IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:

The Hon'ble Justice Rai Chattopadhyay

CRR 200 of 2015

With

CRAN 3 OF 2015 (Old No., CRAN 4091 of 2015)

With

CRAN 7 of 2016 (Old No.CRAN 4449 of 2016)

With

CRAN 14 of 2018 (Old No.CRAN 2051 of 2018)

Sandeep Jatia

Vs

The State of West Bengal & Anr.

Mr. Sekhar Kumar Basu, Id. Senior Adv.,

Mr. Soubhik Mitter,

Mr. Soumya Banerjee,

Mr. Sucheta Banerjee. … for the petitioner

Mr. Saswata Gopal Mukherjee, Id. P.P.,

Mr. Imran Ali,

Ms. Debjani Sahu. … for the State

Heard on: 12.05.2023, 10.01.2023, 17.01.2023, 27.02.2023, 17.05.2023.

Judgment on: 12.11.2026; Uploaded on: 12.11.2026

(1) The criminal proceeding being GR Case No. 4419 of 2013, arising out of Asansol (South) Police Station case No. 422 of 2013, dated 21.10.2013, under sections 420, 406,465, 467, 468 and 120B of the Indian Penal Code, 1860, is

challenged in the instant revision, which is now pending in the Court of Additional Chief Judicial Magistrate at Asansol. The revisionist/petitioner has prayed for quashing of the entire criminal proceeding as mentioned above.

Allegations made in the F.I.R/complaint:

(2) The complainant being engaged in transport business had decided to purchase a pair of chassis. The complainant came to know that Tata Motors introduced a scheme from the month of March 2013, to grant concessions to purchasers in the last part of March, 2013. Thus, he contacted with the Regional Sales Manager, Mr. Rahul Singh of M/s SREI Equipments Finance Limited [accused No.4 in the complaint]. At his instance, the complainant was introduced to the Branch Manager Mr. Rajesh Mehta, Area Sales Manager Mr. Mukesh Mishra and the Managing Director Mr. Sandip Jatia of M/s French Motor Car Company Limited [accused persons No. 1, 2 and 3 respectively, the accused No.3 being the petitioner in the instant revision], at their Asansol showroom, with further introduction that the company deals with new chassis of trucks and buses, from Tata Motors. The complainant finally decided after discussion to purchase two Tata LP chassis in the month of May 2013 at a total price of Rs.2,18,644/-. According to the complainant he was given to understand that the year of manufacturing of the said vehicles was in 2013, each of those having twelve wheels.

(3) The complainant had entered into two hire purchase agreements with accused No.5 on behalf of accused No.7, which he says to have been done by him only at the instance of the accused persons No.1, 2 and 3 [No.3 being the petitioner

in the instant revision]. An amount of Rs.1,00,000/- was paid by the complainant instantaneously whereas each vehicle was priced at Rs.2,18,644/- and the complainant was required to pay instalments @ Rs.1,25,000/- per month. Two sale certificates were issued in his favour, both dated 22.6.2013 and the two vehicles were delivered to the complainant. The complainant had registered the vehicles in his name on and from 04.7.2013.

(4) As per the complainant, breach has occurred in the following manner. First that the company of the present petitioner did not provide accessories, like extra tyres and tools, which were required to be delivered at the time of delivery of the vehicle, but was never done. Second, the performance of the vehicles was found to be unsatisfactory. Third, though the complainant sought for intervention of the accused persons in this regard, but it was not to any avail due to alleged non cooperation by the accused persons including the petitioner. Then only, when the complainant had contacted Tata Motors, he came to know for the first time that the said two vehicles were not the new ones and its manufacturing was in the year 2011. For this reason, it should have been priced at a much lower rate than the rate at which it has been sold to the complainant. Therefore, finally the complainant has stated that he has been induced to believe a wrong fact as true at the instance of the said accused persons, which caused him to part with this money and thus, he has been cheated by the accused persons including the present petitioner.

