

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

PRESENT:

THE HON'BLE DR.JUSTICE AJOY KUMAR MUKHERJEE

CRR 2732 of 2022

Bikasija Bhattacharjya @ Bikasija Bhattacharya

Vs.

The State of West Bengal & Anr

For the Petitioner	:	Mr. Ayan Basu Ms. Juin Dutta Chakraborty Mr. Kushal Roy Mr. Sumit Routh Mr. Bidan Modak Ms. Arpita Kundu
For the Opposite Party no.2	:	Mr Dipanjan Dutt Mr. Pijush Biswas
For the State	:	Mr. Madhusudan Sur, Id. APP Mr. Manoranjan Mahata
Heard on	:	04.04.2025
Judgment on	:	06.05.2025

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioner/accused moved the present application under section 482 of the Code of the criminal procedure (Cr.P.C) seeking quashment of GR

Case no. 2828 of 2021 presently pending before Id. Additional Chief Judicial Magistrate, Uluberia, Howrah.

2. It has been alleged *inter alia* in the complaint that the complainant who is the president of the Sanjiban Hospital, in presence of other staff had made prolonged discussion with the accused /petitioner for obtaining financial assistance from him and the petitioner agreed to the proposal that he could provide Rs. 12 cores for a period of two years for the said hospital to meet the dire needs of funds at the rate of 24% interest and it was further agreed that for obtaining said loan of Rs.12 crores, the complainant would pay him in advance Rs. 42.28 lakhs on account of advance interest and the service charges of the accused for arranging the funds. The complainant further alleged in the letter of complaint that the petitioner had fraudulently shown the complainant a cheque no.017749 dated 05.10.2021 drawn on Punjab National Bank, Manicktala Branch, issued in favour of complainant amounting to Rs. 10 crores and the petitioner told that the rest two crores would be disbursed shortly. Further case of the complainant is that being allured upon such representation, the complainant transferred Rs. 42.28 lakhs to the account of the accused as an advance interest and processing charges, but the said loan of Rs. 12 crores was never disbursed and it is now clear that the showing of the cheque No. 017749 was an evil design to defraud the complainant. Accordingly the instant proceeding started under section 406/417/420 IPC.

3. Being aggrieved by the impugned proceeding, Mr. Ayan Basu learned counsel appearing on behalf of the petitioner submits that the dispute between the parties is essentially a civil dispute which has arisen due to

alleged non refunding the amount of advance, which does not constitute any offence of cheating. In this context petitioner relied upon the judgment in ***Hiralal & others Vs. State of UP & others*** reported in **2009 (5) SCALE 418**. He submits, even if the allegation contained in the complaint petition be given face value and taken to be correct in their entirety, commission of an offence is not disclosed. The learned sessions judge has already observed in the associated Misc. case no. 133 of 2022, while considering anticipatory bail prayer of the petitioner that the cheque no. 017749 dated 05.10.2021 of PNB Manicktala Branch, as referred by the complainant in his complaint in support of inducement is lying blank with the accused and not a single word is written in the said cheque. The said cheque is still attached to the original cheque book. Accordingly, the complainant's contention that the accused has shown a cheque of Rs. 10 crores which had induced him to transfer Rs. 42.28 lakhs to the accused is absolutely false. He further submits that in CRM (DB) 686 of 2022, pertaining to the cancellation of bail prayer on the same cause of action, the Division Bench of this court had observed that there is element of civil dispute between the parties.

4. Petitioner's further contentions is that the complainant was suffering from financial crunch, due to paucity of funds and the petitioner herein/accused used to help the complainant with money and for which the opposite party no.2/complainant had issued post-dated cheques. In fact the petitioner had sold his ancestral properties to render monetary help to the opposite party/complainant. Unfortunately different post-dated cheques issued by the complainant herein got bounced and when the complainant herein was reluctant to pay the petitioner and finding no other alternative

petitioner initiated cases under section 138 of Negotiable Instrument Act (in short N.I. Act) against the complainant herein and his persons, the details of which he has given in the supplementary affidavit. The opposite party no. 2 herein paid the said amount of Rs. 42.28 lakhs to clear a part due. Since misappropriation of funds or money nor any dishonest intention or *mens rea* are there to attract section 406 or 417 or 420 of the IPC, the petitioner prayed for quashing the impugned proceeding

