

IN THE HIGH COURT AT CALCUTTA

Criminal Revisional Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1480 of 2021

Commscope India Pvt. Ltd.

Vs.

State of West Bengal & Ors.

For the Petitioner

: Mr. Sandipan Ganguly, Sr. adv.
Mr. Rohit Das,
Mr. Indradip Das,
Mr. Kishwar Rahman,
Mr. Karan Dudhawala,
Ms. Divya Tekriwal.

For the Opposite Party Nos. 2 to 4

: Mr. Milon Mukherjee, Sr. adv.
Mr. Daanish Haque,
Mr. Zohaib Rauf,
Mr. Abdul Zahid.

Hearing concluded on : 28.08.2025

Judgment on : 25.09.2025

SHAMPA DUTT (PAUL), J. :

1. The revisional application has been preferred praying for quashing of the order dated March 23, 2021 passed by the learned Chief Metropolitan Magistrate, Calcutta in Complaint Case No. C/19/2021 rejecting the petition under Section 156(3) of the Code of Criminal Procedure, 1973.
2. The petitioner's/complainant's case is that the Petitioner had dealings with the Opposite Party No. 2, through its Directors,

Ram Kumar Singhee and Mr. Damodar Das Singhee, the Opposite Parties No. 3 and 4 respectively, over the past 7 years during which time, the Petitioner routinely placed orders for copper wires at the market rate prevailing on the day of the order being placed from time to time.

- 3.** In the month of February 2020, the Petitioner was approached by the Opposite Parties No. 2 to 4, with a new proposal. The Opposite Parties promised to supply copper wires at pre-fixed agreed prices with delivery set at a future date by giving a proposal of hedging the prices of the raw copper with London Metal Exchange (hereinafter for the sake of brevity referred to as "LME"), i.e., raw copper would be booked for future supply at pre-fixed prices with LME by the Opposite Party No. 2 on behalf of the Petitioner, and after taking supply of the raw copper at its factory, Opposite Party would manufacture the necessary copper wire from the same and supply the same to the Petitioner at pre-fixed prices. Given that raw copper prices were relatively low at that point of time, the Opposite Parties No. 2 to 4 were successful in painting a rosy picture representing that copper prices were expected to only increase in the future and therefore the Petitioner would do well to enter into such advance/forward contract at fixed price for purchase of copper wires in the future, and by such representations, the Opposite

Parties No. 2 to 4 induced the Petitioner to enter into the aforesaid contract with the Opposite Party No. 2 and part with huge sums of money on the promise of future delivery of copper wires at pre-fixed agreed rates irrespective of any future increase or other fluctuation in raw copper prices at the time of delivery. The initial inducements made by the Opposite Parties No. 2 to 4 are encapsulated in the e-mails exchanged between the parties in the months of February and March, 2020, which are summarized herein below. Vide the e-mail dated February 22, 2020, the Opposite Party No. 3 categorically recommended the LME which according to the Opposite Party No. 3, "unlike any other metal exchange is considered as best platform to hedge the Non-Ferrous metal because of many reasons". The representation made by the Opposite Party No. 3 was to the effect that so far as raw copper is concerned, the Opposite Party No. 2 would be acting as more of a middle man who could be entrusted to book the copper through its LME Category - I broker in London with assured delivery from LME, and thereafter the Opposite Party No. 2 would make the copper wires out of such raw copper and supply the same to the Petitioner. The said fact is further borne out by the detailed steps of hedging as elaborated in the e-mail dated February 22, 2020 wherein:-

- i. There is a clear acknowledgment that the margin money was being entrusted to the Opposite Party no. 2 for specific purpose of booking of raw copper and which was to be released upon 100% payment for physical delivery.
 - ii. This is further borne out by the important notice contained in the said e-mail that "Tamra is only pricing on buyer instruction and all profit and loss arising out of future pricing is to the buyer account only".
 - iii. As would be revealed from the subsequent e-mails, the Opposite Parties No. 2 to 4 had no intention of taking any of the above steps and had intention to cheat the Petitioner, from day one, though the Petitioner was unaware of such intention at that point of time.
- 4.** The Opposite Party No. 2 raised three pro-forma invoices on March 11, 2020, against which the Petitioner paid an advance of Rs.1,63,15,373.25 (Rupees One Crore, Sixty-Three Lakhs, Fifteen Thousand, Three Hundred and Seventy-Three and Twenty-Five Paise Only) on the same day and vide two separate e-mails dated March 18, 2020 and another e-mail dated March 23, 2020 demanded immediate payment of margin money and additional margin money. Thereafter, the additional margin money demanded was also paid by the Petitioner.

