IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 777 of 2018

D. K. Enterprises Pvt. Ltd. & Anr.
Versus
The State of West Bengal & Anr.

For the Petitioners	:	Mr. Dipankar Saha, Adv. Mr. Bikash Shaw, Adv. Mr. Subham Kr. Das, Adv.
Heard on	:	16.06.2025
Judgment on	:	23.07.2025

Ajay Kumar Gupta, J:

1. The petitioner no. 1, a company registered under the Companies Act, 1956 and petitioner no. 2, the Director of the said company, have filed this Criminal Revisional application under Section 401 read with Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'), seeking for quashing of the proceedings being CS 41478 of 2017 for the alleged commission of offence punishable under Sections 420/406/422/34 of the Indian Penal Code, 1860, pending before the Court of the Learned Metropolitan Magistrate, 19th Court at Calcutta.

2. The brief facts, leading to the filing of this instant Criminal Revisional application, are as under:

2a. The opposite party no. 2 filed a Complaint Case under Section 200 of the CrPC registered being CS 41478 of 2017 against the company and its Director under Sections 420/406/422/34 of the Indian Penal Code, 1860 with an allegation, *inter alia*, that the opposite party no. 2 dealing with the manufacturing and supply of pure activated carbon and different types of other materials. The accused persons (petitioners herein) are the customers doing business under the name and style of M/s. D. K. Enterprises Pvt. Ltd.

2b. The accused nos. 2 and 3 being the responsible persons of the said company came to the complainant's place of business and introduced themselves as successful businessman. They assured the complainant that they would place a large quantity of orders if the terms of payment would consider. On the basis of the said assurance, given by the accused persons, the opposite party no. 2 delivered the goods i.e. best quality of Granular Activated Carbon etc. raising the invoices for the same. A balance sum of Rs. 4,52,075/- is due against the goods supplied as per the tax invoices.

2c. The accused persons duly received all the goods without any objection or demur. However, they did not pay the balance sum of Rs. 4, 52,075/- and the same is still lying outstanding. Despite repeated demands made through telephonic calls, notices, emails and personal visit to the place of business of the accused persons, no payment was made. Finally, on 30th March, 2017, the accused persons flatly denied any receipt of goods and also threatened the complainant using slang and filthy languages. Thereafter, a legal demand notice dated 05.04.2017 was issued through learned advocate and duly served. Despite that, the accused persons did not make any payment. Accordingly, the accused persons had cheated the opposite party no. 2 by practising fraud and also committed criminal breach of trust compelling the complainant to file complaint under Section 200 of the CrPC against them.

2d. On the contrary, the case of the present petitioners is that they are actually engaged exclusively in software developments and have no nexus whatsoever with the opposite party no. 2. The petitioners never dealt with or trade in Granular Activated Carbon or any related product. The petitioners had/have no business connections with the complainant as the place of business of the petitioners is located solely in Chennai and they have no business connection with the complainant. It is further alleged that the complainant has mistaken them for another entity with a similar name operating out of Maharashtra. The invoices and road challans relied upon by the complainant bear addresses located in Thane and Bhiwandi, Maharashtra, which have no link with the petitioners. The email communication allegedly sent to the address "DKENT @ REDIFFMAIL.COM" is not associated with the petitioners.

2e. It is further case of the petitioners that even if taken at face value of the complaint and accepted entirety allegations they also do not disclose the commission of any criminal offence. Whatever disputes raised by the complainant in his complaint are within the scope of a civil dispute and, in such event, the criminal prosecution is not at all permissible in law. Hence, this Criminal Revisional application.

SUBMISSIONS ON BEHALF OF THE PETITIONERS:

3. Learned counsel appearing on behalf of the Petitioners vehemently argued and advanced his submission under four distinct limbs.

3a. **Firstly**, there is no sufficient material whatsoever to suggest any contractual, commercial, legal business relationship between the petitioners and the opposite party no. 2. The invoices and the road challans relied upon by the complainant refer to two addresses i.e. Thane and Bhiwandi, Maharashtra, which have no connection with the petitioners.

3b. **Secondly**, even if all allegations in the complaint are taken at face value, the essential ingredients of cheating, criminal breach of trust or fraudulent disposition of property or any type of threat are not made out even prima facie against the present petitioners. Moreover, no specific dates, place, mode of transaction or evidence brought to show involvement of the petitioners with regard to any type of threat in any manner whatsoever. It is also not demonstrated that petitioner no. 2 played any role for commission of any alleged offences.

3c. **Thirdly**, the petitioner no. 1's place of business is situated at Chennai and petitioner no. 2, Director of petitioner no. 1/company is also from Chennai i.e. beyond the territorial jurisdiction of the learned Magistrate, who took cognizance against the present petitioners without following the mandatory provisions of Section 202 of the CrPC before issuing process and failure to follow such mandatory provision, the entire case vitiated only on such score.