(5) Hence, the complainant filed a complaint dated 07.10.2013 under section 156(3) of the Cr.P.C before the ACJM Asansol, which has later been registered as FIR being Asansol (South) Police Station case No. 422 of 2013,

dated 21.10.2013, under sections 420, 406,465, 467, 468 and 120B of the Indian Penal Code.

The petitioner's version:

(6) Certain facts are admitted in this case. The petitioner in the instant revision has admitted that the complainant was a purchaser of two 2011 made chassis by way of executing a hire purchase agreement. What the petitioner has denied is the allegation of cheating said to have been committed by him, being the Managing Director of the company. According to the petitioner, the complainant after having due knowledge of the year of manufacture of the vehicles, has consciously agreed to purchase the same at a heavily discounted price, which is said to be much less than the actual market price of the vehicles as on the date of sale. The petitioner has denied that the vehicles were not new as alleged, though admitted that those were manufactured in 2011, though sold in 2013, to the complainant. The petitioner has also stated that shortfall of supply of five tyres was duly compensated by refunding a further sum of Rs.95,000/- to the complainant, which has been duly accepted and received by him, though suppressed in the complaint. According to the petitioner, there has not been any unlawful inducement of the complainant as alleged and entire business deal of sale and purchase of the two vehicles were done by the complainant with due knowledge and consent. The petitioner has also denied to have possessed any mala fide intention from the inception, as alleged. Thus, the petitioner has sought for quashing of the criminal proceeding against him, as aforementioned.

The petitioner's argument:

(7) That, in the chargesheet no role has been particularly ascribed to the present petitioner as to how the petitioner was involved in the offence as alleged; that, there is no allegation that the petitioner at any point of time had misrepresented any fact or illegally gained any money or forced any document or entered into any criminal conspiracy with the other accused persons. That, the present petitioner has been made an accused in the case only for the reason that he was the Managing Director of the company. That, there is no material on record collected by the investigating agency to substantiate that the petitioner had any role to play in the said transactions entered into by the company with the complainant. That the company has not been made a party in the instant case. That, the petitioner merely being the Managing Director of the company cannot be made vicariously liable for the alleged offence committed by the company or its other officers, if any, at all.

(8) It has been submitted that the complainant consciously agreed to purchase the 2011 model to appeal a huge discount as much as open amount of Rs. 7,00,000/-. As per the petitioner, the sale price of the vehicles is to be quoted as per that fixed on the date of sale. The company quoted bills on 31.5.2013 of an amount of Rs.21,88,644/- for each of the vehicles sold, as it was the selling price on the date. The company allowed discount of Rs.3,50,000/- per vehicle sold amounting to a total discount of Rs.7,00,000/-. Thus, the net price of each vehicle stood at Rs. 18,38,644/-, which, according to the petitioner, was much less than the market price of the vehicle as on the date of sale. The petitioner

has further stated in admitted that the said vehicles were purchased by the company from the Tata Motors on 30.9.2011 and 30.11.2011 respectively, when selling price of the said vehicles was Rs. 19,63,128/- each. The petitioner's further contention is that no sooner the company came to know about non-supply of accessories to the complainant like tyres [5 in number], a sum of Rs.95,000/- was immediately refunded to the complainant vide cheque No. 875715 dated 16.8.2013, towards the short supply of tyres. Thus, according to the petitioner no case of cheating as alleged can be found to have been made out, on plain reading of the complainant, as against him.

(9) The following two judgments have been relied on by the petitioner:

a. **Priyanka Srivastava and Another versus State of Uttar Pradesh and Another reported at (2015) 6 SCC 287; and**
b. **Lalita Kumari versus Government of Uttar Pradesh and Others reported at (2014) 2 SCC 1.**

State opposes the petitioner's contentions, argument and prayer:

(10) The State is represented in this case. The State has supported the complaint as well as the chargesheet and said that the instant is a fit case to be sent for trial as sufficient materials are available against the accused persons including the present petitioner, to have been involved in commission of offence as alleged against them. According to the State the present revision is a misconceived one and bears no cogent grounds so that this Court may interfere with the criminal proceeding being GR Case No. 4419 of 2013, arising out of Asansol (South) Police Station case No. 422 of 2013, dated

21.10.2013, under sections 420, 406,465, 467, 468 and 120B of the Indian Penal Code, in exercise of its extraordinary power of revision.

