

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 2771 of 2025

CRAN 2 of 2025, CRAN 5 of 2026

**Sanjib Dey @ Sanjib Kumar Dey & Ors.
Vs.
The State of West Bengal & Anr.**

For the Petitioners	:	Mr. Navanil De Mr. Rajeshwar Chakraborty Mr. Srinjan Ghosh Ms. Monami Mukherjee Mr. Shoumilya Majumder
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For the Opposite Party No.2	:	Mr. Abhishek Halder Mr. Debabrata Halder Ms. Pritha Chatterjee
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For the State	:	Mr. Kallol Mondal Ld. APP Mr. Imran Siddiqui
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Heard on	:	03.08.2026
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Judgment on	:	03.09.2026
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Dr. Ajoy Kumar Mukherjee, J.

1. The instant revisional application has been preferred seeking quashment of the criminal proceeding arising out of Sonarpur P.S. Case No. 874 of 2025 under section 318 (4)/316 (2)/351(2) /74 of the BNS

corresponding to GR Case no. 4367 of 2025, presently pending before learned Additional Chief Judicial Magistrate Baruipur.

2. The allegations that gave rise to the said criminal proceeding, in short, is that in October, 2024 , petitioner 2 engaged OP no.2 and her husband for a Home Interior Project, which was initially estimated at Rs. 23, 49, 033/-. It is alleged at the instance of the petitioner no.3, the work was undertaken on credit without any advance payment. During execution, the scope of work was allegedly expanded resulting in revised estimates of Rs. 29,17,274/- and finally Rs. 38,91,961/-. Although payments aggregating Rs. 23,40,000/- were made, it is alleged that a sum of Rs. 15,42,928/- remained outstanding. It is alleged that the petitioners cheated the OP no.2 of Rs. 15,42,928/-, inducing the OP to spend money and resources to the unlawful benefit of the petitioner. It is further alleged that petitioner no.2 abused and assaulted OP no.2 and that the petitioners humiliated her during the housewarming ceremony on May 12, 2025 and thereafter ceased communication and that petitioner no.3 criminally intimidated her by referring political and criminal connections, and that the petitioners had intended to cheat her from the very inception.

3. Being aggrieved by the aforesaid proceeding learned counsel appearing for the petitioners submits that petitioner no.1 is a government servant having unblemished service record, and petitioner no.2 is an engineer and petitioner no.3 is a practicing advocate who are the sons of petitioner no.1. He submits that the petitioners after purchasing a flat came in contact with OP no.2 and her husband for undertaking the Interior Decoration and during discussion, it was held that the initial budget was

Rs. 15,00,000/- excluding electronic appliances. Upon their assurance, the parties ultimately agreed upon an all-inclusive budget of approximately 25,00,000/- covering the entire interior work with the delivery of the fully completed flat by 31st March, 2025.

4. It is alleged by the petitioner that despite repeated request by petitioner no.3, OP no.2 and her husband refused to execute a written agreement citing tax-related issues. However, relying on their representation, the petitioner no.3 paid an initial sum of Rs. 5 lakhs by cheque on 1st November, 2024, whereupon the work commenced on 5th November, 2024. Thereafter petitioner no. 3 paid a further sum of Rs. 18,40,000/- aggregating Rs. 23, 40,000/-, which has been admitted in the FIR, itself against the agreed consideration of Rs. 25 lakhs

5. It is further alleged by the petitioners that despite receiving Rs. 23, 40,000/-, OP no.2 and her husband failed to complete the work by the agreed deadline of 31st March, 2025 or even before the scheduled housewarming ceremony on 12th May 2025, leaving several agreed items incomplete, missing or substandard. It is further alleged that when petitioner No.3 sought completion of the pending work after taking the balance amount of RS. 1,60,000/-, OP No.2 and her husband instead of fulfilling their obligations, demanded an additional sum of Rs. 12 Lakhs and threatened petitioner no.1 with dire consequences in case of non-payment.

