IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 17 OF 2023

ADITYA BAHL & ANR.

VS.

THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Sourav Chatterjee, Adv.

Mr. Soumya Nag, Adv.

Mr. Ritoban Sarkar, Adv.

Mr. Debanjan Ghosh, Adv.

For the State : Mr. Kallol Mondal, Learned Public Prosecutor

Mr. Pritam Roy, Adv.

Mr. Rishav Kumar Singh, Adv.

For the Opposite

Party no. 2 : Mr. Wrickbrata Roy, Adv.

Mr. Chiranjit Pal, Adv.

Mr. Iswar Das,Adv.

Heard On : 01.09.2026

Judgement on : 16.11.2026

Uploaded on : 16.11.2026

CHAITALI CHATTERJEE DAS, J.:-

1. This is an application filed by the petitioners for quashing the proceedings being C.G.R no. 837 of 2019 pending before the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas arising out of Taratala police Station Case No. 18 of 2019 dated 11.3.2019 under Sections 420/120B of the Indian Penal Code and all other orders passed therein.

Fact of the case

2. The petitioner no. 1 & 2 are the Directors of the company namely M/S. Abha Spa Holidays Pvt Ltd. established in New Delhi facilitating chartered flight services and also handles office of the company namely Private charter Ltd in India, a company based in United Arab Emirates and is well-known for providing chartered flight services in various countries including India. A contract was entered into between the complainant company and private charter for providing chartered flights to the opposite party no. 2 company but it was decided that the payment to be routed through the company of AVA Spa Holidays Ltd. who is a booking agent of Private Charter Pvt. Ltd. Due to bad weather forecast no flight could be provided to them on the first scheduled date due to non-availability of flight and that was duly intimated but later on the opposite party company thereafter cancelled the entire contract and asked for refund and since did not get the refund lodged the complaint arraigning the petitioner as accused for commission of offence of cheating and Criminal Breach of Trust after receiving information through RTI that on that date no adverse weather forecast was in existence and also there was no flight booking either at kolkata airport or

at Jamshedpur. On completion of investigation the charge sheet has been submitted against the being the Directors of Ava Spa Holidays Pvt. Ltd. for committing offences punishable under Section 420/120B IPC and the Learned ACJM took the cognizance and issued process .Hence this revisional application is filed by the petitioners for quashing of the entire proceeding.

Submissions

3. The Learned Senior Advocate representing the petitioners argued the proceeding is not maintainable since the petitioners being the Directors of the Ava Spa have been arrayed as accused without impleading the company and the concept of vicarious liability in the Indian Penal Code is completely alien . It is his further contention that the contract dated 25.10.2018 contained the Clause *Force Majure* and there was a communication regarding weather forecast and no flight could be provided on account of that. Such inconvenience was duly communicated to the opposite party vide an email .The petitioners are the Directors of Ava Spa and they had no direct role to play but curiously none of the companies were either arraigned as accused and or were made as charge sheeted accused persons .

4. That apart as per contract the Jurisdiction was mentioned at Delhi and the office of the Ava Spa Holidays is situated at Delhi but while taking cognizance the learned ACJM, Alipore merely wrote "taken"' in handwriting on dotted line on a previously printed cyclostyle order sheet which is in complete violation of rule 183 of the Criminal Rules and Orders of Calcutta

High Court. Further contended that the scheduled flight had to be cancelled due to bad weather and such ground exempts the company of the petitioner to refund of booking amount at all as per the clause of *Force Majure* in the contracts, entered into by both the parties. Besides this pursuant to s the terms of the agreements, the petitioners were exempted from any civil, criminal or tortious liability and every dispute arises would be subject to jurisdiction of courts in Delhi. It is further contended that from the contents of the written complaint at best the dispute can be said to be mere breach of contract and no initial deception since inception by the company of the petitioner can be found and hence such disputes attract only civil remedy . In this regard reliance was placed on the decision of ***Shailesh kumar Singh vs State of UP and Anr. [1]para 10,13 ,14 ,Vir Prakash Sharma vs Anil Agarwal and Anr.[2] para 2,8, Dilip Kaur and Ors vs Jagnar Singh and Anr[3].***

5. Further put reliance in the case of Sushil ***Sethi and another versus State of Arunachal Pradesh and others[4]*** to substantiate that without impleading the company and in absence of specific allegation the Directors cannot be prosecuted as entire dispute revolves around the functions and transactions between two companies only. In this regard Reliance was put

[1] 2025 SCC Online SC 1462
[2] (2007) 7 SCC 373
[3] (2009)14 SCC 696
[4] (2020) 3 SCC 240

on ***S.K Alagh versus face State of UP & ors[5], Maksud Sayed versus State of Gujarat[6], Sunil Bharti Mittal versus CBI[7], Sharon Michel & Anr. vs State of Tamil Nadu and another[8], Keki Hormusji Gharda vs Mehervan vs Rustom Irani[9].*** It is specifically submitted that this is a fit case where it would amount to abuse of the process of the court if allowed to be continued.

