IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 1935 of 2017

Girish Kishore Nayak
Versus
The State of West Bengal & Another

For the Petitioner	:	Mr. Amarta Ghose, Adv. Mr. Sauryadeep Ghosh, Adv.
Heard on	:	11.12.2024
Judgment on	:	19.02.2025

Ajay Kumar Gupta, J:

1. Petitioner being the accused has preferred this Criminal Revisional application under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC') praying for quashing of the proceedings being C.S. Case No. 0094963 of 2016 under Sections 406/420/506/120B of the Indian Penal Code, 1860 pending before the Court of the Learned 19th Metropolitan Magistrate at Calcutta.

2. The brief facts, leading to filing of this Criminal Revisional application, are as under:

2a. The petitioner is the Chief, SOT of ICICI Lombard General Insurance Company Limited and was a Senior Executive of ICICI Bank Limited. By virtue of being a Senior Executive of ICICI Bank Limited, the petitioner was nominated as Nominee Director on the Board of ABG Shipyard Limited (accused no. 1), a Company registered under the Companies Act, which availed of loan facilities from the ICICI Bank as per the provisions of the Loan Agreement entered into by and between the Bank and the ABG Shipyard Limited.

2b. Such a nomination was primarily made to protect the interests of the Bank only and the petitioner never oversaw the day-to-day business affairs of the ABG Shipyard Limited in any manner.

2c. On or about 18th April, 2013, ICICI Bank Limited withdrew the Petitioner as the Nominee Director on behalf of the Bank from the

Board of the ABG Shipyard Limited and in his place, another officer of the Bank was nominated. The actual details of the situation can be ascertained from Form 32 filed in pursuant to sections 303(2), 264(2) or 266(1)(a) and 266 (1) (b)(III) of the Companies Act, 1956, which was duly submitted to the Registrar of Companies, West Bengal.

2d. By the said Form, it was declared that petitioner's nomination as Nominee Director was withdrawn by Appointing Authority with effect from 30th May, 2013. In his place, Mr. Loknath Mishra, General Manager of ICICI Bank Limited was nominated as Nominee Director on the Board of the said ABG Shipyard Limited, effective on and from 30.05.2013.

2e. On or about 21st April, 2014, a Notice under the Negotiable Instruments Act, 1881 for dishonour of cheque was issued to the said ABG Shipyard Limited and was also received by the Petitioner from the learned advocates for the Opposite party/respondent no. 2. Upon receipt of such a notice, the Petitioner immediately referred the matter to ICICI Bank Limited. The Senior General Manager (Legal) and Company Secretary of ICICI Bank Limited issued a response to the learned advocate for the Opposite Party no. 2 informing, inter alia, as follows:

> *"a) The petitioner is a resident of Navi Mumbai and had received the letter of the Ld. Advocates for the Respondent No. 2:*
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> *b) The petitioner is an employee of the Bank and was on the Board of Directors of M/s. ABG Shipyard Limited as nominee director representing the interests of the Bank which had lent and advanced monies to the said Company;*
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> *c) That the nomination of the Petitioner as a Director was withdrawn by the Bank by its letter dated 18th April, 2013 and that as on from that date the Petitioner ceased to be a director of the said Company;*
>
> *d) The subject dis-honoured cheque was returned on 5th April, 2014 when the Petitioner was not a director of the said Company;*
>
> *e) The Learned Advocates were requested to withdraw the said notice;"*

2f. Despite such a reply, unexpectedly in the first part of the year 2017, the Petitioner received a summon as an accused person from the Learned Court of the 19th Metropolitan Magistrate, Calcutta along with the copy of a Complaint Petition being numbered C.S. 0094963 of 2016, filed by the opposite party no. 2 indicating him as accused no. 7. Petitioner herein made an accused despite the fact that the petitioner had neither played any role nor had authority over the day-to-day business affairs of the said company.

2g. It reveals from the Complaint that the opposite party no. 2 has filed a petition of complaint before the Learned Chief Metropolitan Magistrate, Calcutta alleging, *inter alia*, as under: -

> *"i. The accused nos. 2 to 10 are the responsible officers and in charge of and/or responsible to the accused no. 1 for its day-to-day business and have also enjoyed overall control over the regular affairs of the accused no. 1 during all the material times when the offence was committed and the accused nos. 2 to 10 jointly and/or severally were responsible for taking all decisions relating the transactions with the complainant representing the accused no. 1 company. The accused no. 1 is in the business of ship construction and ship repair.*
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> *ii. On or about December 2012, the accused persons came to the office of complainant and approached the complainant for the purpose of granting financial assistance. They further represented that they have very good reputation and goodwill in the market and they would repay the loan amount without default.*
>
> *iii. By letter dated 08.01.2013, the complainant sanctioned an Inter Corporate Deposit to the Accused*