3d. **Lastly**, the Learned Magistrate took cognizance and issued process in a very casual and mechanical manner and without applying judicious mind or without evaluating that the complainant has not disclosed the sufficient materials to constitute offence under Sections 420/406/422/34 of IPC. To bolster his submission, the learned counsel has placed reliance upon the following judgments as under: -

1. Rama Devi Vs. State of Bihar & Ors.[1];

2. V.P. Shrivastava Vs. Indian Explosives Ltd. & Ors.[2];

3. Ashok Chaturvedi & Ors. Vs. Shitul H. Chanchani & Anr.[3];

4. State of A.P. Vs. Gourishetty Mahesh and Ors.[4];

5. Manoj Mahavir Prasad Khaitan Vs. Ram Gopal Poddar & Anr.[5];

6. Delhi Race Club (1940) Limited & Ors. Vs. State of Uttar Pradesh & Anr.[6].

3e. Finally, the learned counsel prays for quashing of the aforesaid proceedings considering the aforesaid facts thereof.

[1] (2010) 12 SCC 273;
[2] (2010) 10 SCC 361;
[3] (1998) 7 SCC 698;
[4] (2010) 11 SCC 226;
[5] (2010) 10 SCC 673;
[6] (2024) 10 SCC 690.

4. On the other hand, none appeared on behalf of the opposite parties despite service. Nevertheless, several opportunities having been provided, no one had appeared on behalf of the opposite parties. In such circumstances, the fate of the Petitioners could not be left at the 'mercy' of the opposite parties and, thus, the Court proceeds to adjudicate the matter on merits, without the presence of the opposite parties.

DISCUSSIONS, ANALYSIS AND CONCLUSION OF THIS COURT:

5. Considering the submissions made by the learned counsel appearing on behalf of the petitioners, judgments relied upon by the petitioners and on perusal of the record, it reveals the Opposite party has initiated a proceeding under Section 200 of the CrPC for commission of the offence punishable under Sections 420/406/422/34 of the IPC against the Company and others, who were associated with the company, namely, M/s. D. K. Enterprises Pvt. Ltd. The Petitioners, however, claim they are in no way connected with any business transaction with the complainant. They categorically deny placing any orders or receiving any goods from the complainant's company. These are disputed questions of fact that require appreciation of oral or documentary evidence by both sides and can only be adjudicated after conclusion of full-fledged trial.

6. It transpires from the record, before issuing process the Learned Magistrate perused the complaint supported by an affidavit, recorded the statements of complainants and another witness and, thereafter, took cognizance and issue process after being satisfying the mandatory procedural mandate under Section 202 CrPC. The contention of none compliance of mandatory provision of Section 202 has no force and convincing. Thus, issue as aforesaid raised by petitioners cannot be taken into account of the valid ground to quash the proceedings.

7. In course of hearing, learned counsel appearing on behalf of the petitioners submitted that even for the sake of argument, the business transactions taken place between the parties, then the allegation made by the opposite party no. 2/complainant is purely civil in nature. The allegation of complainant is mainly that complainant has supplied best quality of Granular Activated Carbon etc between 2014 to 2016 to the petitioners and there is due of balance sum of Rs. 4,52,075/= with the petitioners. Whatever transactions taken place between the parties was a commercial transaction, which never comes within the domain of criminal act. Dispute regarding balance due could be decided by the Civil Court and not by the Criminal Court. Question of inducement or cheating to the supplier/complainant never arose when there were terms of business transactions. Though, the complainant has alleged that they supplied the best quality of Granular Activated Carbon etc on several dates to the petitioners, Petition of complaint clearly indicates and admits that the petitioners have paid some amount to the complainant.

8. Even for the sake of argument, if any dues are pending that lies in initiating a civil suit for recovery. The complainant has filed this complaint with an allegation for offence punishable under Sections 406/420/422/34 of the IPC though no ingredients fulfilled either in complaint or in deposition. Therefore, the proceeding, initiated against the petitioners, is clearly abuse of process of law and same is liable to be quashed so far as the petitioners are concerned.

9. The complainant made the written complaint before the Learned Magistrate is awful of vague and non-specific and the same does not disclose sufficient grounds or ingredients to proceed against the petitioners. In such a situation, criminal proceeding should not be allowed to be continued for securing the ends of justice.

10. The complainant alleged that the petitioners represented themselves as a reputed businessman and dealing with activated carbon and different types of other materials at the beginning. Based on that, the complainant supplied best quality of Granular Activated

Carbon etc on credit on different dates between the years 2014 to 2016. The dispute arises when the petitioners herein fail to make payment of balance amount despite repeated demands and even after giving legal notice through learned advocate. The complainant claims that the petitioners have no intention to pay, leading to alleged cheating and misrepresentation. Whereas, the petitioners herein contended that the dispute is purely civil in nature and the criminal proceedings initiated against them are an abuse of process of law. Offence as alleged is not at all attracted.

