IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 636 of 2017

Ajit Kumar Sinha

Versus

The State of West Bengal & Another

For the Petitioner	:	Mr. Mayukh Mukherjee, Adv. Mr. Abhijit Singh, Adv. Ms. Sarmistha Basak, Adv. Ms. Aishwarya Bazaz, Adv.
For the Opposite Party No. 2	:	Mr. Satadru Lahiri, Adv. Mr. Krishna Chandra Das, Adv. Mr. Safdar Azam, Adv. Mr. Jyotirmoy Talukder, Adv.
Heard on	:	14.11.2024
Judgment on	:	29.01.2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 has been filed by the petitioner/accused seeking for quashing of the proceedings being Complaint Case No. 122006 of 2016 under Sections 406/420 of the Indian Penal Code, 1860 pending before the Court of the Learned Metropolitan Magistrate, 3rd Court at Calcutta including Impugned Order dated 25.11.2016 passed in connection with the proceedings therewith.

2. The background facts, which led to filing of this Criminal Revisional application, may be adumbrated as under:

3. The Opposite Party No. 2 herein has filed and moved a petition of complaint before the Learned Metropolitan Magistrate being Complaint Case No. 122006 of 2016 alleging, *inter alia*, that in the month of September, 2015, the accused no. 1, Odyssey Infomedia Pvt. Ltd. approached the complainant through its Director, Mr. Ajit Kumar Sinha through an E-Mail as they were in need of banquet halls to hold an exhibition-cum-conference summit in the month of November, 2015. In reply to their e-mail, the complainant has arranged three banquet halls, namely, Rosewood, Banyan and Ebony for exhibition-cum-conference summit and necessary rental charges for hall, lunch and dinner were fixed.

4. As per the agreement, the aforementioned three banquet halls were rented out to the accused no. 1 for holding their exhibition-cum-conference summit from 9 am to 11 pm on 27.11.2015. After the completion of aforesaid event, a bill for the food and rental charges of Rs. 2,18,425/- was raised but the same was not paid by the accused person.

5. On requesting for payment of the said amount, Mr. Ajit Kumar Sinha assured them that the bill amount would be paid. Subsequently, based on the assurance given by Mr. Ajit Kumar Sinha, the accused no. 2 issued cheque being no. 012823 amounting to Rs. 2,18,425/- in favour of the complainant to discharge their liability. However, the said cheque was returned by the bank on 02.12.2015 with remarks “dishonoured for insufficient funds”.

6. After the said cheque was returned, the matter of its dishonour was reported to the accused nos. 2 and 3. In response, they stated that they were facing a financial crisis but assured that they would arrange the money and make the payment as soon as possible.

7. After a considerable period of time, the accused nos. 2 and 3 issued two fresh cheques drawn on the Central Bank of India, Sehani Branch, Meerut Road, Ghaziabad, U.P., 201003 amounting to Rs. 1,00,000/- dated 15.04.2016 and Rs. 1,18,425/- dated 20.04.2016 in favour of the complainant. Both the cheques were presented to the bank for encashment, but, were dishonoured due to “insufficient funds”.

8. The matter was once again reported to the accused nos. 2 and 3. They requested some time to arrange the payment of the Bill amount. However, the accused person did not make any effort to pay the money.

9. After a long period of time, the accused persons transferred a sum of Rs. 1 Lakh in favour of the complainant. However, the remaining outstanding balance of Rs. 1,18,425/- has not yet been paid. The accused persons continued to avoid payment and eventually denied making the payment. Therefore, they intentionally cheated the complainant in furtherance of their common criminal conspiracy.

10. On the other hand, Petitioner herein claims that he is the Director of the Odyssey Infomedia Pvt. Ltd. located at 3BA-713, Tower No. 4, 7th Floor, River Height, Hindon River, Raj Nagar Extension, Ghaziabad, Uttar Pradesh, 20100. He further asserts that he is completely innocent and in no way connected with the commission of the alleged offence.

11. It is further the contention of the Petitioner that the Learned Magistrate issued process in the nature of summons against the petitioner and others and fixed the matter on 30.01.2017 for Service Return and appearance of the accused persons. Accordingly, the petitioner voluntarily surrendered before the Learned Magistrate and vide order dated 30.01.2017, the petitioner was granted bail by the Learned Magistrate.

