

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 2648 of 2022

M/s. Todays Vidyarthi Shera Bazar & Ors.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Moyukh Mukherjee,
Mr. Koustav Lal Mukherjee,
Ms. Sagnika Banerjee,
Ms. Sarmistha Basak.

For the Opposite Parties : None.

Hearing concluded on : 14.11.2024

Judgment on : 26.11.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceeding being Complaint Case No. 265 of 2021 dated 30.01.2021 pending before the learned 5th Judicial Magistrate, Alipore, 24 Parganas (South), alleging commission of offence under Sections 420/406/120B of the Indian Penal Code.
2. The case of the petitioners is that the petitioner no. 1 is a partnership firm namely M/s. Todays Vidyarthi Shera Bazar, having its office at 10, Rathin Banerjee Lane, Dhakuria, Kolkata-700031 and petitioner nos. 2 and 3 are the citizen of India, having permanent abode at 10, Rathin Banerjee Lane, Dhakuria, Kolkata-700031.
3. The petitioner no. 2 is the sole proprietor of the above said partnership firm. That the said M/s. Todays Vidyarthi Shera Bazar, is being represented through the petitioner no. 2.
4. The petitioner no. 3 is the daughter of petitioner no. 2 herein, she is no way connected with the above said firm namely M/s Todays Vidyarthhi Shera Bazar.
5. The Complaint Case No. 265 of 2021, presently pending before the learned 5th Judicial Magistrate at Alipore, 24 Parganas (South) dated 30.01.2021, was registered on the basis of complaint lodged by one Mr. Sumit Gupta, authorized signatory of M/s. B. Dayal & Co. Pvt. Ltd. of 5D, Heysham Road, P.S. Bhawanipore, Kolkata-700 020. (hereinafter referred as the “Complainant”), against the petitioners, alleging

commission of offence under Sections 420/406/120B of the Indian Penal Code.

6. The allegations made in the aforesaid complaint are inter alia to the effect that:-

“The complainant, it is alleged that the complainant has been cheated of Rs.8,91,269/- (Eight Lakh Ninety One Thousand Two Sixty Nine) by the petitioners. That the complainant herein/opposite party is one of the authorized signatory of M/s. B. Dayel Pvt. Ltd., the said company carrying on business of reselling of stationary goods.”

7. The petitioners allegedly approached the complainant herein opposite party no. 2 to supply 5,54,260 Pcs. of pen of different size at different rates on **credit basis** and also alleged that the petitioners allegedly **assured** that they will give the entire amount within alleged three months from the date of supply of the abovesaid goods and that they were well reputed and doing satisfactory business till date.
8. The said incident has happened verbally and sometimes over phone and by meeting on many occasions. After such communication the accused persons/petitioners allegedly avoided to pay the money and also allegedly assured to make payment shortly.
9. Thus the complainant has been allegedly cheated by the accused persons/ petitioners herein to the tune of Rs.8,91,269/- for the supply of pen. It is further submitted that from the very inception the alleged accused persons had ill motive.
10. In spite of due service there is no representation on behalf of the opposite party no. 2.

11. From the petition of complaint it appears that the complainant did not annex any copy of the agreement or documents to show that there was an agreement between the parties. Only copies of bills raised by the complainant/opposite party no. 2 were annexed to the complaint petition. There is no copy showing any receipt of the goods as alleged.

12. The order issuing process upon the petitioners herein which is dated 02.03.2021 also does not show any application of mind by the learned Magistrate.

13. The said order dated 02.03.2021 is as follows:-

“C 265/2021

Dated: 02.03.21

Today is fixed for S.A. The Complainant is present.

The Complainant is examined on S.A. Relevant documents are filed on behalf of the complainant in form of Xerox.

Perused the petition of the complaint, the documents filed herein and the evidence on S.A. It appears to me that there is sufficient ground to proceed against the accused persons for the offence u/s 420/ 406/ 120B IPC. Hence I am inclined to issue process against the accused persons.

Issue summons against the accused persons. Requisites at once.

To 18.09.21 for S/R and appearance.