6. on behalf of State/Opposite party no.1 it is submitted that on the basis of the complaint and after completion of investigation the investigating authority has submitted the charge sheet which has been taken into cognizance by the learned court and issued summons against the present petitioners and hence they ought to appear before the learned Magistrate and the proceeding should be permitted to be continued. It is his contention that during enquiry it could be ascertained that the management of the company was decided to book charter flights on 26.9.2018, 24.10.18, 25.10.18 and 26.10.18 for the directors of the complainant company coming from UK to India. Enquiry further revealed that the accused persons intentionally deceived the complainant into a belief that they would provide the charter flights at low rate which they did not intend to provide and thereby dishonestly induced the complainant's company to part with the full consideration with such deceitfulness induced the complainant's company to part with the full consideration with such deceitful assurance of providing such services timely. It is not a mere breach of contract between the parties

[5] (2008) 5 SCC 662
[6] (2008) 5 SCC 668
[7] (2015) 4 SCC 609
[8] (2009) 3 SCC 375
[9] (2009) 6 SCC 475

and not is a mere inability of the accused to provide their studies due to bad weather condition. They found *mens rea* which attracts the offence.

7. On behalf of opposite party No. 2, vehement objection raised and it is contended that due to deliberate fraudulent act on the part of the accused persons through opposite party No. 2 company had to cancel the order of contracts for chartered flight scheduled in October 2018 since faced with huge embarrassment by the senior officials in India. Subsequently when they asked for refund of the amount paid to the company of the petitioners they started avoiding on the pretext of one another. By filing RTI only the opposite party came to learn that no chartered flight was registered with the New Delhi airport, flights from Delhi to Kolkata on 26.9.2018 and no chartered flights flew from New Delhi to Kolkata on that date. In addition there was no adverse metrological reports regarding weather conditions for flying between New Delhi and Kolkata and between Kolkata and Jamshedpur as made as a defence to justify their wrong doing. It is further submitted on behalf of prosecution that the accused persons received ₹ 41, 44, 700/- as full and final remittance from the complainant company and during interrogation one of the Director of Ava Spa could not produce any payment slip/bank draft in support of his claim that he or his company booked any chartered flights of any chartered flight providing company to provide service to the complainant's company on 26.9.2018 at Kolkata. No document could be revealed from the bank statement that any payment made by the accused persons for booking any chartered flight for which received such payment. The Airport Director from the official record

revealed that they never received any information/instructions to request for parking/lending of chartered flight at Kolkata airport there. Therefore there are sufficient materials which can be unfolded in course of trial for which the present petitioners must appear before the court and place their defence. Accordingly prayed for dismissal of this revisional application.

Analysis

8. Heard the submissions made by the respective Counsels. Perused the materials on record as well as the case diary. Considering the submissions made before this court and from the materials on record the admitted fact found are that the present petitioners are the Directors of the company namely M/S Ava Spa Holidays Pvt.Ltd.established in New Delhi and claiming to be facilitating charter flight services and also handle office of a company named as Private charter Ltd in India, a company based in United Arab Emirates.

9. The written complaint demonstrates that the opposite party no. 2/complainant working for gain at M/S Vesuvius India , a subsidiary company of Vesuvius PLC , UK decided to come to India to attend a board meeting of the Directors of opposite party no. 2/ company , scheduled on 23.10.2018 at Kolkata and as the Directors were coming from UK to India they decided to visit the senior officials of Tata Steel Ltd. at Jamshedpur for which a special chartered flights had to be arranged by the management . For this reason M/S Private chartered Ltd, UAE was selected by the management and after various discussions between the officials of the two companies it was informed by Aditya Bhal the petitioner no.1 and Navdeep

Singh of M/S Private Charter Ltd. that the service should be provided by the Indian handling office at Delhi rectangle while the payments were required to be routed through Ava Spa Holidays who happens to be the booking agent of M/S private chartered Ltd, UAE. Hence four bipartite agreements between those two companies were entered into wherein two contracts were dated 12.9.2018, one contract dated 11.8.2018 and another dated 13.8.2018 for availing chartered flights from Kolkata to Jamshedpur and back and Kolkata to Pune and Pune to Mumbai.

