

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

APPELLATE SIDE

CRR 1232 of 2023

Sankar Mondal

Vs.

The State of West Bengal & Anr.

Before: The Hon'ble Justice Apurba Sinha Ray

For the Petitioner : Mr. Arun Kumar Mohanty, Adv.
Ms. Kaberi Sengupta Mohanty, Adv.
Mr. R.R. Mohanty, Adv.
Ms. Snigdha Ghosh, Adv.
Mr. Shivam Saha, Adv.
Ms. Pusprita Chowdhury, Adv.
Ms. Awantika Bajpai, Adv.
Ms. Rajorna Mazumder, Adv.
Ms. Deblina Basu, Adv.

For the Opposite Party No. : Mr. Imtiaz Ahmed, Adv.
2 Mr. Ghazala Firdaus, Adv.
Mr. Sk. Saidullah, Adv.
Mr. Mithun Mondal, Adv.
Mr. Md. Arsalan, Adv.

CAV On : 03.09.2025

Judgment On : 26.09.2025

Apurba Sinha Ray, J. :-

1. The instant application under Section 482 of Cr.P.C. was filed by the petitioner Sankar Mondal alleging inter alia that initially an agreement dated 01.03.2017 was executed by and between the opposite party no. 2 and

himself. The said agreement was essentially a development agreement for a project to be constructed by the opposite party no. 2 who had paid Rs. 25,00,000/- (twenty five lakhs only) to the petitioner by way of cheques on the basis of certain conditions as mentioned in the said agreement. However, subsequently misunderstanding and disputes were cropped up and by an agreement dated 04.01.2020 the aforesaid agreement dated 01.03.2017 was mutually cancelled on condition that the petitioner will have to pay Rs. 80,00,000/- (eighty lakhs only) to the opposite party no. 2. However, it is mentioned in the second agreement that the proposed sum of Rs. 80,00,000/- (eighty lakhs only) will include Rs. 25,00,000/- (twenty five lakhs only) which was paid to the opposite party no. 2 by the petitioner.

2. Mr. Maity, learned counsel for the petitioner, argues that the said agreement dated 04.01.2020 is unconscionable and the petitioner was forced to execute such agreement. However, the opposite party no. 2 lodged a false criminal case, which is full of misrepresentation and anomalies, against the petitioner knowing fully well that the dispute arose between the parties is of civil nature and the opposite party no. 2's prayer for initiation of criminal proceedings under Section 156(3) of Cr.P.C was turned down and after taking cognizance, the opposite party no. 2 was directed to proceed in accordance with the provisions under Section 200 of Cr.P.C. Subsequently, the opposite party no. 2 was examined and an enquiry report was called for from the concerned police station. Although, the police report discloses that there is no criminality involved in the matter, the Learned Judicial Magistrate issued process against the petitioner in connection with

Complaint Case No. AC 995 of 2022 in gross violation of the established principles of law. Mr. Maity has further submitted that before taking cognizance and issuance of process, necessary formalities are required to be complied with but in this case the same were not complied with. There are no ingredients of fraud or criminal breach of trust or cheating in the four corners of the complaint. The fact disclosed in the complaint partakes the character of civil wrong and, therefore, the opposite party no. 2 should have moved the civil forum for breach of contract. Moreover, as there was a delay in mutation proceeding the opposite party no. 2 is not willing to proceed with the agreement. It is also submitted by Mr. Maity that time is not stipulated in the agreement dated 01.03.2017 and time is not the essence of the said contract. However, the first agreement has become redundant after execution of the second agreement dated 04.01.2020.

