IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

CRR 4999 OF 2023
With
IA No. CRAN 1 of 2024
With
CRAN 2 of 2024
(Assigned)

EMTA Coal Ltd. & Ors.
Vs.
The State of West Bengal & Anr.

For the petitioners :	Mr. Sandipan Ganguly, Sr. Advocate Mr. Ayan Chakraborty Mr. Karan Dudhwewala Ms. Sohini Mukherjee Mr. Subhajit Saha
For the opposite party no. 2:	Mr. Ayan Bhattacharjee Ms. Ritu das Mr. Siddharth Garg Mr. Srijan Sinha Mr. Himanshu Chaubey
For the State :	Mr. Debasish Roy, Ld. P.P. Mr. Rudradipta Nandy Mr. Anand Keshari
Heard On :	17.01.2024, 05.02.2024, 08.03.2024, 22.03.2024, 18.04.2024, 29.04.2024, 03.05.2024, 10.05.2024,

11.06.2024, 12.06.2024

Judgment On: 25.06.2024

Bibhas Ranjan De, J.

1. Present application under Section 482 of the Code of Criminal Procedure (for short Cr.P.C.) has been filed by the petitioner herein with a prayer for quashment of the proceedings in connection with G.R. Case No. 1742 of 2022 arising out of Barjora Police Station Case No. 245 of 2022 dated 28.12.2022 under Sections 406/417/420/120B of the Indian Penal Code (for short IPC) presently pending before the Court of Ld. Chief Judicial Magistrate, Bankura (for short C.J.M.).

Factual backdrop:

2. The impugned proceeding was put into motion by a complaint lodged by the opposite party no. 2 herein with the Superintendent of Police (for short SP) Bankura who in turn forwarded the same to the Officer-in-charge (for short O.C.) of Barjora Police Station for enquiry and upon completion of enquiry the SP granted permission to the O.C., Barjora P.S.

to register a case. As a sequel, a specific case being no. 245/2022 was registered by the Barjora P.S. on 28.12.2022.

3. The allegations alienated in the said complaint are to the effect that the opposite party no. 2/M/s G.S. Atwal & Company engaged in the business of excavation and mining activities including providing Heavy Earth Moving Machinery for various projects was approached by the petitioner no. 1/EMTA Coal Ltd., a company dealing in mining of coal to perform excavation of coal at Barjora (North) Block OCP. It is further alleged that due to long standing business relationship between petitioner no.1/company and opposite party no. 2/company herein, the complainant firm/opposite party no. 2 sent an offer to the petitioner no. 1/company vide letter dated 07.10.2013. The offer contained the proposal for the work at the mining site. It has been further added that the accused persons in furtherance of their common mala fide intention requested the opposite party no. 2/company to start the mining work. Upon assurance given by the accused persons that the work order confirming the modalities will be provided in due course, the opposite party no. 2/company started making necessary arrangements for excavation.

4. In addition to that the complainant further alleged that from January, 2014 they started their excavation work but they received the work order only on 12.07.2014. In the meantime, the opposite party no. 2/company raised six Running Account bills (for short R.A. bills) but the accused kept on delaying the payment and only made some part payments.

5. It is alleged that a total of 11 R.A. Bills were raised by the opposite party no. 2/company during the work period from November, 2013 – November, 2014 totaling to an amount of Rs. 69,57,58,441/- (Sixty Nine Crores Fifty Seven Lakhs Fifty Eight Thousand Four Hundred and Forty One Rupees) but the petitioner no. 1/company only made a payment of Rs. 42,41,50,000/- (Forty Two Crores Forty One Lakhs Fifty Thousand Rupees). Despite repeated reminders sent to the accused through various platforms on multiple occasions to settle the due amount, the accused kept on delaying in making payments.

6. Thus, the opposite party no. 2/company alleged that the accused persons have wrongfully and dishonestly made unlawful gains by not paying the legitimate dues of the complainant firm. Therefore, the accused persons have committed offences punishable under Sections 406/417/420/120B of the IPC.

