

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 949 of 2015

**Tapan Dhar & Ors.
Vs.
The State of West Bengal & Anr**

For the Petitioners : Mr. Milon Mukherjee, Ld. Sr. Adv.
Mr. Kunal Ganguly
Mr. Kaustav Banerjee

For the State : Ms. Amit Gaur, Ld. Sr. Govt. Adv.

Heard on : 12.09.2025

Judgment on : 28.11.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners herein have sought for quashing of the proceeding being G.R case no. 1655 of 2014, pending before the court of learned Additional Chief Judicial Magistrate, Serampore under section 406/120B/468/506/34 of the Indian Penal Code.

2. The opposite party no. 2 herein filed a complaint before the Magistrate for a direction in terms of section 156(3) of the Code of Criminal Procedure upon the concerned police station to treat petition of complain as FIR and to

start investigation. Upon learned magistrate's direction instant Uttarpara police station case no. 290/ 2014 was started.

3. The allegation levelled in the said complaint *inter alia* to the effect that the opposite party no. 2 is one of the Directors of M/S A.D Nirman Pvt. Ltd and as a promoter he had to take loans from different person including the petitioner no. 1 herein and in turn he had to execute two agreements, showing payment of Rs.3,90,000/- for a flat measuring 150 sq. ft. It is stated that after completion of multi-storeyed building, the opposite party no. 2 had to take shelter at a different place due to some other litigations but before leaving the site area, due to inducement made by petitioner no. 1, the opposite party no. 2 herein/complainant executed one power of attorney on 25.08.2006 in the name of petitioner no. 2 in respect of two flats measuring 860 sq. ft. in the first floor and a flat measuring 600 sq. ft. in the second floor in the said multi-storeyed building raised by the opposite party No.2. Said power of attorney was executed on the basis of cordial relationship with an understanding that the consideration price which will be received after selling the said property shall be deposited in the bank account of opposite party no. 2. It is alleged that in collusion with each other, the petitioner no. 1 and 2 in order to grab the said property on the strength of the aforesaid power of attorney executed two sale deeds in favour of petitioner no. 3 and 4 and the petitioner no. 3 and 4 thereafter without depositing any consideration amount in the account of opposite party no. 2 had sold the said two flats in favour of accused no. 5 namely Shipra Bera. The opposite party no. 2 thereafter came up with the case that the said two flats have been illegally sold taking advantage of their cordial relationship.

4. Being aggrieved by the impugned proceeding Mr. Milan Mukherjee learned Senior counsel appearing on behalf of the petitioners submits that the petitioners are in no way connected with the commission of the alleged offence and they have been falsely implicated out of garage and ill motive. He further contended that on 10.02.2001 two agreements were executed by three person on behalf of M/S A.D. Constriction with the petitioner no. 1 and among the aforesaid two agreements, the agreement which was executed by the petitioner no. 2 relates to purchase of a shop room in the ground floor and for the purpose of executing said agreement, an amount of Rs.1,60,000/- was paid to the developer out of a total consideration amount of Rs. 1,75,000/-. He further submits that the other agreement executed in between the opposite party no. 2 and petitioner no. 1 herein pertains to purchase of a flat on the 2nd floor.

5. Thereafter on 15.08.2002 another two agreements were executed in between the petitioner no. 1 and 2 separately with the directors of M/S A.D. Nirman Pvt. Ltd. By one agreement dated 15.08.2002, the petitioner no. 1 entered into an agreement with the said developer whereunder the agreement dated 10.02.2001 executed by petitioner no. 2 was cancelled and the petitioner no. 2 agreed to purchase a flat measuring 600 sq. ft. on the 2nd floor of the said premises. In the said agreement it was declared that the petitioner no. 2 in order to purchase the said flat had already paid the entire consideration amount of Rs. 3,90,000/- to the directors of M/S A.D. Nirman Pvt. Ltd. By another agreement dated 15.08.2002, the petitioner no. 2 cancelled her earlier agreement dated 10.02.2001 and entered into a fresh agreement for purchasing a flat in the said premises measuring 85 sq. ft. on

the first floor of the premises after paying full consideration of Rs. 5,52,000/-. Since the opposite party no. 2 was not in a position to hand over possession of the flats to the petitioners two agreements were executed on 17.11.2004 between M/s A.D. Nirman Pvt Ltd. and the petitioner no. 1 and 2 separately wherein it was agreed that the opposite party no. 2 shall deliver possession of the flat within four months from the said date. Finally on 14.02.2005 an agreement was executed and it was agreed that the aforesaid two flats shall be handed over to the petitioner no. 1 and 2 within the stipulated period and it was also agreed that after receiving possession of the said flat, the purchasers/petitioner no. 1 and 2 shall be entitled to enter into agreement for sale in respect of their allocated two flats and shall be entitled to receive the consideration price.