Sd/-

JM, 5th Court, Alipore.”

14. The Supreme Court in *R. Nagender Yadav vs The State of Telangana, Criminal Appeal No. 2290 of 2022, on 15 December, 2022*, held:-

“17. While exercising its jurisdiction under Section 482 of the CrPC, the High Court has to be conscious that this power is to be exercised

sparingly and only for the purpose of prevention of abuse of the process of the court or otherwise to secure the ends of justice. Whether a complaint discloses a criminal offence or not, depends upon the nature of the act alleged thereunder. Whether the essential ingredients of a criminal offence are present or not, has to be judged by the High Court. A complaint disclosing civil transaction may also have a criminal texture. But the High Court must see whether the dispute which is in substance of a civil nature is given a cloak of a criminal offence. In such a situation, if civil remedy is available and is in fact adopted, as has happened in the case on hand, the High Court should have quashed the criminal proceeding to prevent abuse of process of court.”

15. The Supreme Court in **Deepak Gaba and Ors. vs State of Uttar Pradesh and Anr., Criminal Appeal No. 2328 of 2022, on January 02, 2023**, held:-

“21. We are, therefore, of the opinion that the assertions made in the complaint and the pre-summoning evidence led by respondent no. 2 - complainant fail to establish the conditions and incidence of the penal liability set out under Sections 405, 420, and 471 of the IPC, as the allegations pertain to alleged breach of contractual obligations. **Pertinently, this Court, in a number of cases, has noticed attempts made by parties to invoke jurisdiction of criminal courts, by filing vexatious criminal complaints by camouflaging allegations which were ex facie outrageous or pure civil claims. These attempts are not to be entertained and should be dismissed at the threshold.** To avoid prolixity, we would only like to refer to the judgment of this Court in **Thermax Limited and Others v. K.M. Johny (2011) 13 SCC 412**, as it refers to earlier case laws in copious detail. In **Thermax Limited and Others** (Supra), it was pointed that the court should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegations may constitute both civil and criminal wrongs. The court must cautiously examine the facts to ascertain whether they only constitute a

civil wrong, as the ingredients of criminal wrong are missing. A conscious application of the said aspects is required by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Even though at the stage of issuing process to the accused the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set the criminal proceedings into motion. The requirement of Section 204 of the Code is that the Magistrate should carefully scrutinize the evidence brought on record. He/she may even put questions to complainant and his/her witnesses when examined under Section 200 of the Code to elicit answers to find out the truth about the allegations. Only upon being satisfied that there is sufficient ground for summoning the accused to stand the trial, summons should be issued. Summoning order is to be passed when the complainant discloses the offence, and when there is material that supports and constitutes essential ingredients of the offence. It should not be passed lightly or as a matter of course. When the violation of law alleged is clearly debatable and doubtful, either on account of paucity and lack of clarity of facts, or on application of law to the facts, the Magistrate must ensure clarification of the ambiguities. Summoning without appreciation of the legal provisions and their application to the facts may result in an innocent being summoned to stand the prosecution/trial. Initiation of prosecution and summoning of the accused to stand trial, apart from monetary loss, sacrifice of time, and effort to prepare a defence, also causes humiliation and disrepute in the society. It results in anxiety of uncertain times.

24. We must also observe that the High Court, while dismissing the petition filed under Section 482 of the Code, failed to take due notice that criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with ulterior motive of wreaking vengeance and with a view to spite the opposite side due to private or personal grudge. Allegations in the complaint and the pre-summoning evidence on record, when taken on the face value and accepted in entirety, do not constitute the offence alleged. The inherent powers of the court can and

should be exercised in such circumstances. When the allegations in the complaint are so absurd or inherently improbable, on the basis of which no prudent person can ever reach a just conclusion that there is sufficient wrong for proceeding against the accused, summons should not be issued.”