<u>Arguments advanced:</u>

7. Ld. Senior Counsel, Mr. Sandipan Ganguly appearing on behalf of the petitioner has mainly canvassed his argument on the following points:

- That there was a long standing business relationship between both the companies and owing to this relationship only the complainant firm was entrusted with the excavation work.
- Against the work done by the opposite party no. 2/company, they raised 11 R.A. bills totaling to an amount of Rs. 69,57,58,441/-. It is an admitted fact that the petitioner no. 1 made part payments totaling to an amount of Rs. 42,41,50,000/-. The last payment being made on 03.03.2015 of Rs. 50,00,000/-.
- After the last date of payment i.e. 03.03.2015, the opposite party no. 2/company lodged a letter of complaint on 07.12.2022 due to non-payment of the purported outstanding due of Rs. 27,16,08,441/-.
- It has been further submitted that the petitioners were severely affected by the Order dated 25.08.2014 passed by the Hon'ble Apex Court in ***Manohar Lal Sharma Vs. Principal Secretary*** reported in ***(2014) 9 SCC 516*** wherein the Hon'ble Apex Court cancelled the allotment of 204 coal blocks including Barjora North Coal Block which was jointly allotted in favour of petitioner no. 1/company. Due to such cancellation the petitioner no. 1 incurred huge losses and therefore they were not able to make the complete payment for the reasons beyond the control of the petitioners.

- Even if the contents of the complaint are to be accepted in its entirety, no specific element of **'initial deception'** can be made out as there was no act on part of the petitioner to **'dishonestly induce'** the opposite party no. 2/company to issue the work order. On the contrary, both the companies admittedly have a long standing business relationship.
- As there is no essential ingredients to constitute a prima facie case against the petitioners for the offences alleged the impugned criminal proceedings has no legs to stand.

8. In support of his contention Mr. Ganguly has relied on the following cases:

- ***Vir Prakash Sharma vs. Anil Kumar Agarwal and Anr.*** reported in ***(2007) 7 SCC 373.***
- ***Anil Mahajan vs. Bhor Industries Ltd. & Anr.*** reported in ***(2005) 10 SCC 228***.
- ***Binod Kumar vs. State of Bihar*** reported in ***(2014) 10 SCC 663.***
- ***Medmeme, LLC & Ors. Vs. IHORSE BPO Solutions Pvt. Ltd.*** reported in ***(2018) 13 SCC 374***.
- ***Vinod Natesan vs. State of Kerala & Ors***. reported in ***(2019) 2 SCC 401***.

- ***Shyam Sundar Mallick vs. The State of West Bengal & Anr.*** reported in ***2017 SCC OnLine Cal 16208.***
- ***Jully Techi & Ors. vs. State of West Bengal & Anr***. reported in ***2019 SCC OnLine Cal 588***.
- ***S.K. Alagh vs. State of Uttar Pradesh & Ors.*** reported in ***(2008) 5 SCC 662.***
- ***Chanchalpati Das vs. State of West Bengal & Anr***. reported in ***2023 SCC OnLine SC 650***.
- ***Mahmood Ali & Ors. vs. State of Uttar Pradesh & Ors.*** reported in ***2023 SCC OnLine SC 950***.

9. Per contra, Ld. counsel Mr. Ayan Bhattacharjee appearing on behalf of the opposite party no. 2 has tried to swing the attention of this Court in his favour by highlighting the following points:

- Since the investigation is at a very nascent stage and the police has a statutory obligation to investigate under Chapter 12 of the Cr.P.C., the High Court should not interfere with the investigation till filing of the final report.
- As the complete dues have not been cleared by the petitioners without ascertaining any specific reason to that effect thereby causing wrongful loss to the opposite party no. 2/company, the petitioners have defrauded them. Therefore, all the ascriptive

conditions contained in the IPC under Section 420 read with Section 415 squarely cover the present case.

- The issue of part payment taken as a ground for quashing is not sufficient as it has to be considered only during the time of trial after appreciation of entire facts and circumstances.
- In a petition under Section 482 of the Cr.P.C. neither any defence nor any defence document can be considered as it is the domain of the investigation.