According to the contract a total amount of ₹ 41, 44, 700 towards full payments were transferred by the opposite party No. 2 /complainant to the bank account provided by private charter Ltd i:e of M/S Ava Spa Holidays from 27.7.2018 to 7.9.2018 in advance . The materials on record further unveils that the before the first flight of Private Charter Ltd supposed to be provided on 26.9.2018, the opposite party No. 2 was informed on 25.9.2018 at 1.22 pm about an sincomplete flight detail when it should have been intimated about 72 hours ago. The opposite party no.2 claimed payment of further amount other than that was agreed but despite full payment made on 7.9.2018 the opposite party was kept under dark regarding confirmation of flight on 26.9.2018 when the specific itineraries of opposite party no 2 was furnished much before . It is further the case of the opposite party that as per the discussions and terms of contract, it was confirmed by the company of the petitioners that the flight would be arrived at Kolkata on 25.9.2018 night but on that day the flight did not land at Kolkata and underneath day in the morning also it was not landed.

10. It is undisputed that the contracts were entered into between the officials of M/S Private chartered Ltd and the opposite party No. 2 company to the extent of providing service by the Indian handling office at Delhi rectangle though the payments were required to be routed to Ava Spa Holidays Pvt. Ltd. Whether the company of the present petitioners being Ava Spa was directed to receive the payment or not acting as a booking agent of M/S private chartered Ltd, UAE cannot be decided at this stage but facts remain 4 bipartite agreements were executed between these two companies and none of the same was signed by any of the petitioners . It is also an admitted fact that an amount of ₹41,44,700 (initially an amount of rs ....and later on asked for further 6 lac) transferred by the opposite party No. 2/complainant to the bank account provided by Private chartered Ltd i:e of Ava Spa Holidays Pvt ltd.

11. The point raised on behalf of the petitioners pertains to the maintainability of the proceeding against them being the Directors without impleading the company when it is no more *res integra* that the Directors of a company cannot be subject to criminal prosecution when the company is not arrayed as accused unless specific allegations are made against them.

In the decision of ***Sushil Sethi & Anr (supra)*** as relied upon on behalf of the petitioner, the charge sheet was filed against the Managing Director and another Director for cheating the government of Arunachal Pradesh by supplying substandard turbines containing composition of materials not in accordance with the specification of MOU. An application for quashing was filed before the High Court and against an order of refusal the matter went

up to Supreme Court. On behalf of the petitioner the points raised that the complainant tried to convert a civil dispute into a criminal case and even if the face value of the F.I.R is taken in its entirety and assumed to be correct, failed to disclose prime of facie commission of any offence. The Hon'ble Supreme Court after considering the allegations and the rival contentions found that the main allegation was that the company supplied substandard material but no complaint or FIR or the charge sheet was filed against the company. The contract between the company and the government was for supplying and commissioning of the project and the Appellants purchased the turbines for the project from another manufacturer. The Department of power issued a certificate certifying satisfaction over execution of the project and thereafter the defect was found in respect of three turbines therefore it cannot be said that there was any intention from the inception to cheat as alleged. In saddition, it was further observed that the main allegations were against the company who was not made a party and the allegations were restricted to the Managing Director and the Director of the company respectively. No specific allegation against the Managing Director or the director was found and also no allegations to constitute the Vicarious liability.

12. The Hon'ble Supreme Court took note of the decision of ***Maksud Saiyed versus State of Gujarat (supra)*** where it was observed and held that the- "*penal code does not contain any provision for attaching vicarious liability on the part of the Managing Director for the Director or the directors of the company when the accused is the company*". It was further observed and

held that the vicarious liability of the managing director and director would arise provided any provision exists in that behalf in the Statute and further held that it is obligatory on the part of the complainant to make specific allegations which won't attract the provisions constituting vicarious liability.