16. The Supreme Court in:-

A. *Sarabjit Kaur vs State of Punjab and Anr., (2023) 5 SCC*

360, decided on March 1, 2023, held:-

“13. *A 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. Merely on the allegation of failure to keep up promise will not be enough to initiate criminal proceedings. From the facts available on record, it is evident that Respondent 2 had improved his case ever since the first complaint was filed in which there were no allegations against the appellant rather it was only against the property dealers which was in subsequent complaints that the name of the appellant was mentioned. On the first complaint, the only request was for return of the amount paid by Respondent 2. When the offence was made out on the basis of the first complaint, the second complaint was filed with improved version making allegations against the appellant as well which was not there in the earlier complaint. The entire idea seems to be to convert a civil dispute into criminal and put pressure on the appellant for return of the amount allegedly paid. The criminal courts are not meant to be used for settling scores or pressurise parties to settle civil disputes. Wherever ingredients of criminal offences are made out, criminal courts have to take cognizance. The complaint in question on the basis of which FIR was registered was filed nearly three years after the last date fixed for registration of the sale deed. Allowing the proceedings to continue would be an abuse of process of the court.”*

B. M N G Bharateesh Reddy v. Ramesh Ranganathan & Anr.,

2022 SCC OnLine SC 1061, decided on August 18, 2022,

held:-

“12. 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.”

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

14. 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.”*

15. In *Hridaya Ranjan Prasad Verma v. State of Bihar*, 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)

16. In *Dalip Kaur v. Jagnar Singh* 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)

17. 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.

18. 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.

19. 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”.”

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.

20. In *Anwar Chand Sab Nanadikar v. State of Karnataka* 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.”

21. In *Vijay Kumar Ghai v. State of West Bengal* 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.”

22. *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.”*

C. *Vijay Kumar Ghai & Ors. vs. State of West Bengal & Ors.,*

(2022) 7 SCC 124, decided on March 22, 2022, held:-

“24. *This Court in G. Sagar Suri v. State of U.P. [G. Sagar Suri v. State of U.P., (2000) 2 SCC 636 : 2000 SCC (Cri) 513] observed that it is the duty and obligation of the criminal court to exercise a great deal of caution in issuing the process, particularly when matters are essentially of civil nature.*

25. *This Court has time and again cautioned about converting purely civil disputes into criminal cases. This Court in Indian Oil Corpn. [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] noticed the prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. The Court further observed that : (Indian Oil Corpn. case [Indian Oil Corpn. v. NEPC India Ltd., (2006) 6 SCC 736 : (2006) 3 SCC (Cri) 188] , SCC p. 749, para 13)*

“13. *... 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.”*

27. *Section 405IPC defines “criminal breach of trust” which reads as under:*

“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 violation of 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 wilfully suffers any other person so to do, commits “criminal breach of trust”.”

The essential ingredients of the offence of criminal breach of trust are:

- (1) The accused must be entrusted with the property or with dominion over it,
- (2) The person so entrusted must use that property, or;
- (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,
 - (a) of any direction of law prescribing the mode in which such trust is to be discharged, or;
 - (b) of any legal contract made touching the discharge of such trust.

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.

29. The definition in the section does not restrict the property to movables or immovables alone. This Court in *R.K. Dalmia v. Delhi Admn.* [*R.K. Dalmia v. Delhi Admn.*, (1963) 1 SCR 253 : AIR 1962 SC 1821] held that the word “property” is used in the Code in a much wider sense than the expression “movable property”. There is no good reason to restrict the meaning of the word “property” to movable property only when it is used without any qualification in Section 405.

30. In *Sudhir Shantilal Mehta v. CBI* [*Sudhir Shantilal Mehta v. CBI*, (2009) 8 SCC 1 : (2009) 3

SCC (Cri) 646] it was observed that the act of criminal breach of trust would, *inter alia* mean using or disposing of the property by a person who is entrusted with or has otherwise dominion thereover. Such an act must not only be done dishonestly but also in violation of any direction of law or any contract express or implied relating to carrying out the trust.

31. Section 415 IPC defines “cheating” which reads as under:

“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”.”

The essential ingredients of the offence of cheating are:

1. Deception of any person
2. (a) Fraudulently or dishonestly inducing that person—
 - (i) to deliver any property to any person; or
 - (ii) 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, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

32. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.