3. Learned counsel Mr. Imtiaz Ahmed appearing for the opposite party no. 2 has submitted that this is not a direct complaint case and reasons have been given by the Learned Additional Chief Judicial Magistrate, Alipore by his order dated 20.04.2022. By the said order the Learned Additional Chief Judicial Magistrate, South 24 Parganas, Alipore had taken cognizance and for further proceeding, the case was transferred to the Learned Judicial Magistrate, 7th Court, Alipore and thereafter vide order dated 26.07.2022 the police was directed to make an enquiry and to submit a report. After perusing the police report the Learned Judicial Magistrate, 7th Court, Alipore was pleased to issue process against the petitioner. Therefore, according to

Mr. Ahmed, by a reasoned order dated 20.04.2022 the Learned Additional Chief Judicial Magistrate, Alipore had already taken cognizance and it is not correct assertion from the side of the petitioner that no application of mind was exercised by the concerned Learned Judicial Magistrate, 7th Court, Alipore in passing the orders dated 26.07.2022 and 01.12.2022. Mr. Ahmed has further submitted that the petitioner actually cheated and deceived the opposite party no. 2 who is a widow. In support of his contention the opposition party has cited several judicial decisions.

4. In Suresh Chand Jain Vs. State of Madhya Pradesh reported in 2001 (1) AD (Crl.) SC 34 the Hon'ble Supreme Court had observed as follows:-

“In those cases where the allegations are not very serious and the complainant himself is in possession of evidence to prove his allegations there should be no need to pass orders under Section 156(3) of the Code. The discretion ought to be exercised after proper application of mind and only in those cases where the Magistrate is of the view that the nature of allegations is such that the complainant himself may not be in a position to collect and produce evidence before the Court and interests of justice demand that the police should step in.”

5. In Ramdev Food Products private Limited Vs. State of Gujarat reported in 2015 (6) SCC 439 and Priyanka Srivastava and Anr. Vs. State of LP 2015 (96) SCC 287 the Hon'ble Supreme Court has emphasized that the Magistrate has to apply its mind before issuing any direction under Section 156(3) Cr.P.C.

6. In Indian Oil Corporation Vs. NEPC India Ltd. & Ors. reported in (2006) 6 SCC 736 the Hon'ble Supreme Court opined that:

“While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/ creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through

criminal prosecution should be deprecated and discouraged.”

7. In Pranati vs. State of West Bengal reported in SCC OnLine Cal 132 Hon’ble Court has observed as follows:-

“The appropriate course of action of the Magistrate while rejecting prayers under section 156(3) of Cr.P.C to take cognizance of the alleged offences under section 200 of Cr.P.C, and to examine the complainant and her witnesses to determine as to whether the process should not be issued. Under section 202(1) of Cr.P.C the Magistrate may direct an investigation instead of issue of process. Investigation under section 202(1) of Cr.P.C may hold the magistrate to ascertain whether or not there is substantial ground to proceed further.”

8. In the case of Lalaram Vs. State of U.P. and 13 Ors. passed in **Criminal Revision No. 1611 of 2020, decided on 18.12.2020** the Hon’ble Apex Court has observed:-

"The other option open to the Magistrate is to take cognizance on the complaint, register it as a complaint case and proceed as per the

procedure prescribed under Chapter XV Cr.P.C. The Magistrate would record the statement of the complainant and other witnesses, if any present under Section 200 Cr.P.C. He may if he thinks fit and shall in cases where accused resides outside the area of exercise of jurisdiction of the Magistrate concerned, either enquire into the case himself or direct the investigation to be made by the police officer or by such other person as he thinks fit under Section 202(1) Cr.P.C.

Thereafter, he shall pass order, either under Section 203 dismissing the complaint, for brief reasons to be recorded or he shall issue process under Section 204 Cr.P.C.”

9. In **Neeharika Infrastructure Private Ltd. Vs. P. Mohan & Others**, reported in **2021 SCC OnLine SC 315**, the Hon’ble Supreme Court has also observed that:

“The parameters of quashing at the initial stage of investigation. It states that at this stage or investigation, a Court should not delve into the point of disputed facts. If it is prima facie satisfied that the ingredients of the offence is disclosed then there is no justification upon the Court to interfere.....

