

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

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 2087 OF 2023

**M/S. SAI BABA ENTERPRISE
-VS-
STATE OF WEST BENGAL & ANR.**

For the Petitioner : Mr. Saptarshi Majumder

For the State : Mr. Ramashis Mukherjee
Mr. Utsav Dutta

For the Opposite Party No. 2 : Mr. Dhananjay Banerjee
Mr. Himangshu Ghosh
Mr. Mahiul Islam
Mr. Archan Dutta

Reserved on : 17.09.2026

Pronounced on : 17.09.2026

JUDGMENT (ORAL)

UDAY KUMAR, J.: –

1. This revisional application under Section 482 of the Code of Criminal Procedure, 1973, has been instituted by the petitioner, M/s. Sai Baba Enterprise, seeking the quashing of the proceeding relating to G.R. Case No. 738 of 2023 arising out of Madhyamgram Police Station F.I.R. No.

175/23 dated 16.03.2023 under Sections 406/420 of the Indian Penal Code, 1860, currently pending before the learned Chief Judicial Magistrate, Barasat, North 24 Parganas.

- 2.** The foundational facts, as unfurled from the records, reveal that the petitioner is a business enterprise engaged in the manufacturing of male garments, while Opposite Party No. 2 company represented by its proprietor, Sushanta Kumar Kundu, was a regular supplier of packing cartons. A longstanding commercial and business relationship existed between the parties, governed by standard commercial covenants and trade practices. The core controversy erupted during the unprecedented COVID-19 pandemic period, when Opposite Party No. 2 allegedly generated and raised bills for cartons that were never physically delivered or supplied to the petitioner.
- 3.** The petitioner categorically repudiated these bills, asserting that no such supplies were ever received during the said period. In furtherance of this commercial deadlock, the petitioner caused a formal legal notice to be issued to Opposite Party No. 2 on 02.09.2022, explicitly calling upon them to resolve the accounting discrepancies and reserving rights under civil law. This notice was formally contested and denied by Opposite Party No. 2 via a reply dated 06.09.2022. Failing to extract commercial compliance through civil correspondence, Opposite Party No. 2 subsequently lodged a written criminal complaint at Madhyamgram Police Station, culminating in the registration of the impugned F.I.R.

4. Mr. Saptarshi Majumdar, learned counsel appearing on behalf of the petitioner, vehemently contends that the entire substratum of the prosecution case is commercial and civil in texture. In support of this contention, he refers to the legal notice and reply exchanged between the parties, which are communications characteristic of a dispute of a civil nature. Drawing specific attention to paragraph 7 of the legal notice dated 02.09.2022, where it has been stated that “...my client may take steps under Section 57 of the Sale of Goods Act, 1930, and claim damages for non-delivery of goods” he highlights that the dispute relates strictly to the non-delivery of goods and claims for damages, for which specific remedies are statutorily enshrined under Section 57 of the Sale of Goods Act, 1930, and the same is completely civil in nature.
5. Crucially, Mr. Majumdar draws the attention of this Court to the text of the written complaint dated 16.03.2023 filed before the police station, wherein the Opposite Party No. 2 proprietor, Sushanta Kumar Kundu, explicitly stated that it is a “*comprehensive complaint against the accused person / opposite party for non-payments of the legitimate commercial claim of your complainant amounting to the tune of Rs. 9,13,900/-*”. He urges that this very admission in the foundational police complaint reveals that the dispute is exclusively centered on the non-payment of an alleged commercial claim of a definite amount, and is completely devoid of any ingredients constituting the offences of cheating, deception, or criminal misappropriation of money ab initio, in support of his such submission, he relied on the paragraphs 13, 15 of

the *V. Ganesan v. State represented by the Sub Inspector of Police & Anr.*, (2026 SCC OnLine SC 444).