6. In the aforesaid background, Mr. Mukherjee contended that therefore it is clear that the power of attorney was in harmony with the agreement between the petitioner no. 1 and 2 and the Directors of M/S A.D. Nirman Pvt. Ltd. and that the agreement dated 14.02.2005 was executed towards full and final settlement in between the parties and power of attorney was executed for granting the petitioner no. 2 with the liberty to transfer her property at her own will. The allegation made in the complaint that the petitioners have not deposited the sale consideration price in the account of opposite party no. 2 is baseless as it would be apparent from the agreements executed prior to the power of attorney that the petitioner no. 1 and 2 had paid the full consideration amount for the purchase of such flat.

7. Mr. Mukherjee further argued that the opposite party no. 2 herein never approached before any civil court for cancellation of the agreements or

the deed of sale and by suppressing the existence of above mentioned agreements, the complainant/opposite party no. 2 herein has initiated the impugned proceeding. It is also apparent that from 2001 till 2005 numerous agreements were executed by and between the parties for purchase of flats and payment of consideration amount to that effect, which the complainant deliberately suppressed. Moreover from the final report of the investigating agency it transpires that the opposite party no. 2 failed to produce original documents in support of his claim. The alleged power of attorney is a public document and the investigating agency would have obtained the same from the concerned office but they did not make any attempt to verify such document. Therefore he prayed for quashing the impugned proceeding.

8. In spite of service the private opposite party no.2 is not represented. Mrs Amita Gour learned counsel appearing on behalf of the State placed the case diary before the court and submits that there is sufficient material in the case diary to proceed with the case and it would not be proper to quash the impugned proceeding at its threshold without giving an opportunity to the State to place their argument before the court below in support of petitioners conviction.

9. I have considered submissions made by both the parties.

10. Opposite party no.2/*de facto* complainant is not represented in the instant case therefore, the uncontroverted factual aspect of the case as narrated by learned counsel for the petitioner is as follows:-

(a) That on 10.2.2021 two agreements were executed in between M/S A.D. Constructions being represented by the opposite party no.2 and the petitioner nos. 1 and 2 for purchase of a shop room on the ground floor of 75, Charakdanga Street, Uttarpara for a consideration amount of Rs. 1,75,000/-. Out of the said consideration amount Rs. 1,50,000/- was paid to the opposite party no.2.

(b) Later on, two further agreements were executed on 15.8.2002 whereby the aforesaid two agreements dated 10.2.2001 were cancelled and it was agreed between the parties that the petitioners nos. 1 and 2 shall purchase two flats on the 1st floor and 2nd floor of the said building. From the said agreements it would transpire that the entire consideration amount to the tune of Rs. 3,90,000/- and Rs. 5,52,500/- were duly paid to the opposite party no.2.

(c) That the opposite party no.2 was not able to hand over possession of the flats to the petitioners within due time. For such reasons two further agreements dated 17.11.2004 were executed by the opposite party no.2, whereby the opposite party no. 2 agreed to hand over possession of the flats within a period of four months.

(d) That although the opposite party no.2 agreed to deliver possession within four months from 17.11.2004 but he failed to do so. For such reason the opposite party no.2 further executed an agreement on 14.2.2005 to hand over possession of the flat within the stipulated period. It was further agreed that after receiving the flats the petitioners shall be entitled to enter into agreements for sale in respect of their allocated two flats.

(e) After the stipulated period, petitioners were delivered possession of the said flats in 2005. From 2005 till 2014, no dispute was raised by the opposite party no.2 but after the rise in property value the opposite party no.2 lodged the criminal complaint with intention to extort money.

11. The aforesaid unchallenged facts and circumstances of the case demonstrates that the alleged power of attorney as well as the sale deed executed by dint of said power of attorney was never under challenge before any civil court of law nor said deeds/documents have ever been declared as null void by any competent court of law.