5. Subsequently, several communications between the parties to place via email and finally it is stated that the accused company on January 8, 2021, the Opposite Party No. 3 wrote to the Petitioner informing the Petitioner as follows: "We regret to inform that Tamra is going through very difficult financial scenario and has proposed a recast of loan to our banks. The said proposal is under discussion past couple of months and its unfortunate that bankers are yet to finalize on our proposal.
6. The petitioner's/complainant's case raised on the said breach of terms and conditions as occurred upon between the parties.
7. The petitioner field an application under Section 156(3) before the learned CMM, Kolkata who on receiving a preliminary report of the enquiry from the concerned police station rejected the petitioner's application under Section 156(3) Cr.PC. The report submitted by the Hare Street Police Station on 21.03.2021 was considered by the Court while rejecting the application under Section 156(3) Cr.PC. The relevant extract from the said report is as follows:-

".....In the month of February, 2020, petitioner company entered into a 'hedging arrangement' with accused company Tamra Dhatu Udyog Pvt. Ltd. in respect of copper at agreed price with delivery set at a future date.

Amit Chakraborty alleged that the Director of the accused company, viz, Ram Kumar Singhee

induced the complainant company to pay Rs. 12,21,01,402/- with a promise to deliver 375 metric ton copper as per the agreed delivery schedule. And being induced by the promise of accused company, the petitioner company paid advance payment, out of that payment the accused company denied in making delivery of 248.84 metric ton valued Rs. 12,21,01,402/-.

In course of enquiry, petitioner submitted all the photocopies of email correspondence, purchase order, proforma invoices, credit notes, Bank statements, payment details and reconciliation table of outstanding quantity and deflection amount.

In course of enquiry, undergone the copies of relevant documents rendered by the petitioner company, it could be learnt that the accused company in several occasions communicated their promise to deliver copper in time and in process of time the accused company deviated from it's promise. Since date, the delivery of copper to a large extent is pending and transaction had ended since considerable period in spite of several communication.

On enquiry, it could be found that the allegation made by the petitioner is cognizable in nature, no criminal case was recorded in connection with the allegation made by the petitioner and proper investigation is needed to unearth the truth of the allegation.....”

8. The learned Magistrate on considering the said report held as follows:-

“.....Allegations pertain to non-delivery of goods against advance payment received in respect thereof. An advance payment of Rs 12,21,01,402 was made by the petitioner to the accused on the demand of the latter, for proposed supply of 248.84 MT of Copper at fixed prices. It has been claimed that after buying time on repeated occasions, the accused had flatly denied to make the supply, claiming that he never ever purchased or booked the Copper for supplying the same to the complainant. It appears from the enclosed documents, there were steady correspondences between the parties all the time over the issue of making advance payment and the delay in supply and it further appears that performance of the contract became difficult.

It does not appear that at any stage of the transaction the accused evaded the complainant or tried to part off with the advance deposit. Law is trite on the point that mere failure to pay up dues or honor any contractual obligation does not imply any criminal intention to cheat, unless there is some further overt act on the part of the accused showing some pre-existing intention to cause wrongful loss to the victim. However, such additional ingredient appears to be missing in loss to the instant case.

In my view, the facts and circumstances do not make out any clear cognizable offense so as to necessitate an order of police investigation u/s 156(3)

Cr.P.C. The dispute appears to be of a pure civil nature, not requiring any intervention under the criminal law. In view of the same, the prayer u/s 156(3) Cr.P.C is hereby rejected. Nor do the facts and circumstances require any judicial inquiry under the provisions of the Cr.P.C.

CMM
Chief Metropolitan Magistrate
CALCUTTA”

9. Learned counsel for the parties have filed their respective written notes along with judgments relied upon. Affidavits are on record.
10. On hearing the parties and considering the materials on record it appears that admittedly the parties in the present case had a business arrangement passed on an agreement and on the basis of the said agreement the parties had several business transactions.
11. It is the case of the petitioner that this is one transaction wherein the petitioner has suffered huge monetary loss.
12. The accused company having undertaken to provide goods to the petitioner at a certain rate could not do so.
13. It is the case of the petitioner that there was a clear intention to cause loss to the petitioner company it appears from the materials on record that prima facie no financial gain has been

made by the accused company herein by not providing the goods to the petitioner company as per undertaking.

14. The Supreme Court in ***Rikhab Birani & Anr. Vs State of Uttar Pradesh & Anr., 2025 SCC OnLine SC 823, decided on 16.04.2025***, held:-

“15. In Lalit Chaturvedi v. State of Uttar Pradesh, this Court quoted an earlier decision in Mohammed Ibrahim v. State of Bihar, wherein, referring to Section 420 of the IPC, it was observed that the offence under the said Section requires the following ingredients to be satisfied:

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.”

16. Reference was also made to the decision in *V.Y. Jose v. State of Gujarat* and it was observed:

“7. Similar elucidation by this Court in “V.Y. Jose v. State of Gujarat”, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract.

Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr. P.C. Section 482 of the Cr. P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in V.Y. Jose (supra) placed reliance on several earlier decisions in “Hira Lal Hari Lal Bhagwati v. CBI”, “Indian Oil Corporation v. NEPC India Ltd.”, “Vir Prakash Sharma v. Anil Kumar Agarwal” and “All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain”.

