IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 476 OF 2025

RAJLAKSHMI SYAM

VS

THE STATE OF WEST BENGAL & ANR.

For the petitioner : Mr. Debajyoti Deb, Adv.
Ms. Somdyuti Parekh, Adv.
Mr. Harshawardhan Kr. Jha, Adv.

For the Opposite Party : Mr. Sabir Ahmed, Adv.
No. 2 Mr. Dhiman Banerjee, Adv.

For the Respondent : Mr. Ranabir Roychowdhury, Adv.
Mr. Arani Bhattacharya, Adv.

Last heard on : 03.09.2025

Judgement on : 08.09.2025

CHAITALI CHATTERJEE DAS, J. :-

1. This application under Section 528 of BNSS 2023 has been filed for quashing of charge-sheet No.105/2024 dated 28.11.2024, under Section 420/406 of the Indian Penal Code and all further proceedings in connection with GR case number 791 of 2023 arising out of jora Bagan Police Station number 70/2023 dated 2 9.7.2023, pending before the learned Judicial Magistrate, 18th Court at Calcutta.

2. The proceeding initiated on the basis of FIR lodged by the de-facto complainant under Section 156(3) of the Code of Criminal Procedure, 1973 before the Learned Additional Chief Metropolitan Magistrate at Calcutta alleging that by suppressing an order of status quo, the petitioner had entered into an agreement for sale with the complainant and thereby received a consideration money of ₹80 lakhs towards transfer of a property situated at 7, Mullen Street, Kolkata 700020. It was further alleged that the father of the petitioner Provash Chandra Shyam had gifted the property as described above by virtue of registered deed of gift dated February 24, 2020 and the purpose of executing such deed of gift was to meet the financial expenses for the prolong cancer treatment of the petitioner and further due to series of incident he felt that his elder daughter Sharbani Nandi and her family members were ruining and misappropriating family assets for their unlawful gain.

3. It is the case of the petitioner that after demise of her father, the elder sister, filed a partition suit along with a prayer for injunction and by an order dated 4th December, 2020, the Learned Civil Judge (Senior Division), 7th Court at Alipore, passed an order of status quo restraining the petitioner and her mother from transferring or creating any third-party interest over the properties as described above. It is her further case that due to ignorance, she was unaware about the fact of such order of status-quo passed by the learned court was also effective for the Mullen Street property and as such she was under the impression that such order of injunction was applicable for the properties, situated at 9, lower Rowden Street, Bata Nagar, and as regards a

Tea Estate at Jalpaiguri. That apart her health was deteriorating and she required urgent funds for her cancer treatment so she approached the opposite party No.2, who offered to purchase the petitioner's property at Mullen street at a total consideration of ₹1, 60 crore. Accordingly, a Memorandum of understanding was entered into between the petitioner and the opposite party no. 2 on January 26, 2022 pursuant to which the complainant paid a sum of ₹20 lakhs to the petitioner and thereafter on the date of executing agreement for sale on 4 March 2022, paid a sum of ₹60 lakhs to her. The petitioner never parted with possession of the said property, though the agreement was executed on 4th May, 2022.

4. The complainant alleged to have received a notice in connection with T.S number 484/20 22 filed by her eldest sister where from opposite party no. 2 came to learn about the third-party interest created by the petitioner in violation of an order of injunction passed by the civil court in T.S number 300 of 2020. The petitioner in the said case after entering appearance filed an application for rejection of plaint in the said suit and by an order dated 8th August, 202 the Learned Court of Civil Judge, Senior Division, 2nd Court at Alipore rejected the application . Immediately after realising her mistake in understanding that the order of injunction is applicable for the above mentioned disputed property, she offered to return the amount of 80 lakhs received from the opposite party but due to the cordial relations between the complainant and the petitioner and on request of the complainant, the petitioner voluntarily refunded ₹40 lakhs to the complainant. It is her further case that on being informed about the appeal filed by the petitioner against the order, the complainant assured to wait till the time the legal hurdle was cleared and accordingly the sale deed to be executed and the rest consideration amount would be paid to the petitioner without any delay.

