

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

**BEFORE:
THE HON'BLE JUSTICE UDAY KUMAR**

1.

CRR 932 of 2023

With

CRAN 4 of 2025

Tapas Kumar Das & Anr.

Vs.

State of West Bengal & Anr.

For the Petitioners	: Mr. Soumitra Deb, Mr. Sougata Banerjee,
For the State	: Mr. Madhusudan Sur, Mr. Dipankar Paramanick
Hearing Concluded on	: 11 th July, 2025
Judgment on	: 18 th July, 2025

Uday Kumar, J.:-

1. The present revisional application, under Section 482 read with Section 401 of the Code of Criminal Procedure, 1973 (Cr.P.C.), has been preferred by the petitioners, Shri Tapas Kumar Das and Smt. Shukla Tapas Das, for quashing of the criminal proceedings arising out of First Information Report (FIR) being Serampore Police Station Case No. 47 of 2023, dated February 5, 2023, under Sections 420, 406, 403, 506, 120B, and 34 of the Indian Penal Code, 1860 (IPC), corresponding to G.R. Case No. 258 of 2023, pending before the Learned Additional Chief

Judicial Magistrate, Serampore, Hooghly. It was prayed on the ground of a gross abuse of the process of law, being an attempt to give a criminal colour to an essentially civil dispute.

2. The genesis of the criminal proceedings lies in a complaint filed by the Opposite Party No. 2, Shri Sanjoy Sarkar, an 80-year-old Non-Resident Indian (NRI) residing in the UK. The complaint pertains to a property transaction that commenced in 2015. The complainant executed an agreement to purchase two flats (No. 301 and 302) and a garage from M/s Kamal Enterprises (represented by the petitioners) and M/s Laxmi Agency (represented by Shri Tapan Kumar Das, also an accused). He paid a substantial sum of Rs. 4,99,500/- separately for the garage between December 28, 2013, and July 1, 2015. He handed over its possession to the complainant, despite that he did not execute and registered sale deed for the garage. However, petitioners duly executed and registered the sale deeds only for the two flats. The complainant further alleged that the petitioners consistently avoided his requests for registration of garage and caused disturbances to his peaceful enjoyment and access to the garage by constructing an "illegal wall."
3. The immediate trigger for the criminal complaint was an incident on December 9, 2022, during a request for the garage deed's registration, which reportedly escalated into a "hot altercation," allegedly causing the complainant to suffer a "severe heart attack." Following this, the complainant sent legal notices on December 12 and December 20, 2022, which the petitioners purportedly avoided. When written complaints to the police on January 10, 2023, yielded no action, the complainant filed

a court complaint under Section 156(3) Cr.P.C., which ultimately led to the registration of the impugned FIR on February 5, 2023.

4. Mr. Soumitra Deb, Learned Advocate for the petitioners vigorously contended that the entire dispute is fundamentally civil in nature, emanating from a failure to fulfil a contractual obligation regarding property registration. He asserted that the criminal colour has been maliciously imparted solely to harass the petitioners and gain an undue advantage. In support of this contention, he highlighted a letter from the complainant dated January 25, 2025, explicitly reiterating his demand for the garage's registration. This, it was argued, unequivocally demonstrates that the complainant's ultimate objective is to secure the property deed, a remedy clearly civil in nature. He also pointed to the Hon'ble High Court's observation on March 3, 2023, during the anticipatory bail hearing, stating that the disputes "apparently are of civil nature."
5. Further, it was submitted that the allegations in the FIR are vague and omnibus, lacking specific details of individual roles of the petitioners in the alleged criminal acts, and that the Learned Magistrate acted mechanically by directing the registration of the FIR under Section 156(3) Cr.P.C. without proper application of judicial mind, especially considering the inherent vagueness and significant delay since the alleged cause of action (2015). The petitioners' compliance with the Section 41A Cr.P.C. notice on February 20, 2023, was cited as proof of their cooperation. The improper cancellation of the petitioners' anticipatory bail on June 28, 2023, by the Learned Trial Court, without

granting them an opportunity to be heard, was deemed a motivated act. Other related disputes, such as the construction of an alleged "illegal wall" and fire exit issues, were also argued to be civil in nature, as evidenced by correspondence with the Municipality and Fire Station. Crucially, it was contended that Shri Tapan Kumar Das (Accused No. 3) had no relationship with their business (Kamal Enterprises) concerning the property, supported by a letter dated February 5, 2015, and an affidavit-cum-declaration dated June 20, 2015, from the complainant himself, stating that the petitioners would have no liability regarding the flats and garage, thereby aiming to absolve themselves of involvement related to his actions.

