

**IN THE HIGH COURT AT CALCUTTA**

**Criminal Revisional Jurisdiction**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Shampa Dutt (Paul)**

**CRR 417 of 2023**

**With**

**CRAN 3 of 2024**

**Vikram Sikaria**

**Vs**

**The State of West Bengal & Anr.**

**For the Petitioner** : Mr. Sourav Chatterjee,  
Ms. Subhasree Patel,  
Ms. Saini Das.

**For the State** : Mr. Debasish Roy, ld. PP  
Mr. Bitasok Banerjee,  
Mr. Sourat Nandi.

**For the Opposite Party No. 2 :** None.

**Hearing concluded on** : 08.01.2025

**Judgment on** : 08.01.2025

**Shampa Dutt (Paul), J.:**

1. The present revisional application has been preferred praying for quashing of proceeding in G.R. Case No. 600/18 arising out of Bowbazar Police Station Case No. 163/2018 under Sections 406/420/467/468/471/120B of the Indian Penal Code, pending before the learned Metropolitan Magistrate 14<sup>th</sup> Court, Calcutta.
2. **The petitioner's case is as follows :-**

*“The petitioner, aged about 50 years, is a businessman by profession, residing permanently at the address mentioned in the cause title. That sometime in 2017, the petitioner came in contact with the opposite party no. 2 through one of his agents namely, Partha Mukherjee, who showed the said property being premises no. 18/2/26, Uday Sankar Sarani, postal address being DT-14, Golf Green Urban Complex, Phase 1, Kolkata-700095 to the opposite party no. 2 and his wife. Thereafter, due to a misunderstanding between the petitioner on one hand and the opposite party no. 2 and his wife on the other hand, the opposite party no. 2 lodged a written complaint, which was registered as Bowbazar Police Station Case NO. 163/2018 dated 31.05.2018 under Sections 406/420/467/468/471/120B of the Indian Penal Code. The parties held several discussions and **mutually agreed to settle the disputes in an amicable manner** and to that effect, the parties signed **a Deed of Cancellation** on 20.07.2018. In the said Deed of Cancellation, the opposite party no. 2 has expressly declared that he has received the entire amount of Rupees 1 (one) crore 10 (ten) lacs, which the petitioner had to incur in order to make the said premises habitable after demolition/alternation carried out by the opposite party no. 2. On 18.07.2018, the opposite party no. 2 and his wife made a representation to the Joint Commissioner of Police (Crime), Kolkata and expressed their desire to put an end to the ongoing criminal*

*proceeding instituted by them against the petitioner, which was duly received by the office of Joint Commissioner of Police (Crime), Kolkata on 20.07.2018.”*

3. In spite of due service, the opposite party no. 2 is not represented.
4. Heard the learned Public Prosecutor, who has placed the case diary.
5. It appears from the materials in the case diary, more specifically the letter sent by the de facto complainant to the Joint Commissioner of Police (Crime), Kolkata on 18<sup>th</sup> July, 2018, that the entire dispute had been **amicably settled** and the deal has been cancelled and that **he has received the total amount paid** by him on **full satisfaction** from the petitioner herein and that he has no grievance or claim in any manner. A Deed of Cancellation cancelling the agreement between the parties was duly executed.
6. It is clarified by the learned counsel for the petitioner that the initial agreement between the parties was dated 11.12.2017 and the Deed of Cancellation is dated 20<sup>th</sup> July, 2018.
7. Subsequently, a statement of the complainant was recorded by the investigating officer on 20.02.2024 wherein the de facto complainant has stated that he wants to pursue the case for the balance amount along with interest.
8. In ***Sanjeev Kapoor Vs Chandana Kapoor, AIR 2020 SC 1064, on 19 February, 2020***, the Supreme Court held:-

*“17. Learned counsel for the appellant has also referred to judgment of this Court in Mahua Biswas(Smt.) vs. Swagata Biswas and another, (1998) 2 SCC 359. In the above case, in the proceedings under Section 125 Cr.P.C. parties*

*compromised and started living together but later fell apart. An objection was raised by the husband that order of maintenance could not be revived with which High Court agreed. This Court revived the maintenance application by allowing the appeal. In paragraph 3 following was held:*

*“3. The matter can be viewed from either angle. It can be viewed that there was a genuine effort by the wife to rehabilitate herself in her matrimonial home but in vain. The previous orders of maintenance in a manner of speaking could at best be taken to have been suspended but not wiped out altogether. The other view can be that the maintenance order stood exhausted and thus she be left to fight a new litigation on a fresh cause of action. Out of the two courses, we would prefer to adopt the first one, for if we were to resort to the second option, it would lead to injustice. In a given case the wife may then be reluctant to settle with her husband lest she lose the order of maintenance secured on his neglect or refusal. Her husband on the other side, would jump to impromptu devices to demolish the maintenance order in duping the wife to a temporary reconciliation. Thus, in order to do complete justice between the parties, we would in the facts and circumstances activate the wife’s claim to maintenance and put her in the same position as before. Evidently, she has obtained a maintenance order at a figure which was taken into account by the Court of the C.J.M. Taking that into account, we order the husband to pay to his wife and the daughter a sum of Rs 1000 each, effective from 1-10-1997. The sum of Rs 12,000 which was earlier ordered by this Court to be paid to the wife and her daughter as arrears of maintenance shall be taken to have been duly paid upto 30-9-1997, irrespective of the rate of maintenance. This streamlines the dispute between the parties. It is made clear that it is open to the parties to claim*

