IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.R. 1941 of 2014
Sant Kr Tibrewal & Anr.
-Vs-
The State of West Bengal & Anr.

For the Petitioners	: Mr. Ayan Bhattacharya Mr. Shanuk Kumar Mondal Ms. Sutapa Mitra
For the Opposite Party no. 2	: Mr. Asimes Goswami Ms. Paulami Banerjee
For the State	: Mr. Swapan Banerjee Mr. Narayan Prasad Agarwala Mr. Pratick Bose
Heard on	: 28.06.2023, 20.07.2023, 02.08.2023.
Judgment on	: 13.12.2023.

<u>Ananya Bandyopadhyay, J.:-</u>

1. The instant criminal revisional application is filed by the petitioners praying for quashing of the proceeding being Topsia P.S. Case No. 38 dated 24.03.2014 under Sections 406/420/120B of the Indian Penal Code corresponding to G.R. Case No. 1021 of 2014 pending before the Learned Additional Chief Judicial Magistrate, Sealdah.

2. The instant case has been registered by the police on the basis of the direction dated 07.03.2014 passed by the Learned Additional Chief Judicial Magistrate, Sealdah in connection with an application moved by the opposite party No.2 under section 156(3) of the Criminal Procedure Code. It will appear from the complaint that the same does not disclose any cognizable offence and the dispute, if any in between the parties is of civil nature.
3. The petitioner No.2 is one of the Director of the company. The petitioners have set up a modernized food processing unit/factory near Khargapur Town under the name and style “Basukinath Food Processors” and the said unit is owned by the company set up the petitioners and others namely “Basukinath Food Processors Limited”. The present market value of the unit and/or factory would be more than Rs. 100,00,00,000/- (Rupees Hundred Crores) only.
4. The raw materials required for the unit/factory is potato. Due to several other reasons including the non-availability of proper market for the finished product the company has suffered huge loss in last two financial years.
5. The complainant/opposite party No.2 herein and the petitioners are well known to each other and prior to initiation of the instant case there was a cordial relation between them. Monetary transactions have been made between the parties on several occasions. The complainant used to invest money in the company of the petitioners and in turn the company used to pay profit or interest on the investment made by the complainant. For

protection of the complainant the money invested was treated as loan refundable with interest.

6. After considering the financial strength of the company of the petitioners as well as their reputation the complainant for their long cordial relation paid Rs. 25,00,000/- (Rupees Twenty-five lacs) only to the company of the petitioners on 17.09.2012. As per trade practice the company of the petitioner No.2 handed over a postdated cheque of Rs. 2500,000/- (Rupees Twenty-Five Lacs) only to the complainant on the date of receiving payment on account of their company. Time to time the company of the petitioners paid interest to the complainant upto December 2013. The company suffered huge losses and due to financial stringency, they could not pay the amount of the complainant. The company of the petitioners tried their level best to refund the amount and from time to time issued cheques but they could not pay the amount. The cheques handed over to the complainant were dishonored and the company requested to extend the time in writing but the same was refused in writing.

7. It appears that the complainant herein has moved an application under section 156 (3) of the Code of Criminal Procedure before the Learned Additional Chief Judicial Magistrate, Sealdah and the Learned Magistrate on 07.03.2014 directed the concerned Officer-in-Charge of Topsia Police Station to treat the petition as F.I.R. which gave raise to Topsia P.S. Case No.38 dated 24.03.2014 under Section 406/420/120B of the Indian Penal Code. It will appear from the said complaint that the said complaint/F.I.R. does not

disclose any cognizable offence. After careful reading of the complaint the following facts/case will come out on the said F.I.R.:-

i. Accused persons are known to the complainant.
ii. The complainant on several occasions made financial help to the accused persons.
iii. As of earlier the complainant on 17.09.2012 paid Rs. 25,00,000/- (Rupees Twenty-five lacs) to the company of the petitioners.
iv. Inspite of issuing cheque the company of the petitioners has failed to repay the amount.