12. The Learned Magistrate has overlooked the fact that while taking cognizance under Sections 406/420/120B of the IPC against the Petitioner, the petitioner's company was facing a financial crisis. Moreover, the company has paid a sum of Rs. 1 Lakh out of total outstanding dues. The transaction between the complainant and the petitioner was related to the bill amount for services provided to the Petitioner's company. The dispute regarding the non-payment of outstanding dues would essentially be a civil liability and a criminal prosecution does not lie in such a case. When a criminal prosecution is initiated on the basis of a purely civil dispute, it would amount to a clear abuse of process of law. The attempt by the Opposite Party No.

2 to convert a civil dispute into a criminal prosecution should have not been allowed by the Learned Court. Hence, this Criminal Revisional application.

SUBMISSION ON BEHALF OF THE PETITIONER:

13. Mr. Mukherjee, learned counsel appearing on behalf of the petitioner along with others submitted that the petitioner is innocent and the allegations made against him are entirely false. It is true that there are some outstanding dues, but this dues fall within the purview of civil liability. The banquet halls were rented to the petitioner's company to hold exhibition-cum-conference summit on 27.11.2015 from 9 am to 11 pm and a sum of Rs. 2,18,425/- was charged for halls and food. Out of this bill, Rs. 1 Lakh has already been paid by the petitioner's company.

14. It was further submitted that, due to financial crisis, the accused/petitioner's company was unable to pay the remaining outstanding balance. As such, it could never be a Criminal Act in any manner.

15. The petitioner herein is actually a resident of Uttar Pradesh i.e. outside the territorial jurisdiction of the Learned Trial Court, where the proceedings are pending against the present petitioner and others. However, without following the mandatory provision of Section 202 of the CrPC, the Learned Court issued summons against the petitioner which is illegal. The Learned Magistrate issued summons mechanically without applying judicious mind despite the fact that none ingredients of Sections 406/420/120B of the Indian Penal Code, 1860 are fulfilled.

16. It was further relied the following judgments to bolster his contention that the outstanding dues amount, not paid by the accused for services as provided by the opposite party no. 2, is come within the purview of civil disputes and, in such a case, criminal proceedings under Sections 420/406 of IPC cannot be continued and the same may be quashed under Section 482 of CrPC for securing ends of justice: -

i. *Medmeme, LLC and Others Vs. Ihorse BPO Solutions Private Limited*[1]*;*

ii. *Lalit Chaturvedi and Others Vs. State of Uttar Pradesh and Another*[2]*;*

iii. *Birla Corporation Limited Vs. Adventz Investments and Holdings Limited and Others WITH Birla*

[1] (2018) 13 SCC 374;
[2] 2024 SCC OnLine SC 171;

Buildings Limited Vs. Birla Corporation Limited WITH Govind Promoters Private Limited Vs. Birla Corporation Limited[3]*;*

iv. *A.M. Mohan Vs. State Represented by SHO and Another*[4]*.*

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:

17. Per contra, Mr. Lahiri, learned counsel along with others appearing on behalf of the opposite party no. 2 submitted that the Learned Court below rightly issued summons upon the accused persons including the present petitioner as they all are liable for such alleged offences. The accused persons have, despite knowing the fact that they do not have any amount in the bank, issued cheques on twice occasions for payment of bill amount and those cheques were, one after another, bounced due to insufficient funds. The said cheques were intentionally issued by the accused persons only to cheat the opposite party no. 2.

18. Learned counsel placed reliance of judgments passed in the cases of ***Medchl Chemicals & Pharma (P) Ltd. Vs. Biological E.***

[3] (2019) 16 SCC 610 : (2020) 2 SCC (Civ) 713 : 2019 SCC OnLine SC 682;
[4] 2024 SCC OnLine SC 339.

Ltd. and Others[5] and ***Nagpur Steel & Alloys Pvt. Ltd. vs. P. Radhakrishna Alias Ranjan and Ors.***[6] to support of his contention that conduct of the accused is relevant for appreciating maintainability of prosecution under Section 415 of Indian Penal Code, 1860.

Learned counsel has further placed reliance of judgments passed in the cases of ***Vijayander Kumar & Ors. Vs. State of Rajasthan & Anr.***[7] and ***Mahesh Chaudhary vs. State of Rajasthan and Anr.***[8] to support of his contention that mere part payment of a paltry sum does not dilute the offence especially when preceding conduct demonstrates culpability.