10. Mr. Bhattacharjee has highlighted the following cases in order to further substantiate his argument which stand as follows:

- ***State of Haryana and Ors. vs. Ch. Bhajanlal and Ors.*** reported in ***AIR 1992 SC 604.***
- ***Neeharika Infastructure Private Limited vs. State of Maharashtra and Ors.*** reported in ***(2001) 19 SCC 401***.
- ***Central Bureau of Investigation vs. Aryan Singh Etc.*** reported in ***2023 (5) SCALE 533.***
- ***Priti Saraf & Anr. vs. State of NCT of Delhi & Anr.*** reported in ***2001(4) SCALE 1***.
- ***State of Karnataka & Anr. vs. Pastor P. Raju*** reported in ***(2006)6 SCC 728.***
- ***Rajesh Bajaj vs. State of NCT of Delhi & Ors.*** reported in ***(1999) 3 SCC 259***.

- ***State of Chattisgarh & Anr. vs. Aman Kumar Singh & Ors.*** reported in ***(2023) 6 SCC 559.***
- ***Skoda auto volkswagen (India) Private Limited vs. State of UP & Ors.*** reported in ***(2021) 5 SCC 795.***
- ***Kamal Shivaji Pokarnekar vs. State of Maharashtra & Ors.*** *reported in* ***(2019) 14 SCC 350.***
- ***Dilbag Rai vs. State of Haryana & Ors.*** *reported in* ***(2019) 16 SCC 736.***
- ***Lalmuni Devi (SMT) vs. State of Bihar*** *reported in* ***(2001) 2 SCC 17.***
- ***S.P. Gupta vs. Ashutosh Gupta*** *reported in* ***(2010) 6 SCC 562.***
- ***State of Gujarat vs. Afroz Mohammed Hasanfatta*** *reported in* ***2019(2) SCALE 634.***
- ***Indian Oil Corp. vs. NEPC India & Ors.*** *reported in* ***(2006) 6 SCC 736.***
- ***Ravindra Kumar Madhanlal Goenka & Ors. vs. M/s. Rugmini Ram Raghav Spinners P. Ltd.*** *reported in* ***2009 AIR SCW 3211.***
- ***Dineshbhai Chandubhai Patel vs. State of Gujarat & Ors.*** *reported in* ***(2018)3 SCC 104.***
- ***State of M.P. vs. Awadh Kishore Gupta & Ors.*** *reported in* ***(2004) 1 SCC 691.***

<u>Ratio of the cases relied on behalf of the parties:</u>

11. Ld. Counsel appearing on behalf of the petitioner has taken assistance of a good number of cases mentioned above in order to substantiate his argument. The ratio of the cases that have been highlighted by Mr. Ganguly are discussed hereinunder.

12. In ***Vir Prakash Sharma*** (Supra) the Hon'ble Apex Court has observed that non-payment or under-payment of the price of the goods by itself does not amount to commission of an offence of Cheating or Criminal Breach of Trust.

13. In ***Anil Mahajan*** (Supra) the Hon'ble Apex Court has held that the substance of the complaint is to be seen. If there is no averment about the deceit, cheating or fraudulent intention of the accused at the time of entering into an agreement wherefrom it can be inferred that the accused had the intention to deceive the complainant then mere use of the expression **'Cheating'** is of no consequence.

14. In ***Binod Kumar*** (supra) the Hon'ble Apex Court has highlighted the 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 interest of creditors/ lenders. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is 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.

15. In ***Medmeme LLC*** (Supra) the Hon'ble Apex Court has held that if the complaint gives a clear impression that it was primarily a case where the respondent had alleged breach of contract on the part of the appellants in not making the entire payments for the services rendered to the appellants and if it is not disputed that substantial amounts have been paid by the appellants to the respondent company for the services rendered, then no prima facie case under Section 406/420/120B of the IPC could be made out as the matter would entirely pertain to civil jurisdiction.

16. In ***Vinod Natesan*** (Supra) the Hon'ble Supreme Court has handed down the following ratio:- If the accused merely fails to pay the due and payable amount under the agreement that itself cannot said to be a cheating or commission of offence under Section 406/420 of the IPC as alleged.

17. In ***Shyam Sundar Mallick*** (Supra) the Co-ordinate Bench of this Court remarked that the dispute or grievance of the Opposite Party relating to non-payment of his dues for the services rendered is within the exclusive domain of civil jurisdiction and the appropriate remedy would be a civil suit.