8. After careful reading of the complaint/F.I.R. it will appear that there is no ingredient of offence either under section 406 or under section 420 or under section 120B of the Indian Penal Code. The dispute involved in this matter is of purely civil in nature. The course open for the complainant is either to file a money suit or to file a complaint case under section 138 of the Negotiable Instrument Act, if necessary, along with an application for Condonation of delay. In any event the present complaint/F.I.R. under section 406/420/120B of the Indian Penal Code has no leg to stand. The complaint has been lodged for creating pressure upon the petitioners through police and the said pressure is still continuing.

9. The allegations made in the complainant against the so-called accused persons are self-contradictory because of the plea taken by the complaint that out of cordial relationship between the complainant and the so called

accused persons the loan of Rs. 25,00,000/- was given to them and at the same time plea has been taken by the complainant that the so-called accused person have committed the offence of cheating under section 420 of Indian Penal Code and criminal conspiracy under the section 120B of the Indian Penal Code as such if the complaint itself is allowed to be investigated it would certainly cause the abuse of the process of the Court.

10. The cheque in question being dishonored after presentation for the reason of insufficiency of fund standing to the credit of the account of the so called accused on which the claim has been drawn it would constitute the offence under section 138 of the Negotiable Instrument Act obviously after the cause of action arises, that is to say,

    a. Issuance of cheque
    b. Presentation of cheque
    c. Endorsement of dishonor
    d. Issuance of a statutory notice
    e. And the location of the office of the person in whose favour the cheque was issued are to be complied with.

But the complainant having not resorted to take shelter under section 138 Negotiable Instrument Act has come forwarded to take shelter under the Criminal Procedure Code by invoking by section 156(3) of Criminal Procedure Code in order to fill up the lacuna for not existing the forum of Negotiable Instrument Act.

11. The offence under section 138 of the Negotiable Instrument Act being a non-cognizable offence by nature the complaint has by passed that forum in order to bring the so called accused person under charge of cheating, criminal breach of trust and criminal conspiracy which is not permissible under the law and the same has been done only to harass the so called accused unnecessary with the aid of police personal which is also not permissible in law.
12. The police have nothing to investigate other than that the cheque has been bounced or not and as if it is crystal clear that the cheque compelled of has been dishonored no fruit full purpose shall be served by directing investigation through police and it would be clear abuse of the process of the Court.
13. In the facts and circumstances of the present case the continuation of the criminal case would amount to abuse of the process of law and in such circumstances the criminal complaint may be quashed for the ends of justice.
14. After careful reading of the complaint/F.I.R. it will appear that there is no reasonable possibility of being equated with the conviction of the petitioners as such the proceeding is liable to be quashed for the ends of justice.
15. After careful reading of the complaint/F.I.R. it will appear that if the present proceeding is allowed to be continued then the petitioners will be prosecuted in the name of prosecution in violation of the mandate of the Constitution of India.

16. The Learned Advocate for the petitioner submitted that:-

    i. The petitioners submited that being citizens of this country they are entitled to the protection of the Constitutional Rights and Guarantees. The provisions of Article 21 and the judicial interpretation thereof by the different High Court do furnish to a citizen an assurance that none will be prosecuted in the name of prosecution. Article 21 of the Constitution of India being a step towards fulfillment of the premises solemnly made in the preamble to the Constitution, it looms large in every sphere of life and a criminal Prosecution is not exception to the said rule.

    ii. The petitioners stated, once the Constitutional promise has not been honored by the prosecutor and the accused has been subject to unnecessary agony and anxiety, the allegation leveled against the accused would fall on the ground, regardless of the nature of it. Irresponsible prosecutors cannot have the luxury of subjecting a citizen to involve in false case.

    iii. The petitioners stated that the ends of justice being higher than mere ends of law, a case which has no reasonable possibility of being equated with the conviction of the petitioners can be said to have no legs to stand upon and ought to be quashed, in order to prevent the law from being abused and further to secure justice, which stands on a pedestal higher than law although it is to be administered in accordance with law.

