IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 145 OF 2025

RACHIT GOYAL

VS

THE STATE OF WEST BENGAL & ANR.

For the Petitioner	:	**Mr. Surendra Kr. Sharma, Adv.**
For the State	:	**Ms. Rituparna Ghosh, Adv.**
		Mr. Santanu Talukdar, Adv.
For the de facto Complainant	:	**Mr. Sandipan Ganguly, Adv.**
		Ms. Rajashree Kajaria, Adv.
		Mr. Dipanjan Dutt, Adv.
		Ms. Vrinda Kedia, Adv.
Last heard on	:	**09.09.2025**
Judgement on	:	**24.09.2025**

CHAITALI CHATTERJEE DAS, J. :-

1. The present petitioner being the accused No. 3 has filed this application under Section 528 of Bhartiya Nagrik Suraksha Sanhita ,2023 for quashing of the F.I.R being number 55/24 dated 2.5.2024, lodged with Mejia Police Station registered as G.R Case No .614 of 2024 , Bankura, West Bengal under sections 409/420/120B, IPC by the Opposite Party ,pending before the Learned Chief Judicial Magistrate, Bankura to strike off the name of the petitioner from the said F.I.R.

2. Bereft of any details, the fact of the case pertains to a F.I.R lodged against the present petitioner being the sole proprietor of M/s Sajal Traders and deal in steel products and also is a dealer of Tata steel. The accused No.1 Siddharth Purohit was the General Manager cum State Head of the de-jure complainant company namely M/s Shyam Steel Manufacturing Limited and he resigned from the same company only on 20.3.2024. The accused no. 4 is the Area Sales Manager of the said company (Haridwar,) Uttaakhand . The accused No.2 Ajit Kumar Jain is the sole proprietor of M/s Adinath steel having Office at Dehradun, Uttarakhand. On being approached by the officials of M/s Shyam Steel company to the petitioner to become distributor of the said company he agreed to become the dealer and deposited Rs. 3 lacs on 11.9.2023 with the De-jure Company and since the business relation going smooth, as per the persuasion of the said Company he agreed to become the distributor of the company and paid ₹25 lakhs and ₹26 Lakhs in total ₹51, lakhs through RTGS to the complainant company as security for distributorship of the said company.

3. However, despite receiving such amount, no material was supplied to the petitioner and also did not provide distributorship as agreed and the request, was made to refund the security amount of ₹51 lakhs or to provide distributorship. He was assured by said Siddharth Purohit of the de-jure company to refund the said amount on 23.10.23 through WhatsApp. It is the further case of the petitioner that through email dated 25 April 2024 once again request was made to refund ₹51,32,000 along with the dealership security of 3 lakhs within three days from the date of such email and also informed the de-jure complainant that he is not interested to be the guarantor and action will be taken against Shyam steel manufacturing Limited. After being informed about the intention of the present petitioner, Shyam steel manufacturing Limited made frivolous allegation against the petitioner and lodged the complaint dated 2.5.2024 with Mejia police station where he is included as accused no. 3.

4. In the meantime, the petitioner issued the legal notice on 23.8.2024, through his advocate upon the said de-jure com company. The petitioner also received the notice under Section 41 (A) of Code of Criminal Procedure, 1973 and in compliance thereof, he duly appeared before the concerned police station on 21.11.2024. They said G.R case no. 614 of 2024 was taken up for hearing by the learned Judicial Magistrate, Bankura on 22.11.2024 when it was observed that the Learned Session Judge, Bankura did not consider the existence of section 409 of I.P.C and accordingly directed the concerned I.O to appear in person and he appeared on 27.11.2024 and admitted that section 409 was not plausible in the said case.

