

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

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1572 of 2022

**Tarun Kumar Tripathi & Anr.
Vs.
Kaushik Dutta**

For the Petitioners : Mr. Rohit Das, Adv.
Mr. Indradip Das, Adv.
Ms. Kishwar Rahman, Adv.
Ms. Divya Tekriwal, Adv.

For the State : Mr. Santanu Deb Roy, Adv.

Hearing concluded on : 14.01.2025

Judgment on : 22.01.2025

Shampa Dutt (Paul), J.:-

1. The present revisional application has been preferred praying for quashing of all proceedings in C.N. 39 of 2020, under Sections 420/120B of the Indian Penal Code, 1860, pending before the Learned 8th Metropolitan Magistrate at Calcutta.
2. **The allegations in the written complaint against the petitioners herein are that:-**

“..... they entered into an agreement for sale and purchased Shalimar Paints. The accused persons were the

purchasers and the complainant was seller. It is stated that the accused persons after receiving the goods failed to make the payment....”

- 3. In *Naresh Kumar Vs The State Of Karnataka., Criminal Appeal No. of 2024, (Arising Out Of SLP (Crl.) No. 1570 of 2021), on 12th March, 2024*, the Supreme Court held as follow:-**

*“6. In the case of *Paramjeet Batra v. State of Uttarakhand* (2013) 11 SCC 673, this Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure 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 happened in this case, the High Court should not hesitate to quash the criminal proceedings to prevent abuse of process of the court.” (emphasis supplied) Relying upon the decision in *Paramjeet Batra (supra)*, this Court in *Randheer Singh v. State of U.P.* (2021) 14 SCC 626, observed that criminal proceedings cannot be taken recourse to as a weapon of harassment. In *Usha Chakraborty & Anr. v. State of West Bengal & Anr.* 2023 SCC OnLine SC 90, relying upon *Paramjeet Batra (supra)* it was again held that where a dispute which is essentially of a civil nature, is given a cloak of a criminal offence, then such disputes can be quashed, by*

exercising the inherent powers under Section 482 of the Code of Criminal Procedure.

7. Essentially, the present dispute between the parties relates to a breach of contract. A mere breach of contract, by one of the parties, would not attract prosecution for criminal offence in every case, as held by this Court in Sarabjit Kaur v. State of Punjab and Anr (2023) 5 SCC 360. Similarly, dealing with the distinction between the offence of cheating and a mere breach of contractual obligations, this Court, in Vesa Holdings (P) Ltd. v. State of Kerala, (2015) 8 SCC 293, has held that every breach of contract would not give rise to the offence of cheating, and it is required to be shown that the accused had fraudulent or dishonest intention at the time of making the promise.

8. In the case at hand, the dispute between the parties was not only essentially of a civil nature but in this case the dispute itself stood settled later as we have already discussed above. We see no criminal element here and consequently the case here is nothing but an abuse of the process. We therefore allow the appeal and set aside the order of the High Court dated 02.12.2020. The criminal proceedings arising out of FIR No.113 of 2017 will hereby stand quashed.”

4. The dispute in the present case arises out of non-payment of dues due to the materials not being of the quality assured. It appears from documents annexed that the accused persons had ordered Asian Paints but were allegedly supplied Shalimar Paints. As such, it appears that **there is a dispute regarding the nature/type of goods supplied and thus subsequent payment.**
5. The dispute in the present case arises clearly out of a business transaction and is civil in nature.
6. **C.R.R. 1572 of 2022 is accordingly allowed.**

7. The proceeding in C.N. 39 of 2020 under Sections 420/120B of the Indian Penal Code, 1860, pending before the Learned 8th Metropolitan Magistrate at Calcutta, **is hereby quashed in respect of the petitioners namely Tarun Kumar Tripathi and Shailendra Kumar Tripathi.**
8. All connected applications, if any, stands disposed of.
9. Interim order, if any, stands vacated.
10. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
11. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]