

IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 4777 of 2023

Sanjay Singha & Ors.

Vs

The State of West Bengal & Anr.

For the Petitioners : Mr. Kamalesh Chandra Saha,
Ms. Payel Mitra.

For the Opposite Party No. 2 : Mr. Kallol Kumar Basu,
Mr. Jannat Ul Firdous.

For the State of West Bengal : None.

Hearing concluded on : 05.03.2024

Judgment on : 10.04.2024

Shampa Dutt (Paul), J.:

1. The revision has been preferred praying for quashing of the proceedings in Complaint Case being no. C-401/19 under Sections 120B/403/420/506/34 of I.P.C pending before the Learned 1st Additional Judicial Magistrate, Basirhat, North 24 Parganas.

2. The prosecution case against the petitioners in a gist is that:-

One Nripen Sarkar filed a petition of Complaint before the Learned Additional Chief Judicial Magistrate, Basirhat, stating inter alia that:-

“The petitioner No.1 is the brother-in-law of the Complainant and with the instigation of other petitioners, the private opposite party no. 2 issued a Cheque on Axis Bank being Cheque No. 92069 on 05.05.2015 and thereafter the petitioner No. 1 deposited the said Cheque to his account on 07.05.2015 of rupees 80,000/- for encashment and subsequently the petitioner no. 1 withdraw the said amount with a condition that he will purchase a plot of land in the name of the wife of the opposite party no.2 but unfortunately the petitioner No.1 refused to return the said amount that is rupees 80,000/- to the opposite party no.2 on 02.02.2019 and when the opposite party no.2 asked the petitioner no.1 to return the said amount at that time the petitioner no.1 used some filthy and defamatory languages towards the opposite party no.2 and all the petitioners with some mala fide intention misappropriated the entire amount. It is also mentioned that similar case is pending before the Learned Chief Judicial Magistrate, Barasat being Barasat P.S. Case No. 684/17 dated 22.07.2017 against some of the petitioners and with the aforesaid allegation the instant case has been started.”

3. The petitioners' state that the entire matter is a family dispute between the parties and the same is also Civil in nature and there is no criminal liabilities throughout the proceeding and thus the entire proceeding is liable to be quashed.

4. The following rulings have been relied upon by the learned counsel for the petitioners:-

- 1) *Wyeth Limited & Ors. vs State of Bihar & Anr., in Criminal Appeal No. 1224 of 2022, (Special Leave Petition (Crl.) No. 10730 of 2018), decided on August 11, 2022.*
- 2) *Sijo John vs State of Kerala, 2018 SCC ONLINE KER 3450, decided on August 14, 2018.*
- 3) *Gopal Singh & Ors. vs State of Rajasthan & Anr., in S.B. Criminal Misc (Pet.) No. 658/2015, decided on 19.07.2017.*

5. In the petition of Complaint it is stated as follows:-

- i. *The opposite party no.2/Complainant issued a cheque for Rs. 80,000/- in favour of the petitioner no.1, who encashed the same.*
- ii. *The said amount had been paid to the petitioner no. 1 to purchase a plot of land in the name of the Complainant's wife which the petitioner no.1 did not do, nor did he return the said amount in spite of repeated requests.*
- iii. *On being asked to return the amount, the petitioner no.1 allegedly used filthy and demantory language towards the complainant/opposite party no.2.*
- iv. *It is thus stated that the petitioners with some mala fide intention misappropriated the entire amount.*
- v. *Hence the case was registered.*

6. Learned counsel for the petitioners submits that even if the allegations made by the Complainant are true, the dispute is civil in nature and that there are no ingredients in the present case to make out a prima facie case in respect of the offences alleged against the petitioners.
7. The present proceedings have been initiated for offence punishable under Sections 120B/403/420/506/34 of IPC.

8. Section 403 of IPC, lays down:-

“403. Dishonest misappropriation of property.—Whoever dishonestly mis-appropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Ingredients of offence.- The essential ingredients of the offence under sec. 403 are as follows:-

- (1) The property belongs to a person other than the accused,*
- (2) The accused appropriated the said property or converted it to his own use, and*
- (3) He did so "dishonestly" - that is to say, with the intention of causing wrongful gain to one or wrongful loss to another person.*
- (4) 'Dishonestly' and 'misappropriate' are necessary ingredients used in sec. 403.”*

9. The ingredients required to prima facie constitute the offence under Section 403 of IPC is not present against any of the petitioners as there is no materials to prima facie show that the ingredients required to constitute the said offence is present against them.

10. Section 420 of IPC, lays down:-

“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.

Ingredients of offence.- The essential ingredients of the offence under sec. 420 are as follows:-

(1) There should be fraudulent or dishonest inducement of a person by deceiving him;

(2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(b) the person so induced to do anything which he would not do or omit if he were not so deceived, and

(c) in cases covered by second part of clause (a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.

The two essential ingredients of the offence under this section are-

(A) Deceit, that is to say dishonest or fraudulent misrepresentation, and

(B) Inducing the person deceived to part with property.”

11. 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:-

“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. 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 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)

17. 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)

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 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.”*

23. *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.”*

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.”

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. Vijayasathy v. Sudha Seetharam [R.K. Vijayasathy 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.”

12. In *Lalit Chaturvedi vs State of Uttar Pradesh & Anr., in Criminal Appeal No. of 2023 (arising out of SLP (Crl.) No. 13485 of 2023), decided on February 06, 2024,* the Supreme Court held:-

“..... 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.

*In “**Mohammed Ibrahim and Others v. State of Bihar and Another**” (2009) 8 SCC 751, 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).”

Similar elucidation by this Court in **“V.Y. Jose and Another v. State of Gujarat and Another” (2009) 3 SCC 78**, 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”* (2003) 5 SCC 257, *“Indian Oil Corporation v. NEPC India Ltd.”* (2006) 6 SCC 736, *“Vir Prakash Sharma v. Anil Kumar Agarwal”* (2007) 7 SCC 373 and *“All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain”* (2007) 14 SCC 776

13. As such it is clear that **the parties being related to each other initially had no disputes.** 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 of IPC is clearly absent against all the petitioners. There are also no ingredients to prima facie make out any offence under Sections 506/34/120B of IPC against any of the petitioners.

14. It thus appears from the materials on record that there is no prima facie materials on record to substantiate the allegations against the petitioners. The petitioner no. 1, who is alleged to be the principal accused is the brother of accused Nivedita Sarkar (Singha), who is the wife of the complainant. There is admittedly a matrimonial dispute between them and the present case has been initiated several years after Nivedita instituted proceedings under Section 498A of IPC and the Domestic Violence Act against the complainant.

15. In *Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors.*, 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022), the Supreme Court held:-

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.’

41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 which is to the following effect :

‘102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.’ Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in ***State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335*** as under :

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of

decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is

a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.**”*

16. The present case falls under category 1, 3 and 7 of Para 102 of **Bhajan Lal (Supra)**.

17. The materials on record 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.

18. CRR 4777 of 2023 is allowed.

19. The proceedings in Complaint Case being no. C-401/19 under Sections 120B/403/420/506/34 of I.P.C pending before the Learned 1st Additional Judicial Magistrate, Basirhat, North 24 Parganas, **is hereby quashed in respect of all the petitioners.**

20. All connected applications, if any, stand disposed of.

21. Interim order, if any, stands vacated.

- 22.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 23.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)