13. Similarly in the decision as relied upon of the three Judges bench of the Hon'ble Supreme Court in the case of ***Sunil Bharti Mittal (Supra)*** also it was held that when company is accused, its Directors, can be roped in only if there is sufficient incriminating evidence against them coupled with criminal intent or the statutory regime attracts the doctrine of vicarious liability. In the said case the observation of the Supreme Court was that the Magistrate did not ascribe any incriminating role of the directors of their respective accused companies nor was any statutory regime but invoked vicarious liability and passed the order of issuance of process by the magistrates under Section 204 Cr.P.C and therefore was liable to be set aside. The Hon'ble court took note of the case of ***Iridium India Telecom pvt. Ltd vs Motorola Inc.***[10] and ***Standard Chartered Bank vs Directorate of Enforcement***[11] and the court held *'alter ego'* permits the criminal intent of the persons controlling a company to be attributed to the company ,enabling prosecution of the company for offences requiring mens rea .Further observed that the Learned Special Court applied the principle in reverse by attributing the acts and criminality of the company to its director merely because they represented its directing mind and will which

[10] (2011) 1 SCC 74
[11] (2005) 4 SCC 530

is contrary to the settled principles of governing criminal and vicarious liability.

14. In the given case the complaint lodged before the officer in charge of the Taratala police station disclose that the opposite party no. 2 /company contacted Private charter Ltd ,U.A.E for providing service by their Indian handling office at Delhi rectangle and the payments were required to be routed through the company of the present petitioners who happens to be the booking agent of M/S private chartered Ltd U.A.E .The specific contracts were executed between the opposite party No. 2 company that is M/S Visuvius India Ltd . With M/S Ava Spa for availing the chartered flights on the scheduled dates. The quotations were provided by the company of the present petitioners and also informed them that the payments to be transferred to the bank account of M/S Ava Spa Holidays India Pvt. Ltd. and as per their contracts an amount to the tune of ₹ 35, 37, 000/- were transferred to the bank account provided by private chartered Ltd of M/S Ava Spa Private Ltd initially and later, on their asking the opposite party no. 2 further paid a further amount of Rs. 6,07,700/- on 21.9.2018 .The aggregate payment was therefore Rs. 41,44,700/- . The first journey was scheduled on 26.9.2018 when four passengers at Kolkata would travel from Kolkata to Jamshedpur.

15. The complaint was lodged on 11.3.2019 where it was specifically mentioned that Aditya Bahl, the petitioner no. 1 and Navdeep Singh of M/S private Charter Ltd. U.A.E assured that the service to be provided by their Indian Handling agent being the Company of the present petitioners and on

failure to provide such service the agreements executed between the opposite party company and Ava Spa Holidays were cancelled but in the charge-sheet Aditya Bahl is shown as Director of M/S Ava Spa that is the petitioner no1 which would suggest that at best the petitioner no1 the Director of Ava Spa was present during the time of negotiation along with the Director of M/S Private Charter .

16. The nature of complaint reflects that the present petitioners informed sending email at 4.21 AM and 4.35 AM on 26.9.2018 to the Opposite Party Company about the bad weather in Kolkata Jamshedpur sector for which they did not take the flight from Delhi to Kolkata. They further sent another email at 3.12 p.m. on 26.9.2018 to inform that they have cancelled the flight.It is alleged that there was no communication from them from 4.36 a.m to 3.11 p.m. on 26.9.2018 that is the day of flight and also none of the persons of the Private Charter and Ava Spa were contacted . The opposite party No. 2/complainant later on came to know from their associates at Jamshedpur that the weather was quite fine and three chartered flights being registered number BTGSR, BT -100 and VTSLK had landed at Sonari Airport in Jamshedpur on that date and no adverse reports relating to bad weather was detected . Due to such cancellation of flights and the conducts of the petitioner, the opposite party no. 2 cancelled the other contracts for chartered flights scheduled on October 2018 and asked the petitioner company to refund the amount paid to them for availing the chartered flights but the officials of the company as well as the petitioners started avoiding on one pretext or the other.

17. On close scrutiny of the entire complaint it is glaringly visible that the communications and discussions were done between the present petitioner no.1 and 2 with the opposite party /complainant. The legal notice was given to Ava Spa Holidays Pvt. Ltd. and Private Charter Ltd. UAE for refund of charges paid for booking the flight Services by the Opposite party no.2. Prior to that the letter regarding cancellation of the subsequent booking and claiming refund was made by opposite party no.2 to M/S Ava Spa Holidays Private Ltd with attention to the petitioner no. 1. Therefore the specific allegation is found against the petitioner no. 1 of inability to provide satisfactory services. That apart the sum and substance of the written complaint demonstrate that even after cancellation of the agreement the company of the petitioners did not refund the amount. According to the opposite party no. 2/ Company the aforesaid conduct amounts to criminal breach of contract . However with regard to this point it is settled that mere breach of contract do not ascribe criminality and can be assailed before the civil side. The petitioners are the Directors of a company who acted as booking agent of Private Charter and the opposite party no .2 company after their board meeting, decided to avail the flight service from Private Charter Pvt Ltd .who thereafter introduced the company of the petitioner to provide the flight service as a booking agent. The investigating agency did not make any of the company as accused.