6. Finally, Mr. Deb, Learned Advocate for the petitioners prayed that the criminal proceedings initiated against them be quashed, recognizing the dispute as civil in nature and the criminal complaint as an abuse of the legal process.
7. Conversely, Mr. Madhusudan Sur, Learned Advocate for the State - opposite party no. 1 unequivocally asserted that the petitioners received payment for the garage and delivered possession but deliberately failed to execute and register the sale deed, thereby committing criminal breach of trust and cheating against the complainant. He further contended that the petitioners misappropriated the funds paid for the garage, and the complainant's actions are a legitimate pursuit of justice against individuals who have defrauded him. Furthermore, it was submitted that the petitioners intimidated the complainant and disturbed his peaceful enjoyment and access to the garage, including by

constructing an alleged illegal wall, which indicates further mala fide intent. These acts, it was submitted, were committed in furtherance of a common intention (120B/34 IPC), implying a conspiracy. The lack of diligence by the petitioners, their intentional avoidance of legal notices, and continuous refusal to complete the registration were also highlighted.

8. Finally, it was clarified that prior complaints to the police did not result in an FIR, which necessitated a court complaint under Section 156(3) Cr.P.C. to initiate proper legal recourse against the petitioners for their alleged criminal actions. The opposite party prayed that the criminal proceedings continue, allowing for a thorough investigation and trial, to ensure that justice is served against the accused.

9. The paramount question that falls for consideration before this Court is:

"Whether the allegations contained in the First Information Report, even if accepted at their face value, primarily disclose the commission of cognizable criminal offenses under the Indian Penal Code, or if the dispute is fundamentally a civil one concerning a breach of contract and property rights, thereby warranting the exercise of this Court's inherent power under Section 482 Cr.P.C. to quash the criminal proceedings to prevent an abuse of the process of law?"

10. To answer this question, I have considered the rival contentions, the factual matrix, and the legal principles governing the exercise of powers under Section 482 Cr.P.C. The essence of the complainant's case is the non-registration of the sale deed for the garage despite full payment and possession. While he alleges cheating punishable under Section 420 and Criminal Breach of Trust punishable under Section 406 of the IPC, it is

a well-settled principle of criminal jurisprudence that a mere breach of contract or failure to fulfil a promise does not, by itself, automatically transform into a criminal offense. For cheating under Section 420 IPC, the dishonest intention to deceive must be present at the very inception of the transaction, inducing the victim to part with property. A subsequent failure to honour a commitment, if the initial intent was not dishonest, would typically give rise to a civil liability. Similarly, for criminal breach of trust under Section 406 IPC, there must be an entrustment of property and a subsequent dishonest misappropriation or conversion. The initial receipt of money for the purpose of selling a property, even if the sale is not completed, does not automatically signify a dishonest intent from the outset. Crucially, there is a fine line distinction between a civil wrong and a criminal offence.

- 11.** The Hon'ble Supreme Court, in numerous pronouncements, has cautioned against imparting a criminal colour to a purely civil dispute, as seen in *Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC 168, and *Indian Oil Corp. v. NEPC India Ltd.*, (2006) 6 SCC 736.
- 12.** The present facts, particularly the undisputed delivery of possession of the garage and the execution of deeds for the flats, suggest that the initial transaction was not inherently fraudulent. The dispute appears to have arisen from a subsequent failure to complete the formal transfer of title for the garage.
- 13.** Moreover, the petitioners have rightly contended that the FIR lacks specific details regarding their individual roles in the alleged conspiracy or criminal acts. While an FIR need not be an exhaustive document, it

must contain sufficient particulars to disclose a cognizable offence. The omnibus allegations, especially in the context of a transaction spanning several years, merit closer scrutiny.