19. It was further submitted that there is no objection/dispute/demur regarding service provided by the opposite party no. 2 and even there is no dispute with regard to the bill amount raised by the opposite party no. 2. But, they did not heed to pay the same. The accused persons had not paid any advance at the time of booking of the said banquet halls due to their culpable intention to cheat from the very beginning. The opposite party no. 2 has able to satisfied the Learned Court below by filing a petition of

[5] (2000) 3 SCC 269;
[6] 1997 SCC (Cri) 1073
[7] (2014) 3 SCC 389;
[8] (2009) 4 SCC 439.

complaint supported by an affidavit as well as examination of witnesses under Section 200 of the CrPC and, thereafter, it was found prima facie case by the Learned Magistrate against the accused persons under Sections 406/420/120B of the IPC and, therefore, issued the summons against the accused persons. The complainant has disclosed all the ingredients of sections punishable under Sections 406/420/120B of the IPC since they have induced with mala fide intention to cheat the opposite party no. 2 from the very beginning.

20. Learned counsel also drew attention of Section 415 of Indian Penal Code, 1860 (Explanation D) indicating that sections are very much attracted against the accused persons. Therefore, at the initial stage of enquiry, the proceedings should not be quashed. Normally, revisional jurisdiction should be exercised on a question of law. When factual appreciation is involved, a full-fledged trial is required. Learned counsel has cited judgments passed in the cases of ***Vijay Dhanuka and Ors. Vs. Najima Mamtaj and Ors.***[9] and ***Bhushan Kumar and Anr. Vs. State (NCT of Delhi) and Anr.***[10] to support of his contention that there is sufficient compliance of Section 202 of

[9] (2014) 14 SCC 638;
[10] (2012) 5 SCC 424;

Code of Criminal Procedure, 1973 and no illegality is attached with summoning order.

21. It was further submitted that the Learned Court below examined two witnesses and considered documents supplied by the complainant as such, Section 202 of CrPC is duly complied with.

22. Learned counsel further placed reliance of a judgment passed in the case of ***S.P. Gupta Vs. Ashutosh Gupta***[11] to support of his contention that intention to cheat is a mental state which being a question of fact can only be decided during trial. He further places reliance of the judgments passed in the cases of ***Lalmuni Devi (Smt.) Vs. State of Bihar & Ors.***[12] and ***Kamal Shivaji Pokarnekar Vs. State of Maharashtra & Ors.***[13] to support of his contention that merely a fact, has civil profile, does not outweigh the criminality attached to the same.

23. Learned counsel further placed reliance of judgments passed in the cases of ***Pradeep S. Wodeyar Vs. State of Karnataka***[14] and ***Kamal Ghosh and Anr. Vs. State of West Bengal and Anr.***[15] to

[11] (2010) 6 SCC 562;
[12] (2001) 2 SCC 17;
[13] (2019) 14 SCC 350;
[14] (2021) 19 SCC 62;
[15] 2023 SCC OnLine Cal 699 : (2023) 3 AICLR 744;

support of his contention that cognizance is not bad in law in view of prima facie material produced by the Opposite Party No. 2.

24. Learned counsel further placed reliance of judgments passed in the cases of ***Ghanshyam Sharma Vs. Surendra Kumar Sharma & Ors.***[16] and ***Skoda Auto Volkswagen (India) Private Limited Vs. State of Uttar Pradesh and Ors.***[17] to support of his contention that quashing is impossible if any offence is made out irrespective of the offence for which summons has been issued and finally prayed for dismissal of the instant Criminal Revisional application.

DISCUSSION AND FINDINGS BY THIS COURT:

25. Heard the arguments and submissions made on behalf of the rival parties and upon perusal of the record as well as judgments referred to by the learned counsels appearing on behalf of the parties, this Court finds the opposite party no. 2 had filed a petition of complaint alleging, *inter alia*, that criminal breach of trust and cheating were committed by the Petitioner and other accused from the very inception. The fact that they did not pay any advance amount indicates their culpable intention from the outset. They issued cheques for payment of their liabilities on two occasions

[16] (2014) 13 SCC 401;
[17] (2021) 5 SCC 795.

despite being fully aware that there were insufficient funds in their bank account. Three cheques were dishonoured due to insufficient funds in that bank account. However, it is an admitted fact of the Opposite Party No. 2 that the accused persons have paid a sum of Rs. 1,00,000/= out of total amount of bill of service provided by the Opposite Party No. 2 for holding their exhibition-cum-conference summit from 9 am to 11 pm on 27.11.2015.