*such other relief as may be due to him/her by raising a matrimonial dispute before the matrimonial court.”*

9. In ***Ruchi Agarwal vs Amit Kumar Agrawal & Ors., (2005) 3 SCC 299, decided on November 5, 2004,*** the Supreme Court held:-

*“8. Learned counsel appearing for the appellant, however, contended that though the appellant had signed the compromise deed with the abovementioned terms in it, the same was obtained by the respondent husband and his family under threat and coercion and in fact she did not receive lump sum maintenance and her stridhan properties. We find it extremely difficult to accept this argument in the background of the fact that pursuant to the compromise deed the respondent husband has given her a consent divorce which she wanted, thus had performed his part of the obligation under the compromise deed. Even the appellant partially performed her part of the obligations by withdrawing her criminal complaint filed under Section 125. It is true that she had made a complaint in writing to the Family Court where Section 125 CrPC proceedings were pending that the compromise deed was filed under coercion but she withdrew the same and gave a statement before the said court affirming the terms of the compromise which statement was recorded by the Family Court and the proceedings were dropped and a divorce was obtained. Therefore, we are of the opinion that the appellant having received the relief she wanted without contest on the basis of the terms of the compromise, we cannot now accept the argument of the learned counsel for the appellant. In our opinion, the conduct of the appellant indicates that the criminal complaint from which this appeal arises was filed by the wife only to harass the respondents.*

**9.** *In view of the abovesaid subsequent events and the conduct of the appellant, it would be an abuse of the process of the court if the criminal*

*proceedings from which this appeal arises is allowed to continue. Therefore, we are of the considered opinion to do complete justice, we should while dismissing this appeal also quash the proceedings arising from criminal case Cr. No. 224 of 2003 registered in Police Station Bilaspur (District Rampur) filed under Sections 498-A, 323 and 506 IPC and under Sections 3 and 4 of the Dowry Prohibition Act against the respondents herein. It is ordered accordingly. The appeal is disposed of.”*

10. In the present case too the de facto complainant having got his relief, without contest is now proceeding with the case only to harass the petitioner inspite of having specifically put in writing in the year, 2018 to the joint commissioner of police about the amicable settlement and not wanting to peruse the case.
11. He has now in the year 2024, withdrawn from the said settlement inspite of receiving the amount due.
12. In ***Naresh Kumar Vs The State Of Karnataka., Criminal Appeal No. .... of 2024, (Arising Out Of SLP (Crl.) No. 1570 of 2021), on 12<sup>th</sup> March, 2024***, the Supreme Court held as follow:-

*“6. In the case of Paramjeet Batra v. State of Uttarakhand (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:*

*“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to*

*secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.” (emphasis supplied) Relying upon the decision in Paramjeet Batra (supra), this Court in Randheer Singh v. State of U.P. (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In Usha Chakraborty & Anr. v. State of West Bengal & Anr. 2023 SCC OnLine SC 90, relying upon Paramjeet Batra (supra) it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by exercising the inherent powers under Section 482 of the Code of Criminal Procedure.*

**7.** *Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in Sarabjit Kaur v. State of Punjab and Anr (2023) 5 SCC 360. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.*

**8.** *In the case at hand, the dispute between the parties was not only essentially of a civil nature but in this case the dispute itself stood settled later as we have already discussed above. We*

*see no criminal element here and consequently the case here is nothing but an abuse of the process. We therefore allow the appeal and set aside the order of the High Court dated 02.12.2020. The criminal proceedings arising out of FIR No.113 of 2017 will hereby stand quashed.”*

**13. 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.***

14. The present case falls under category 1, 3 and 7 of Para 102 of **Bhajan Lal (Supra)**.
15. The dispute in the present case is prima facie civil in nature.
16. Considering the materials on record, it appears that the de facto complainant is not willing to honour the settlement between the parties.
17. Thus, considering the conduct of the complainant, it shall be an abuse of the process of the law/ court if the proceedings in the present case is not quashed.
18. 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 against the principle of natural justice.
19. **CRR 417 of 2023 is thus allowed.**
20. The proceeding in G.R. Case No. 600/18 arising out of Bowbazar Police Station Case No. 163/2018 under Sections 406/420/467/468/471/120B of the Indian Penal Code, pending before the learned Metropolitan Magistrate 14<sup>th</sup> Court, Calcutta, **is hereby quashed in respect of the petitioner namely Vikram Sikaria.**
21. All connected applications, if any, stands disposed of.
22. Interim order, if any, stands vacated.

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

**(Shampa Dutt (Paul), J.)**