IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

<u>Appellate Side</u>

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1638 of 2018

Kakarlapudi Venkata Madhava Varma

Versus

The State of West Bengal & Anr.

For the Petitioner	:	Mr. Ayan Bhattacharyya, Sr. Adv. Mr. S. Mondal, Adv. Mr. Manish Shukla, Adv.
For the Opposite Party No. 2	:	Mr. Satadru Lahiri, Adv. Mr. Rajib Mullick, Adv. Mr. Sonia Mukherjee, Adv. Mr. Biswaroop Ghosh, Adv.
Heard on	:	12.12.2025
Judgment on	:	12.12.2025

Ajay Kumar Gupta, J:

1. This instant Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) has been filed by the petitioner seeking quashing of the proceeding being Case No. CS/10505 of 2017 under Sections 406/420/34 of the Indian Penal Code, 1860 (in short IPC) pending before the Court of the Learned Metropolitan Magistrate, 19th Court at Calcutta, including the Order of Cognizance and order dated March 22, 2017 passed in connection thereof.

FACTS OF THE CASE

2. The factual matrix giving rise to the revisional application is as under: -

i. The petitioner is the Managing Director of Akash Dredging and Marine Services Pvt. Ltd. (hereinafter referred to as 'ADAMSPL') and he is involved in the day-to-day business affairs of the said company.

ii. The opposite party no. 2 herein is a non-banking financial company and a PSU engaged in the business of financing through hypothecation/mortgage of securities/assets.

iii. Around 17th February, 2017, the opposite party no. 2 filed a complaint under Section 200 of the Cr.P.C before the Learned Chief Metropolitan Magistrate at Calcutta, alleging commission of offence of criminal breach of trust, cheating, misappropriation against the Petitioner and other thereby caused wrongful loss attracting offences under sections 406, 420, 34 and 120B of IPC against the petitioner.

iv. As per the complaint, in July, 2012, the accused person along with his associates approached the complainant company/opposite part no. 2 seeking financial assistance for the purpose of purchasing of 2 dredgers, one from the Netherlands and another indigenously purchased from Sanghi Infrastructure on the basis of loan- cum-hypothecation, along with its accessories.

v. The complainant granted loans of Rs. 30,00,00,000/- (Rupees Thirty Crore only), Rs. 3,52,00,608/- (Rupees Three Crore Fifty-Two Lakhs Six hundred and eight only) and Rs. 23,41,33,182/- (Rupees Twenty-Three Crore Forty-One Lakhs Thirty-Three Thousand One Hundred and Eighty-Two only) respectively including Exchange rate fluctuation of Rs. 5,31,21,357/- (Rupees Five Crore Thirty-One Lakhs Twenty-One Thousand Three Hundred and Fifty-Seven only). The loans were granted on the basis of the representation made by the accused person regarding their financial soundness, good reputation and generosity in the market. Personal guarantees and collateral securities were also furnished.

vi. The repayment schedule consisted of 46 monthly instalments of Rs. 88,84,600 under agreement dated HL0059769/139034 dated 1st July, 2012; 11 monthly instalments of Rs. 34,61,700/- under agreement HL0059725/16660 dated 1st July, 2012; 56 instalments under agreement HL00594949/15829 dated 15th September 2011, with varying instalment amounts as specified in the complaint.

vii. The complainant alleged that the accused persons conspired with each other and defaulted from the outset and paid only the initial few instalments after persuasion, thereby inducing the complainant to part with substantial funds with a dishonest intention from inception. Accordingly, the accused persons in furtherance of common intention, induced the complainant company to financial assistance with intention of misappropriating the property and for that reason, the complainant company had suffered wrongful loss. Accordingly, the accused persons had committed offence under Sections 420/406/34/120B of the IPC.

viii. The learned Magistrate thereafter took cognizance against the petitioner. According to the petitioner, the order of cognizance itself is bad in law, given that the learned Magistrate failed to appreciate that the transaction involved between the parties, with regard to the loan for the purpose of purchasing two dredgers, is purely civil in nature and a criminal offence is not attracted. Moreover, the petitioner was a resident of Visakhapatnam, and the learned Magistrate was mandatorily required to conduct an inquiry under Section 202 of the Cr.P.C. before issuing summons. Failure to do so renders the proceedings liable to be quashed to prevent abuse of process of law and to secure ends of justice.