17. *This Court, in Delhi Race Club (1940) Limited v. State of Uttar Pradesh, highlighted the fine distinction between the offences of criminal breach of trust and cheating, observing that the two are antithetical in nature and cannot coexist simultaneously. Police officers and courts must carefully apply their minds to determine whether the allegations genuinely constitute the specific offence alleged.*

18. *In Kunti v. State of Uttar Pradesh, this Court referred to Sarabjit Kaur v. State of Punjab wherein it was observed that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep a promise will not be enough to initiate criminal proceedings. Thus, the dishonest intention on the part of the party who is alleged to have committed the offence of cheating should be established at the time of entering into the transaction with the complainant, otherwise the offence of cheating is not established or made out.*

19. *It is the duty and obligation of the court to exercise a great deal of caution in issuing process, particularly when the matter is essentially of civil nature. The prevalent impression that civil remedies, being time-consuming, do not adequately protect the interests of creditors or lenders should be discouraged and rejected as criminal procedure cannot be used to apply pressure. Failure to do so results in the breakdown of the rule of law and amounts to misuse and abuse of the legal process.*

20. *In yet another case, again arising from criminal proceedings initiated in the State of Uttar Pradesh, this Court was constrained to note recurring cases being encountered wherein parties repeatedly attempted to invoke the jurisdiction of criminal courts by filing vexatious complaints, camouflaging allegations that are ex facie outrageous or are pure civil claims. These attempts must not be entertained and should be dismissed at the threshold. Reference was made to a judgment of this Court in *Thermax Limited v. K.M. Johny*, which held that courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. Further, there has to be a conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate should carefully scrutinize the evidence on record and may even put questions to the complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course.*

21. Lastly, we would refer to another detailed judgment of this Court in *Sharif Ahmed v. State of Uttar Pradesh*, which draws out the ingredients required to establish an offence under Sections 406, 415, 420, 503 and 506 of the IPC in the following terms:

“36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the said property. Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. Clearly, the charge/offence of Section 406 IPC is not even remotely made out.

37. The chargesheet states that the offence under Section 420 is not made out. The offence of cheating under Section 415 of the IPC requires dishonest inducement, delivering of a property as a result of the inducement, and damage or harm to the person so induced. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. As per the investigating officer, no fraudulent and dishonest inducement is made out or established at the time when the agreement was entered.

38. An offence of criminal intimidation arises when the accused intendeds to cause alarm to the victim, though it does not matter whether the victim is alarmed or not. The intention of the accused to cause alarm must be established by bringing evidence on record. The word ‘intimidate’ means to make timid or fearful, especially : to compel or deter by or as if by threats. The threat communicated or uttered by the person named in

the chargesheet as an accused, should be uttered and communicated by the said person to threaten the victim for the purpose of influencing her mind. The word 'threat' refers to the intent to inflict punishment, loss or pain on the other. Injury involves doing an illegal act.

39. This Court in Manik Taneja v. State of Karnataka, had referred to Section 506 which prescribes punishment for the offence of 'criminal intimidation' as defined in Section 503 of the IPC, to observe that the offence under Section 503 requires that there must be an act of threatening another person with causing an injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. This threat must be with the intent to cause alarm to the person threatened or to do any act which he is not legally bound to do, or omit to do an act which he is entitled to do. Mere expression of any words without any intent to cause alarm would not be sufficient to bring home an offence under Section 506 of the IPC. The material and evidence must be placed on record to show that the threat was made with an intent to cause alarm to the complainant, or to cause them to do, or omit to do an act. Considering the statutory mandate, offence under Section 506 is not shown even if we accept the allegation as correct."

22. Significantly, this Court in Sharif Ahmed (supra) cautioned courts to check such attempts of making out a criminal case on the basis of vague and ex facie false assertions."

- 15. In *Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors.*, 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022), the Supreme Court held:-**

*“15. This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in **Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:*

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

*23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy* (1977) 2 SCC 699 held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :*

‘7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution

rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

*41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 which is to the following effect :*

'102. (7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.' Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report

was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. *The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :*

“102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order

of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

17. The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.**”

16. The present case falls under category 1, 3 and 7 of Para 102 of

Bhajan Lal (Supra).

- 17. The dispute in the present case relates to a business transaction.**
- 18. The dispute is clearly a civil dispute** and a case of breach of agreement.
- 19.** The materials on record, do not prima facie show presence of the ingredients required to constitute the offences alleged against the accuseds/opposite parties herein and as such the order under challenge dated March 23, 2021 passed by the learned Chief Metropolitan Magistrate, Calcutta in Complaint Case No. C/19/2021 rejecting the petition under Section 156(3) of the Code of Criminal Procedure, 1973, **being in accordance with law requires no interference by this Court.**
- 20. CRR 1480 of 2021 is dismissed.**
- 21.** All connected Applications, if any, stand disposed of.
- 22.** Interim order, if any, stands vacated.
- 23.** Copy of this judgment be sent to the learned Trial Court for necessary compliance.
- 24.** Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

[Shampa Dutt (Paul), J.]