No. 1/Company a sum of Rs. 50,00,000/- for a period of 62 days i.e. from 08.01.2013 to 10.03.2013 bearing interest @ 18% per annum. It was agreed that as per the terms of the Inter Corporate Deposit, the accused persons would be liable to pay the amount along with interest on or before 11.03.2013.

iv. Two post dated cheques bearing nos. 114817 and 114818 dated 11.03.2013 both drawn on Development Credit Bank Ltd., Nariman Point Branch, Mumbai in favour of the complainant for a sum of Rs. 50,00,000/- and Rs. 1,37,589/- with an undertaking that the said cheques would be honoured at the time of presentation.

v. The accused persons, after expiry of the said period, deliberately failed and/or neglected and/or refused to pay the amount. Subsequently, on or about 31.03.2013, the accused persons made a payment of Rs. 1,37,589/- towards payment of interest at 18% per annum accrued on the Inter Corporate Deposit Facility.

vi. The complainant also sent notices under Section 434 of the Companies Act, 1956 and called upon the accused company to pay the outstanding the sum of Rs. 50,00,000/- along with interest from 01.04.2013 till 30.09.2013 with 18% per annum but in spite of receipt of the said notices, the accused persons failed to make payment of the legitimate dues of the complainant.

vii. The accused no. 1 issued two post dated cheques bearing nos. 114969 and 114973 for Rs. 25,00,000/- each towards payment of Inter Corporate Deposit Facility and further requested the complainant to withdraw all legal notices against the accused company. But those cheques were also dishonoured upon presentation by the banker of the accused persons.

viii. The complainant till date received an amount aggregating to Rs. 10,20,576/- being interest for a period between March 2013 to May 2014 which included penal interest at the rate of 2% but did not receive any amount towards repayment of Inter Corporate Deposit Facility. The amount outstanding and due by the accused company against the Inter Corporate Deposit Facility along with interest at the rate of 18% per annum and penal interest at 2% as on 27.10.2014 was Rs. 54,93,151/-.

ix. Furthermore, they illegally threatened the complainant's representatives with dire consequences. Thus, it is quite transparent that the accused persons had committed offence punishable under Sections 406/420/506 read with Section 120B of the Indian Penal Code".

2h. The complainant has made accusation punishable under Sections 420/406/506/120B of the IPC against the company and others including the Petitioner despite being fully aware of the petitioner's legal status. The petitioner was a Nominee Director with no responsibility for involvement in the day to day business affairs of the company. Furthermore, the petitioner was withdrawn by ICICI Bank from the Board of the said accused company on the 18th April, 2013 and that the petitioner was duly replaced by another officer of the Bank. The Form 32 of the Companies Act contains the same.

2i. The petition of complaint has been filed against the petitioner with mala fide intention and ulterior motive even being aware of the factual position as was duly informed to the learned advocates for the opposite party no. 2. Despite, the Opposite party No. 2 filed petition of complaint against the petitioner solely to harass and implicate to recover alleged outstanding amount by way of initiation of criminal case is an abuse of process of law. Hence, this Criminal Revisional application.

3. In spite of service of notice, none appears on behalf of the opposite party no. 2. No accommodation was prayed for at the time of call.

4. Heard the learned counsel for the petitioner and on perusal of the entire record, this Court finds the petitioner was solely a representative of ICICI Bank, nominated as a Nominee Director on the Board of ABG Shipyard Limited. The petitioner was nominated to oversee the company's management in order to protect the interest of the institution/bank, shareholders and debenture holders.

5. Apart from that, the petitioner was not involved in the day-to-day business affairs of the said company and he was not at all responsible for any action done by the Company and its active directors. The petitioner was withdrawn from the said company by appointing authority on 30th May, 2013. As a Nominee Director, he has no role to play in the day-to-day business affairs of the accused company. He was nominated as Nominee Director to look after interest of the bank with regard to credit facility, lent and advance by the bank to the said company only.

6. He had no involvement in the day-to-day business affairs or enjoyed overall control over the regular affairs of the accused no. 1/company. The petitioner had never played any role to obtain financial assistant from the complainant/opposite party no. 2. Therefore, he is not liable for any liability of the company.

7. It reveals from the complaint that the opposite party no. 2/the complainant sanctioned an Inter Corporate Deposit to the Accused No. 1/Company a sum of Rs. 50,00,000/- for a period of 62 days i.e. from 08.01.2013 to 10.03.2013 bearing interest @ 18% per annum. It was agreed that as per the terms of the Inter Corporate

Deposit, the accused persons would be liable to pay the amount along with interest on or before 11.03.2013. The company did not pay the same.