SUBMISSION ON BEHALF OF THE PETITIONERS:

3. Mr. Bhattacharya, learned senior counsel appearing on behalf of the petitioner, vehemently argued and submitted as follows: -

a. The petitioner is innocent and in no way connected with the alleged offences.

b. It is further submitted that ADAMSPL has already repaid an amount towards the loans of Rs. 2,95,62,918/- and Rs. 47,58,90,181/- was adjusted by selling two dredgers. The petitioner was the Managing Director, and the company had taken a loan. Such a transaction is purely a civil matter, and, therefore, a criminal proceeding cannot be initiated against the present petitioner in relation to such civil dispute.

c. The initiation of the present criminal proceeding appears to be merely for the purpose of recovery of the dues, despite there being a separate civil remedy available for the recovery of any loan dues from the petitioner. The fact that the petitioner no. 1/company has already repaid the aforesaid sum of Rs. 50,54,53,099/-. Instead, the complaint incorrectly stated that the accused persons made irregular payments and further narrated that the assets were also not found in their supposed location. Therefore, such a proceeding is required to be quashed to secure the ends of justice. Learned senior counsel placed reliance of the judgments to bolster his aforesaid submission as follows: -

i. ***Basukinath Food Processors Ltd. and Anr. v. State of West Bengal***[1]

ii. ***Manish v. State of Maharashtra and Anr.***[2]

SUBMISSION ON BEHALF OF THE OPPOSITE PARTY NO. 2:

4. Per contra, Mr. Lahiri, learned counsel appearing on behalf of the opposite party no. 2 vociferously opposed the prayer of the learned senior counsel appearing on behalf of the petitioner and further strenuously argued that the proceeding initiated by the opposite party no. 2 is not aimed at recovery of loan but to punish the accused persons for deliberate cheating and conspiracy. Learned counsel further contended that the accused/petitioners herein induced the complainant/opposite party no. 2 to disburse a huge loan amount in

[1] ***2024 SCC OnLine Cal 11326***
[2] ***2025 SCC OnLine SC 707***

crores by presenting a false picture of their financial standing and very good reputation.

5. They initially made a few payments only to avoid suspicion and thereafter intentionally defaulted, thereby cheating the complainant. It was further submitted that the petitioner introduced another company, namely, KSR Infracon Private Limited (in short "KSR") and proposed to sell the dredgers to KSR, but even the accused persons flouted the clauses and terms of the reconstituted agreement dated 15.02.2014 and never paid any heed to the repayment schedule. The accused played the most vital role in the entire process of introducing KSR into the subject transaction. Hence, the ingredients of offences under sections 406, 420, 425 IPC are fully satisfied. Accordingly, the Petitioner/accused is liable for commission of offence punishable under Section 406/420/425/34 of the IPC.

6. Learned counsel has placed reliance on the following judgments in support of his contention that the petitioner is liable for commission of offence punishable under Sections 406/420/425/34 of the IPC:

i. ***Indian Oil Corpn. Vs. NEPC India Ltd. & Ors.***[3] *particularly in paragraph nos. 2-10, 12(v) and 32-37;*

[3] (2006) 6 SCC 736;

ii. ***Priti Saraf and Anr. Vs. State (NCT of Delhi) and Anr.***[4] *particularly in paragraph nos. 2-7, 11, 12 and 28-36;*

iii. ***S.P. Gupta Vs. Ashutosh Gupta***[5] *particularly in paragraph no. 17;*

iv. ***Medchl Chemicals & Pharma (P) Ltd. Vs. Biological E. Ltd. and Ors.***[6]***;*** *particularly in paragraph nos. 3, 7-11 and 16-18;*

v. ***S.W. Palanitkar and Ors. Vs. State of Bihar & Anr.***[7] *particularly in paragraph nos. 21 and 28;*

vi. Kamal Shivaji Pokarnekar Vs. State of Maharashtra and Ors.[8]***;***

vii. ***Vijayander Kumar and Ors. Vs. State of Rajasthan and Anr.***[9] *particularly in paragraph nos. 2, 3, 5 and 11-13;*

viii. ***Ravindra Kumar Madhanlal Goenka and Anr. Vs. Rugmini Ram Raghav Spinners Pvt. Ltd.***[10] *particularly in paragraph nos. 17 and 18;*