18. In ***Jully Techi*** (Supra) the Co-ordinate Bench of this Court dealt with a case of similar nomenclature wherein the dispute mainly cropped up due to the complainant company who was engaged by the petitioner company to do earthwork excavation including procurement and laying GSB layer was not given their legitimate dues for the services rendered by them amounting to a total due of Rs. 3,85,00,000/-. It was further alleged by the complainant/ Opposite Party No. 2 therein that the petitioners had no intention to honour the representations made by them at the inception of the transaction and they fraudulently and dishonestly deceived the complainant and thereby committed offences attracting Sections 420/406/120B/34 of the IPC. While adjudicating the matter, the Co-ordinate Bench of this Court in its final conclusion held that the claim of the Opposite Party No. 2 therein regarding fraudulent intention of the petitioners from the very inception to cheat the complainant company has no merit. Mere failure of the petitioners to make **complete** payment for the services rendered to the Opposite Party No. 2/ company can at best be termed as a breach of contract as nowhere in the complaint it shows that there was any intention on the part of the petitioners to cheat the complainant at the time of entering into the agreement.

19. In ***S. K. Alagh*** (Supra) the Hon'ble Supreme Court has expressed that in absence of any provision laid down under the statute, a Director of a Company or an employee cannot be held to be vicariously liable for any offence committed by the Company itself.

20. In ***Chanchal Pati Das*** (Supra) the Hon'ble Apex Court has returned its findings as follows:- inordinate delay in itself may not be a ground for quashing of a criminal complaint, however, unexplained inordinate delay must be taken into consideration as a very crucial factor and ground for quashing a criminal complaint.

21. In ***Mehmud Ali & Others*** (Supra) the Hon'ble Apex Court while discussing about the powers of the Court to exercise jurisdiction under Section 482 of Cr.P.C. or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/ registration of the case as well as the materials collected in the course of investigation.

22. Per contra, Ld. Counsel appearing on behalf of the Opposite Party No. 2 has also taken assistance of some cases mentioned above in order to substantiate his own argument. The main highlighting points of the referred cases are discussed in brief hereinunder.

23. In ***Bhajanlal*** (Supra) the Hon'ble Apex Court has held that the investigation of an offence is the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Cr.P.C. and the Courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned.

24. In ***Neeharika Infrastructure*** (Supra) the Hon'ble Supreme Court has observed that police has the statutory right and duty under the relevant provisions of the Cr.P.C. contained in Chapter XIV to investigate into a cognizable offence and the Courts while exercising extraordinary and inherent powers should not generally thwart any investigation into a cognizable offence **unless non-interference would result in miscarriage of justice.**

25. In ***Central Bureau of Investigation*** (Supra) the Hon'ble Supreme Court has clearly expressed that the High Court while dealing with proceedings under Section 482 of the Cr.P.C. should not conduct a mini trial at the stage of discharge and/or quashing of the criminal proceedings.

26. In ***Priti Saraf*** (Supra) the Hon'ble Supreme Court laid down the following principal:- To exercise powers under Section 482 of Cr.P.C., the complaint in its entirety shall have to be examined on the basis of the allegation made in the complaint/FIR/Charge Sheet and the High Court at that stage is not under an obligation to go into the matter or examine its correctness. Whatever prima facie appears on the face of the complaint/FIR/Charge Sheet shall be taken into consideration without any critical examination of the same.

27. In ***Pastor P. Raju*** (Supra) the Hon'ble Apex Court has enunciated that any concluding remark by the High Court regarding the initiation of a criminal proceeding being a gross abuse of process of Court and miscarriage of justice without ascertaining any proper reasoning to that effect while the case is still under investigation and the police is still in process of collecting evidence, is wholly unjustified.

28. In ***Rajesh Bajaj*** (Supra) the Hon'ble Apex Court has expressed that even if the averments made in the complaint reveal a commercial or money transaction, there is hardly a reason for holding that the offence of cheating would elude from such a transaction. In fact, many a cheatings are committed in the course of commercial as well as money transaction.

29. In ***Aman Kumar Singh*** (Supra) the ratio laid down by the Hon'ble Apex Court is not applicable with the case at hand as the Hon'ble Apex Court dealt with a disproportionate assets case.

30. In ***Skoda auto volkswagen*** (Supra) the Hon'ble Apex Court dealt with an allegation of violation of the requirements of the Central Motor Vehicle Rules, 1989 which is not identical with that of ours.

