IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 36 OF 2023

M/S SHREE RADHEY KRIPA CONCAST INDIA PRIVATE LTD AND OTHERS
-VS-
M/S EASTERN COPPER MANUFACTURING CO PRIVATE LIMITED

For the Petitioners	: Mr. Haradhan Banerjee, Ld. Sr. Adv. Mr. Swapan Mallick, Ld. Sr. Adv. Mr. Partha Pratim Mukhopadhyay, Ld. Adv. Mr. Suresh Kr. Sahoo, Ld. Adv. Ms. Aparna Dhali, Ld. Adv.
For the Opposite Party	: Mr. Somopriyo Chowdhury, Ld. Adv. Ms. Sonia Sharma, Ld. Adv. Ms. Anamika Pandey, Ld. Adv.
Reserved on	: 02.09.2026
Pronounced on	: 16.09.2026

UDAY KUMAR, J.: –

1. This criminal revisional application has been filed under Section 482 of the Code of Criminal Procedure, 1973, by the Petitioners, comprising corporate entities and their respective directors, seeking the quashing of Case No. CN/1650 of 2022 (arising out of an initial complaint under Section 200 Cr.P.C.), presently pending before the Learned Metropolitan Magistrate, 19th Court at Calcutta, including the quintessential order of cognizance and issuance of process dated 05.11.2022 under Sections 406, 420, and 120B of the Indian Penal Code, 1860. The core debate centers on whether a commercial transaction dating back to the year 2014, involving a partial remittance of dues and subsequent monetary defaults coupled with an inordinate six-year silence, can legitimately sustain a criminal prosecution or whether it represents an impermissible attempt to cloth a civil dispute in criminal garb.

2. To appreciate the lis between the parties, the foundational facts as unfurled from the record require a brief summation. The opposite party no. 2, representing M/s. Eastern Copper Manufacturing Co. Pvt. Ltd., instituted the complaint alleging that between July and August 2014, the petitioners, directors and principal officers of M/s. Shree Radhey Kripa Concast (India) Pvt. Ltd. and M/s. Lakshmi Metallurgy Ltd. approached the complainant's business office in Kolkata. They allegedly made tall representations regarding their nationwide scale of operations and induced the complainant for supply of "Copper Contact Pads including Fabrication Work" under a solemn assurance of prompt and timely payment. Pursuant thereto, goods valued at ₹23,00,064/- were supplied between August 20, 2014, and September 13, 2014. It is an admitted and indisputable part of the record that immediately thereafter, in September 2014, the accused persons remitted a substantial sum of ₹15,46,500/- towards the bills.

3. The bone of contention arises from the remaining unpaid balance, differential tax liabilities, and incidental travel expenses, culminating in an aggregate claimed due of ₹8,36,627/-. After maintaining complete silence and issuing no reminders or legal correspondences for a staggering period of over six years, the complainant issued a demand notice on November 3, 2020, and subsequently lodged a criminal complaint in September 2022. Upon recording the solemn affirmations of the complainant's representative and an employee witness under Sections 200 and 202 of the Code, the Learned Magistrate proceeded to take cognizance and issue process vide the impugned order dated November 5, 2022.

4. Mr. Haradhan Banerjee, learned senior counsel appearing in support of the petitioners, has vehemently argued that the continuation of the criminal proceeding is a gross abuse of the process of the court. The primary thrust of Mr. Banerjee's argument rests upon the admitted fact of a prompt and substantial part-payment of ₹15,46,500/, representing over 65% of the total invoice value, paid immediately upon delivery in September 2014. He submits that a purchaser harbouring a fraudulent or dishonest intention from the very inception (*ab initio*) would never disburse such a massive sum voluntarily. Relying upon the authoritative pronouncements of the Hon'ble Supreme Court in *Vijay Kumar Ghai & Ors. v. State of West Bengal & Ors.* [(2022) 7 SCC 124], *Binod Kumar & Ors. v. State of West Bengal &Anr.* [(2014) 10 SCC 663], and *Naresh Kumar & Anr. v. State of Karnataka &Anr.* (2024 SCC OnLine SC 268), Mr. Banerjee contends that a mere breach of contract or subsequent default in payment cannot translate into the offense of cheating under Section 420 IPC unless a dishonest intention at the inception is writ large on the face of the record.