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[4] (2021) 16 SCC 142;
[5] (2010) 6 SCC 562;
[6] (2000) 3 SCC 269;
[7] (2002) 1 SCC 241;
[8] (2019) 14 SCC 350;
[9] (2014) 3 SCC 389;
[10] (2009) 11 SCC 529;

ix. ***Ghanshyam Sharma Vs. Surendra Kumar Sharma And Ors.***[11] *particularly in paragraph nos. 7 and 8;*

x. ***Central Bureau of Investigation Vs. Aryan Singh and Ors.***[12] *particularly in paragraph nos. 6 to 9.*

DISCUSSIONS AND FINDINGS BY THIS COURT:

7. Having heard the arguments of the rival counsel for the parties and upon perusal of the record as well as judgments relied upon by the learned senior counsel appearing on behalf of the Parties, the following issues are suggested for determination: -

a) Whether the allegations of the opposite party no. 2, if taken at face value, disclose the ingredients of offences punishable under section 420 or 406 or 425 of IPC?

b) Whether the dispute between the parties is essentially civil in nature, arising out of a loan-cum-hypothecation transaction, which is outside the purview of criminal prosecution?

8. The entire foundation of the complaint is that the opposite party no. 2 granted 3 sets of loans to the petitioner's company for purchase of two dredgers based on the petitioner's representation and that subsequently, instalments were allegedly or deliberately defaulted. It

[11] (2014) 13 SCC 401;
[12] (2023) 18 SCC 399.

has not been stated anywhere that, at the very inception, there was any intention on behalf of the petitioners to cheat the complainant.

9. Furthermore, there is nothing in the complaint to suggest that the petitioners had a dishonest or fraudulent intention at the time when the opposite party, No. 2, granted the loan to the Petitioner for the purpose of purchasing dredgers.

10. It is settled law that mere breach of contractual obligation or default in repayment of a loan cannot constitute commission of cheating, unless there is a specific allegation of dishonest intention and conspiracy at the beginning or inception of the transaction.

11. The Hon'ble Supreme Court, in the case of ***Hridaya Ranjan Prasad Verma v. State of Bihar***[13]**,** held that the crux of the offence of cheating lies in the intention to deceive from the very beginning. If the intention develops later due to subsequent circumstances, the same does not amount to cheating. The relevant portion of the aforesaid judgment is set out herein below: -

> ***"15.*** *In determining the question, it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which may be judged by his subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for*

[13] ***(2000) 4 SCC 168***

> *cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed."*

12. It is further an admitted fact that the company had repaid a part of the loan through the initial EMIs. Such admitted repayments negate any interference of dishonest intention from the inception.

13. Dispute arose between the parties when the said company allegedly failed to pay the outstanding amount as claimed by the Opposite party no.2. No other prima facie ingredients were made out by the opposite party no. 2 in the complaint regarding offence punishable under Section 406 or 420 or even 425 of the IPC as alleged. The complainant upon satisfaction further agreed to involve KSR and entered an Agreement. This Court is satisfied that the core dispute, pertaining to the alleged non-repayment of loan under financial agreement, is purely civil in nature. The opposite party no. 2 has adequate remedies available under civil law.

14. The differences in the ingredients required for an offence of Criminal Breach of Trust and Cheating have been highlighted by the Hon'ble

Supreme Court in the case of ***Delhi Race Club (1940) Limited v. State of Uttar Pradesh[14]:*** -

Difference between criminal breach of trust and cheating

35. *This Court in its decision in S.W. Palanitkar v. State of Bihar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241: 2002 SCC (Cri) 129] expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the offence of cheating (Section 420). The relevant observations read as under: (SCC p. 246, paras 9-10)*

> *"9. The ingredients in order to constitute a criminal breach of trust are : (i) entrusting a person with property or with any dominion over property; (ii) that person entrusted : (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.*
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> *10. The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property."*

36. *What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients:*

In order to constitute a criminal breach of trust (Section 406 IPC)

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[14] ***(2024) 10 SCC 690***

(1) There must be entrustment with person for property or dominion over the property, and

(2) The person entrusted:

(a) Dishonestly misappropriated or converted property to his own use, or

(b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:

(i) Any direction of law prescribing the method in which the trust is discharged; or

(ii) Legal contract touching the discharge of trust (see : S.W. Palanitkar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 : 2002 SCC (Cri) 129]).