31. In ***Kamal Shivaji Pokarnekar*** (Supra) the Hon'ble Apex Court came across a case of forgery and preparation of false documents on the basis of which a development agreement came into existence. The findings of this case are not at all applicable to the case at hand.

32. In ***Dilbag Rai*** (Supra) the Hon'ble Supreme Court dealt with a case of complete different nature which cannot be equated with the instant case.

33. In ***Lalmoni Devi*** (Supra) the Hon'ble Supreme Court has observed that there could be no dispute to the proposition that if the complaint does not make out an offence then it can be quashed. However, there can be circumstances giving rise to a civil claim as well as an offence. Merely because a civil case is maintainable does not mean that the criminal complaint cannot be maintained.

34. In ***S.P.Gupta*** (Supra) the Hon'ble Supreme Court has held that if at the very initiation of the negotiations it was evident that there was no intention to cheat, the dispute would be of a civil nature but such a conclusion would depend on the evidence to be laid at the time of trial.

35. In ***Afroz Mohammed Hasanfatta*** (Supra) the Hon'ble Apex Court held that mens rea can only be decided at the time of trial and not at the stage of issuing summons.

36. In ***Indian Oil Corporation*** (Supra) the Hon'ble Apex Court dealt with two agreements between the parties and second agreement was held to be executed with a motive of dishonestly and fraudulently pre-empting and avoiding any action by the Indian Oil Corporation as per the first agreement. The facts and circumstances of this case are not identical with that of ours.

37. In ***Ravindra Kumar Madhanlal Goenka*** (Supra) the Hon'ble Apex Court held that generally criminal prosecution cannot be quashed at the very threshold and the defence case even if made out cannot be considered as it has to be taken into account at a later stage and the aggrieved would have ample opportunity to raise all the issues urged in his plea at an appropriate later stage where such pleas would be and could be properly analyzed and scrutinized.

38. In ***Dineshbhai Chandubhai Patel*** (Supra) the Hon'ble Supreme Court categorically expressed that in order to examine as to whether the factual context of the FIR disclose any prima facie cognizable offence or not, the High Court cannot act like an investigating agency and nor can exercise the powers like an Appellate Court.

39. In ***Awadh Kishore Gupta*** (Supra) the Hon'ble Supreme Court has enumerated that when an information is lodged at the police station and an offence is registered, then the mala fides of the informant could be of secondary importance. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.

Analysis

40. Therefore, the settled proposition of law laid down by the Hon'ble Apex Court is as follows:

- The inherent power of the High Court under Section 482 Cr.P.C. for quashing has to be exercised sparingly with circumspection and in the rarest of rare case.
- Exercise of inherent power under Section 482 of the Code is not the rule but it is an exception. The exception is applied only when it is brought to the notice of the Court that grave miscarriage of justice would be committed if the trial is allowed to proceed.
- The High Court in exercise of its jurisdiction under Section 482 of the Code does not function either as the Court of Appeal or Revision. Such inherent power can only be exercised either to prevent the process of Court or to secure the ends of justice.

41. In the celebrated Judgment of ***Bhajan Lal*** (Supra) Hon'ble Apex Court categorized the cases by way of following illustrations wherein power under Section 482 of Cr.P.C. could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice:

- 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.

- 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.
- 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.
- 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.
- 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.
- 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.

- 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.

42. On the basis of the written complaint lodged by the opposite party no. 2, the impugned proceeding being Barjora P.S. Case No. 245/2022 under Sections 406/417/420/120B of the IPC was initiated.

43. Before delving into the nuances of the case at hand, I think it would be profitable to refer certain provisions of the IPC for the sake of convenience. Both the Sections 417 & 420 of the IPC provide for the punishment for the offence of cheating. But the primary ingredients/key elements in order to constitute an offence of cheating are laid down under Section 415 of the IPC which stand as follows:

"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"."

44. The Penal provisions of Section 417 and 420 of the IPC for the offence of cheating are depicted as follows:

"417. Punishment for cheating.—

Whoever cheats shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both."

"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."

45. Now, let us recapitulate the contents of Section 406 of the IPC which stand as follows:

"406. Punishment for criminal breach of trust.—

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both."

