

IN THE HIGH COURT AT CALCUTTA
(Criminal Revisional Jurisdiction)
Appellate Side

Present:

Justice Bibhas Ranjan De

C.R.R. 2368 of 2023

Tomim Hossain & Anr.

Vs.

The State of West Bengal & Anr.

For the Petitioners :Ms. Sulekha Mitra, Adv.
 Mr. Manas Kumar Das, Adv.

For the State :Mr. Sanjoy Bardhan, Adv.
 Mr. Amanul Islam, Adv.

Last Heard on :16.06.2025

Judgment on :19.06.2025

Bibhas Ranjan De, J.

1. This is an application under Section 482 read with Section 401 of the Code of Criminal Procedure (for short CrPC)

assailing the proceedings in connection with Narayanpur Police Station Case No. 37 of 2023 dated 24.03.2023 under Section 379/406/420/120B of the Indian Penal Code (for short IPC) corresponding to GR Case No. 2532 of 2023.

- 2.** The complaint which gave rise to the impugned proceeding was filed by the opposite party no. 2 herein under Section 156 (3) of the CrPC in the Court of Ld. Additional Chief Judicial Magistrate, Barackpore alleging inter alia that the opposite party no. 2 required a Horizontal Directional Machine on a monthly rental basis for business purpose due to which he approached the petitioner no. 1 through a middle man/petitioner no. 2 for renting the said machine. Accordingly, an agreement was made on 09.12.2022 and amount of Rs. 1,50,000/- was paid as monthly rent in addition to a security deposit of Rs. 3,00,000/-. The petitioner no. 1 allegedly took 11 blank dated cheques of Rs. 1,50,000/- each containing the signatures of the complainant as security of the said machine.
- 3.** On 09.02.2023 the said machine was kept for an entire day near Kalitala More under Narayanpur P.S. for business purpose and the driver had to rush back to his home due to

some emergency which was informed to the complainant. On the very next day, when the complainant/ opposite party no. 2 reached the spot, he saw that the truck along with the machine was missing and this whole incident was reported to the concerned police station wherein it was informed to him that G.D.E can only be made if the original owner of the machine lodges the missing complaint. But, when the opposite party no. 2 informed this matter to the petitioner, he did not visit the concerned P.S. even after lapse of a few days and being aggrieved the opposite party no. 2 with a reasonable apprehension that the petitioners have stolen the said truck along with the machinery with the motive to grab the money of the opposite party no. 2, lodged a complaint to the Ld. ACJM, Barackpore under Section 156(3) of the CrPC which *in tern* was forwarded to the Inspector-in-charge for Narayanpur P.S. with a direction to treat the complaint as FIR.

- 4.** In pursuance to the said direction, the Narayanpur P.S. registered the case Under Section 379/406/420/120B of the IPC and upon investigation charge sheet was submitted against the petitioners under Section 420 of the IPC.

Argument advanced:-

5. Ms. Sulekha Mitra, Ld. Counsel, appearing on behalf of the petitioner has submitted that the contents of the application made under Section 156(3) of the CrPC are completely vague and do not constitute any offence stated therein as it is an admitted position that the petitioner no. 1 is the owner of the said machinery. Therefore, no allegation of theft subsists against the owner of a movable property. So continuation of such vexatious proceedings shall only tantamount to miscarriage of justice.
6. Before parting with, Ms. Mitra has contended that the whole factual matrix of the dealings that took place between the parties to this revision application is completely different from what has been narrated by the opposite party no. 2 as it is the opposite party no. 2 who defaulted in making payment of the rent of the said machinery after one month and even refused to return those machines to the petitioner no. 1. Amidst such circumstances, the petitioners had filed one complaint before the Inspector-in-charge of Burdwan Sadar PS which was registered as Burdwan P.S. case no. 218 of 2023 dated 19.02.2023 under Section 406 of the IPC.

Therefore, Ms. Mitra has tried to make this Court understand that the impugned proceeding is nothing but a counter blast to the case mentioned hereinabove in order to harass the petitioners.

- 7.** Per contra, Mr. Sanjoy Bardhan, Ld. Counsel, appearing on behalf of the State has submitted that during investigation a good number of documents along with credible evidence has been collected by the investigating authority in order to prima facie establish a case against the petitioners and accordingly prays that due opportunity must be given to the prosecution to prove its case during trial. In support of his contention, Mr. Bardhan has referred to the contents of the case diary.

Analysis:-

- 8.** At the very outset, Considering the nomenclature of the issue pertaining to this revision application, I find it to be apt to set out the provision of Section 420 of the IPC at the very outset which runs below:-

“420. Cheating and dishonestly inducing delivery of property.—

“Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person,

or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.”

9. If I consider the aforesaid provision with great circumspection, it would be clear that Section 420 only deals with an act of inducement to deliver the property, **not** any inducement to do or not to do anything which he would not do or omit if he were not so deceived.

10. Therefore, what I find is that key ingredients of Section 420 of IPC are **‘inducement’** and **‘delivery of property’**. It is trite law that in order to invoke Section 420 of the IPC, the complainant should prima facie establish the presumption of **intention** in the mind of the petitioners to **cheat** and/or **defraud** the complainant/opposite party no. 2 herein right from the **inception**. And such an alleged act should have resulted in wrongful loss for the complainant/opposite party no. 2 herein and wrongful gain for the petitioners.

11. In our case, neither the FIR nor the investigation report disclosed any such inducement on the part of the petitioners to deliver property rather it is an admitted position that the

petitioner no. 1 is the actual owner of the said machinery in question. Admittedly, there was a business transaction between the parties. Moreover, it is the case of the opposite party no. 2 only that he himself approached the petitioner for renting out the said machinery for business purposes.

12. Now, if I come to the complaint which is the genesis of the impugned proceeding, it would be clear that not even a single specific averment with regard to presumption of commission of offence under Section 420 has been made at the behest of the opposite party no. 2 herein. Above all upon a thorough and exhaustive examination of the facts and circumstances, investigating authority was found unable to gather any evidence that could justifiably attract any of the ingredients to constitute an offence under Section 420 of the IPC.

13. In the premises set forth above, allowance of continuation of such proceeding would be nothing but a gross abuse of the process of Court. If I align myself with the exhaustive guidelines enumerated by the Hon'ble Apex Court for exercising inherent jurisdiction, then it would be crystal clear that the instant application also squarely falls under the

category of cases which are liable to be quashed by invoking inherent jurisdiction,

- 14.** As a sequel, the revision application being no. CRR 2368 of 2023 stands allowed and the impugned proceeding in connection with Narayanpur Police Station Case No. 37 of 2023 corresponding to GR Case No. 2532 of 2023 stands hereby quashed.
- 15.** Connected applications, if there be any, stand disposed of accordingly.
- 16.** All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.
- 17.** Urgent Photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]