Similarly, in respect of an offence under Section 420IPC, the essential ingredients are:

(1) Deception of any person, either by making a false or misleading representation or by other action or by omission;

(2) Fraudulently or dishonestly inducing any person to deliver any property, or

(3) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see : Harmanpreet Singh Ahluwalia v. State of Punjab [Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) 3 SCC (Cri) 620]).

37. *Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.*

38. *In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405IPC, punishable under Section 406IPC, is committed by the accused, then in the same* *breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415IPC, punishable under Section 420IPC.*

***39.** Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha [Hari Prasad Chamaria v. Bishun Kumar Surekha, (1973) 2 SCC 823: 1973 SCC (Cri) 1082] as under: (SCC p. 824, para 4)*

"4. We have heard Mr Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 of the Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 of the Penal Code, 1860. There is nothing in the complaint to show that the respondent had dishonest or fraudulent intention at the time the appellant parted with Rs 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating."

40. *To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.*

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. The Hon’ble Supreme Court further laid down legal propositions with regard to applying Sections 406 and 420 of the Indian Penal Code in the said particular case as follows:

> ***“54.*** *When dealing with a private complaint, the law enjoins upon the Magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The Magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from an FIR, this responsibility is of the police — to thoroughly ascertain whether the allegations levelled by the informant indeed fall under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.*
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> ***55.*** *It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating vis-à-vis criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of IPC (now BNS, 2023) are not twins that they cannot survive without each other.”*

16. This Court also relied on a judgment of the Hon'ble Supreme Court in the case of ***The State of Kerala v. A. Pareed Pillai and Anr.***[15] where it was held as follows: -

> *"**16.** ....To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise."*

17. Similarly, in the case in hand, there is nothing to show that the petitioners had dishonest or fraudulent intention at the time borrowing loan from the Opposite Party No. 2. It is not disputed by the complainant that he had not paid any amount.

18. The loan was granted by the complainant under hypothecation of two dredgers and other collateral securities. It is admitted fact that the petitioner had repaid towards loan to the tune of Rs.2,95,62,918/- and subsequently, Rs.47,58,90,181/- was adjusted by selling two dredgers. However, complainant raised question about the outstanding loan amount. Non-payment of outstanding loan amount, by no stretch of imagination, can be called dishonest inducements. It was/is purely a non-fulfilment of contract, which definitely comes under civil dispute. Simply because of the amounts have not been

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[15] ***(1972) 3 SCC 661***

repaid or there are outstanding will not make it a case of wilful or dishonest inducement or deception or criminal breach of trust or mischief by any manner.

19. It is not the case of the opposite party no. 2, in the present case, that the company was deceived by fraudulent or dishonest inducement from the beginning at the time of obtaining loan rather admits Petitioner repaid initial instalments. Thus, culpable intention, right from the beginning when the promise was made cannot be presumed simply from mere failure of a person to keep up promise subsequently. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. The Court must decide on the basis of the substance of the complaint and not just the mere use of the expression "cheating" or " conspiracy" or "criminal breach of trust" in the complaint. This Court finds that in the instant case, the petitioners had admittedly repaid some amount and further adjusted the amount by selling the two Dredgers. A total sum of Rs. 50,54,53,099/- was collected by the complainant; as such, the dishonest intention of the petitioners from the very inception of the transaction cannot be presumed.

20. This Court is of the view that neither the offence of cheating punishable under Section 420 of the Indian Penal Code, 1860, nor the offences punishable under sections 406/120B or section 425 of the Indian Penal Code, 1860, are made out from the written complaint.