33. Section 420IPC defines “cheating and dishonestly inducing delivery of property” which reads as under:

“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 converted 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.”

34. *Section 420IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.*

35. *To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:*

- (i) The representation made by the person was false.*
- (ii) The accused had prior knowledge that the representation he made was false.*
- (iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.*
- (iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.*

36. *As observed and held by this Court in R.K. Vijayasarathy v. Sudha Seetharam [R.K. Vijayasarathy v. Sudha Seetharam, (2019) 16 SCC 739 : (2020) 2 SCC (Cri) 454] , the ingredients to constitute an offence under Section 420 are as follows:*

- (i) a person must commit the offence of cheating under Section 415; and*
- (ii) the person cheated must be dishonestly induced to:*
 - (a) deliver property to any person; or*
 - (b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420IPC.*

37. *The following observation made by this Court in Uma Shankar Gopalika v. State of Bihar [Uma Shankar Gopalika v. State of Bihar, (2005) 10 SCC 336 : (2006) 2 SCC (Cri) 49] with almost similar facts and circumstances may be relevant to note at this stage : (SCC pp. 338-39, paras 6-7)*

“6. Now the question to be examined by us is as to whether on the facts disclosed in the petition of the complaint any criminal offence whatsoever is made out much less offences under Sections 420/120-BIPC. The only allegation in the complaint petition against the accused persons is that they assured the complainant that when they receive the insurance claim amounting to Rs 4,20,000, they would pay a sum of Rs 2,60,000 to the complainant out of that but the same has never been paid. ... It was pointed out on behalf of the complainant that the accused fraudulently persuaded the complainant to agree so that the accused persons may take steps for moving the consumer forum in relation to the claim of Rs 4,20,000. It is well settled that every breach of contract would not give rise to an offence of cheating and only in those cases breach of contract would amount to cheating where there was any deception played at the very inception. If the intention to cheat has developed later on, the same cannot amount to cheating. In the present case, it has nowhere been stated that at the very inception that there was intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420IPC.

7. In our view petition of complaint does not disclose any criminal offence at all much less any offence either under Section 420 or Section 120-BIPC and the present case is a case of purely civil dispute between the parties for which remedy lies before a civil court by filing a properly constituted suit. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of court and to prevent the same it was just and expedient for the High Court to quash the same by exercising the powers under Section 482CrPC which it has erroneously refused.”

38. *There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this Court in Hridaya Ranjan Prasad Verma v. State of Bihar [Hridaya Ranjan Prasad Verma v. State of Bihar, (2000) 4 SCC 168 : 2000 SCC (Cri) 786] , the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by*

Respondent 2 does not disclose dishonest or fraudulent intention of the appellants.

39. *In Vesa Holdings (P) Ltd. v. State of Kerala [Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293 : (2015) 3 SCC (Cri) 498] , this Court made the following observation : (SCC pp. 297-98, para 13)*

“13. It is true that a given set of facts may make out a civil wrong as also a criminal offence and only because a civil remedy may be available to the complainant that itself cannot be ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose the criminal offence of cheating or not. In the present case, there is nothing to show that at the very inception there was any intention on behalf of the accused persons to cheat which is a condition precedent for an offence under Section 420IPC. In our view, the complaint does not disclose any criminal offence at all. Criminal proceedings should not be encouraged when it is found to be mala fide or otherwise an abuse of the process of the court. The superior courts while exercising this power should also strive to serve the ends of justice. In our opinion, in view of these facts allowing the police investigation to continue would amount to an abuse of the process of the court and the High Court committed [Maniprasad v. State of Kerala, 2011 SCC OnLine Ker 4251] an error in refusing to exercise the power under Section 482CrPC to quash the proceedings.”