5. Expanding his challenge to the invocation of Section 406 IPC, Mr. Banerjee urges that in a standard commercial transaction involving the sale and purchase of goods on credit or order, the dominion and absolute ownership over the chattels pass entirely to the buyer upon delivery. Such a transaction constitutes a contract of sale rather than an "entrustment" of property under Section 405 IPC, rendering criminal breach of trust legally inapplicable, as underscored in *Indian Oil Corporation v. N.E.P.C. India Limited & Ors. [*(2006) 6 SCC 736*].* Furthermore, by sleeping over their rights for six years long after any civil suit for recovery became barred by limitation, the complainant is attempting to utilize the criminal machinery as a coercive recovery agent, a practice heavily deprecated by the Apex Court in *State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335]* and most recently, in *Sandeep Shukla v. State of U.P. & Anr. (2026 INSC 817)* and in *Delhi Race Club (1940) Limited & Ors. v. State of Uttar Pradesh & Anr. [(2024) 10 SCC 690].*

6. Conversely, Mr. Somopriyo Chowdhury, learned counsel appearing for the opposite party-complainant, has stoutly defended the legality of the impugned order. Mr. Chowdhury contends that a conjoint reading of the petition of complaint, the solemn affirmation, and the inquiry depositions clearly discloses a *prima facie* case under Sections 420, 406, and 120B IPC. He argues that the petitioners induced the supply of goods through misrepresentations and subsequently misappropriated the balance amount. Relying upon the ratio in *Medchl Chemicals and Pharma Pvt. Ltd. v. Biological E. Ltd.* [(2000) 3 SCC 269] and *Rashmi*

Kumar v. Mahesh Kumar Bhada [(1997) 2 SCC 397], Mr. Chowdhury submits that at the stage of Section 482 Cr.P.C., this Court cannot embark upon a mini-trial or weigh evidence to test the veracity of defense pleas.

7. Addressing the core defense concerning part-payment, Mr. Chowdhury places heavy reliance on a catena of decisions, including *Ravindra Kumar Madhanlal Goenka & Anr. v. Rugmini Ram Raghav Spinners Pvt. Ltd.* [(2009) 11 SCC 529], *Vijender Kumar & Ors. v. State of Rajasthan & Anr. [*(2014) 3 SCC 389*]*, *Ram Avtar Gupta v. Gopal Das Taliwal & Ors. [(1983) 2 SCC 431]*, and the judgment of this Court in *Mini Arora & Anr. v. State of West Bengal* (2020 SCC OnLine Cal 931) to earnestly canvass that miniscule or partial performance of a contract, or the release of a part-payment, does not wipe out or obliterate an offense of cheating or criminal breach of trust if a substantial balance is fraudulently retained without lawful justification. He concludes that whether the non-payment stems from a genuine commercial dispute over defective goods or a pre-conceived design to cheat is a triable issue of fact that must be adjudicated during trial, and that mere delay cannot operate as a blanket bar to quash a continuing offense, citing *Assistant Collector of Customs, Bombay & Anr. v. L.R. Melwani & Anr.* (1968 SCC OnLine SC 161).

8. Having noted the rival submissions and the expansive array of precedents cited at the bar, this Court now takes up the matter for active discussion, legal analysis, and final determination. The focal point of the present *lis* requires this Court to examine whether the uncontroverted allegations in the complaint and the materials collected during the inquiry under Section 202 of the Cr.P.C. satisfy the rigorous legal thresholds required to sustain criminal prosecutions under Sections 420, 406, and 120B of the Indian Penal Code, 1860, or whether this proceeding represents a classic instance of a civil dispute being converted into a criminal prosecution.

9. To test the sustainability of the criminal proceeding, it is imperative to dissect the statutory ingredients of the penal provisions invoked. Section 415 of the IPC defines "Cheating," which requires: (i) deception of any person, (ii)(a) fraudulently or dishonestly inducing that person to deliver any property to any person, or to consent that any person shall retain any property, or (b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived. Section 420 of the IPC penalizes the offense of cheating and dishonestly inducing the delivery of property. It is well-settled by a catena of decisions of the Hon'ble Supreme Court that the gravamen of the offense under Section 420 IPC is the existence of a dishonest or fraudulent intention (*mens rea*) **at the very inception** (*ab initio*) of the transaction when the promise or inducement was made.

10. In this context, the landmark exposition of the Apex Court in *Vijay Kumar Ghai (supra)* assumes paramount significance, wherein the Hon'ble Supreme Court has held that the criminal courts cannot be permitted to be a forum for initiating criminal proceedings on the basis of bald and untenable allegations and that to hold a person guilty of cheating under Section 420 IPC, it is necessary to show fraudulent or dishonest intention at the time of making the promise.

11. Furthermore, on the aspect of distinction between a mere breach of contract and the offence of cheating, the locus classicus is the judgment of the Apex Court in *Indian Oil Corporation (supra)*, where the Supreme Court observed in paragraph 35 of the report:

> *"35. ... Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is, the time when the offense is said to have been committed. Therefore, it is the intention which is the gist of the offense. To hold a person guilty of cheating it is not enough to show that a person has subsequently not kept the promise willfully, but it must be shown that the accused had dishonest intention right at the beginning."*

12. Applying these foundational principles to the facts of the instant case, this Court finds merit in the primary contention of Mr. Banerjee that the element of *ab initio* dishonest intent is completely negated by the conduct of the accused persons themselves. It is an admitted and undisputed position on record, flowing directly from the complainant's own pleadings and initial depositions, that out of a total invoice value of ₹23,00,064/-, the principal accused company promptly remitted a substantial sum of **₹15,46,500/-** in September 2014 paying over 65% of the total financial liability immediately upon the receipt of goods. This Court is at a loss to understand how a purchaser harboring a pre-conceived, fraudulent design to cheat or deceive a supplier from the very inception would voluntarily disburse more than two-thirds of the consideration.

