<u>**IN THE HIGH COURT AT CALCUTTA**</u>

<u>**CRIMINAL REVISIONAL JURISDICTION**</u>

<u>**APPELLATE SIDE**</u>

<u>**Present:-**</u>

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRR NO.1516 of 2022

M/S. NEWAMPS TECHNOLOGIES LLP & ORS.
VS.
SMT. KAVERI BHAR

For the Petitioners	:	**Mr. Masudur Rahaman Paik, Adv.** **Mr. Safikul Islam, Adv.**
For the Opposite Party	:	**Mr. Ashis Kumar Chowdhury, Adv.** **Mr. Babhru Bahan Bera, Adv.** **Mr. Sudip Jana, Adv.** **Mr. Rohan Paul, Adv.**
Last heard on	:	**15-12-2025.**
Judgement on	:	**15-12-2025.**
Uploaded on	:	**17-12-2025.**

<u>**CHAITALI CHATTERJEE (DAS), J. :-**</u>

1. This is an application under Section 482 of the Code of Criminal Procedure, 1973 filed for quashing of an order dated March 16, 2022 passed by the learned Metropolitan Magistrate, 18th Court, Calcutta, in case no.CN/38/2022.

2. The fact of the case in a nutshell is that a complaint has been lodged by the opposite party before the Court of Additional Chief Metropolitan Magistrate, Calcutta, alleging against the present petitioners that the complainant was engaged as a consultant with the limited liability partnership firm namely M/s. Newamps Technologies LLP. Sometime in the year 2019, the petitioners visited the complainant through their common associates and intended to have an urgent business loan to meet up certain funds of their said partnership business and also represented the complainant that within a very short period that entire amount of the said business loan would be repaid and one declaration was made by one of the partners being the present petitioner no.2 herein stating inter alia that the said firm will take a sum of Rs.2,00,000/- from the complainant/petitioner for the said business purpose as short term interest free loan .It was agreed that the entire amount would be repaid within August 05, 2019 for which one post-dated cheque no.267799 dated 05-08-2019 for Rs.2,00,000/- drawn on Indusind Bank Limited, Kasba Branch, Kolkata was given with the condition that in the event of failure to pay the amount within the stipulated period, then interest @ 12% per annum to be payable to the complainant until repayment of the said amount. It was further alleged that being duped and deceived by his said apparent veil of honesty and moved by his repeated requests and persuasions, the petitioner also agreed to provide them a short term loan provided to repay the loan without any default. After a continuous follow-up by the complainant and his men from time to time, all the accused persons systematically deferred the matter of making payment of the said dues by showing certain causes best known to them and the accused persons also assured the complainant that they will abide by each and every terms and conditions. The present petitioners also assured the complainant that the security cheque will not be deposited as they will make payment within a very short period as they are still facing serious monetary problem and in that manner, the petitioners took time again and again with the assurance that the said cheque will be dishonoured if deposited to the bankers. Lastly, when it was found that no repayment made on behalf of the present petitioners and also they were forced not to place the cheque in question for encashment, the instant complaint under Section 200 of the Code of Criminal Procedure 1973 was lodged.

3. The learned Court examined the complainant under Section 200 of the Code of Criminal Procedure and also enquired by examining the documents and perused the deposition of the complainant, petition of complaint and the materials on record and was of the view that sufficient materials exist against the present petitioners under Section 406/420/120B of the Indian Penal Code and, accordingly, directed to issue process against the present petitioners under the aforesaid sections. The petitioners being the FIR named accused persons have come up before this Court for quashing of the said order of issuance of process.

4. Learned Advocate for the petitioners submits that there is no ingredient to attract Sections 406/420/120B of the Indian Penal Code as there exists a business transaction and such loan was taken for a commercial transaction and a substantial amount has been refunded and, therefore, there is no *mens rea* for cheating excepting the delay in repayment of the loan. That apart, the transaction was contractual and if any liability accrued, that amounts to civil liability and this complaint has been filed giving a cloak of criminal intent when the matter pertains to a civil dispute.