26. In the present case, it has not been stated anywhere in the petition of complaint that the petitioner had any dishonest or fraudulent intention at the time of booking the banquet halls. The opposite party no. 2 provided service to the accused persons without receiving advance payment. This indicates that the accused had a good relationship with the complainant even though, at the time of booking of any banquet hall or for food, the provider charges usually advance amount. It is further an admitted fact that the company had paid Rs. 1 Lakh out of the total outstanding dues amount to the complainant. Dispute arises between the parties when the said company allegedly failed to pay the outstanding amount of Rs. 1,18,425/- (Rupees One Lakh Eighteen Thousand Four Hundred Twenty-Five) only. This dispute is clearly civil in nature and that should be resolved before the Civil Court rather than through the initiation of criminal proceedings. No other prima facie ingredients were made out by the opposite party no. 2 in the petition of complaint regarding offence punishable under Section 406 or 420 of the IPC as alleged.

27. The differences in the ingredients required for an offence of Criminal Breach of Trust and Cheating have been highlighted by the Hon'ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. & Ors vs. State of Uttar Pradesh & Anr.***[18] in paragraph nos. 24 to 30 as under: -

> *"24. This Court in its decision in **S.W. Palanitkar & Ors. v. State of Bihar & Anr.** reported in (2002) 1 SCC 241 : AIR 2001 SC 2960) expounded the difference in the ingredients required for constituting an of offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -*
>
> > *"9. The ingredients in order to constitute a criminal breach of trust are: (i) entrusting a person with property or with any dominion over property, (ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any*

[18] AIR 2024 SC 4531 : AIR Online 2024 SC 612.

> *direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.*
>
> *10. The ingredients of an offence of cheating are: (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."*

25. What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients.

<u>In order to constitute a criminal breach of trust (Section 406 IPC)</u>: -

1) There must be entrustment with person for property or dominion over the property, and

2) The person entrusted: -

a) dishonestly misappropriated or converted property to his own use, or *b) dishonestly used or disposed of the property or willfully suffers any other person so to do in violation of:*

i. any direction of law prescribing the method in which the trust is discharged; or

ii. legal contract touching the discharge of trust (see: S.W.P. Palanitkar (supra).

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are: -

1) deception of any person, either by making a false or misleading representation or by other action or by omission;

2) fraudulently or dishonestly inducing any person to deliver any property, or

3) the consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see: Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) Cri.L.J. 3462 (SC))

26. Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.

27. In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients *noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405 of IPC, punishable under Section 406 of IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415 of the IPC, punishable under Section 420 of the IPC.*

28. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha & Ors., reported in (1973) 2 SCC 823 : (AIR 1974 SC 301) as under:

> *"4. We have heard Mr. Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the*

> *appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 Penal Code, 1860. There is nothing in the complaint to show that the respondents had dishonest or fraudulent intention at the time the appellant parted with Rs. 35.000/- There is also nothing to indicate that the respondents induced the appellant to pay them Rs. 35,000/- by deceiving him. It is further not the case of the appellant that a representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability on the respondents for the offence of cheating."*

29. To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

30. The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership' of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e., since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal *breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously."*

28. The Hon'ble Supreme Court further laid down legal propositions of law with regard to applying of Sections 406 and 420 of the Indian Penal Code in the said particular judgment as follows:

"42. When dealing with a private complaint, the law enjoins upon the magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from a FIR, this responsibility is of the police – to thoroughly ascertain whether the allegations levelled by the informant indeed falls under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an

FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.

43. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating viz-a-viz criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of the IPC (now BNS, 2023) are not twins that they cannot survive without each other."

29. This Court also relied a judgment of the Hon'ble Supreme Court passed in the case of ***The State of Kerala v. A. Pareed Pillai and Anr.***[19], where it was held as follows: -

"To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise."