13. Moving to the second plank of the prosecution, namely Section 406 of the IPC for "Criminal Breach of Trust," this Court must examine the ingredients of Section 405 IPC, which mandates an "entrustment" of property or dominion over property, coupled with a dishonest misappropriation or conversion to one's own use in violation of a legal contract in order to attract the offence. In a standard commercial transaction involving an outright sale and purchase of goods on credit or order, the absolute ownership, property, and dominion over the chattels pass entirely to the buyer upon delivery. Such a transaction constitutes a contract of sale, not an entrustment.

14. When tested on this touchstone, the failure or default in paying the balance commercial price gives rise to a civil debt and a potential civil remedy for recovery of money, but it can never legally constitute criminal misappropriation or breach of trust under Section 406 IPC. Furthermore, the defence has consistently maintained that the balance was withheld because a portion of the goods was defective and not in accordance with the ordered specifications, prompting requests for the complainant to take back the substandard materials. These circumstances point unmistakably toward a bona fide commercial dispute over accounts and product quality, rather than a criminal conspiracy or fraudulent deception of entrustment.

15. This brings us to the crucial element of delay, limitation, and the timing of the criminal complaint. The transactions in question occurred between August and September 2014. The cause of action, if any, accrued immediately thereafter in September 2014. Yet, the complainant company maintained absolute silence, issuing no correspondences, letters, or legal demands for a staggering period of **over six years**, until a demand notice was issued on November 3, 2020, followed by a criminal complaint in late 2022. By the time the demand notice was issued, any civil suit for the recovery of the alleged balance amount had long become barred by the law of limitation under the Limitation Act, 1963.

16. While learned counsel for the opposite party-complainant, Mr. Chowdhury, has strenuously argued, relying on *Assistant Collector of Customs, Bombay (supra)* and *Ravindra Kumar Madhanlal Goenka (supra)*, that mere delay or partial part-payment does not automatically obliterate an ongoing offense and that defence pleas must be tested at trial, this Court must be equally cognizant of the well-established limitations on criminal jurisprudence. The Apex Court in *Bhajan Lal (supra)* explicitly laid down categories where criminal proceedings are manifestly attended with *mala fide* or where proceedings are initiated maliciously with an ulterior motive for settling civil scores or recovering time-barred debts, the real test is whether the allegations in the complaint disclose the criminal intent or are essentially civil in nature.

17. Similarly, in *Binod Kumar (supra)*, the Supreme Court cautioned at paragraph 11:

> *"11. ....It is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into a criminal cases. .....Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution should be deprecated and discouraged..."*

18. Such exposition of law was further illuminated by the Supreme Court in *Naresh Kumar (supra)*, wherein it was reiterated that civil disputes arising out of commercial contracts cannot be permitted to be dragged into the criminal justice machinery to exert undue pressure upon a party and most recently in *Sandeep Shukla (supra)* and in *Delhi Race Club (1940) Limited (supra)*, wherein the Apex Court strongly deprecated the growing malpractice of utilizing the criminal process as a coercive shortcut for the recovery of stale civil claims or long-due commercial balances where civil remedies have become time-barred and emphasized that courts must not allow criminal machinery to be weaponized as a recovery agent.

19. In the light of the comprehensive analysis of the statutory provisions, the undisputed fact of a prompt 65% part-payment *ab initio*, the absence of any initial fraudulent intent, the nature of the transaction being an outright sale rather than an entrustment, and the unexplained, inordinate delay of six years resulting in a time-barred civil claim, this Court is of the firm view that the continuation of Case No. CN/1650 of 2022 against the petitioners is an absolute abuse of the process of the court. Allowing the criminal trial to proceed under such circumstances would reduce the criminal justice system to a tool for coercive civil recovery, which this Court cannot countenance.

20. Accordingly, the criminal revisional application succeeds.

21. The impugned order of cognizance and issuance of process dated 05.11.2022 passed by the Learned Metropolitan Magistrate, 19th Court, Calcutta, in Case No. CN/1650 of 2022, along with all further proceedings arising therefrom, stands hereby quashed and set aside qua the petitioners.

22. C.R.R. No. 36 of 2023 is accordingly allowed and disposed of.

23. Interim order, if there be any, shall stand vacated.

24. An application for extension of interim order being CRAN 4 of 2025 though was filed, but was not showing in the list, as such by the order dated 09.12.2025, this Court had directed the Department to ensure that the application is tagged with the main application. Despite such instruction, Department has failed to comply.

25. CRAN 4 of 2025 is disposed of accordingly. The Department is directed to ensure that such disposal is reflected in the list accordingly.

26. There shall be no order as to costs.

27. Let a copy of this judgment along with the Trial Court Records be transmitted immediately to the Trial Court for information and necessary compliance.

28. Case diary, be returned to the Learned Counsel for the State.

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

(Uday Kumar, J.)