8. It is the contention of the complainant that till date his company received an amount aggregating to Rs. 10,20,576/- being interest for a period between March 2013 to May 2014 which included a penal interest at the rate of 2% but did not receive any amount towards repayment of Inter Corporate Deposit Facility. The amount outstanding and due by the accused company against the Inter Corporate Deposit Facility along with interest at the rate of 18% per annum and penal interest at 2% as on 27.10.2014 was Rs. 54,93,151/-. Thereafter, the accused company in or about December 2014, remitted a sum of Rs. 2,95,705/- being interest for the period of 1st May, 2014 to 31st August, 2014.

9. Now, the question arises before this Court whether the present petitioner is liable for alleged commission of offences punishable under Sections 406/420/506 read with Section 120B of the Indian Penal Code, 1860 or not?

10. In the present case, it has not been stated anywhere that from the very inception there was any intention on behalf of the petitioner to cheat, which is a necessary condition for an offence under Section 420 of the Indian Penal Code, 1860. Furthermore, there is nothing in the complaint to show that the petitioner had any dishonest or fraudulent intention at the time, when the opposite party no. 2 /the complainant sanctioned an Inter Corporate Deposit to the Accused No. 1/Company a sum of Rs. 50,00,000/- for a period of 62 days i.e. from 08.01.2013 to 10.03.2013 bearing interest @ 18% per annum.

11. It is further admitted fact that the company had paid an amount aggregating to Rs. 10,20,576/- along with the interest for a period between March 2013 to May 2014 which included penal interest at the rate of 2% to the complainant. Dispute arises between the parties when the said company allegedly failed to pay the amount outstanding and due by the accused company against the Inter Corporate Deposit Facility along with interest at the rate of 18% per annum and penal interest at 2% as on 27.10.2014 was Rs. 54,93,151/-.

12. Thereafter, the accused company in or about December 2014, remitted a sum of Rs. 2,95,705/- being interest for the period of 1st May, 2014 to 31st August, 2014 only. This dispute is apparently civil in nature and that should be resolved by Civil Court. No other prima facie ingredients were made out by the opposite party no. 2 in the petition of complaint regarding alleged offence punishable under Section 406 or 420 of the IPC.

13. The differences in the ingredients required for an offence of Criminal breach of Trust and Cheating have been distinguished by the Hon'ble Supreme Court in the case of ***Delhi Race Club (1940) Ltd. & Ors vs. State of Uttar Pradesh & Another***[1] particularly in paragraphs nos. 24 to 30 as under: -

> *"24. This Court in its decision in **S.W. Palanitkar & Ors. v. State of Bihar & Anr.** reported in (2002) 1 SCC 241 : AIR 2001 SC 2960) expounded the difference in the ingredients required for constituting an of offence of criminal breach of trust (Section 406 IPC) viz-a-viz the offence of cheating (Section 420). The relevant observations read as under: -*
>
> > *"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*

[1] AIR 2024 SC 4531 : AIR Online 2024 SC 612.

> *any legal contract made, touching the discharge of such trust.*
>
> *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."*

25. 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): -

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 willfully 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.P. Palanitkar (supra).

<u>Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are:</u> -

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 persons 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, (2009) 7 SCC 712: (2009) Cri.L.J. 3462 (SC))

26. 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.

27. 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 405 of IPC, punishable under Section 406 of IPC, 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 415 of the IPC, punishable under Section 420 of the IPC.*

28. 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 & Ors., reported in (1973) 2 SCC 823: (AIR 1974 SC 301) as under:

> *"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 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 Penal Code, 1860. There is nothing in the complaint to show that the respondents 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, 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 on the respondents for the offence of cheating."*

29. 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.

30. 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. 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. 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."*

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

"42. 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 a FIR, this responsibility is of the police – to thoroughly ascertain whether the allegations levelled by the informant indeed falls 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.

43. 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 viz-a-viz 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 the IPC (now BNS, 2023) are not twins that they cannot survive without each other."

15. This Court also relied a judgment of the Hon'ble Supreme Court in the case of ***The State of Kerala v. A. Pareed Pillai and Anr.***[2], where it was held as follows: -

"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."

[2] **1972 Cri.L.J.1243**

16. Similarly, in the case in hand, there is nothing to show that the petitioner had dishonest or fraudulent intention at the time when the opposite party no. 2 /the complainant sanctioned an Inter Corporate Deposit to the Accused No. 1/Company a sum of Rs. 50,00,000/- for a period of 62 days i.e. from 08.01.2013 to 10.03.2013 bearing interest @ 18% per annum. It is not disputed by the complainant that company had not paid any amount. However, complainant raised question about the amount outstanding and due by the accused company against the Inter Corporate Deposit Facility along with interest at the rate of 18% per annum and penal interest at 2% as on 27.10.2014 was Rs. 54,93,151/-. Non-payment of such outstanding 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 breach of contract or the amounts have not been paid or there are outstanding will not make it a case of wilful or dishonest inducement or deception or criminal breach of trust.