6. Mr. Dey learned counsel for the petitioner therefore argued that the impugned criminal proceeding is a gross abuse of the process of law as the allegation contained in the FIR even if taken at their face value do not disclose the commission of any cognizable offence. The dispute is purely civil

and contractual in nature, arising out of alleged disagreements regarding the scope of work and payment under an oral agreement for interior decoration. The petitioners had no fraudulent or dishonest intention at the inception of the transaction which is evident from the continuous execution of work and substantial payment made by the petitioners. The complainant herself admitted through WhatsApp messages that the petitioners' maximum budget was Rs. 25 lakhs and it establishes that there is no consensus ad idem regarding any enhanced budget and consequently no concluded contract for the higher amount. He therefore submits that the present case imminently warrants the exercise of the inherent jurisdiction of this court under section 528 of the BNSS, to secure the ends of the justice by quashing the impugned First Information Report together with all proceedings consequential thereto.

7. Per contra Mr. Halder learned counsel appearing on behalf of the Opposite party No.2 argued that at this stage of considering the prayer for quashment, the court is not required to meticulously examine whether every ingredients of offences have been stated with mathematical precision. If the factual foundation of the offence exists criminal proceeding ought not to be scuttled at the threshold. The High Court cannot analyse the prosecution case in the light of probabilities or assess the evidentiary value of the materials or determine whether conviction is likely. Therefore, the petitioners attempt to demonstrate innocence by relying upon their own version of facts, WhatsApp communications, alleged quotations and disputed documents is wholly impermissible at this stage.

8. Mr. Halder further argued on behalf of complainant that petitioner no.3 represented himself as an influential advocate, having powerful connections, which induced the complainants to undertake the interior project, entirely on credit without any advance. Repeated assurances were given throughout the execution of the work and the scope of work was continuously enlarged at the instance of the petitioners. The payments were strategically made only to keep the work progressing and to induce further expenditure and thereafter obtaining complete benefit of the work, the petitioners refused to clear the dues and instead resorted to threats and intimidation. Therefore, if such allegations are taken at face value, it unmistakably disclose deception, inducement resulting wrongful loss to the complaint.

9. Mr. Halder in this context further argued that part performance or partial payment does not automatically erase criminality, specially when the complainant alleges that the accused never intended to honour the entire obligation and had merely made payments to keep the complainant acting to his detriment. Relying upon the judgment of ***Indian Oil Corporation Vs. NEPC India Ltd. and others***, reported in **(2006) 6 SCC 736**, learned counsel for the petitioners submits that the existence of a civil remedy is not a ground to quash a criminal proceeding, where the complaint discloses ingredients of criminal offence. The petitioners reliance on partial payment is therefore misplaced. The specific allegations of the complainant is not that no payment was made but that the payments were strategically made only towards material costs, so that the complainant would continue to invest labour, supervision, designs services and further resources on credit.

Whether such allegation could be ultimately proved is a matter of evidence and investigation and it cannot be adjudicated in a quashment proceeding.

10. He further argued that the FIR specifically alleges threats involving political influence, police influence and even criminal elements when the complainant demanded payment. There are allegations that the complainant and persons associated with her were threatened with consequences, if payment was pursued. Now whether such threats would be ultimately proved, is a matter for investigation and trial but at this stage the court must proceed taking the allegations as true. Therefore, the disputed factual assertions relied by the petitioners requires appreciation of evidence and that disputed questions of fact cannot be treated as established, merely because it has been asserted in the revisional application. The present case does not fall within any of the seven categories laid down in **Bhajanlal's Case** reported in **1992 Supp (1) SCC 335**. When the FIR discloses a continuous course of conduct involving inducement deception, expansion of work on assurances of payment and refusal to honour obligations after obtaining the benefit of the work and in the presence of allegation of criminal intimidation and use of criminal force by the petitioners, the instant revisional application deserves to be dismissed with cost.