5. It is submitted by the learned advocate representing the petitioner in this case that his company is not the sister concern of M/s Adinath steel as portrayed in the written complaint . In fact, it is admitted by Shyam steel company in the complaint about involvement of their officials misappropriation of fund non-payment of the amount by the present petitioner and he did not play any role in the entire transaction as alleged and the amount accumulated as outstanding still not recovered by said Shyam steel Company from said M/s Adinath steel, owned by Mr Ajit Kumar Jain. It is submitted that from the complaint itself, it is crystal clear that there is no ingredient of criminal offence involved in the instant case against this petitioner and the entire allegation levelled against the petitioner is baseless and therefore the proceeding is a gross abuse of process of law and therefore is liable to be quashed.

6. It is further their case that the petitioner also lodged a complaint on 6.12.24 against Shyam Steel Company at Dehradun, Uttarakhand complaining about non-refund of ₹54 lakhs to the petitioner by the said company and it is the petitioner who has been cheated and defrauded and hence this complaint is lodged falsely implicating him. In this regard, the learned advocate has relied upon a decision reported in***, Mala Chaudhary and another versus State of Telangana & amp; Anr***[1] in paragraph 11, 13 & amp; 15. Another decision relied upon, reported in***, Lalit Chaturvedi and others versus State of Uttar Pradesh***[2] and another where 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 Section 420 and 406 of IPC were discussed. The other judgement relied upon reported in ***Sachin Garg vs State of Uttar Pradesh***[3] where it was held that a wrong demand or claim would not meet the conditions specified by section 405, in absence of evidence to establish entrustment misappropriation, conversion, use, or disposal, which action should be in violation of any direction of law, or legal contract, touching the discharge of trust. Another judgement relied upon reported ***in, Rishab Birani and another versus state of Uttar Pradesh and another***[4] paragraph 13 &; 27 in order to substantiate that a dispute of civil nature cannot be cloaked with the criminal content and is liable to be quashed.

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[1] 2025 SCC online SC 1474

[2] 2024 SC online SC 171

[3] 2024 11 SCC 687

[4] 2025 SCC online SC 823

7. Submissions advanced on behalf of the learned Senior advocate, representing the Opposite Party No.2 that the investigation is still going on and the present opposite party being the General Manager and authorised representative of M/s Shyam Steel Manufacturing Limited lodged the complaint for causing criminal conspiracy and criminal misappropriation of properties, criminal breach of trust, cheating, etc. against the accused persons including the petitioner. It was specifically mentioned in the written complaint that by adopting a fair business practice and by making payment timely both the dealers had earned the faith of the company and accordingly the company agreed to supply materials in credits. Since Mr Ajith Kumar Jain had earned trust and faith of the company, and as per assurance and guarantee of the then General Manager cum State Head Mr Siddharth Purohit, the business transactions started from December, 2023. Initially Mr Ajit Kumar Jain made a few ad hoc payment till 16th March, 2024, but thereafter no payment was received by their company without assigning any reason. It is further submitted that from the very inception, they had a deep rooted mala fide common intention and they earned the trust and faith to supply materials in credits and thereby tried to cause wrongful gain to themselves and cause wrongful loss to the company to the tune of 1, 79, 17, 082,/- The assurance given to the Opposite Party No. 2 henceforth M/s Adinath Infra Development Pvt being represented by the proprietor Mr Ajit Kumar Jain do the business by the concern, namely M/s Adinath steel, instead of M./s Adinath infra developers Pvt. Ltd. But the companies' valuable documents and properties were never delivered, and in the meantime, the petitioner being the proprietor of M/s Sajal Traders requested them to refund his security amount as he was not interested to become the guarantor of Mr Ajit Kumar Jain of M/s Adinath Steel. Therefore, the involvement of the petitioner and his proprietorship concerned is very much apparent.

8. The Learned Senior Advocate relied upon the decision of the Hon'ble Supreme Court reported in***, State of M.P versus Awadh Kishore Gupta and others***[5], where it was observed that the High Court cannot appreciate the evidence but can evaluate material and documents on record to the extent of its prima facie satisfaction about the existence of sufficient ground for proceeding against the accused and quashing of proceedings by appreciating the evidence was held as not permissible. The learned Senior Advocate further relied upon the decision of ***State of Orissa and another versus Saroj Kumar Sahu***[6] paragraph 11,13 and 14 where it was observed that where the investigation was not complete, and at that stage, it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial.