Discussion and decision:

(11) The question which falls for determination in the instant revision is whether, upon a consideration of the allegations contained in the complaint, the materials collected during investigation and the legal principles governing the exercise of the inherent and revisional jurisdiction of the High Court, the continuation of the criminal proceeding against the present petitioner would be legally sustainable, or whether the same would amount to an abuse of the process of the Court. The answer to this question necessarily requires an examination of the essential ingredients of the offences alleged, the distinction between a civil or commercial dispute and a criminal offence, and, more particularly, the circumstances in which an individual occupying the position of Managing Director of a company may be subjected to criminal prosecution for transactions undertaken in the course of the company's business.

(12) It is a settled principle of criminal jurisprudence that the power of the High Court to quash a criminal proceeding is extraordinary in character and is required to be exercised sparingly, cautiously and only where the circumstances of the case justify such interference. The celebrated decision of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal, reported at 1992 Supp (1) SCC 335**, identifies illustrative categories of cases in which such jurisdiction may appropriately be exercised. Amongst those categories are cases where the allegations, even if 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; cases where the allegations are so inherently improbable that no prudent person could reasonably conclude that sufficient grounds exist for proceeding against the accused; and cases where the criminal proceeding is otherwise manifestly attended with mala fides or constitutes an abuse of the process of the Court. These categories are illustrative and not exhaustive. The governing consideration is whether the continuation of the prosecution is justified by the allegations and the materials legally available against the person sought to be prosecuted. The aforesaid principle has been consistently reiterated in subsequent decisions of the Hon'ble Supreme Court, including **Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre, reported at (1988) 1 SCC 692**, and **Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque, reported at (2005) 1 SCC 122**. The High Court, while exercising such jurisdiction, is not expected to conduct a meticulous examination of the evidence, determine the ultimate truth of disputed factual assertions, or undertake a premature assessment of the credibility of the prosecution witnesses. Equally, however, the power to prosecute cannot be permitted to operate as an instrument of harassment where the allegations, viewed in their entirety and without entering into a disputed trial of facts, fail to disclose the essential ingredients of the alleged offence. The jurisdiction is thus intended neither to stifle a legitimate prosecution nor to compel an accused to undergo a criminal trial in the absence of a legally sustainable accusation.

(13) A further fundamental principle relevant to the present controversy is the distinction between the offence of cheating and a mere breach of a

contractual or commercial obligation. In **Hridaya Ranjan Prasad Verma v. State of Bihar, reported at (2000) 4 SCC 168**, the Supreme Court explained that the distinction between a mere breach of contract and the offence of cheating depends substantially upon the intention of the accused at the time of the alleged inducement. For the offence of cheating, dishonest or fraudulent intention must exist at the inception of the transaction; a subsequent failure to fulfil a promise or contractual obligation does not, by itself, establish that the promise was made dishonestly from the beginning. The subsequent conduct of the accused may be relevant in determining the original intention, but such conduct cannot, standing alone, substitute for the requisite dishonest intention at the time when the inducement is alleged to have occurred. The same doctrinal distinction has been recognised in **Indian Oil Corporation v. NEPC India Ltd., reported at (2006) 6 SCC 736**, wherein the Hon'ble Supreme Court cautioned against converting disputes essentially arising out of commercial transactions into criminal proceedings merely because the complainant alleges that a contractual obligation has not been performed. The principle does not mean that a commercial transaction is immune from criminal scrutiny. Where the factual allegations disclose that a party was dishonestly induced to part with property by a deliberate misrepresentation made with the requisite intention, the existence of a contractual relationship will not prevent criminal prosecution. The decisive consideration is whether the alleged conduct satisfies the ingredients of the particular criminal offence, rather than whether the same facts may also give rise to a civil remedy.