21. Upon perusal of the copy of complaint, it further shows that there was no fraudulent or dishonest inducement or deception by intentional practice by the petitioner right from the inception of obtaining loan amount even if subsequent payment has not been made, that will neither tantamount to deception, fraudulent or dishonest inducement nor would it amount to deception by intentional means right from the beginning. Therefore, the case either under Section 420 or 406 or 425 of IPC, in the facts of this case, has not been made out. Non-payment of the outstanding loan amount cannot be called cheating in the facts of this case.

22. In the case of ***Paramjeet Batra v. State of Uttarakhand*[16]*,*** the Hon'ble Court recognised 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. The relevant portion of the judgment has been set out below:-

> *"**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.*

[16] ***(2013) 11 SCC 673***

> *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."*
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> (Emphasis supplied)

23. Coming to the issue of violation of section 202 of the Cr.P.C. on the part of the Learned Magistrate, it is an admitted fact that the Petitioner herein was a resident of Visakhapatnam, which is outside the territorial jurisdiction of the Learned Magistrate at Calcutta.

24. An inquiry under section 202 of the Cr.P.C. is mandatory before issuance of process against an accused residing beyond the jurisdiction of the Magistrate. However, there is no specific procedure of inquiry required to be followed by a Magistrate under the aforesaid section.

25. In the instant case, the learned Magistrate did his due diligence by going through the evidence on record and examining witnesses before issuing process against the petitioner. Therefore, the Learned Magistrate has satisfied the provisions of section 202 of Cr.P.C. insofar as the petitioner is concerned. However, it is not considered that the granting of a loan and subsequent non-payment of the loan would not constitute a criminal offence in the absence of ingredients of offence punishable for criminal breach of trust, cheating, conspiracy or mischief.

26. In light of the above observations, together with averments contained in the written complaint, this Court finds that the ingredients of the offences alleged by the opposite party no. 2 are missing. Mere non-payment of the outstanding loan amount does not constitute offences punishable under Sections 406/420/425/120B of the Indian Penal Code, 1860.

27. The complaint does not establish a dishonest intention at the inception, nor does it spell out any essential ingredients for the commission of an offence under sections 406 or 420 or 425 of the Indian Penal Code, 1860. The disputes between the parties are purely civil in nature, and giving criminal colour to them is not permitted by the law.

28. It is a settled principle of law that a set of facts may make out a civil wrong as also a criminal offence, and only because a civil remedy may also be available to the informant/complainant, the itself cannot be a ground to quash a criminal proceeding. The real test is whether the allegations in the complaint disclose a criminal offence or not. This proposition is supported by several judgments of the Hon'ble

Supreme Court, and the same is noted in the judgment relied by the Opposite party no.2 herein, ***Ravindra Kumar Madhanlal Goenka (Supra)*** in particularly paragraph no.16. In the present case test of criminal offence is absolutely absent. Therefore, the judgments relied upon by the opposite party no 2 have not helped in any manner.

29. Applying the aforesaid principles and discussion, this Court is fully satisfied that the dispute between the parties is purely civil in nature, and continuation of the criminal proceeding would be wholly unwarranted, unjustified, and impermissible in law.

30. Accordingly, **CRR No. 1638 of 2018** is **allowed**. Connected applications, if any, are also, thus, disposed of.

31. Further, this Court is of the considered view that continuation of the impugned criminal proceeding against the petitioner would amount to an abuse of process of law, attracting the exercise of inherent powers under section 482 of the Cr.P.C. As a result, the criminal proceeding being Case No. CS/10505 of 2017 under Sections 406/420/34 of the Indian Penal Code, 1860, pending before the Court of the Learned Metropolitan Magistrate, 19th Court at Calcutta, including the Order of Cognizance and order dated March 22, 2017 passed in connection therewith, is quashed insofar as the petitioner is concerned. However, the opposite party no. 2 is at liberty to realise the outstanding dues of loan and interest accrued thereof from the petitioner no. 1/company in accordance with law.

32. Let a copy of this Judgment be sent to the Learned Trial Court for information.

33. Interim order, if any, stands vacated.

34. All parties will act on the server copies of this Judgment uploaded from the official website of this Court.

35. Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J.)

Milan