11. Learned counsel for the state opposes the prayer made by the petitioners and placed the case diary for perusal of the court.

12. I have considered submissions made on behalf of all the parties.

13. Needless to reiterate that the petitioners herein are booked under section 318(4)/316(2)/351(2)/74 of the BNS. On perusal of the complaint and materials collected during investigation, including the statement of

witnesses recorded by IO, it appears that the complaint does not disclose any credible allegation in respect of any fraudulent or dishonest intention on the part of the petitioners at the inception of the transaction, which is the *sine qua non* for constituting the offence of cheating. The only contention of the O.P. No.2 is that petitioner no.3 induced the complainant representing himself as an influential person, which led to undertaken of the work on credit from the inception. Complainant/OP in this context has further taken a plea that the payments were strategically made by the petitioners only towards materials costs so that the complainant would continue to invest labour and further resources on credit.

14. Even if such allegation is taken as a gospel truth, it does not ipso facto lead to an inference that there was an intention to deceit, from the very inception. Petitioners specific case is that against all-inclusive budget of approximately 25 lakhs covering the entire interior work with the delivery of the fully completed flat by 31st March, 2025, the petitioner no.3 paid Rs. 5 lakh on 1st November, 2024 and the work was commenced on 5th November, 2024 and thereafter petitioner no.3 paid a further sum of Rs. 18,14,000/- comprising of Rs 15,14,000/- by cash and Rs. 3,00,000/- by cheque which has been admitted in the FIR and it does not suggest that the payments were made strategically to induce the complainant to continue with the investment, nor does it suggest that the payments were made only towards material costs to deprive him from other costs in order to make an illegal gain. On the contrary it is not disputed that the parties entered into a consensual oral agreement for interior decoration, pursuant to which the complainant and her husband voluntarily undertook the work and received

payment aggregating Rs.23,40,000/- from the petitioners. The complaint depicts that dispute arose only at a subsequent stage over the alleged enhancement of the work, project cost, completion of the remaining work and also over the balance amount payable, all of which are purely contractual issues giving rise at best to civil consequences. In the absence of any material demonstrating that the petitioners had deceived the complainant or dishonestly induced her to deliver any property from the very inception of the transaction, the foundational requirement of cheating is absent in the present proceeding.

15. So far as the allegation under section 316 A of the BNS is concerned '*entrustment*' is the essential ingredient of the offence. A person, who dishonestly misappropriates property entrusted to him contrary to the terms of an obligation imposed, can be roped with the allegation of criminal breach of trust. In the present case the indispensable ingredients of '*entrustment*' of property or dominion over property is conspicuously absent. The allegations contained in the FIR, if accepted in their entirety, it discloses that the complainant and her husband had undertaken interior decoration work at the petitioners flat pursuant to a verbal agreement and may have brought certain materials to the site for the execution of the said work. Such materials were never entrusted to the petitioners in any fiduciary capacity, nor did the petitioners assumed dominion over the same. No allegation has been levelled in the complaint that the petitioners dishonestly misappropriated, converted or disposed of any property belonging to the complainant in violation of any legal obligation or contract. The dispute pertains to the alleged non completion of the work, the quality thereof and

the amount allegedly payable, all of which arises out of a contractual agreement and are purely civil in nature. Therefore, the ingredients to constitute offence under section 316(2) of the BNS is completely lacking in the present case. Furthermore, it is now settled principle of law in view of the judgment passed in ***Delhi Race Club Ltd. case*** reported in **(2024) 10 SCC 690** that if it is a case of the complainant that offence of criminal breach of trust as defined under section 405 IPC, punishable under section 406 IPC is committed by the accused, then in the same breath it cannot be said that the accused is also committed the offence of cheating as defined and explained in section 415 IPC punishable under section 420 IPC.