17. In the case of ***Haridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.***[3], the Hon'ble Apex Court also held that: -

[3] **(2000) 4 Supreme Court Cases 168**

> "*There was no allegation in the complaint indicating, expressly or impliedly, any intentional deception on the part of the appellants right from the beginning of the transaction. The Hon'ble Apex Court drew distinction between cheating from mere breach of contract. According to the Hon'ble Apex Court, definition of cheating contemplates two separate classes of acts namely deception by fraudulent or dishonest inducement and deception by intention. Deception by fraudulent or dishonest inducement must be shown to exist right from the beginning of the transaction*".

18. It is not the case of the opposite party no. 2 that the opposite party no. 2 was deceived by fraudulent or dishonest inducement from the beginning or at the time of sanctioned an Inter Corporate Deposit to the Accused No. 1/Company a sum of Rs. 50,00,000/- for a period of 62 days i.e. from 08.01.2013 to 10.03.2013 bearing interest @ 18% per annum rather admits company kept making payment of an amount aggregating to Rs. 10,20,576/- being interest for a period between March 2013 to May 2014 which included penal interest at the rate of 2% to the complainant and thereafter, the accused company in or about December 2014, also remitted a sum of Rs. 2,95,705/- being interest for the period of 1st May, 2014 to 31st

August, 2014 only. Culpable intention, right from the inception 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 on the basis of mere use of the expression “accused persons by conspiracy with each other fraudulently and dishonestly misappropriated the entire Inter Corporate Deposit amount” in the complaint. This Court finds that in the instant case, the accused company has made some payment either towards an Inter Corporate Deposit or interest. Rs. 54,93,151/- as on 27.10.2014 is due as alleged by the complainant as such the dishonest intention of the petitioner from the very inception of the transaction cannot be presumed. In my view, neither the offence of cheating punishable under Section 420 of the Indian Penal Code, 1860 is made out from the written complaint nor can I persuade myself to hold that an offence punishable under Sections 406/120B of the Indian Penal Code, 1860 is made out from the allegations made in the petition of complaint.

19. 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 sanctioned an Inter Corporate Deposit to the Accused No. 1/Company a sum of Rs. 50,00,000/- for a period of 62 days i.e. from 08.01.2013 to 10.03.2013 bearing interest @ 18% per annum 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 of IPC, in the facts of this case, has not been made out. Non-payment of an Inter Corporate Deposit cannot be called cheating in the facts of this case.

20. In the case of ***Paramjeet Batra v. State of Uttarakhand***[4], the Hon'ble 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*

[4] ***(2013) 11 SCC 673***

> *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."*
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> *(Emphasis supplied)*

21. In the light of above observations together with averments contained in the written complaint, this Court finds ingredients of the offences alleged by the opposite party no. 2 are missing. Merely because non-payment of an Inter Corporate Deposit does not constitute offences punishable under Sections 406/420/506/120B of the Indian Penal Code, 1860. The allegation in the complaint does not spell out any essential ingredients for commission of offence under Sections 406 and 420 of the Indian Penal Code, 1860. The disputes between the parties are purely civil in nature and criminal proceeding in such a civil nature case should not be allowed to be continued any further against the present petitioner.

22. In addition, the present petitioner was mere appointed by the ICICI Bank as nominee director of the company/accused no.1 for the purpose to look after interest of the bank with regard to credit facility, lent and advance by the bank to the said company only and subsequently he was withdrawn from the nominee director on 30th May, 2013 as appears from Form 32 duly filed with Registrar of Companies recording such withdrawal of the petitioner and in his place, new Nominee Director was appointed by the said Bank. He was neither whole time active director nor responsible for day-to-day business affairs of the company.

23. Accordingly, **CRR No. 1935 of 2017** is **allowed.** Connected applications, if any, are also, thus, disposed of.

24. Continuation of the criminal proceeding against the petitioner will be an abuse of the process of the Court. Accordingly, this Court would like to invoke its inherent power under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the said criminal proceeding. As a result, the criminal proceeding being C.S. Case No. 0094963 of 2016 under Sections 406/420/506/120B of the Indian Penal Code, 1860 pending before the Court of the Learned 19^{th} Metropolitan Magistrate at Calcutta is hereby quashed insofar as the petitioner is concerned.

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

26. Interim order, if any, stands vacated.

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

28. 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)

P. Adak (P.A.)