18. The observations made in the case of ***S.K Alag vs State of UP and ors (supra)*** is that the Company is a juristic person and Managing Directors cannot be vicariously liable while demand draft was issued in the name of

the company and no specific allegations against the Director was made. So far the nature of allegation found in the instant complaint is all about non refund of the amount by the petitioners even after cancellation of the contract by the opposite party/Company. With regard to this a legal notice was served to Ava Spa with attention to the petitioner no. 1 and on behalf of Ava Spa Holidays Pvt. Ltd. reply was given through the legal team. Both the parties have allegations and counter allegations against each other and this Court while exercising jurisdiction cannot test the veracity of the same by holding a mini trial. However fact remains that no flight service could be provided to the opposite party no 2 company as agreed on the ground of bad weather and the knowledge gathered by the complaint later on demonstrate no such adverse weather forecast and no prior booking of the flight in any of the airport and then found to be cheated and accordingly demanded refund of their advance payment for the upcoming bookings after cancelling the agreements but that was refused on the plea of *Force Majure* clause .

19. In the decision of ***Hridaya Ranjan Prosad Verma vs State of Bihar***[12] which has been taken note of by the Hon'ble Supreme Court in the case of ***Sailesh Kumar Singh (supra)*** in paragraph 14 it was observed-

> *"14. We could have said many things but we refrain from observing anything further. If the Respondent No.4 has to recover a particular amount, he may file a civil suit or seek any other appropriate remedy available to him in law. He cannot be permitted to take recourse of criminal proceedings."*

[12] (2000) 4 SCC 168

The Hon'ble Supreme Court further referred the decision ***State of Haryana & Others vs. Bhajan Lal & Other***[13] for consideration of an application under Section 482 Cr.P.C .

20. In section 415 IPC, the definition of cheating is described as follows-

> "***415. 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 omit to do anything which he would not do or omit 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, is said to "cheat".*
>
> *Explanation.— A dishonest concealment of facts is a deception within the meaning of this section."*

The ingredients of Section 420 IPC are mentioned as follows ;

> *i) Deception of any persons ;*
>
> *ii) Fraudulently or dishonestly inducing any person to deliver any property or;*
>
> *iii) To consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.*

21. The fulcrum of the issue assailed before this court is the order whereby the Learned Magistrate took cognizance against the petitioners along with another accused under section 420/120B IPC and directed to issue

[13] 1992 Supp.(1) SCC 335.

summons against them. The order clearly demonstrate that the Learned Court mechanically passed such order without applying judicial mind in the cyclostyle printed order sheet and the practice of doing the same has been highly deprecated both by the Supreme Court and High courts. Practically the specific allegations made against the petitioners along with the third FIR named accused about abuse of the representative of the opposite party no. 2 but the Investigating officer did not find sufficient materials and the said allegation was not established .The penal code ,save and except some provisions specifically providing therefor does not contemplate any vicarious liability on the part of a party who is not charged directly for commission of an offence and excepting the above no specific allegation can be found against the petitioners being the Directors of the booking agent company of the Private Charter. It is significant to note that the investigating officer miserably failed to consider the surrounding circumstances, the culpability if it can be attributed against the petitioners or the respective companies of which the petitioners are the Directors. The officer though collected the agreement executed between the company of the petitioners and the Private Charter which specifically contained certain clauses restricting their responsibility did not make any of the companies as accused.

22. Therefore after giving an anxious consideration to all the submissions made before this court and being fully conscious of the importance of the matter as well and that the status of the petitioners who are only the Directors of the Booking agent company of Private Charter Co. Ltd .and that

none of the companies have been arrayed as accused persons, is of the opinion that the Learned Additional Chief Judicial Magistrate was not correct in issuing summons without considering these aspect of the matter and hence the order is not sustainable in the eye of law.

Conclusions

23. Hence this court in exercise of the inherent power in order to prevent the abuse of the process of the Court find it a fit case for quashing the entire proceeding against the present petitioners.

24. Accordingly this revisional application stands allowed.

25. The entire proceeding pending before the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas arising out of Taratala police Station Case No. 18 of 2019 dated 11.3.2019 under Sections 420/120B of the Indian Penal Code is hereby quashed .

26. No order as to costs.

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

28. 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.]