5. It is submitted by the learned advocate representing the petitioner that such order of Trial Court eventually carried to Supreme Court in connection with Civil Appeal number 5776 of 2022, and by an order dated 23 August 2022, permission was granted by the Supreme Court to dispose of her property at Mullen Street and to deposit 1/3rd of the sale proceeds with the Trial Court. Immediately, after such order, the petitioner promptly requested the complainant to proceed with the execution of the sale Deed as she was in extreme need for funds for her cancer treatment. However, the complainant to the utter surprise started pressurising the petitioner to execute the sale deed at a much lesser consideration than the agreed amount of ₹1.60,00,00,000s. It is further submitted that since the complainant was unwilling to proceed with the proposed sale deed and was deliberately dragging and delaying the process, the petitioner had no other option but to cancel the power of attorney executed in favour of the complainant and accordingly it was cancelled by a registered deed of revocation executed on 28th March, 2023. The complaint has been instituted alleging that the petitioner had refuse to refund a fictitious sum of ₹56,30,001159 only without mentioning about the request made by the petitioner on repeated occasion to the complainant to proceed with the sale deed but the complainant and his associate Neeraj Kedia flatly refused to proceed with the same.

6. It is further submitted that in course of investigation, also, the petitioner sent multiple detailed complaint to the officer in-charge, Jora Bagan Police Station and to higher police authorities as to the manner in which they are continuously threatening and literally coercing her to dispose of the above mentioned property at a much lesser consideration but no action taken on it. The learned advocate representing the petitioner further argues that it is a pure civil dispute between the parties and there exists no element of cheating as the petitioner all along was willing to dispose of the property at a consideration of ₹1.60,00,00,000. That the complainant/Opposite party No.2 has also instituted a Money suit against the petitioner on 18th March 2024 being T.S number 400 of 2024, before the court of the civil Judge, Senior Division, 2nd court at Alipore and claimed part refund of the consideration amount. In this regard, the learned advocate relies upon a decision reported in ***Vijay Kumar Ghai and others versus state of West Bengal***[1] and others where it was observed by the Hon'ble Supreme Court that when a complaint does not disclose dishonest or fraudulent intention of the parties to constitute offence under Section 405 and 420 IPC and where Prima face, it is not established that due to such alleged act of cheating, the complainant had suffered a wrongful loss and the same had resulted in wrongful gain for accused, no proceeding is permissible in the eye of law with regard to commission of offence punishable under section 420 IPC. The learned Advocate further put reliance upon the decision reported in, ***Mitesh Kumar, J.Shah versus The state of Karnataka and others***[2]**,** where it was observed that criminal prosecution cannot be resorted to for settling civil disputes and such an exercise is nothing but abuse of process of law, which must be discouraged in its entirety.

[1] (2022) 7 SCC 124
[2] 2021 Supreme (SC) 628

7. The Learned Advocate on the other hand, a strong objection and submits that the petitioner with a fraudulent intention. Despite having knowledge about the order of injunction took a plea of ignorance which is not tenable in the eye of law and is not to be accepted. It is a specific case that the complainant is one of the Director of M/s Ladu Ram projects, Private Ltd and involved in real estate activities. In the third week of January 2022, the accused person contacted the complainant at his office at Strand Road after collecting information about the real estate activities of the complainant company and made a proposal to sell and transfer her land measuring about 2 cottah 3 chittacks more or less with dilapidated structure, consisting of ground and first floor, measuring 590 $ft.^2$ built-up area, each being premises No.7, Mullen Street, Kolkata, along with four occupants for and at a price of ₹1.60, 00, 000 and placed before the complainant a deed of conveyance dated January 6, 1996, standing in the name of the father of the present petitioner, Prabhas Chandra Shyam since deceased and a deed of gift dated February 24, 2020 executed by him in favour of the present petitioner for the year 2020 and the complainant requested her to fix the suitable date for execution of memo of understanding and the date was fixed on January 26, 2022.

8. It is strenuously argued by the learned advocate representing the Opposite Party that the complainant/Opposite PartyNo.2, repeatedly enquired from the petitioner after payment of ₹20 lakhs as to whether the said property is free from encumbrances and the petitioner induced the complainant to believe that the suit property is free from all encumbrances and accordingly, the complainant further proceeded to purchase the said property and the said agreement for sale was registered on March 4, 2022. All on sudden on May 4, 2022, the complainant acknowledged the receipt of show cause notice forwarded from the Court of Second Civil Judge Senior Division at Alipore in Title suit No.484 of 2022 filed by Smt. Sharbani Nandi against the present petitioner and her mother, Smt. Moni Deepa Shyam and then he came to learn that the plaintiff's elder sister filed another Title suit No.300 of 2020 in the court of Alipore against the petitioner and her mother and obtained an order restraining them to alienate and transfer of the premises 7,Mullen Street and other properties by an order dated December 4, 2020. That apart the Opposite Party no.2 further came to learn that the petitioner while filing written statement there in admitted that she has allowed the son of her elder sister to run the business by occupying one 30 ft.^{2} of space at said property when she declared in the MOU dated January 26, 2022 and the agreement for sale dated March 4, 2022, that there are only four occupants at the said premises. After that, when he enquired from the accused person, she failed to give any reply and refunded ₹40 lakhs only by issuing cheque in the name of complainant, but failed to return the balance amount and other expenses incurred by the complainant on account for payment of stamp duty, municipal rate and taxes, searching fee, sanction fee to Kolkata Municipal Corporation totalling rupees 56, 30, 159. The petitioner despite repeated request made by the present complainant/Opposite Party number 2 to refund, the said amount did not pay the same and cancelled the registered power of attorney dated March 28, 2023.