[19] **1972 Cri.L.J.1243**

30. Similarly, in the case in hand, there is nothing to show that the petitioner had dishonest or fraudulent intention at the time of booking banquet halls from the Opposite Party No. 2. It is not disputed by the complainant that he had not paid any amount. However, complainant raised question about the outstanding dues amount. Non-payment of outstanding dues amount, by no stretch of imagination, can be called dishonest inducements. Moreover, complainant by itself admitted in the petition of complaint that the company had stated about financial crisis. It was/is purely a non-fulfilment of contract, which definitely comes under civil dispute. Simply because of the amounts have not been paid or there are outstanding will not make it a case of wilful or dishonest inducement or deception or criminal breach of trust.

31. In the case of ***Haridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.***[20], the Hon'ble Apex Court also held that: -

> "*There was no allegation in the complaint indicating, expressly or impliedly, any intentional deception on the part of the appellants right from the beginning of the transaction. The Hon'ble Apex Court drew distinction between cheating from mere breach of contract. According to the Hon'ble Apex Court,*

[20] **(2000) 4 Supreme Court Cases 168**

definition of cheating contemplates two separate classes of acts namely deception by fraudulent or dishonest inducement and deception by intention. Deception by fraudulent or dishonest inducement must be shown to exist right from the beginning of the transaction".

32. It is not the case of the opposite party no. 2, in the present case, that the company was deceived by fraudulent or dishonest inducement from the beginning at the time of booking the banquet halls for the purpose of holding their exhibition-cum-conference summit from 9 am to 11 pm on 27.11.2015. Rather it is admitted that the accused persons booked the Banquet Halls through e-mail. Culpable intention, right from the beginning when the promise was made, cannot be presumed merely from a subsequent failure to keep up the promise. It depends on the intention of the accused at the time of inducement and the subsequent conduct is not the sole test. The Court must decide on the basis of the substance of the complaint and not on the basis of mere use of the word "cheating" in the complaint. This Court finds that in the instant case, the petitioner admittedly made payment of Rs. 1 Lakh out of total dues amount of Rs. 2,18,425/- and Rs. 1,18,425/- is now outstanding as alleged by the complainant. Therefore, the dishonest intention of the petitioner, from the very inception of the transaction, cannot be presumed. In my view, neither the offence of cheating punishable under Section 420 of the Indian Penal Code, 1860 is made out from the complaint nor can I persuade myself to hold that an offence punishable under Sections 406/120B of the Indian Penal Code, 1860 is made out from the allegations made in the complaint.

33. Upon perusal of the copy of petition of complaint, it further appears that there was no fraudulent or dishonest inducement or deception by intentional practice by the petitioner right from the inception of booking banquet halls. Even if subsequent payment has not been made, it does not amount to deception, fraudulent or dishonest inducement nor can it be considered to deception by intentional means from the beginning. Therefore, in the fact of this case, no case has been made out under Section 420 or 406 of the IPC. Non-payment of the outstanding amount cannot be classified as cheating in the facts of the case.

34. In the case of ***Paramjeet Batra v. State of Uttarakhand***[21], the Hon'ble Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure,

[21] ***(2013) 11 SCC 673***

1973 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 hesitate to quash the criminal proceedings to prevent abuse of process of the court."*
>
> *(Emphasis supplied)*

35. The accused person issued cheques on twice occasions to the complainant for payment of the bill amount and those cheques were returned with remarks "insufficient funds". Despite the said facts, no action was taken by the complainant to file proceedings under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 though it was presumably a criminal act. The accused had already informed the complainant that they were facing financial crisis which was well within the complainant's knowledge. The opposite party no. 2 took no steps though proceedings under Section 138 read with Section 141 of the NI Act, 1881, could have been initiated against the accused for commission of offence punishable under N.I. Act, 1881.

36. So far as the compliance of Section 202 of the CrPC is concerned, it is admitted fact that the petitioner resides beyond the territorial jurisdiction of the Court concerned. There is no dispute with regard to the address. Accordingly, it would be necessary to assert whether the Learned Magistrate should follow the provisions of sub-section (1) of Section 202 of the CrPC and, for that, this Court relied a judgment passed in ***S.S. Binu Vs. State of West Bengal & Anr.***[22] where the Division Bench observed in paragraph nos. 65 to 72 as under: -

> *"**65**. The term "inquiry" is defined under Sub-Section (g) of Section 2 Cr.P.C which is quoted below: -*
>
> > *"2.(g) "inquiry" means every inquiry other than trial, conducted under this court by a Magistrate or court."*

[22] 2018 SCC OnLine Cal 16881: (2018) 3 RCR (Cri) 4: (2018) 5 CHN 562.