It is well settled that to find out whether factual contents of the complaint disclose commission of cognizable offence, the High Court cannot act like an investigating agency or can exercise its power like an Appellate Court, while adjudicating an application for quashing of a complaint case under Section 482 of the Cr.P.C.”

10. In Jhandu Pharmaceutical Works Limited Vs. Md. Saradul Haque reported in **(2005) 1 SCC 122** it was observed by the Hon’ble Apex Court that:

“The inherent power should not be exercised to stifle a legitimate prosecution. The High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved whether factual or legal are of magnitude and cannot be seen in their true perspective without sufficient material of course.”

11. In Skoda Auto Volkswagen India Private Limited Vs. State of Uttar Pradesh and Other reported in **2020 SCC OnLine SC 958**, the Apex Court held that:-

“It is needless to point out that even since the decision of the Privy Council in King Emperor - Vs- Khwaja Nazir Ahmad, (1944 SCC online PC 29: AIR 29 1945 PC 18)..... It is only in cases where no cognizable offence or offences of any kind is disclosed in the First Information Report that the Court will not permit an investigation to go on.”

12. In State of Haryana -V- Bhajan Lal reported in 1992, Supp (1), SCC 335; 1992 SCC (Cri) 426 has observed as follows:-

“The Power of Quashing should be excused very sparingly and with circumspection and that too in the rarest of rare cases while examining a complaint, the quashing of which is sought. The court cannot embark upon an enquiry as to the reliability or genuineness or otherwise of the allegation made in the FIR or in the complaint.”

13. In S.M. Datta Vs. State of Gujrat reported in (2001) 7 SCC 659; 2001 SCC (Cri.) 1361; 2001 SCC (L&S) 1201 has observed as follows:-

“This court held that if a perusal of the First Information Report leads to disclosure of an offence even broadly, law courts are barred from

usurping the jurisdiction of police, since the two organs of the State operate in two specific spheres of activities and one ought not to treat over the other sphere.”

14. In concluding his submission, Mr. Ahmed has argued that it is not in serious dispute in the present case that the contents of the complaint disclose acts of cheating and criminal breach of trust and even the Learned Additional Chief Judicial Magistrate, Alipore while disposing of the application under section 156(3) of Cr. P.C. observed that criminality cannot be entirely ruled out by its order dated 20.04.2022. Accordingly, there is hardly any scope to say that the present case falls within the exception as carved out in paragraph 108(6) in the case of Bhajanlal (Supra).

15. Therefore, according to him the petitioner has miserably failed to make out any case for hearing and thus the present revisional application is liable to be dismissed with costs.

16. Opposing the above contention Mr. Maity learned counsel of the petitioner has referred to a number of judicial decisions in support of his contention.

17. In Deepak Gaba Vs. State of Uttar Pradesh reported in 2023 LiveLaw (SC) 3/CRA 2328 of 2022 the Hon’ble Supreme court has been pleased to observe as follows:-

"The court must cautiously examine the facts to ascertain whether they only constitute a civil wrong, as the ingredients of criminal wrong are missing. ...

*"Criminal proceedings should not be allowed to be initiated when it is manifest that these proceedings have been initiated with *ulterior motive*... due to private or personal grudge."*

18. In M/s. Thermax Ltd. & Ors. Vs. K.M. Johny & Ors. reported in 2011 AIR SCW 5952/ Criminal Appeal No. 1868 of 2011 the Hon'ble Apex Court held that:

"In a few cases, the question arose whether a criminal prosecution could be permitted when the dispute between the parties is of predominantly civil nature and the appropriate remedy would be a civil suit. In one case reported in Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre this Court held that if the allegations in the complaint are both of a civil wrong and a criminal offence, there would be certain situations where it would predominantly be a civil wrong and may or

may not amount to a criminal offence. It was under those circumstances that this Court "Though a case of breach of trust may be both a civil wrong and a criminal offence but there would be certain situations where it would predominantly be a civil wrong and may or may not amount to a criminal offence. The present case is one of that type where, if at all, the facts may constitute a civil wrong and the ingredients of the criminal offences are wanting."