9. Therefore, from the inception, the petitioner/accused person had a clear intention to cheat the complainant and Neeraj Kedia and committed criminal breach of trust by suppressing the material fact about the order restraining her to alienate the said disputed property and by suppressing the same received huge amount of ₹80 lakhs from the complainant by way of inducement, causing wrongful loss to the complainant and Neeraj Kedia. In order to buttress, the learned advocate cited a decision reported in, ***Mahesh Choudhury versus State of Rajasthan***[3] and another where it was observed that where allegations of fraud and forgery is made, the power under Section 482 of the Code of Criminal Procedure is to be exercised to prevent abuse of process of court or to secure ends of justice and the court can quash the charge-sheet if allegations in FIR or complaint petition do not disclose commission of offence, even if on face value, they are taken to be correct in their entirety. It was held that dispute being primarily of civil nature is not by itself, a ground to quash criminal proceedings because in cases of forgery and fraud, there would always be some elements of civil nature.

10. In view of the aforesaid factual back drop and allegation counter allegation it is necessary to go through the relevant provision which defines the criminal breach of Trust.

Section 405 of the Indian Penal Code reads as follows;

> **Criminal breach of trust -** whoever, being in any manner entrusted with property, or with any dominion over the property, dishonest, miss, appropriate or converts to his own, use that property, or dishonest uses or disposes of that property in violation of any direction of law, prescribing the mood 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,

[3] (2009) 4 SCC 439

or wilfully suffers any other person, so to do comments, "criminal breach of trust".

In a decision ***of C.B.I versus Duncans Agro industries Limited***[4]**,** the Hon'ble Supreme Court observed that the property in respect of which criminal breach of trust can be committed must necessarily be the property of some person, other than the accused or the beneficial interest in ownership of it must be in the other person and the offender must hold such property in interest for such other person or for his benefit. In the instant case admitted fact is that the father of the present petitioner was the owner of the property and by virtue of a deed of gift the said property was transferred in favour of the present petitioner.

11. Therefore, primarily the petitioner became the absolute owner in respect of the disputed property as described above by virtue of the execution of such deed of gift until the said deed of gift is cancelled by virtue of any judicial order. The petitioner being a owner of the said property entered into the MOU with the opposite party No.2 for sale of the said property and received an amount of ₹20 lakhs as an advance amount followed by agreement of sale duly registered and received payment of ₹40 lakhs towards the total consideration of ₹1, 60 crores .So while entering into such MOU or the agreement for sale, no criminal intent can be found since she was the absolute owner of the property and merely by filing suit such right of her cannot be said to be negated. The question comes that in violation of the order of injunction, she entered into such agreement with the plea that she was ignorant how far can be consider as bona fide . In this case, the present

[4] AIR 1996 SC 2452

petitioner also addressed one letter to the Officer-in-Charge Jora Bagan Police Station Kolkata on 18th of August 2023, as a reply to the complaint lodged against her as revealed from the case diary as produced by the Prosecution where she specifically assigned the reason that she being a cancer patient and undergone cancer surgery and developed severe complications and hospitalised on several times and had number of tests was under tremendous mental trauma and physical suffering . Further her mother was also aged about 80 years and her father left nothing excepting the said property at 7, Mullen Street and a flat at 9 lower Rowden Street by way of registered Deed gift. And to meet up the huge expenses towards her treatment and also in order to respond legal issues with her sister, she and her mom decided to sell one of her property, and accordingly the deal was materialised. She came to know about the list of encumbered property only after receiving the notice of the said case, which was within a month of sale agreement and for that reason in the matter went up to Supreme Court on 23rd of August 2022, the Supreme Court ordered to sell the house lifting the injunction and also directed the petitioner to deposit 1/3rd portion of the sale proceeds to the Trial Court and thereby she was protected by the order of Hon'ble Supreme Court and had no embargo to sell the property.

12. So it can be gathered from above that the memorandum of understanding was executed on January 26, 2022 and on 4 March 2022, paid the sum of ₹60 lakhs to the petitioner and the agreement for sale was registered.

