IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2493 of 2019

Central Bureau of Investigation
Vs.
Anju Barman

For the C.B.I/Petitioner	:	Mr. Anirban Mitra
For the Opposite Party	:	Mr. Subir Banerjee Mr. Sandip Bandyopadhyay Mrs. R. Basu Ray
Heard on	:	11.06.2026
Judgment on	:	25.08.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The present application under section 482 read with section 397/401 of the Cr.P.C have been preferred against the impugned order dated 19.02.2019 passed by learned Special Judge, C.B.I Court no. 2, Alipore in connection with C.B.I Special case no. 6 of 2014. By the impugned order learned Court below discharged the Opposite Party(in short OP) Anju Barman from the allegation of committing offence of cheating punishable under section 420 IPC, on the ground that the opposite party Anju Barman had repaid alleged cheated amount in terms of one time settlement, though charges have been framed against her under section 120B/467/468/471 IPC.

2. Background of the case is that on 06.01.2005 Assistant General Manager of UCO bank, lodged a complaint before Superintend of Police, CBI alleging fraud committed by one Kamal Kumar Chakraborty, the then Sr. Manger of UCO Bank, during the period from 31.07.2000 to 15.05.2003, who allegedly by entering, into criminal conspiracy with different borrowers, middle man, empanelled advocate etc. has defrauded UCO Bank and in pursuance thereof and abusing his official position, he sanctioned and disbursed cash credit limit, advanced under "UCO Traders Scheme" to several farms/ companies which were either non-existent or not carrying any business activities. Said Kamal Kumar Chakraborty had knowingly accepted false, defective, overvalued, non-existent, encumbered immoveable properties as collateral securities. The UCO bank suffered a loss of Rs.4,68,26,000/-

3. It is further alleged that the accused persons including opposite party herein Anju Barman along with said Kamal Kumar Chakraborty during the said period have dishonestly availed multiple financing from different banks and the borrowers have closed down their respective units within a very short period of availing such credit facilities.

4. On the basis of allegation the aforesaid case being RCBSK- 2005E002 under section 120B/420/467/468/471 of the IPC read with sections 13(2), 13(1) (d) of the Prevention of Corruption Act. 1988 (in short PC Act) was registered against the petitioner & others. The crux of the allegation in respect of the borrower farm M/S S.P. Industries and that of opposite party Anju Barman are that it is a non-existent farm floated by Anju for availing loan. The address of the farm was also found to be the residential premises of the borrower. Smt. Anju Barman/opposite party herein was using the said premises for residential purpose only and no commercial activity of the said farm was carried out from the said premises. Furthermore no stock was available as falsely shown in the loan document. The bank engaged a stock editor who conducted spot verification and submitted a report regarding non-existence of the said farm.

5. After completion of investigation charge sheet has been submitted against the opposite party herein Anju Barman and other accused persons under section 120B/420/467/468/471 of the Indian Penal Code read with section 13(2)/13(1)(d) of the P.C. Act. Thereafter the opposite party/accused Anju Barman filed a discharge petition under section 239 of the Cr.P.C and the court below by the impugned order has been pleased to discharge the OP Anju Barman under section 420 of the Indian Penal Code but directed to frame charge against her under section 120B/467/468/471 of the Indian Penal Code.

6. Being aggrieved by the aforesaid order Mr. Anirban Mitra learned counsel appearing on behalf of C.B.I argued that mere payment of the agreed amount which is settled at only Rs. 14,34,000/- by way of one time settlement, will not absolve the criminal liability of the opposite party. Mr. Mitra in this context relied upon the judgments reported in:-

(I) (2016) 1 SCC 389, *(CBI Vs. Maninder Singh)*

(II)* (2012) 10 SCC 303, *(Gian Singh Vs. State of Punjab & Another)

(III) (2014) 15 SCC 29, (*State of Maharashtra Vs. Vikram Anantrai Doshi and Others*.)

(IV)* (2011) 5 SCC 708, (*Sushil Suri Vs. Central Bureau of Investigation and Another.)

(V) CRR no. 918 of 2020 , ***(Arup Kumar Bhoumik Vs. C.B.*I*)***

7. Mr. Mitra further argued that opposite party herein Anju Barman i.e. purported proprietor of M/S S.P. Enterprise had applied for cash credit limit and the application was supported with financial statement filed by her and charted accountant but those financial statements are found to be false and bogus. However a cash credit limit of Rs. 20,00,000/- was sanctioned on 12.09.2002 by aforesaid accused Kamal Kumar Chakraborty (Branch Manager). At present there is outstanding amount of Rs. 16,32,000/-.

8. Mr. Mitra further argued that during investigation it has been established that M/S S.P. Industries is a non-existent farm floated by opposite party herein for availing loan. Therefore from the very inception of taking loan from the borrower, Anju Barman forged and fabricated documents and had acted in connivance with the then bank manager in order to procure loan of Rs. 20,00,000/- which was subsequently settled at an amount of Rs. 14,34,000/-. Therefore learned trial Court has committed error in discharging the accused under section 420 of the IPC, inspite of the fact that the dishonest intention for inducing the bank for obtaining the loan is evident from the very inception of taking the loan.