6. It is argued by the learned counsel for the petitioner that a pure contractual and accounting dispute regarding unpaid or disputed bills has been maliciously wrapped in a criminal garb. Invoking the coercive machinery of the criminal justice system to penalize a business partner for an alleged commercial default, or to apply pressure for monetary recovery, constitutes a textbook abuse of the process of the court.
7. Per contra, Mr. Dhananjay Banerjee, learned counsel appearing for Opposite Party No. 2, submits that the petition for quashing is premature. It is argued that the F.I.R. and subsequent materials disclose triable issues regarding the actual supply and receipt of goods. Relying on the doctrine that disputed questions of fact cannot be weighed, filtered, or adjudicated in a mini-trial under Section 482 of the Cr.P.C., learned counsel urges that the matter be allowed to proceed to trial.
8. Furthermore, Mr. Ramashis Mukherjee, learned counsel for the State, adopts a formal stance, supporting the continuation of the investigation and proceedings and prays for dismissal of the instant revisional application.
9. Heard learned counsel for the respective parties at length, perused the F.I.R., the transactional notices exchanged, the text of the police complaint, and the statutory provisions invoked. The primary question falling for judicial scrutiny is;

“whether the criminal proceedings can be legally sustained when the explicit bedrock of the dispute, as admitted by the complainant himself, is an unadjusted commercial account and the recovery of a legitimate commercial claim”

- 10.** It is a well-entrenched proposition of criminal jurisprudence that criminal law cannot be permitted to be utilized as a shortcut for the recovery of civil debts or the settlement of commercial scores. Where a transaction is rooted in a commercial contract, the mere non-payment of dues or a dispute over delivery schedules will not constitute the penal offences of criminal breach of trust or cheating unless there is clear, clinching material showing a dishonest intention (*mens rea*) on the part of the accused from the very inception (*ab initio*) of the transaction.
- 11.** To evaluate how higher courts must navigate commercial disputes cloaked as criminal offences, it is instructive to look at the exposition of the Hon’ble Supreme Court in *V. Ganesan (supra)* wherein the Apex Court observed in paragraphs 13 and 15:

“13. In order to constitute an offence of cheating the intention to deceive should be in existence when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise. Mere failure to keep the promise subsequently cannot be the sole basis to presume that dishonest intention existed from the very beginning.”

“15. ... in our view, where the transaction between the parties is such that fulfilment of the promise is not entirely in the control of the promisor, or there is an inherent risk in fulfilment of the promise, the High Court may, in exercise of its inherent powers under the Code, or under Article 226 of the Constitution, as the case may be, upon consideration of the attending circumstances, take a decision whether the dishonest intention existed or not at the time of making the promise. And, if it comes to the conclusion that the alleged conduct of the parties does not reflect a dishonest intention of the accused from the very beginning, it may quash the criminal complaint/proceedings and relegate the aggrieved party to civil remedies.”

12. When the facts of the present case are tested on this judicial touchstone, alongside the specific admission made in the written complaint regarding the nature of the claim being a "legitimate commercial claim for non-payment of Rs. 9,13,900/-", it becomes transparently clear that the relationship between the parties was purely commercial. There is a total absence of any foundational averment or material in the F.I.R. to suggest that the petitioner harboured any fraudulent or deceptive intent at the time of placing orders for cartons. The dispute is strictly centered on whether the goods were delivered during the disruptive period of the COVID-19 pandemic and whether the consequent bills are legitimate— these are quintessential questions

of commercial accounting and civil liability for which specific remedies are contemplated under the Sale of Goods Act, 1930.

13. To permit a criminal trial to proceed on the basis of a disputed business account—especially when the complaint itself confesses that the grievance is about the non-payment of a commercial claim—would not only result in the abuse of judicial machinery but would also subject a genuine business enterprise to unmerited harassment and coercive pressure. The remedy of the complainant, if any, lies strictly within the domain of civil and commercial jurisprudence, and not under the criminal law.
14. In view of the detailed foundational facts, the specific admissions in the complaint, established legal parameters, and the binding ratio of the Hon'ble Supreme Court in the precedent cited herein, this Court is of the considered opinion that the continuation of the impugned criminal proceeding against the petitioner is wholly unwarranted and constitutes an abuse of the process of the Court.
15. Accordingly, C.R.R. 2087 of 2023 stands **allowed**.
16. The proceeding in G.R. Case No. 738 of 2023 arising out of Madhyamgram Police Station F.I.R. No. 175/23 dated 16.03.2023, pending before the learned Chief Judicial Magistrate, Barasat, North 24 Parganas, along with all consequential proceedings, is hereby **quashed**.
17. Interim order, if any, stands vacated.
18. There shall be no order as to costs.

- 19.** Let a copy of this judgment along with the Trial Court Records, if any, be transmitted immediately to the Trial Court for information and necessary compliance.
- 20.** Case diary, be returned to the Learned Counsel for the State.
- 21.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)