iv. It would be evident from the records that the complainant having failed to realize the money has filed the criminal case and further the complainant has been trying to use the police for realizing the said amount as such continuation of the proceeding would be abuse of the process of Court.

v. The offence under section 138 of the Negotiable Instrument Act being a non-cognizable offence by nature the complaint has by passed that forum in order to bring the so called accused person under charge of cheating, criminal breach of trust and criminal conspiracy which is not permissible under the law and the same has been done only to harass the so called accused unnecessary with the aid of police personal which is also not permissible in law.

vi. The police have nothing to investigate other than that the cheque has been bounced or not and as if it is crystal clear that the cheque compelled of has been dishonored no fruit full purpose shall be served by directing investigation through police and it would be clear abuse of the process of the Court.

vii. The allegation and statement made by the complainant is self-contradictory and continuation of investigation on the basis of such self-contradictory statement would be abuse of the process of the Court.

viii. The disputes, if any, between the parties were of civil nature as such the proceedings in question should be quashed for the ends of justice.

ix. It will appear from the complaint/F.I.R. that the same does not disclose any cognizable office as such the continuation of the proceeding would be abused to the process of law.

x. There are no proper allegations in accordance with law against the petitioners in the FIR further neither the petitioners have committed any offence nor there was any incident of committing such offence as alleged by the complainant. The petitioners are innocent and implicated in a false case.

xi. If the present case is allowed to be continued, there will be no end to the suffering of the petitioners in as much as apart from all other prejudice, the one injury that the petitioners will seriously suffer is the loss in reputation in business.

xii. There is no violation as alleged in the FIR and also the FIR does not disclose any allegations against the petitioners for which any criminal proceeding under section 406/420/120B of Indian Penal Code may be drawn up against the petitioners.

xiii. In any view of the matter the First Information Report in question is liable to be quashed for the ends of justice.

xiv. The First Information Report is vague and not maintainable under the law. Equity demands that the present proceeding should not be allowed to proceed even for a day now.

17. The Learned Advocate for the opposite party number 2 submitted in good faith the cheques issued by the petitioner were not proceeded against under the provisions of the Negotiable Instruments Act, 1881 considering the cordial relationship between the parties that the petitioner would eventually refund the sum of money in question. However, on false pretext and assurances the petitioner with malafide and malicious intent cheated the complainant and the instant revisional application shall be dismissed.

18. The Learned Advocate of the State in at most fairness submitted that the dispute between the parties was civil in nature, devoid of any criminality.

19. The complaint filed by the opposite party No. 2 inter alia stated that the petitioner was admittedly known to the opposite party engaged in several transactions on different occasions seeking financial assistance as on when there was a financial constraint. Initially prior to the dispute in question the petitioners abided by the commitment to repay the amount received from the opposite party on credit however the amount of Twenty-Five Lacs promised to be returned to the opposite party by the petitioners within three months could not be adhered to. The petitioners failed to refund the aforesaid money within the stipulated period of three months and agreed to give a three-month postdated cheque.

20. On 15.9.12 subsequently to future discussions the company of the opposite party No. 2 issued a cheque being number 446481 dated 17.9.12 to an amount of Rupees Twenty-Five Lacs. Another post-dated cheque bearing number 98625 dated 17.2.2012 of Rupees Twenty-Five Lakhs drawn on PNB Midnapore Branch was issued in favor of the petitioner which on presentation returned on 18.2.12 with a remark “exceed arrangement”. The petitioner assured the opposite party No. 2 company to repay the aforesaid amount by the first week of February 2013. They also issued two postdated cheques, one for the principal amount which is Rupees Twenty-Five Lacs through a cheque bearing number 182331 on 18.2.2013 and one for the interest of Rupees Thirty Four Thousand Nine Hundred and Fifty Two through a cheque bearing number 182330 on 18.2.13 to create some confidence. Both the cheques were drawn on PNB, Midnapore Branch.