9. Relying upon the Judgment of ***Rajesh Bajaj Vs. NCT of Delhi and others*** reported in **AIR 1999 SC 1216** he argued that if factual foundation for the offence has been established in the complaint, the court should not hasten to quash criminal proceeding during investigation stage. Merely on the premises that one of the ingredients have not been stated with details, does not give rise to quash the proceeding.

10. Relying upon the judgment ***S. Mathu Kumar Vs. The State*** reported in **1995 Cri LJ 350** he submits that the requirement of the offence punishable under section 420 of the IPC is the representation which the accused himself knew is false was made and that such representation is made with a dishonest intention and on such representation, the complainant was induced to part with property. He further submits that the settlement which was arrived at was only a private settlement. The charges include the use of fraudulent fake and forged document that were used to embezzle public money and if these are proved they would be grave crimes against the society as a whole and therefore merely due to a private settlement between the bank and accused, it cannot be said that the prosecution against the accused person with the charge of cheating would amount to abuse of the process of the court. In this context he also placed reliance upon the case of ***K. Sursh Kumar Vs. Sate of Telangana*** reported in **2017 SCC OnLine Hyd 919**.

11. Mr. Mitra further argued that though section 420 of IPC is a compoundable offence subject to leave of the court, but it is not compoundable in its own and therefore mere one time settlement with the bank will not absolve criminal liability of the accused. The one time settlement arrived at by and between the bank and the borrower is a private settlement and no leave was taken from the court. Therefore even if any settlement was made between the parties, a *prima facie* case of cheating against the opposite party under section 420 of the IPC is made out and one time settlement between the parties, of an agreed amount shall not absolve the criminal liability and therefore it is a fit case where the matter has to be remanded to the trial court for consideration afresh after setting aside the impugned order.

12. Mr. Banerjee on behalf of the opposite party no.2 argued that the Trial court has not committed any wrong in not framing the charge against the opposite party herein under section 420 of the IPC as the loan obtained by opposite party has already been repaid along with interest as per the settlement between the bank and the opposite party herein. The opposite party Anju Barman availed cash credit facility mortgaging of title deed being no. 6688 of 2002 dated 09.08.2002 measuring about 42 decimal of land which is valued at Rs. 15,00,000/- along with five fixed deposits of rupees one lakh each of UCO Bank, amounting rupees five lakhs.

13. Mr. Banerjee further argued that opposite party herein has repaid to the bank time to time and ultimately the claim was settled by compromise petition and in terms of one time settlement. The opposite party has deposited Rs. 14,34,000/- to the bank and thereby a “no dues certificate” has been issued by the bank in favour of M/s S.P. enterprises on 06.11.2009. Therefore the entire loan amount together with interest has been paid as per settlement made by the opposite party herein and the Bank and by no stretch of imagination, it can be said that the opposite party had any intention to obtain the loan in order to cheat or cause wrongful loss to the bank nor the opposite party herein had any intention to misappropriate bank's money in order to attract offence under section 420 of the IPC.

14. He further argued that during investigation it has been revealed that the statement was counter signed by the field officer of the bank, which made it unequivocally clear that the loan was not obtained by any malice, instead the same was applied with due diligence by following the necessary formalities and after complying all the conditions. Infact the loan was sanctioned only after due scrutiny of the application along with all documents. In order to constitute offence under section 420 IPC there must have existence of *mens rea* or criminal intention. Any act without *mens rea* is not an offence under the said provision. Therefore, in the absence of any cogent proof of criminal intention, probability of conviction under section 420 of the Indian Penal Code, in the present case is bleak and continuation of instant case under the said provision would cause the opposite party the great oppression and prejudice and therefore the instant revisional application ought to be dismissed with costs.

15. I have considered submission made on behalf of all the parties.

16. In view of foresaid background the question that needs to be considered in the present context is whether the court below was justified in discharging the present petitioner/accused from the allegation of cheating punishable under section 420 IPC. It is not in dispute that the petitioner accused herein has repaid the loan amount as per one time settlement made between the bank and the petitioner herein. It is also not in dispute that after accepting the settled amount of Rs. 14.34 lakhs from the petitioner, towards full and final settlement, bank has also issued a 'no due certificate' in her favour on 06th November, 2009 and has closed her loan account.

17. Learned Trial Court while discharged the petitioner from the offence of cheating, punishable under section 420 IPC, has taken into consideration the mitigating factors and has clearly observed that for getting the aforementioned loan, the petitioner mortgaged 42 decimal of land worth Rs. 15 lakhs by depositing the title deed being no. 6688 of 2002 before the Bank. She further mortgaged her five fixed deposit certificates each amounting to Rs. 1 lakh. The trial court held that therefore, she got the aforesaid loan against the security of equal amount of property both movable and immovable and subsequently after initiation of the case, bank has settled the dispute with her on compromise and accepted Rs. 14.034 lakhs from her towards full and final settlement of the said loan amount.