19. In the judicial decision of **Rikhab Birani Vs. the State of Uttar Pradesh reported in 2025 Live Law (SC) 438/ SLP (Crl) No. 008592/2024** the Hon'ble Bench has been pleased to point out the existence of the offence of cheating can be inferred firstly if there is a deception of a person; secondly fraudulent or dishonest inducement of that person and thirdly such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

20. In **M/s Wesman Engineering Co. Private Limited & Ors. Vs. The State of West Bengal & Anr. CRR 28 of 2023** the Hon'ble Court has been pleased to observe that initiation of the criminal process for oblique purposes is bad in law and amounts to abuse of process of law.

21. In Delhi Race Club (1940) Ltd Vs. The State of Uttar Pradesh, Criminal Appeal No. 3114 of 2024 the Hon'ble Supreme Court has been pleased to observe that:

"The Court has time and again reminded that summoning of an accused in a criminal case is a serious matter. Criminal Law cannot be set into motion as a matter of course. Where a jurisdiction is exercised on a complaint petition filed in terms of Section 156(3) or Section 200 of the CrPC, the Magistrate is required to apply his mind. In Mehmood UI Rehman Mohammad V. Khazir Tunda reported in (2015) 12 SCC 420, this Court held that the satisfaction on the ground for proceeding would mean that the facts alleged in the complaint would constitute an offence, and when considered along with the statements recorded, would, prima facie, make the accused answerable before the court. In Sunil Bharti Mittal Vs. CBI (2015) 4 SCC 609, this Court interpreted the expression "sufficient grounds for proceeding" and held that there should be sufficiency of materials against the

accused concerned before proceeding under Section 204 of the CrPC.”

22. In **V.Y. Jose & Anr. Vs. State of Gujarat & Anr.** Reported in **(2009) 3 SCC 78** the Hon’ble Supreme Court has been pleased to lay down as follows:-

“There exists a distinction between a pure contractual dispute of civil nature and an offence of cheating. Although breach of contract per se would not come in the way of initiation of a criminal proceeding, there cannot be any doubt whatsoever of that in absence of the averments made in the complaint petition wherefrom the ingredients of an offence can be found out, the court should not hesitate to exercise its jurisdiction under Section 482 of the Code of Criminal Procedure.

A matter which essentially involves a dispute of a civil nature should not be allowed to be the subject matter of a criminal offence, the latter being not a shortcut of executing a decree which is non-existent. The Superior courts, with the view to maintain purity in the administration of

justice, should not allow abuse of the process of the court."

23. Needless to mention, each case has to be judged by its own merits. After making a detailed study of the judicial decisions cited by both the parties it appears that the above solemn legal principle is also to be followed in this case. The essence of the judicial decisions as cited above is that the High Court should consider the factual aspects of the case in hand scrupulously and with circumspection. It is also highlighted from the combined study of the said decisions that a wrong may have colour of civil disputes and also of criminal texture and in that event the court should consider what is the pre-dominant nature of the litigation. The High Court, in exercising power under Section 482 of Cr.P.C., should not hold a mini trial of the case and if the allegations are pre-dominantly of civil, the court should quash the complaint after opening the door of civil forum. Therefore, the question whether or not the petition under Section 482 of Cr.P.C. is required to be allowed, is entirely dependent upon the factual matrix in the complaint and also other materials on record including the solemn affirmation of the complainant and her witnesses recorded under Section 200 of the Cr.P.C.