The order of Supreme Court granting permission to sell the property lifting the order of injunction was passed on 23rd of August 2022. It is the settled proposition of law that while exercising power under section 528 of BNSS, the

Court will not ordinarily hold a mini trial and on the basis of the allegations contained in the FIR or even if on the face value of the same are taken to be correct in their entirety does not disclose commission of an offence. But for the purpose of exercising the jurisdiction, the superior courts are also required to consider as to whether the allegations made in the FIR or the complaint petition fulfil the ingredients of the offences alleged against the accused person and if the investigation or the proceeding is allowed to continue would amounts to abuse of the process of law, such order of quashing can be passed. Section 420 IPC defines cheating and dishonest inducing delivery of property, which reach as under;

> 420. **Cheating and dishonest inducing delivery of property.;** whoever cheats and their 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 7 years and shall also be liable to fine.

Therefore, in order to establish the offence of cheating, the ingredients essential to be proved as discussed in the decision of ***Vijay Kumar Ghai and others versus State of West Bengal and others.*** *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.'*

13. In this case, the petitioner did not mention about the order of injunction, whereby she was restrained from transferring or alienating the property in dispute which, according to her was not communicated, or she was not aware, unless she received the notice of the said order of injunction, and also because of her prolong and serious illness she was not so vigilant while entering into such agreement, but finally she own the case before the Hon'ble Supreme Court where permission was granted to her to sell the property. It is admitted that she has refunded ₹40 lakhs and has expressed the willingness to refund the rest amount, but whether in view of the assurance given by the complainant, intending to purchase the property, rest transaction did not happen or not to be decided in the Money suit filed by the de-facto complaint against her . Fact remains the Opposite party No 2/ de-facto complainant has not made out a case for not completing the transaction as agreed upon when there is no restriction for the same in view of the order passed by the Hon'ble Supreme court. In the decision of ***Indian oil Corporation versus NEPC India Limited and others (supra)*** the principles relating to exercise of jurisdiction under Section 482 Cr.Pc to quash the complaints in paragraph 12 after taking note of several decisions in this regard and the principles are restated which includes "(v) A given sets of facts may make out: a purely civil wrong ;or (b) purely a criminal offence ;or (c)a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in law, may also involve a criminal offence.

The test is whether the allegations in the complaint disclose a criminal offence or not'. In a decision of ***Hridaya Ranjan Prasad Verma vs State of Bihar***[5]**,** which is referred by the Hon'ble Supreme court in case of Indian oil

14. ***Corporation versus NEPC India Limited and others (supra)*** in paragraph 35 quoted paragraph 14 and 15 of the said decision which reads as follows;

> *'14...*
>
> *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 has fraudulent 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 promise cannot be presumed'*

In this case it is undisputed that the agreement was entered into with the de-facto complainant by the petitioner who was and still is the absolute owner of the property but she violated an order of injunction and she has substantiated by giving reply and more so the said order of restrained has been dealt with by

[5] (2000) 4 SCC 168

the Supreme Court granting her permission to proceed with the sale so the fraudulent intention of the petitioner to defraud the Opposite Party No 2 is missing. The petitioner being the owner entered into such agreement so there was no mens rea to commit the offence alleged and nothing is found to prima facie disclosing any such document which can be termed as fraudulent more so a number civil proceedings are pending, including the Money suit filed by the complainant /O.P no 2 against the present petitioner. Therefore, the complainant in case The de-facto complainant qua the opposite part no. 2 on violation of terms of the agreement for sale, had taken the recourse by filing the Money suit .it is also a settled proposition of law that where it is apparent that the dispute between the parties was essentially a civil dispute resulting from a breach of contract on the part of the petitioner by non- refunding, the amount in advance, the same would not constitute an offence of cheating.

15. Therefore in view of the aforesaid fact and circumstances and the law laid down in this regard this court is of the view that it is a fit case where the court must exercise the jurisdiction under Section 528 BNSS to quash the proceeding pending before the court of Magistrate as if it is allowed to be continue would amounts to abuse of the process of law.

16. Hence this revisional application stands allowed.

17. The charge-sheet No.105/2024 dated 28.11.2024, under section 420/406 of the Indian Penal Code and all further proceedings in connection with GR case number 791 of 2023 arising out of Jora Bagan Police Station No.70/2023 dated 2 9.7.2023, pending before the Learned Judicial Magistrate, 18th Court at Calcutta is hereby quashed. C.D be returned

18. No order as to costs.

19. Urgent Photostat copy of the order be supplied upon compliance of all formalities.

(CHAITALI CHATTERJEE DAS, J.)