5. Learned advocate for the Opposite Party, on the other hand, submits that there is clear deception from the initiation as the loan was accepted with the condition that the loan be repaid within a certain period of time, but they failed to repay the same and also not accepted about taking of the loan. That apart, the complainant was forced not to place the cheque and continuously assured of repayment. Therefore, the learned court rightly took the cognizance and on enquiry of the documents as well as considering the examination of the complainant was pleased to pass such order of issuance of process and at this stage, prima facie, certain material exists to constitute the offences alleged for which he must face the trial . It is, therefore, submitted that this revisional application should be dismissed.

6. Learned Advocate for the opposite party has relied upon a decision of a coordinate Bench of this Court where the proceeding was allowed considering the examination of the complainant and the Magistrate has enquired about the documents, the process should not be quashed at this stage. On perusal of the said judgment, it appears that the same pertains to Section 138 of the Negotiable Instruments Act where the cheque was placed and that could not be encashed and, accordingly, such proceeding was initiated. Therefore, this is absolutely distinguishable with the present case.

7. Heard the submissions advanced by learned Advocates for the parties. On careful perusal of the contents of the complaint filed under Section 200 of the Code of Criminal Procedure, it is clear that the matter relates to a loan, sanctioned in favour of the present petitioners by the complainant of Rs.2,00,000/- and an undertaking was also entered into between the parties with the stipulated time to repay the loan with interest to be accrued thereon by August 05, 2019. From the contents of the complaint, it is seen that in terms of the declaration further condition was incorporated that in case of failure to pay such amount within the stipulated period, an interest @12% per annum to be paid to the complainant until repayment of the said amount. Not only that, a cheque drawn on Indusind Bank Limited of Rs.2,00,000/- was also deposited as a security deposit therefore question of denial of acceptance of loan as alleged does not arise. Nothing can be found from the complaint that the said cheque was ever placed for encashment and no iota of material is found giving the specific date and the mode and manner whereby force was applied upon the complainant for not placing such cheque for encashment. The condition stipulated in the agreement itself manifests that in case of violation of such undertaking, an interest will be imposed @12% which will be till repayment of the said amount and, therefore, this clause itself is a glaring example that the matter is of civil in nature and the appropriate forum would be a civil court and an appropriate remedy would be a money suit in this case.

Time and again the Hon'ble Apex Court on this issue has discouraged to entertain the complaint lodged under Sections 420/406 of the IPC arising out of the disputes which are purely civil in nature but giving a cloak of criminality.

8. In the case of ***Sarabjit Kaur Vs. State of Punjab & Anr.[1],*** it was observed that breach of contract does not give rise to criminal prosecution of cheating unless fraudulent or dishonest intention is shown right from the beginning of such transaction. In the case of ***V. Y. Jose & Anr. Vs. State of Gujarat & Anr.[2],*** the Hon'ble Supreme Court explicitly states that a contractual dispute for breach of a contract per se should not lead to initiate a criminal proceeding. The ingredient of cheating as defined under Section 415 of the Indian Penal Code is to be in existence showing fraudulent or dishonest intention of making promise or misrepresentation. That apart, in case of ***Delhi Race Club (1940) Ltd. & Ors. Vs. State of Uttar Pradesh[3],*** it was held that there is fine distinction between the incident of criminal breach of trust and cheating and observed that two are anti-ethical in nature and cannot co-exist together.

9. Therefore, in view of the above observations of the Hon'ble Supreme Court and the nature of the complaint made under Section 200 of the Code, that too, after three years from the date as agreed to repay the said loan, this Court is of the view that there remains no sufficient material to constitute an offence

[1] 2023 5 SCC 360
[2] 2009 3 SCC 78
[3] 2024 10 SCC 690

under Section 421/406 IPC and also no reason to allow the proceeding to continue. The learned Magistrate utterly failed to apply his judicial mind by taking cognizance only considering the evidence of the complainant and thereby passed the order issuing process without giving any cogent reasons for the same. Therefore, the complaint as filed itself is not maintainable and, accordingly the entire proceeding pending before the Learned Magistrate loses its force and is liable to be quashed.

Conclusion

10. Hence this revisional application stands allowed. The proceeding pending before the learned court is hereby quashed.

11. All parties shall act on the server copies of this judgment duly downloaded from the official website of this Court.

12. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]