24. The factual matrix of the complaint of the opposite party no. 2 discloses, inter alia, that previously there was an agreement for development of a site on conditions that 60% of the constructed building would come

within the allocation of the opposite party no. 2 and the petitioner would get 40% of the share of the said building or the equivalent financial value of such share. Ultimately, the said agreement dated 01.03.2017 was not fruitful although a sum of Rs. 25,00,000/- was paid to the petitioner by the opposite party no. 2 through cheques. Subsequently an agreement for cancellation of the aforesaid agreement dated 01.03.2017 was executed on 04.01.2020 between the petitioner and the opposite party no. 2 stipulating that the petitioner shall pay a sum of Rs. 80,00,000/- which sum will include Rs. 25,00,000/- given by the opposite party no. 2 to the petitioner on the basis of the agreement dated 01.03.2017. It appears that the relevant complaint case under Section 420/406 of IPC was initiated on the grounds, inter alia, that the petitioner failed to respect the agreement dated 04.01.2020.

25. Being unable to lodge an FIR before the concerned police station the opposite party no. 2 filed a petition before the Learned Additional Chief Judicial Magistrate, Alipore, South 24 Parganas praying for a direction upon the concerned police station to treat the complaint as an FIR and to start an investigation under the Code of Criminal Procedure. The said prayer was turned down by the Learned Additional Chief Judicial Magistrate and by a detailed order dated 20.04.2022 converted the said case to a private complaint after taking cognizance thereof and transferred the case to the Learned Judicial Magistrate, 7th Court, Alipore, South 24 Parganas for proceeding under Section 200 of Cr.P.C. Thereafter the Learned Judicial Magistrate, 7th Court, Alipore had examined the complainant Bulu

Majumder and thereafter postponed the issuance of process and called for a report from the concerned police authority. After receiving the police report which intimated that there was no criminality involved in the matter the concerned Judicial Magistrate has directed to issue process against the present petitioner by an unspeaking order.

26. I have gone through the said unspeaking order dated 01.12.2022 by which the Learned Judicial Magistrate directed to issue process against the accused. Prior to passing of such order dated 01.12.2022 the said court had also passed an order dated 26.07.2022 which is as follows:-

“The record is put up by petition.

Complainant is presented by filling hazira.

Initial deposition of the complainant namely, Bulu Majumder is taken on S.A. under Section 200 Cr.P.C.

Ld. Advocate on behalf of the complainant also files documents for perusal and consideration.

Heard Ld. Advocate for the complainant. Perused the available materials on record, I find that for proper adjudication of the case, issue of process against the accused is postponed u/s 202 of Cr.P.C.

Hence, it is ordered that O/C Netaji Nagar P.S. is directed to investigate about the alleged offence and submit a report.

Petitioner is directed to furnish a copy of the complaint petition immediately,

Fixing 01.12.2022 for police report.

Let the copy of the order be sent to O/C Netaji Nagar P.S. for compliance and report.”

27. The said order dated 26.07.2022 discloses that on that day the complainant/opposite party no. 2 Bulu Majumder was examined on solemn affirmation under Section 200 of Cr.P.C. and after hearing the learned counsel for the complainant and perusing the documents filed on behalf of the complainant, the learned court opined that for the purpose of proper adjudication of the case issue of process against the accused is postponed under Section 202 of Cr.P.C. and the court directed the Officer-in-Charge of the concerned police station to submit report after an enquiry.

28. It is further found that on 01.12.2022 the court received and perused the police report which discloses no criminality involved in the matter but the Learned Judicial Magistrate has passed the following order on 01.12.2022:-

“Today is fixed for Awaiting Report from the concerned P.S.

Complainant files hazira.

A report is received from the concerned P.S.

Considering the materials, I am of the view that a prima facie triable case punishable u/s 420/406 of I.P.C has been established against the accused person namely, Sankar Mondal.

Issue process against the accused person at once.

Hence, complainant is directed to file the requisites at once.

To 04.04.2023 for appearance and S.R.”