9. Per Contra the submissions advanced at the behest of the state /Respondent that the investigation is still going on and the amount involved is huge and further the written complaint prima facie would show the involvement of the petitioner in this case and more over in course of investigation, also, the investigating authority has collected some materials against the petitioner for the present and furthermore, not complied with 41 (A) of the Code of Criminal Procedure within time and hence the investigating agency must allow to continue with the investigation as it involves a good amount of money.

[5] (2004) 1 SCC 691
[6] (2005) 13 SCC 540

<u>Heard the submission of the learned advocates representing the respective parties.</u>

10. The Hon'ble Supreme Court in ***State of M.P vs Awadh Kishore Gupta***[7] observed that *"when an information is lodged at the police station, and an offence is registered, then the mala fide of the informant would be of secondary importance. It is the material collected during the investigation and evidence laid in the court, which decide the fate of the accused persons. The allegations of mala fide against the informant is of no consequence and cannot by itself be the basis for questioning of the proceedings"*. The instant case initiated on the basis of the complaint before the Officer-in-charge, Mejia Police Station, District Bankura, by one Lakshmi Kanta Ghosh for Shyam steel Manufacturing Limited, alleging to take necessary legal action against all the four persons, namely Mr Siddharth Purohit, the General Manager cum State, Head of Sales Division of Uttarakhand of Shyam steel Limited, Mr Ajith Kumar Jain, proprietor ofM/s Adinath steel, and one of the directors of M/s Adinath Infra. Developers Pvt ltd.., Mr Rachit Goyal, proprietor of M/s Sajal traders, and Mr Harjinder Singh, the Area Sales Manager, Haridwar on the basis of which the Mejia P.S case was initiated under Section 409/420/120 B of the Indian penal code and subsequently section 409 was struck off and presently under 406, 420/120 B against the all the FIR named accused persons. The role attributed as can be found from the contents of the complaint that the present petitioner being the proprietor of M/s Sajal Traders was introduced by Mr Siddhartha Purahit and according to their prevailing practice agreement were made with both M/s Sajal Traders, and M/s Adinath Infra. Developers Pvt. owned by Mr

[7] 2004 1 SCC 691

Ajit Kumar Jain and accordingly the petitioner paid advance of ₹54.41 lakhs for doing such business with their company. Moreover, Mr Ajith Kumar Jain issued the complainant company in writing on October 16, 2023 that M/s. Sajal Traders is a sister concern of Adinath Infra Developers Pvt which was also confirmed by the present petitioner. Accordingly, both the dealers had adopted fair business practice by making timely payments and accordingly the de-facto complainant company agreed to supply materials in credits.

11. On the date of lodging the complaint, the company had supplied TMT. RE-Bars to M/s Adinath Steel, which valued at Rs 3,46,67,202.13/- and out of which an amount of ₹1, 67, 50, 120.10 was paid keeping an outstanding of ₹1, 79, 17,082.03 as unpaid. In the supply of materials to M/s Adinath Steel, their company noticed few anomalies and in the meantime, the present petitioner requested them to refund his security amount as he is not interested to become the guarantor of Mr Ajit Jain of M/S Adinath steel. This allegation levelled against the present petitioner prima facie would shows that initially he agreed to become the guarantor but subsequently expressed his unwillingness, therefore, it is undisputed that the present petitioner was also involved in a business deal and accordingly paid ₹54.41 lacs in that regard. In the case of ***Mala Chowdhury and others.(supra)*** the content in the FIR, were to the effect that the accused appellant originally agreed to sell a plot of land and a farmhouse to the complainant for a total consideration of ₹5 Lakhs, and a civil suit was pending before lodging of the FIR and the complainant specifically averred that the agreement for sale was made for a consideration of ₹1, 15, 000 per square yard, and the total value of the plot was ₹5, 75, 00, 000.Thus there is a drastic variance in the complainant allegation where the oral agreement as narrated in the FIR.