46. On careful perusal of the written complaint lodged by the opposite party no. 2, certain allegations have been made against the petitioner herein regarding commission of specific offences of Cheating and Criminal Breach of Trust. After dissection of Section 415 of the IPC pertaining to the necessary elements in order to constitute the offence of Cheating mainly focuses on deceit by providing false and fraudulent representation by the accused to the aggrieved and being so deceived by such false representation the aggrieved may either be induced fraudulently or dishonestly to deliver any property to any person or to do or omit to do anything which aggrieved would not do or omit to do if he was not so intentionally deceived by the accused. Now coming to the written complaint, it transpires that the opposite party no. 2 admittedly had a long standing business relationship with the petitioner no. 1/company and due to such relationship only the opposite party no. 2 sent an offer letter for working on the subject coal block of the petitioner no. 1. Moreover, no specific allegation with regard to **'initial deception'** on the part of the petitioner in making false or fraudulent representation since the inception of the transaction has been made by the opposite party no. 2. Therefore, it cannot be said that the petitioner since inception of the transaction had the motive to deceive the opposite party no. 2.

47. In addition to that, by strictly focusing on the letter of complaint only, it has come to my notice that the opposite party no. 2 admittedly received part payments of Rs. 42,41,50,000/- for the services provided and R.A. Bills raised against the total due amount of Rs. 69,57,58,441/-.

The total outstanding due amount was Rs. 27,16,08,441/- and the last transaction of Rs. 50,00,000/- made by the petitioner to the opposite party no. 2 was on 03.03.2015. Such admission on part of the opposite party no. 2 further buttresses the case of the petitioners that they had no fraudulent or dishonest intention from the very inception and mere subsequent failure to make full payment to the opposite party no. 2 cannot constitute the offence of cheating as provided in the specific provision of the IPC unless there is fraudulent or dishonest intention right at the beginning of the transaction. But in the case at hand such requirement to constitute the alleged offence is missing.

48. Now coming to the offence of entrustment and misappropriation within the meaning of Section 406 of IPC is concerned, the offence of Criminal breach of trust as depicted under Section 405 of the IPC has two main ingredients which are -

- entrusting any person with property, or with any dominion over property and
- the person entrusted dishonestly misappropriates or converts to his own use that property to the detriment of the person who entrusted it.

49. The main allegation of the written complaint is to the effect that the opposite party no. 2 provided services but petitioner no. 1/company did not make full payment for the services rendered. So, it is intelligible to conclude that no question of entrustment of a property by the opposite party no. 2 upon the petitioners arises as it is the admitted case of the opposite party no. 2 that they were providing **'services'** to the petitioners. As a result, no prima facie case of Criminal Breach of Trust under Section 406 of the IPC can be said to be made out in connection with the instant case.

50. And to add to that the Hon'ble Apex Court in the case of ***Manohar Lal Sharma*** (Supra) vide an order dated 25.08.2014 cancelled the allotment of total 204 coal blocks including the subject coal block allotted to the petitioners which resulted in huge losses incurred by the petitioners. So, the plea of the petitioners that the full payments could not be made due to the reasons beyond their control cannot be said to be unjustified.

51. Even if all the allegations contained in the letter of complaint are to be accepted in its entirety, the dispute between the parties which purportedly arose out of an under payment made by the petitioner no. 1/company for the services rendered by the opposite party no. 2 at best can be termed as a civil dispute and does not disclose any offence alleged in this case and surely attracts the **parameter no. 1** laid down by the Hon'ble Apex Court in **Bhajan Lal** (Supra).

52. In the aforesaid view of the matter, the continuation of the instant proceeding being G.R. Case No. 1742 of 2022 arising out of Barjora P.S. Case No. 245/2022 presently pending before the Court of Ld. CJM, Bankura would be a gross abuse of the process of court and thereby is liable to be quashed.

53. As a sequel the proceeding mentioned herein above stands quashed and accordingly the application being no CRR 4999 of 2023 is hereby allowed.

54. All connected applications, if there be any, stand disposed of accordingly.

55. Case diary be returned.

56. All parties to this revisional application shall act on the server copy of this order downloaded from the official website of this Court.

57. Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[Bibhas Ranjan De, J.]