***66**. The above provision purports that every inquiry other than a trial conducted by the Magistrate or court is an inquiry under Section 200, Cr.P.C. Examination of complaint only is necessary with the option of examining the witness present, if any, under the inquiry under Section 202, Cr.P.C., the witnesses are examined for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused.*

***67**. In **Chandra Deo Singh Vs. P. C. Bose** a four Judges Bench of the Hon'ble Supreme Court considered Section 202 of the old Criminal Procedure and held as under: -*

8. . . . the object of the provisions of Section 202 (corresponding to present Section 202 of the Code), was to enable the Magistrate to form an opinion as to whether process should be issued or not and to remove from his mind any hesitation that he may have felt upon the mere perusal of the complaint and the consideration of the complainant's evidence on oath.

***68**. The Hon'ble Supreme Court while considering the objects underlined the provisions of Section 202 Cr.P.C. in **Manharibhai Muljibhai Kakadia & Anr. (supra)** made the following observations: -*

"20. Section 202 of the Code has twin objects; one, to enable the Magistrate to scrutinize

carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an unnecessary, frivolous or meritless complaint and the other, to find out whether there is some material to support the allegations made in the complaint. The Magistrate has a duty to elicit all facts having regard to the interest of an absent accused person and also to bring to book a person or persons against whom the allegations have been made. To find out the above, the Magistrate himself may hold an inquiry under Section 202 of the Code or direct an investigation to be made by a police officer. The dismissal of the complaint under Section 203 is without doubt a pre-issuance of process stage. The Code does not permit an accused person to intervene in the course of inquiry by the Magistrate under Section 202. The legal position is no more res integra in this regard. More than five decades back, this Court in ***Vadilal Panchal v. Dattatraya Dulaji Ghadigaonker*** *with reference to Section 202 of the Criminal Procedure Code, 1898 (corresponding to Section 202 of the present Code) held that the inquiry under Section 202 was for the purpose of ascertaining the truth or falsehood of the complaint, i.e. for ascertaining whether there was evidence in support of the complaint so as to justify the issuance of process and commencement of proceedings against the person concerned.*

***69**. The amended provision of sub-section (1) of Section 202 CrPC came up for consideration of the Hon'ble Supreme Court in the matter of **National Bank of Oman (supra)** and the following observation made in the above decision is hereunder: -*

9. The duty of a Magistrate receiving a complaint is set out in Section 202, Cr.PC and there is an obligation on the Magistrate to find out if there is any matter which calls for investigation by a criminal court. The scope of enquiry under this section is restricted only to find out the truth or otherwise of the allegations made in the complaint in order to determine whether process has to be issued or not. Investigation under Section 202, CrPC is different from the investigation contemplated in Section 156 as it is only for holding the Magistrate to decide whether or not there is sufficient ground for him to proceed further. The scope of enquiry under Section 202, CrPC is, therefore, limited to the ascertainment of truth or falsehood of the allegations made in the complaint:

(i) on the materials placed by the complainant before the court;

(ii) for the limited purpose of finding out whether a prima facie case for issue of process has been made out; and

(iii) for deciding the question purely from the point of view of the complainant without at all adverting to any defense that the accused may have.

70. *In **Vijay Dhanuka (supra)**, it has been held that under Section 200, Cr. P.C, examination of complainant only is necessary with the option of examining the witnesses present, if any, whereas in enquiry under Section 202 Cr. P.C., the witnesses are examined for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused. The relevant portion of the above decision is set out below:*

> ***17.*** *In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2 (g) of the Code, the same reads as follows: "2. xxx xxx xxx (g) "inquiry" means every inquiry, other than a trial, conducted under this Code by a Magistrate or Court; xxx xxx xxx". It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or Court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant*

> *only is necessary with the option of examining the witnesses present, if any.*
>
> ***18.*** *This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code. In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process. In view of what we have observed above, we do not find any error in the order impugned. In the result, we do not find any merit in the appeals and the same are dismissed accordingly.*