18. The court below specifically held that there is no dispute regarding the genuineness of the aforesaid collateral securities and no challenge questioning genuineness has been made either on the part of the prosecution or on the part of the Bank. He also observed that the object of keeping security is that in case loanee fails to repay the loan amount, bank would realize its money by liquidating the mortgaged property. He has also taken note of the fact that no evidence came from the prosecution side that bank had put the above landed property in auction, but could not sell the same due to want of title of the owner of the said property. The fixed deposits are liquidated amount and could have been encashed at any point of time but the bank did not do so rather settled the dispute on compromise.

19. It is settled law that in order to constitute offence of cheating punishable under section 420 of the IPC, there must be *mens rea* at the inception. In the present case the genuine collateral securities, which were initially deposited for obtaining the loan clearly demonstrate that there was no deception at the inception on the part of the petitioner for obtaining such loan. Now whether the bank has settled the loan along with interest at a lesser amount and thereby allegedly caused loss to public exchequer, cannot be the subject matter for initiation of a proceeding under section 420 IPC. Similarly, whether the loan was obtained by the petitioner in the name of a fictitious company by forging documents, can be the subject matter of other offences as alleged in the charge sheet but by no means, can constitute the offence under section 420 IPC. When the loan was obtained by securing genuine documents then merely on the ground that he arrived at a settlement at a lesser amount does not constitute offence under section 420 IPC on the ground of under payment. The court below while discussing the issue came to a definite conclusion that prima facie it is found that accused Anju Barman had no intention to cheat the bank.

20. It has been made explicitly clear in ***V.Y. Jose Vs. State of Gujrat & another,*** **(2009) 3 SCC 78** that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredients of cheating as defined in section 415 of IPC is existence of a fraudulent or dishonest intention of making initial promise on representation thereof from the very beginning of the formation of contract.

21. In the case before me, admittedly petitioner/accused was granted loan by the bank authority on satisfying the deed and fixed deposits kept under mortgage. The mere inability of the petitioner to repay the loan in time or to make one time settlement with the Bank at a lesser amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, as it is the *mens rea* which is the crux of the offence.

22. It is settled law by a catena of decisions including the judgment passed in ***Hiralal Hari lal Bhagwati Vs. CBI*** reported in **(2003) 5 SCC 257** that for establishing the offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. From his making failure to keep promise subsequently, such a culpable intention right at the beginning i.e. at the time when the promise was made cannot be presumed.

23. Therefore, the allegations brought by the prosecution against the petitioner that she being the proprietress of M/S S.P. Enterprise took loan from the bank for trading of resale electrical goods which was a non-existent firm during 2002 to 2003 or that she submitted false and bogus financial statement of her firm in order to procure the above loan, may constitute other offences but does not constitute offence under section 420 IPC for the reasons discussed above.

24. In this context, court below while framed charge against the petitioner under section 120B /467/468/471 IPC have specifically held that accused filed some Xerox copy of documents that at the relevant point of time, she had the running business contrary to the allegations of the prosecution and some copies of the trade license reveal that M/S. S.P. Enterprise used to deal in electrical goods and some copies of trade license reveal that the firm had the business of boutique and general order supply but the truthfulness of the said financial statements can only be adjudicated at the conclusion of the trial in respect of the charge framed against the petitioners.

25. It is settled law that High Courts inherent power under section 528 of the BNSS is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. It is wrong to say that at the stage of framing charges, the court cannot apply its judicial mind to the consideration whether or not there is any ground for presuming the commission of a particular offence by the petitioner/accused. It is also well settled that the order framing charge on a particular allegation affects a person's liberty substantially and therefore, it is the duty of the court to consider judicially whether the materials warrants the framing of the charge in respect of that particular offence or not. It cannot blindly accept the submissions made by the public prosecutor nor can act as a mouthpiece of prosecution, to act mechanically so that the accused can be asked to face a trial on the basis of a particular allegation namely cheating which has not at all being constituted from the materials collected during investigation including the reason that the petitioner had no intention to deceive the bank at the inception for obtaining the loan amount.

26. Infact for the purpose of determining whether there is sufficient ground for proceeding against an accused, the court possesses a comparatively wider discretion in the exercise of which it can determine the question whether the material on record if unrebutted is such on the basis of which a conviction can be awarded at the end of trial. In the present case as I have discussed above that by depositing genuine materials /documents the petitioner obtained loan from the bank and therefore there was no deception at the inception, though it may be that the petitioner subsequently defaulted in payment of loan amount but nevertheless later on she entered into a one time settlement with the bank and the bank on being receipt of the settled amount has issued 'no due certificate' in his favour and therefore, there is hardly any chance of conviction of the petitioner for the alleged commission of offence of cheating under section 420 IPC and therefore, in my considered opinion the, trial court has committed no error in discharging the petitioner Anju Barman from the charge of commission of offence punishable under section 420 IPC and thereby the order impugned does not call for interference by this court.

27. It also needs to be mentioned in this context that the case laws relied by the CBI/petitioner is factually distinguishable since in the present proceeding trial court has not exonerated the petitioner fully from the other allegations levelled against him but has exonerated only from the allegation of cheating under section 420 IPC as he did not find sufficient ground to proceed against the petitioner under the said section.

28. In view of above **CRR 2493 of 2019** is dismissed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)