(14) The allegations in the present case also require consideration in the light of the settled law governing criminal liability for offences allegedly committed in the course of a company's business. In **S.K. Alagh v. State of Uttar Pradesh, reported at (2008) 5 SCC 662**, the Hon'ble Supreme Court reiterated that the Indian Penal Code does not ordinarily recognise vicarious criminal liability of a director or officer merely by reason of his official position, in the absence of a statutory provision creating such liability or material establishing his direct involvement in the commission of the offence. In that case, the Court specifically examined the requirements of criminal breach of trust and emphasised that the liability contemplated by Section 406 of the Indian Penal Code cannot be fastened upon a Managing Director merely because the relevant commercial transaction was undertaken by the company. The principle was further elaborated in **Sunil Bharti Mittal v. Central Bureau of Investigation, reported in (2015) 4 SCC 609**. The Hon'ble Supreme Court held that an individual may be prosecuted for an offence committed in the course of a company's affairs where sufficient material establishes his active role coupled with the requisite criminal intent. The doctrine of vicarious liability cannot, however, be invoked automatically merely because the individual is a director or Managing Director of the corporate entity. The criminal intent of the person who constitutes the directing mind of a company may, in appropriate circumstances, be attributed to the company; the reverse proposition, namely, that every act of the company must automatically be attributed to its director, does not follow.

Individual criminal liability must be founded upon the requirements of the offence and the material disclosing the individual's participation.

(15) Turning to the facts of the present case, the complaint originated from a commercial transaction concerning the purchase of two Tata LP chassis by the complainant, who was engaged in the transport business. According to the complaint, the complainant was introduced to the concerned officers of French Motor Car Company Limited, including the present petitioner, who was its Managing Director. The complainant alleges that he was given to understand that the two chassis were manufactured in the year 2013, whereas he subsequently learnt from Tata Motors that the vehicles had actually been manufactured in 2011. The complaint further alleges non-supply of certain accessories, including tyres and tools, and unsatisfactory performance of the vehicles. On the basis of these allegations, the complainant asserted that he had been induced to purchase the vehicles at a price higher than that which would have been appropriate for vehicles of their actual manufacturing year.

(16) The petitioner, on the other hand, has admitted the sale of the two vehicles in 2013 and their manufacture in 2011, but has denied that the manufacturing year was concealed from the complainant or that the transaction was attended by dishonest intention from its inception. His case is that the complainant purchased the vehicles with knowledge of their manufacturing year and accepted a substantial discount in the sale price. The petitioner has also asserted that a sum of Rs.95,000/- was refunded to the complainant towards the alleged short supply of tyres. These assertions have been recorded as the petitioner's defence; their truth cannot be finally

adjudicated in the present proceeding merely by preferring one party's version over the other.

(17) Nevertheless, the existence of competing factual assertions does not dispense with the duty of the Court to examine whether the allegations and the materials collected during investigation disclose the essential ingredients of the offences alleged against the particular accused. Insofar as the allegation of cheating under Section 420 of the Indian Penal Code is concerned, the prosecution must be founded upon material disclosing deception and dishonest or fraudulent inducement of the complainant to deliver property, with the requisite intention existing at the time of the inducement. The fact that the vehicles were manufactured in 2011 but sold in 2013 may constitute a relevant circumstance; it does not, in isolation, establish that the petitioner dishonestly misrepresented their manufacturing year or participated in a design to induce the complainant to part with his money. Similarly, the alleged non-supply of accessories and the subsequent complaint regarding the performance of the vehicles may give rise to contractual or civil consequences. Those circumstances do not, without more, prima facie establish the commission of cheating or criminal breach of trust. To bring an offence under Sections 405 and 406 of the Indian Penal Code on record, the complainant must disclose entrustment of property, or dominion over property, and dishonest misappropriation, conversion, use or disposal in the manner contemplated by the statutory provision. A failure to supply an agreed accessory, without the necessary entrustment and dishonest misappropriation, cannot automatically be equated with criminal breach of trust. The allegations

relating to Sections 465, 467 and 468 must likewise disclose the making or use of a false document, as legally required for the particular offence, together with the other essential statutory ingredients. A general allegation of commercial misrepresentation cannot, by itself, establish forgery or forgery for the purpose of cheating.