21. Prior to 18.02.2013 the petitioner requested the opposite party No. 2 not to deposit the said cheques on 18.2.13 as they were yet to make arrangements for the full amount and they wished to pay the amount in two instalments. The first installment would be paid by 19.4.13 for Rupees Ten Lacs and the second installment would be paid by 19.5.13 of Rupees Fifteen Lacs. Accordingly, they issued two separate cheques, one of Rupees Ten Lacs through a cheque bearing number 060584 on 19.4.13 and another of Rupees Fifteen Lacs through a cheque bearing number 060585 on 19.5.13. Both these cheques were drawn at Axis Bank, Burabazar Branch.

22. On presentation of the cheque bearing number 060584 on 19.4.2013 of Rupees Ten Lacs, the opposite party no. 2 was stunned to receive the information from the bank that the cheques were dishonored due to insufficient funds. The opposite party no. 2 informed the petitioner about the dishonor of the cheques and then the petitioner requested the opposite party no. 2 not to deposit the cheques of Rupees fifteen Lacs on 19.5.13. They issued two fresh cheques in lieu of the above referred two cheques being the cheque bearing number 182518 dated 3.10.13 of Rupees Fifteen Lacs and the cheque bearing number 182517 dated on 3.10.13 of Rupees Ten Lacs. They assured the opposite party no. 2 that they would present the two cheques after Diwali.

23. The opposite party no. 2 deposited the said cheques after Diwali and the two cheques were once again dishonored with the remark "Exceeds Arrangement". The opposite party no. 2 contacted the petitioner, and they assured them that they were earnestly trying to make arrangements for the full amount, and they would issue a cheque by the middle of January, 2014. The opposite party no. 2 waited for the petitioner to issue a fresh cheque, but the petitioner did not. The opposite party no. 2 stated that they realized the petitioner had done all the acts with the intentions to delay any case of Section 138 of the Negotiable Instruments Act, 1881 as they were aware the validity of the cheque would remain for three months only.

24. The opposite party no. 2 tried to contact the petitioner several times, but they did not respond. However, on 15.2.14 the opposite party no. 2 called the

petitioner over the telephone, and they refused to pay the amount of Rupees Twenty-Five Lacs. The petitioner on the other hand threatened the opposite party no. 2 with dire consequences if the petitioner tried to demand any amount from them. The opposite party no. 2 stated that it was crystal clear that the petitioner fraudulently and dishonestly misappropriated the said amount with criminal motives which is criminal conspiracy.

25. In the case of M N G Bharateesh Reddy v. Ramesh Rangana[1], the Hon'ble Supreme Court observed the following: -

"13. The ingredients of the offence of cheating are spelt out in Section 415 of the IPC. Section 415 is extracted below:

"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."

14. The ingredients of the offence under Section 415 emerge from a textual reading. Firstly, to constitute cheating, a person must deceive another.

[1]2022 SCC OnLine SC 1061

Secondly, by doing so the former must induce the person so deceived to (i) deliver any property to any person; or (ii) to consent that any person shall retain any property; or (iii) intentionally induce 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 such an act or omission must cause or be likely to cause damage or harm to that person in body, mind, reputation or property.

15. Section 420 deals with cheating and dishonestly inducing delivery of property. It reads as follows:

"420. Cheating and dishonestly inducing delivery of property - Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being capable of converting into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

16. In Hridaya Ranjan Prasad Verma v. State of Bihar4, a two-judge bench of this Court interpreted sections 415 and 420 of IPC to hold that fraudulent or dishonest intention is a precondition to constitute the offence of cheating. The relevant extract from the judgment reads thus:

"14. On a reading of the section, it is manifest that in the definition there are set forth two separate classes of acts which the person deceived may be induced to do. In the first place he may be induced fraudulently or

dishonestly to deliver any property to any person. The second class of acts set forth in the section is the doing or omitting to do anything which the person deceived would not do or omit to do if he were not so deceived. In the first class of cases the inducing must be fraudulent or dishonest. In the second class of acts, the inducing must be intentional but not fraudulent or dishonest.