11. 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.***[7] 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: -*

[7] (2024) 10 SCC 690

"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 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.

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

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."*

12. The Hon'ble Supreme Court further laid down legal propositions of law with regard to the application of Sections 406 and 420 of the Indian Penal Code in the said particular case 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."

13. This Court also placed reliance on a judgment of the Hon'ble Supreme Court in the case of ***The State of Kerala v. A. Pareed Pillai and Anr.***[8], where it was held as follows: -

[8] 1972 Cri.LJ. 1243

"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."

14. Similarly, in the case in hand, there is nothing to show that the petitioners had any dishonest or fraudulent intention at the time of placing order for supply of Granular Activated Carbon etc. Complainant raised question about the outstanding dues when it became due. Non-payment of outstanding dues or even breach of contract, in a commercial transaction, by no stretch of imagination, can be called a dishonest inducement. It was/is purely a non-fulfilment of contract to pay the outstanding amount of a commercial transaction, which definitely comes under civil dispute. It is an admitted fact that the accused persons have paid some of the bill amount. Simply because the amounts have not been paid or there are outstanding will not make it a case of wilful or dishonest inducement or deception.

15. In the case of ***Haridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.***[9], the Hon'ble Apex Court also held that: -

"There was no allegation in the complaint indicating, expressly or impliedly, any intentional deception on

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[9] **(2000) 4 Supreme Court Cases 168**

> *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, 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".*

16. It is not the case of the opposite party no. 2, in the present case, that the petitioner was deceived by fraudulent or dishonest inducement from the beginning or at the time of order of supply of Granular Activated Carbon etc. Rather, it appears the complainant/opposite party no. 2 supplied the best quality of Granular Activated Carbon etc on different occasions between the years 2014 to 2016. Therefore, culpable intention, right from the beginning when the orders were placed, cannot be presumed simply from mere failure of a person to keep up promise subsequently. It depends upon the intention of the accused at the time of inducement. 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 expression "cheating" in the complaint. Outstanding amount of Rs. 4, 52,075/- as alleged by the petitioner is not the outcome of 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 406/422/34 of the Indian Penal Code, 1860 are made out from the allegations made in the complaint.

17. Upon perusal of the copy of petition of complaint, it further shows that there was no fraudulent or dishonest inducement or deception by intentional practice by the petitioners right from the inception of the order for supply of Granular Activated Carbon etc. even if no payment has been made, that will neither tantamount to deception, fraudulent or dishonest inducement nor would it amount to deception by intentional means right from the beginning as the accused have paid some amount of the bill as raised by the complainant. Therefore, the case either under Section 420 or 406 of IPC, in the facts of this case, has not been made out. Non-payment of outstanding amount cannot be termed as criminal act in the facts of this case.

18. In the case of ***Paramjeet Batra v. State of Uttarakhand & Ors.***[10], the Hon'ble Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure, 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."*
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> *(Emphasis supplied)*

19. In the light of the above discussions together with averments contained in the petition of complaint, this Court finds that the

[10] (2013) 1 C Cr LR (SC) 755

ingredients of the offences alleged by the opposite party no. 2 are absent. Merely, because of non-payment of outstanding amount does not constitute an offence punishable under Sections 406 and 420 of the Indian Penal Code, 1860. The allegations in the complaint do not spell out any essential ingredients for the commission of offence under Sections 406 and 420 of the Indian Penal Code, 1860.

20. 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 petitioners otherwise it would be an abuse of process of law. The Hon'ble Supreme Court time and again deprecated the proceedings initiated under Section 406/420 of the Indian Penal code on the allegation of non-payment of outstanding dues occurred in a commercial transaction. Attempt to convert a civil dispute into a criminal matter, potentially aimed at pressurizing the petitioner into settling the dispute, by way of filing this criminal complaint, should not be encouraged. Accordingly, this Court would like to invoke its inherent power under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the said criminal proceeding.

21. Consequently, **CRR No. 777 of 2018** is **allowed**. Connected applications, if any, are also, thus, disposed of.

22. The proceeding being CS 41478 of 2017 for commission of alleged offences under Sections 420/406/422/34 of the Indian Penal Code, 1860, pending before the Court of the Learned Metropolitan Magistrate, 19th Court at Calcutta is hereby quashed insofar as the petitioners are concerned, and all orders passed therein in respect of the present petitioners are also set aside.

23. Let a copy of this Judgment be sent to the Learned Magistrate for information.

24. Interim order, if any, stands vacated.

25. 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.)