12. The Hon'ble Supreme Court was of firm opinion that even from the admitted allegations set out in the complaint, there was no justification for registering the FIR and rather the complainant should have been instructed to avail the appropriate remedy by approaching the civil court. It was further observed in paragraph 15 of the above mentioned decision that:-

> *"we feel that rather than awarding interest to the complainant, it is a fit case where in the complainant should be penalised with exemplary cost for misusing the process of criminal law in a case, which was of purely civil nature. In the case of* ***Lalit Chaturvedi (supra)*** *it was observed by the Hon'ble Supreme court that there is a 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 Section 420 and 406 of the IPC. Repeated judgement of this court, however, are somehow overlooked and are not being applied and enforced".*

The Hon'ble Supreme Court accordingly referred the decision reported in**,** ***Mohammed Ibrahim versus state of Bihar***[8], where essential ingredients of the offence of cheating were mentioned *at para 18,19 :-*

[8] (2009) 8 SCC 751

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 consignment, or by any other act or omission

2) 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 Umeed if he were not so deceived; and

3) Such act or omission, causing or is likely to cause damage for 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 dishonest induced the person deceive.

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)'.

13. In the instant case, the complaint apparently manifest that by way of introducing the present petitioner as a sister concern by Ajit Nath Jain, the confidence of the present Opposite Party No. 2 were gained and accordingly the business transaction started, but subsequently the petitioner refused to act as a guarantor but whether, the assurance was given behind the back of the petitioner or he too is a victim of the situation can only be decided if the investigation is allowed to be completed. It is undisputed that the petitioner's concern also paid an hefty amount but if the same was deposited as a security amount or for the purpose of investment, as stated by the petitioner also can be decided during investigation provided the petitioner co-operate with the investigating authority. The petitioner has stated to have lodged a complaint against Shyam Steel though the number of the F.I.R or any other details has not been mentioned. The other decision as relied upon in the case of ***Sachin Garg.(supra)*** is not relating to a stage where investigation is still going on, and therefore the principal is not applicable in that case. Even if the seven point guidelines laid down in ***State of Haryana versus Bhajanlal***[9]***,*** is considered in order to ascertain whether, under the present facts and circumstances of the instant complaint, any of the point or guideline framed there in is attracted it would appear that the allegation levelled in the instant complaint is not on their face value can be accepted in their entirety so that it can be said that it does not prima facie constitute any offence or make out a case against the accused and do not disclose a cognizable offence, justifying an investigation by Police Officers or the evidence collected in support of the same, for the allegations made in the FIR 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 or there is any express legal bar to the institution and continuance of the proceeding and lastly, it is manifestly attended with malafide and is instituted maliciously with an ulterior motive for wreaking vengeance on the accused.

[9] 1992 SUPP (1) SCC 335

14. In paragraph 11 of the decision of ***State of M.P versus Awadh Kishore Gupta (supra)*** It was held that *"the power possessed by the High Court under Section 482 of the court are very wide and are very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest court of a state should normally different from giving a prima facie decision in a case where the entire facts didn't complete and hazy more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material".* In the light of the above observation of the Hon'ble Supreme Court of India and the law laid down therein, considering the content of the FIR and further taking note that the investigation is still in progress this court is not satisfied to exercise the power under Section 528 of BNSS.

15. Hence this Court is unable to accept the argument as advanced by the Learned Advocate representing the petitioner that the Opposite Party No. 2 has not been able to make out any case in the written complaint for which no investigation should be proceeded with and of allowed to continue would amount to the abuse of the process of law.

16. Therefore in view of the above observation this Criminal Revision stands dismissed.

17. Urgent certified copy if applied by any of the parties to be supplied subject to observance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)