15. In determining the question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. 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 offence is said to have been committed. Therefore it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."

(emphasis supplied)

17. In Dalip Kaur v. Jagnar Singh5 a two-judge bench of this Court held that a dispute arising out of a breach of contract would not amount to an *offence of cheating under section 415 and 420. The relevant extract is as follows:*

"9. The ingredients of Section 420 of the Penal Code are:

"(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."

10. The High Court, therefore, should have posed a question as to whether any act of inducement on the part of the appellant has been raised by the second respondent and whether the appellant had an intention to cheat him from the very inception. If the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the appellants by non-refunding the amount of advance the same would not constitute an offence of cheating. Similar is the legal position in respect of an offence of criminal breach of trust having regard to its definition contained in Section 405 of the Penal Code. (See Ajay Mitra v. State of M.P. [(2003) 3 SCC 11 : 2003 SCC (Cri) 703])"

(emphasis supplied)

18. Applying the above principles, the ingredients of Sections 415 and 420 are not made out in the present case. The grievance of the first respondent *arises from the termination of his services at the hospital. The allegations indicate that there was an improper billing in respect of the surgical services which were rendered by the complainant at the hospital. At the most, the allegations allude to a breach of terms of the Consultancy Agreement by the Appellant, which is essentially in the nature of a civil dispute.*

19. The allegations in the complaint are conspicuous by the absence of any reference to the practice of any deception or dishonest intention on behalf of the Appellant. Likewise, there is no allegation that the complainant was as a consequence induced to deliver any property or to consent that any person shall retain any property or that he was deceived to do or omit to do anything which he would have not done or omitted to do if he was not so deceived. The conspicuous aspect of the complaint which needs to be emphasized is that the ingredients of the offence of cheating are absent in the averments as they stand.

20. Section 405 of the IPC deals with criminal breach of trust and reads as follows:

"405. Criminal breach of trust - Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such

trust, or willfully suffers any other person so to do, commits "criminal breach of trust"."

21. The offence of criminal breach of trust contains two ingredients : (i) entrusting any person with property, or with any dominion over property; and (ii) the person entrusted dishonestly misappropriates or converts to his own use that property to the detriment of the person who entrusted it.

22. In Anwar Chand Sab Nanadikar v. State of Karnataka6 a two-judge bench restated the essential ingredients of the offence of criminal breach of trust in the following words:

"7. The basic requirement to bring home the accusations under Section 405 are the requirements to prove conjointly (1) entrustment, and (2) whether the accused was actuated by the dishonest intention or not misappropriated it or converted it to his own use to the detriment of the persons who entrusted it. As the question of intention is not a matter of direct proof, certain broad tests are envisaged which would generally afford useful guidance in deciding whether in a particular case the accused had mens rea for the crime."

23. In Vijay Kumar Ghai v. State of West Bengal7 another two-judge bench held that entrustment of property is pivotal to constitute an offence under section 405 of the IPC. The relevant extract reads as follows:

"28. "Entrustment" of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, "in any

manner entrusted with property". So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of "trust". A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal breach of trust and is punished under Section 406 of the Penal Code."

24. None of the ingredients of the offence of criminal breach of trust have been demonstrated on the allegations in the complaint as they stand. The first respondent alleges that the Appellant caused breach of trust by issuing grossly irregular bills, which adversely affected his professional fees. However, an alleged breach of the contractual terms does not ipso facto constitute the offence of the criminal breach of trust without there being a clear case of entrustment. No element of entrustment has been prima facie established based on the facts and circumstances of the present matter. Therefore, the ingredients of the offence of criminal breach of trust are ex facie not made out on the basis of the complaint as it stands.

1. The Hon'ble Supreme Court in the case of *Binod Kumar v. State of Bihar*[2] held the following:-

11. *Referring to the growing tendency in business circles to convert purely civil disputes into criminal cases, in paras 13 and 14 of* Indian Oil Corpn.