40. *Having gone through the complaint/FIR and even the charge-sheet, it cannot be said that the averments in the FIR and the allegations in the complaint against the appellant constitute an offence under Sections 405 and 420IPC, 1860. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making promise being absent, no offence under Section 420IPC can be said to have been made out. In the instant case, there is no material to indicate that the appellants had any mala fide intention against the respondent which is clearly deductible from the MoU dated 20-8-2009 arrived at between the parties.”*

- 17.** The Hon’ble Supreme Court in **Lalit Chaturvedi vs. State of U.P, Criminal Appeal No. of 2023 (Arising out of SLP (Crl.) No. 13485 of 2023):**

“5. This Court, in a number of judgments, has pointed out the clear distinction between a civil wrong in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms; and a criminal offence under Sections 420 and 406 of the IPC. Repeated judgments of this Court, however, are somehow overlooked, and are not being applied and enforced. We will be referring to these judgments. The impugned judgment dismisses the application filed by the appellants under Section 482 of the Cr.P.C. on the ground of delay/laches and also the factum that the chargesheet had been filed on 12.12.2019. This ground and reason is also not valid.

6. In “Mohammed Ibrahim v. State of Bihar”, this Court had referred to Section 420 of the IPC, to observe that in order to constitute an offence under the said section, the following ingredients are to be satisfied:—

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

19. To constitute an offence under section 420, there should not only be cheating, but as a consequence of such cheating, the accused should have dishonestly induced the person deceived

(i) to deliver any property to any person, or

(ii) to make, alter or destroy wholly or in part a valuable security (or anything signed or sealed and which is capable of being converted into a valuable security).”

7. Similar elucidation by this Court in “V.Y. Jose v. State of Gujarat”, explicitly states that a

contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of 'cheating', as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr.P.C. Section 482 of the Cr.P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in "Hira Lal Hari Lal Bhagwati v. CBI", "Indian Oil Corporation v. NEPC India Ltd.", "Vir Prakash Sharma v. Anil Kumar Agarwal" and "All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain".

10. *The charge sheet also refers to Section 406 of the IPC, but without pointing out how the ingredients of said section are satisfied. No details and particulars are mentioned. There are decisions which hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously. For the offence of cheating, dishonest intention must exist at the inception of the transaction, whereas, in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrusts another with the property as per law, albeit dishonest intention comes later. In this case entrustment is missing, in fact it is not even alleged. It is a case of sale of goods. The chargesheet does refer to Section 506 of the IPC relying upon the averments in the complaint. However, no details and particulars are given, when and on which date and place the threats were given. Without the said details and particulars, it is apparent to us, that these allegations of threats etc. have been made only with an intent to activate police machinery for recovery of money.*

11. *It is for the respondent no. 2/complainant – Sanjay Garg to file a civil suit. Initiation of the criminal process*

for oblique purposes, is bad in law and amounts to abuse of process of law.”

18. As such it is clear that the complainant allegedly only on the petitioners' assurance supplied the goods on credit basis. There is no prima facie material to show that the goods were entrusted to the petitioners by the complainant. Thus there being no materials to support the contention of the opposite party that the petitioners always had the intention to deceive/cheat, the ingredients required to constitute the offence under Section 420/406/120B of IPC is clearly absent against the petitioners.
19. Prima facie there are no documents mentioned (described) in the petition of complaint to even show as to whether there was at a contract between the parties.
20. The complainant states in his petition of complaint that the accused persons came and **represented himself** and on that basis, the complainant allegedly supplied the same (goods) on **credit basis** by *“believing upon the said representation”*.
21. The materials on record thus prima facie do not contain the ingredients required for the offences alleged and as such, continuation of the said proceeding in the present case shall be an abuse of the process of law/Court.
22. **The revisional application being CRR 2648 of 2022 is allowed.**
23. The proceeding being Complaint Case No. 265 of 2021 dated 30.01.2021 pending before the learned 5th Judicial Magistrate, Alipore, 24 Parganas (South), alleging commission of offence under Sections 420/406/120B of

the Indian Penal Code, **is hereby quashed in respect of the petitioners.**

- 24.** All connected applications, if any, stand disposed of.
- 25.** Interim order, if any, stands vacated.
- 26.** Let a copy of the judgment be sent to the learned trial Court for compliance.
- 27.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)