29. Needless to mention, the above order does not specify the reasons as to why the Learned Judicial Magistrate thought it fit to issue process against the accused particularly when the said learned court refused to issue process on 26.07.2022 on the basis of the complaint, documents and solemn affirmation of the complainant. From the order dated 26.07.2022 it appears that the Learned Judicial Magistrate thought it fit to receive an enquiry report from the police and thereafter to decide whether issue of process will be done or not. On 01.12.2022 when the police report discloses that the dispute is of civil nature and no criminality was involved in the dispute then as to why Learned Judicial Magistrate issued such process against the accused, the same is not clear. Absence of reasoning as to why the Learned Judicial Magistrate shifted his stance from his earlier decision on 26.07.2022, particularly when the relevant police report discloses the dispute is of civil in nature, makes the order absolutely unreasonable and imprudent. The order dated 01.12.2022 is clearly unacceptable. The district and sub-divisional courts are always advised to write a reasoned order, since failing to do so indicates that there was no application of mind in passing the relevant judicial orders.

30. However, I have gone through the complaint lodged by the complainant Bulu Majumder and I have also taken into consideration the solemn affirmation of the said complainant Bulu Majumder which was recorded by the Learned Judicial Magistrate, 7th Court, Alipore on 26.07.2022. The said solemn affirmation of the complainant is as follows:-

“I am Bulu Majumder, I have filed this case against Shankar Mondal, Shankar Mondal took Rs. 25,00,000/- in the year 2017 on the basis of an Agreement that he will give me back Rs. 80,00,000/- in the year 2020. He issued Cheque bearing no. 106734 and 106735 both dated 20.02.2020 amounting to Rs. 30,00,000/- and Rs. 10,00,000/- respectively, both drawn on Central Bank of India by the accused in favour of B.B. Constructions and my son Abhijit Majumder respectively. Wherein I wanted to present the cheques for encashment the accused person requested me not to present the cheques for encashment. The accused person did not return back my money. I informed the matter before local Police Station. I have also informed

the superior Police authority. Police did not take any action. I am praying for relief as per law.”

31. From the above, it is revealed that the complainant has lodged the complaint as the petitioner was not returning back Rs. 80,00,000/-to her. She has further stated that although the petitioner issued two cheques in favour of herself and her son amounting to Rs. 30,00,000/- and Rs. 10,00,000/- respectively but she was requested not to present those cheques for encashment and in this way the accused was refusing to return back her money. Therefore, the periphery of the said complaint is very small in the sense that the complainant has filed the relevant complaint only because the petitioner had failed to pay Rs. 80,00,000/- as agreed upon on 04.01.2020. There is no allegation in the said agreement dated 04.01.2020 that the complainant was cheated by the petitioner excepting the statement that both the parties mutually agreed to cancel the agreement dated 01.03.2017. So the allegation against the petitioner is that in spite of his undertaking in the form of an agreement dated 04.01.2020 the petitioner is not paying Rs. 80,00,000/- which includes Rs. 25,00,000/- paid by the opposite party no. 2/complainant to the petitioner by virtue of the first agreement dated 01.03.2017. It appears that the nature of the allegation is pre-dominantly civil, and efficacious remedy for such allegation is available in the civil forum. The issue of non-payment of agreed dues cannot be settled in criminal courts in view of the plethora of judicial decisions of the Hon'ble Apex Court. Therefore, as the allegations of the complainant relate to the agreement dated 04.01.2020 only, I find that taking cognizance for

commission of offence punishable under Section 406 and 420 of IPC and the subsequent orders thereto were not the results of proper application of mind and as such, allowing to continue the relevant proceeding in the court of Judicial Magistrate, 7th Court, Alipore, South 24 Parganas would be a sheer abuse of process of court and accordingly I quash the entire proceedings in connection with AC 995 of 2022 pending before the aforesaid court of Judicial Magistrate with immediate effect. However, that will not prevent the petitioner from taking appropriate steps in other forums in accordance with law to pursue her remedy.

32. The instant revisional application is, thus, allowed on contest. No costs. Accordingly, CRR 1232 of 2023 is disposed of.

33. Urgent photostat certified copies of this Judgment, if applied for, be supplied to the parties on compliance of all necessary formalities.

(APURBA SINHA RAY, J.)