[2] (2014) 10 SCC 663

case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , it was held as under : (SCC pp. 748-49)

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. 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. In G. Sagar Suri v. State of U.P. [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] , this Court observed : (SCC p. 643, para 8)

'8. … It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.'

14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 CrPC more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

14. *At this stage, we are only concerned with the question whether the averments in the complaint taken at their face value make out the ingredients of criminal offence or not. Let us now examine whether the allegations made in the complaint when taken on their face value, are true and constitute the offence as defined under Section 406.*

15. *Section 405 IPC deals with criminal breach of trust. A careful reading of Section 405 IPC shows that a criminal breach of trust involves the following ingredients:*

(a) a person should have been entrusted with property, or entrusted with dominion over property;

(b) that person should dishonestly misappropriate or convert to his own use that property, or dishonestly use or dispose of that property or wilfully suffer any other person to do so;

(c) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.

16. *Section 406 IPC prescribes punishment for criminal breach of trust as defined in Section 405 IPC. For the offence punishable under Section 406 IPC, prosecution must prove:*

(i) that the accused was entrusted with property or with dominion over it; and

(ii) that he (a) misappropriated it, or (b) converted it to his own use, or (c) used it, or (d) disposed of it.

The gist of the offence is misappropriation done in a dishonest manner. There are two distinct parts of the said offence. The first involves the fact of entrustment, wherein an obligation arises in relation to the property over which dominion or control is acquired. The second part deals with misappropriation which should be contrary to the terms of the obligation which is created.

17. *Section 420 IPC deals with cheating. The essential ingredients of Section 420 IPC are:*

(i) cheating;

(ii) dishonest inducement to deliver property or to make, alter or destroy any valuable security or anything which is sealed or signed or is capable of being converted into a valuable security, and

(iii) mens rea of the accused at the time of making the inducement.

18. *In the present case, looking at the allegations in the complaint on the face of it, we find that no allegations are made attracting the ingredients of Section 405 IPC. Likewise, there are no allegations as to cheating or the dishonest intention of the appellants in retaining the money in order to have wrongful gain to themselves or causing wrongful loss to the complainant. Excepting the bald allegations that the appellants did not make payment to the second respondent and that the appellants utilised the amounts either by themselves or for some other work, there is no iota of allegation as to the dishonest intention in misappropriating the property. To make out a case of criminal breach of trust, it is not sufficient to show that money has been retained by the appellants. It must also be shown that the appellants dishonestly disposed of the same in some way or dishonestly retained the same. The mere fact that the appellants did not pay the money to the complainant does not amount to criminal breach of trust.*

26. In the instant case there was no entrustment of property in favor of the petitioner by the complainant opposite party which was dishonestly misappropriated or converted into his own property by the petitioner and to have disposed of the property in any manner to the detriment of the opposite party.

27. The parties were known to each other and their acquaintance through business transactions was evident to have been cordially continued for a

considerable period of time eradicating the initial intent of dishonest inducement or mens rea to convert a valuable security or alter or destroy the same. The dispute between the parties is purely civil in nature and does not attract any of the ingredient constituting an offence under Sections 406 and 420 of the Indian Penal Code 1860 and to allow to continue with the proceedings before the Trial Court would result in an abuse of the process of law.

28. In view of the above discussions, the proceeding being Topsia P.S. Case No. 38 dated 24.03.2014 under Sections 406/420/120B of the Indian Penal Code corresponding to G.R. Case No. 1021 of 2014 pending before the Learned Additional Chief Judicial Magistrate, Sealdah is quashed.
29. The criminal revisional application being CRR 1941 of 2014 is allowed.
30. Accordingly, CRR 1941 of 2014 stands disposed of. Connected application, if there be any, also stands disposed of.
31. There is no order as to cost.
32. Let the copy of this judgment be sent to the Learned Trial Court as well as the police station concerned for necessary information and compliance.
33. All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

(Ananya Bandyopadhyay, J.)