- 14.** Furthermore, the role of the Learned Magistrate under Section 156(3) Cr.P.C. is not merely ministerial. As held by the Hon'ble Supreme Court in various judgments, including *M/s. Pepsi Foods Ltd. v. Special Judicial Magistrate*, (1998) 5 SCC 749, the Magistrate must apply judicial mind before directing investigation, especially when the allegations appear vague or smack of a civil nature. The significant delay since the alleged cause of action also required a more circumspect approach.
- 15.** The Hon'ble Supreme Court and various High Courts have consistently laid down guidelines for quashing criminal proceedings, especially when a civil dispute is given a criminal colour, as in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604, which allows quashing if the allegations do not disclose a cognizable offense or if the proceeding is manifestly attended with mala fide and/or malicious institution.
- 16.** Moreover, the subsequent events, particularly the complainant's letter dated January 25, 2025, are highly indicative of the true nature of his grievance. In this letter, he reiterates his demand for the execution and registration of the garage deed within 15 days, threatening further legal action if not complied with. This unequivocally demonstrates that his ultimate objective is to secure the property's title, which is a civil remedy, rather than to see the accused punished for a criminal act. The allegations of an "illegal wall" and disturbance, while relevant to property rights, also fall squarely within the purview of civil disputes amenable to

civil remedies. The fact that the complainant-initiated action with the Municipality and Fire Station for these issues, further underscores their civil character.

17. The observation by this Hon'ble Court on March 3, 2023, while granting anticipatory bail, that the disputes "apparently are of civil nature," lends significant weight to the petitioners' contention. While not a conclusive finding on the merits, it was an initial judicial assessment of the facts. The subsequent cancellation of the petitioners' bail by the Learned Trial Court, purportedly without hearing them, also raises procedural concerns, highlighting the ongoing tension arising from the fundamentally civil dispute.
18. The petitioners' claim that Tapan Kumar Das (Accused No. 3) was not connected to their business and the existence of a prior affidavit from the complainant absolving them of liability for the flats/garage, if established, would further weaken the case, particularly regarding the elements of conspiracy (Section 120B IPC) and common intention (Section 34 IPC) involving all accused.
19. The consistent judicial view is that the extraordinary power under Section 482 Cr.P.C. must be exercised to prevent the abuse of the process of any Court or otherwise to secure the ends of justice. When a criminal proceeding is initiated or continued with a dominant *mala fide* intention to achieve a collateral purpose, particularly one that is purely civil in nature, it amounts to an abuse of the process of law. The attempt to coerce the accused into performing a civil obligation by initiating

criminal proceedings is precisely what the inherent powers of the High Court are meant to prevent.

20. Accordingly, I conclude that the criminal proceedings initiated against the petitioners primarily stem from a civil dispute concerning the non-performance of a contractual obligation related to the registration of a property deed. The allegations, when stripped of their embellishments, do not sufficiently disclose the essential ingredients of the criminal offences alleged under the IPC, particularly the *mens rea* (dishonest intention) at the very inception of the transaction. The subsequent events and the complainant's consistent demand for property registration reinforce the civil character of the dispute. Allowing the criminal proceedings to continue would amount to an abuse of the process of the court and would lead to miscarriage of justice.

21. In view of the foregoing discussions and for the reasons stated above, I find merit in the present Criminal Revision Application.

22. Therefore, the Criminal Revision Application, CRR No. 932 of 2023, is hereby allowed.

23. Consequently, the criminal proceeding being G.R. Case No. 258 of 2023 corresponding to Serampore Police Station Case No. 47 of 2023 dated 05.02.2023, presently pending before the Court of the Learned Additional Chief Judicial Magistrate at Serampore, Hooghly, under Sections 420/406/403/506/120B/34 of the Indian Penal Code, is hereby quashed in its entirety as against the petitioners, Shri Tapas Kumar Das and Smt. Shukla Tapas Das.

- 24.** It is clarified that this order shall not preclude the Opposite Party No. 2, Shri Sanjoy Sarkar, from pursuing any and all appropriate civil remedies available to him under the law for the specific performance of the contract, recovery of money, or any other property-related grievances before the competent civil forum.
- 25.** There shall be no order as to costs.
- 26.** All interim order/orders passed in connection with the aforesaid criminal proceedings stands vacated.
- 27.** CRAN 4 of 2025 stands disposed of, accordingly.
- 28.** TCR, if any, shall be sent down to the Trial Court, at once.
- 29.** Case Diary, if any, be returned forthwith.
- 30.** The department concerned is directed to communicate this judgment to the Learned Additional Chief Judicial Magistrate, Serampore, Hooghly, and the Officer-in-Charge, Serampore Police Station, for necessary action.
- 31.** Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Uday Kumar, J.)