(18) The petitioner is arraigned as an accused principally in his capacity as Managing Director of French Motor Car Company Limited. No particular role has been attributed to him in the charge-sheet demonstrating that he personally made the alleged misrepresentation, dishonestly induced the complainant to part with money, misappropriated any entrusted property, forged any document, or participated in a criminal conspiracy with the other accused persons. It can also be found that the company itself has not been impleaded as an accused. The legal significance of these circumstances must be assessed in conjunction with the actual allegations and the materials collected during investigation. The fact that the petitioner was introduced to the complainant or held the office of Managing Director cannot, without further material, establish his criminal involvement. Conversely, if the complaint or the charge-sheet contained specific material showing that he knowingly represented the vehicles to be of a different manufacturing year, authorised or participated in the creation of false documents, or acted in concert with others pursuant to a criminal conspiracy, the prosecution could not be quashed merely because the transaction was commercial in nature or because the company had not been arraigned. The decisive consideration is whether the materials disclose an individual act or participation attributable to

the petitioner, accompanied by the requisite criminal intention, rather than an assumption of guilt arising solely from his designation.

(19) On the factual basis placed before this Court, and subject to the absence of such specific material in the charge-sheet, the prosecution's case appears to rest upon the petitioner's association with the company and the collective allegation that the complainant was induced to purchase the vehicles. Such an omnibus attribution, without a discernible factual foundation establishing the petitioner's own participation in the alleged offences, would not satisfy the standard contemplated in **S.K. Alagh (supra)** and **Sunil Bharti Mittal (supra)**. Criminal liability cannot be inferred merely from corporate status.

(20) The principle which emerges from the authorities discussed above is that the High Court must examine the allegations as a whole, assume the factual allegations to be true for the limited purpose of the quashing inquiry, and determine whether the essential ingredients of the offences alleged are thereby disclosed. The Court must not conduct a mini-trial, resolve disputed questions of fact, or accept the petitioner's defence merely because it appears plausible. Equally, the Court is not required to permit a criminal trial to continue where the allegations, even taken at their face value, fail to disclose the requisite criminal ingredients or where the materials do not establish any legally sustainable basis for proceeding against the particular accused. In the absence of material showing that the petitioner personally participated in the alleged misrepresentation, acted with the requisite dishonest intention, committed an act of criminal breach of trust, made or used a false document,

or entered into a criminal conspiracy, the mere fact that he was the Managing Director of the company cannot sustain the prosecution against him. The principle in **Sunil Bharti Mittal (supra)** is directly relevant to this aspect. Individual criminal liability requires a factual foundation demonstrating the individual's active role and the requisite criminal intent, unless the applicable statute expressly provides otherwise. The present case, on the materials discussed herein above, does not disclose such a foundation against the petitioner. This Court is, therefore, of the view that, to the extent the prosecution against the present petitioner is founded merely upon his position as Managing Director and upon general allegations concerning a commercial transaction, without specific material disclosing the ingredients of the offences alleged against him, the continuation of the criminal proceeding would not be justified in law. Such continuation would expose the petitioner to a criminal trial without a sufficient legal basis for attributing the alleged offences to him individually. The circumstances, as recorded in the materials placed before this Court, bring the case within the principle recognised in State of Haryana v. Bhajan Lal, namely, that a criminal proceeding may be quashed where the allegations and materials, taken at their face value, fail to disclose a prima facie offence against the accused concerned.

(21) For the reasons aforesaid, the criminal proceeding being G.R. Case No. 4419 of 2013, arising out of Asansol (South) Police Station Case No. 422 of 2013 dated 21 October 2013, under Sections 420, 406, 465, 467, 468 and 120B of the Indian Penal Code, 1860, insofar as the same is directed against the present petitioner, is held to be unsustainable in law and is accordingly

quashed. The proceedings against the other accused persons, if any, shall not be affected by this order and may continue in accordance with law. The criminal revision is accordingly allowed to the aforesaid extent.

(22) Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Rai Chattopadhyay, J.)