16. Similarly the allegations demonstrated in the FIR which pertains to criminal intimidation under section 351 (2) facts and circumstances of the case are to be considered in the light of essential ingredients to constitute such offence which are as follows:-

(a) Threatening a persons with any injury:-

- (i)** to his person reputation or property or
- (ii)** to the person or reputation of anyone in whom that person is interested

(b) The threat must be with intent;

- (i)** to cause alarm to that person
- (ii)** to cause that person to do any act which is not legally bound to do as the means of avoiding the execution of such threat or
- (iii)** to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

17. It is trite law that every expression of anger, abusive language or vague threat uttered during commercial or contractual dispute does not *ipso facto* lead to criminal intimidation. To constitute an offence under section 351 (1) of the Sanhita, there must be a specific, real and credible threat intended to cause alarm to the complainant or to compel her to do or omit to do an act which she is legally entitled to do. In the present case the allegation that the petitioner no.3 threatened the complainant by referring to the name of an alleged antisocial is vague and omnibus. No particulars regarding the exact words used, the circumstances in which they were allegedly uttered or any consequential conduct indicating that the complainant was put under genuine alarm has neither been pleaded nor materials available in the record discloses such. Therefore, bald and general allegations, bereft of material particulars are insufficient to constitute the offence of criminal intimidation under section 351 of BNS. The allegations at their behest merely reflect a heated exchange arising out of a contractual dispute which cannot be given a colour of criminality invoking the provisions relating to criminal intimidation.

18. A careful reading of section 74 of the BNS it appears that the ingredients of an assault or use of criminal force to women with intent to outrage her modesty are as follows:-

- (i)** That the persons assaulted was a female
- (ii)** That the accused assaulted or used criminal force to her
- (iii)** That he intended thereby to outrage her modesty or that he knew it to be likely that he would thereby outrage her modesty.

19. In the instant case even if the allegations contained in the FIR are accepted in their entirety it does not disclose the ingredients of the said offence. To constitute an offence under the said provision, there must be a clear allegation of assault or use of criminal force against a woman with the intention to outrage or with the knowledge that such act is likely to outrage her modesty. The complaint does not disclose any overtact on the part of any of the petitioners involving assault or use of criminal force nor does it attribute any intention or knowledge to outrage the modesty of OP no.2. At best the allegations disclose a verbal altercation arising out of a commercial dispute relating to interior decoration work and payment of arrear amount , if any. Mere use of abusive language exchange of heated words or a confrontation in the course of such dispute however unpleasant, does not *ipso facto* constitute an offence under section 74 of the BNS

20. Supreme Court has time and again comes down heavily on the attempts of the over-zealous litigant in trying to settle their civil disputes by resorting to criminal proceeding. O.P relied upon a three Judges Bench of the Apex Court in ***Inder Mohan Goswami and Anr. Vs. State of Uttaranchal and Ors.*** reported in **(2007) 12 SCC 1** but it also involved contractual dispute among the parties, wherein part payment had been made to the complainant by the accused, the proceeding was quashed. It is well settled that a mere breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Even if the allegations that the petitioners failed to keep up their promise in respect of extended work or extra cost, it is not enough to initiate criminal proceeding with mere

allegation that the part payments were made strategically to induce the complainant to continue with the work, in the absence of any prima facie proof of alleged strategy.

21. In *Mohammad Ibrahim and Ors. Vs. State of Bihar and Anr.*, reported in **(2009) 8 SCC 751** the Supreme Court has made clear observation that Criminal Court should ensure that proceedings before it are not used for settling scores or to pressurize parties to settle civil disputes.

22. In view of aforesaid discussion I have no other alternative but to conclude that further continuance of impugned proceeding against the petitioners would be mere abuse of the process of the court and therefore it is a fit case where the proceeding is to be quashed invoking this court's jurisdiction under section 528 of the BNSS.

23. CRR 2771 of 2025 is allowed.

24. The impugned proceeding being GR Case no. 4367 of 2025 presently pending before learned Additional Chief Judicial Magistrate, Baruipur is hereby quashed. The connected applications also stand disposed of.

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.)