, 417, 420, 120B of the Penal Code that was pending before the Learned Chief Judicial Magistrate, Bankura where the petitioners were the EMTA Coal Ltd. and some of its Directors.

16. In the present case too neither is there any ingredient of criminal breach of trust as nothing had been entrusted upon the petitioners nor is there a prima facie case of cheating made out, especially in the absence of the required mens rea. This would be evident from a plain reading of the first information report and the other materials available in the case diary.

17. In view of the above discussions and in the interest of justice, the impugned proceeding is quashed so far as the present petitioners are concerned.

18. Urgent photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J.)