12. It is quite surprising that the complainant in his complaint have suppressed the factum of execution of several agreements between the parties from 2001 to 2005. According to petitioner, in terms of agreement dated 14th February, 2005, the controversy was fully and finally settled and possession was delivered to the petitioners. It is also curious that complainant did not take any action against the petitioners from 2005 till 2014 even though according to FIR accused no.2 sold property by dint of said power of attorney in the year 2008. No satisfactory explanation has been offered in the complaint for making such inordinate delay in lodging the FIR.

13. Now from the final report submitted by the investigating agency in the form of charge-sheet, it appears that the petitioners have been charge sheeted under section 420/406/120B and section 468/506/34 IPC.

14. At first it needs to be mentioned that section 420 and 406 of IPC deals with two distinct offences which cannot run simultaneously in respect of self same cause of action. Supreme Court ***in Delhi Race Club Ltd. and Ors. Vs. State of U.P. and anr.*** reported in **(2024) 10 SCC 690** clearly laid down the aforesaid proposition of law in the following paragraph:-

41. *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.*

42. *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.*

43. *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.*

15. Section 420 of the IPC speaks of an act where the accused since inception acted with the intention of defrauding a person while section 406 provides misappropriation of the property after entrustment and obtaining dominion over the property and deceitfully uses the same for his personal gain. Therefore if the complainant wants to proceed against the petitioner under section 420 of the IPC, it is incumbent upon him to show that the

petitioners had the intention to defraud the opposite party since 2001. However the opposite party no. 2/complainant has deliberately suppressed the factum of such agreements which revealed that the opposite party no. 2 had already received the consideration amount for the flats and for which the petitioners cannot be arraigned for commission of any offence punishable under section 420 of the IPC.

16. Similarly section 405 of the IPC states that whoever being entrusted with property or with dominion over property dishonestly misappropriates or converts to his own use that property or dishonestly uses or disposes of that property in violation of direction of any law or of any legal contract or wilfully made to suffer any other persons so to do, commits criminal breach of trust. In the instant case the entrustment of the petitioner no. 2 arose allegedly after execution of power of attorney which is not true in view of the fact that dominion of the petitioner no. 2 over the flats in questions arose on the basis of agreements executed in 2002, 2004 and 2005 upon payment of consideration amount to the opposite party no. 2. The opposite party no. 2 with *mala fide* intention after a lapse of more than 8 years lodged the instant complaint.

17. So far as the allegation under section 468 is concerned, it provides punishment for forgery for the purpose of cheating. In order to implicate someone as an accused, the two ingredients which are required to establish are

- (i) Committing an act of forgery and
- (ii) Committing act of cheating using the forged document

18. In the instant case from the fact that no document has been alleged to have been forged and has been relied upon by the investigating agency, the act of cheating using any forged document is not attributable. Moreover as stated above the act of cheating as required under section 415 of the IPC is completely absent.

19. From the aforesaid facts it is palpably clear that in the present case though the complainant alleged that the entrustment of the property arose after execution of power of attorney but the documents clearly state that the dominion of the petitioner over the flat is question arose on the basis of agreement executed in 2002, 2004 and 2005 upon payment of consideration amount to the opposite party no.2. The allegation of criminal intimidation has neither been alleged nor has been substantiated during investigation, therefore section 506 has got no application in the present context.

20. In ***Bharala Bharat Kumar Vs. State of Telengana***, reported in **(2017) 9 SCC 413** it was held that the extraordinary power under article 226 or inherent power under section 482 of the criminal procedure code can be exercised by the High court either to prevent abuse of process of the court or otherwise to secure the ends of justice. Since the allegation made in the complaint and the outcome of investigation as found in the charge sheet even if taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out the case against the accused and when the uncontroverted documents submitted by the petitioners does not disclose any case against the petitioners and when it is apparent that the criminal proceeding has been manifestly attended with *mala fide* and with

ulterior motive to realise more consideration price, the proceeding is liable to be quashed.

21. Therefore, I see no justifiable reason for the IO to rope in the petitioners by filing charge sheet. IO during investigation only recorded statement of 4/5 interested witnesses under section 161 of the Cr.P.C. and the result of investigation does not suggest any offence of forgery or cheating or criminal breach of trust but they have mechanically and without application of mind have submitted the charge sheet.

22. In such view of the matter **CRR 949 of 2015** is allowed.

23. The impugned proceeding being GR case No.1655 of 2014 presently pending before learned Additional Chief Judicial Magistrate, Seramore arising out of Uttarpara P.S. case no. 290 of 2014 dated 21.08.2014 is hereby quashed.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)