71*. In* ***Vijay Dhanuka (supra)*** *the aforesaid principle has been repeated and reiterated in the observation that under Section 200, Cr.P.C. the examining of complainant only is necessary with the option of examining the witnesses present, if any. Though no specific mode or manner of enquiry is provided under Section 202 Cr.P.C., in an enquiry under Section 202, Cr. P.C., the witnesses are examined for the purpose of deciding whether or not there is sufficient ground of proceeding against the accused. The relevant portion of the above decision is quoted below:*

14. *In view of our answer to the aforesaid question, the next question which falls for our determination is whether the learned Magistrate before issuing summons has held the inquiry as mandated under Section 202 of the Code. The word "inquiry" has been defined under Section 2 (g) of the Code, the same reads as follows:*

2. (g) 'inquiry' means every inquiry, other than a trial, conducted under this Code by a Magistrate or court,

It is evident from the aforesaid provision, every inquiry other than a trial conducted by the Magistrate or the court is an inquiry. No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code, examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code.

15. *In the present case, as we have stated earlier, the Magistrate has examined the complainant on solemn affirmation and the two witnesses and only thereafter he had directed for issuance of process.*

> ***72.*** *Therefore, keeping in mind the object sought to be achieved by way of amendment of sub-section (1) of Section 202, Cr.P.C., the nature of enquiry as indicated in Section 19 of the Criminal Procedure (Amendment) Act, 2005, the Magistrate concerned is to ward of false complaints against such persons who reside at far of places with a view to save them for unnecessary harassment and the Learned Magistrate concerned is under obligation to find out if there is any matter which calls for investigation by Criminal Court in the light of the settled principles of law holding an enquiry by way of examining the witnesses produced by the complainant or direct an investigation made by a police officer as discussed hereinabove."*

37. The Learned Magistrate has directly issued summons after examining the complainant and witness under Section 200 of the CrPC but not postpone the proceedings, signalling that there is enough prima facie evidence to proceed with the case without further delay but this Court does not find such materials and ingredients of the offence punishable under Sections 406/420/120B of the Indian Penal Code, 1860.

38. In the light of above observations together with averments contained in the petition of complaint, this Court finds ingredients of the offences alleged by the opposite party no. 2 are not present. Merely because, non-payment of outstanding amount does not constitute offences punishable under Sections 406 and 420 of the Indian Penal Code, 1860. The allegation in the complaint does not spell out any essential ingredients for commission of offence under Sections 406 and 420 of the Indian Penal Code, 1860.

39. Judgments referred by the leaned counsel appearing on behalf of the Opposite Party No. 2 do not improve the case in favour of the Opposite Party No. 2 in any manner.

40. From the perusal of the impugned order dated 25.11.2016 passed by the Learned Chief Metropolitan Magistrate at Calcutta by which cognizance was taken mechanically without assigning a reason thereof and transferred the case record to the file of Learned Metropolitan Magistrate, 3rd Court at Calcutta for enquiry and disposal in accordance with law though the Learned Chief Metropolitan Magistrate must have recorded the reason for taking cognizance even prima facie thereto. Order passed thereby lacks of non-application of mind.

41. The disputes between the parties are purely civil in nature and criminal proceeding, in such a civil nature case, should not be allowed to be continued any further against the present petitioner otherwise it would be an abuse of process of law. The Hon'ble Supreme Court, time and again, deprecated the proceedings initiated under Sections 406/420 of the Indian Penal Code on the allegation of non-payment of outstanding dues. Attempt to convert a civil dispute into a criminal matter, potentially aimed at pressurizing the petitioner into settling the dispute with the complainant should not be encouraged. Continuation of such criminal proceedings against the petitioner will be an abuse of the process of the law. Accordingly, this Court inclined to invoke its inherent power under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the said criminal proceedings.

42. Accordingly, **CRR No. 636 of 2017** is **allowed.** Connected applications, if any, are also, thus, disposed of.

43. As a result, the criminal proceedings being Complaint Case No. 122006 of 2016 under Sections 406/420 of the Indian Penal Code, 1860 pending before the Court of the Learned Metropolitan Magistrate, 3rd Court at Calcutta including Order dated 25.11.2016 is hereby quashed insofar as the petitioner is concerned.

44. Let a copy of this Judgment be sent to the Learned Trial Court for information.

45. Interim order, if any, stands vacated.

46. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)