5. Ld. Counsel appearing on behalf of the opposite party Mr. Dipanjan Dutt vehemently opposed the submissions made by the petitioner. He argued that it is apparent from the facts and circumstances of the instant case that the petitioner has made wrongful gain of Rs. 42.28 lakhs and caused wrong ful loss of Rs. 42.28 lakhs to the Hospital and thereby dishonestly induced the complainant. Opposite party in this context submits that the said amount of Rs. 42.28 lakhs was entrusted to the petitioner and the manner of entrustment being that the petitioner was to act as a trustee over the said amount until the loan had been made available by the petitioner, in which event the petitioner could adjust the same amount towards the interest on the loan. The loan was never adjusted by the petitioner and therefore, there arises no question of any interest amount of the loan. In such circumstances petitioner was required to account for the advance interest which was paid to him. However the petitioner has instead, proceeded to misappropriate the said amount for his exclusive ulterior use to the exclusion of the complainant and therefore, the petitioner has also committed offence punishable under section 406 of IPC. He further submits whatever may be the defence version, it is a question of fact and required to

be proved, which the petitioner has the opportunity to do in the course of trial but not in a proceeding initiated under section 482 Cr.P.C. When the facts are being disputed the same has to be proved and facts can only be proved in the course of trial. In the present case there is no denial of the facts rather it is admitted position that the petitioner received an amount of Rs. 42.28 lakhs on 05.10.2021.

6. He further contended that in the present context the defence case is wholly contrary to the FIR and thus requires proof in the course of trial. Moreover, fancy and concocted defence version cannot form the basis for quashing of a proceeding. Petitioner tried to escape by citing vague sketchy unconnected proceeding under section 138 of the N.I. Act. It is not the case of the petitioner that inspite of the receipt of the said amount he has paid a single penny to complainant in connection with Rs. 42.28 lakhs received by him. In such circumstances any proceeding under section 138 of N.I. Act, if at all exists is wholly unconnected, since there are legal debts or liability of the complainant to the petitioner in connection with the instant case

7. He further submits though petitioner has tried to project that instant case is a counterblast to the proceedings initiated by petitioner herein under section 138 of the N.I. Act, but a proceeding cannot be quashed on the ground of it being a counterblast and the same may only be agitated in trial. The pendency of any proceeding under section 138 of N.I. Act cannot be a defence of the petitioner in the instant case, since the purported N.I. Act proceeding may end in acquittal and thus may not ultimately come to the defence of the petitioner. He further submits that FIR reproduces the cheque no. accurately as also the bank particulars. Unless the petitioner has shown

the cheque to the complainant it would not have been possible for the complainant to state the particulars with accuracy. The petitioner has no explanation for the same. Under section 106 of Evidence Act, the disputed question as to the present status of the cheque is entirely for the petitioner to explain during trial, since the petitioner is in custody of the same. In this context learned Counsel for the opposite party further indicated that the petitioner is likely to have committed other offences of forgery, material alteration or duplication of the cheque in question which was/is all along in his custody.

8. The complainant further submits that in the given case there may have elements of both a civil cause of action and also a criminal cause of action and therefore, it is of no aid to the petitioner to seek quashing of a proceeding on the anvil that there are elements of civil dispute, when the factual matrix of the instant case palpably discloses a criminal cause of action and the petitioner has failed to address submissions on the palpable criminal cause of action that has been disclosed in the instant case. The opposite party no.2 therefore prayed for dismissal of the instant proceeding. Opposite party in this context relied upon following judgments:-

- (i) *State of Orissa and another Vs. Saroj Kumar Sahoo* reported in (2005) 13 SCC 540.**
- (ii) *Rajesh Bajaj Vs. State NCT of Delhi and others* reported in (1999) 3 SCC 259.**
- (iii) *K Jagadish V. Udaya Kumar G.S. and another* reported in (2020) 14 SCC 552.**

(iv) State of Haryana and others Vs. AGM Management Services Ltd.

reported in **(2006) 5 SCC 520.**

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

10. The main offence alleged by the opposite party no.2 herein is that the petitioner herein committed the offence of cheating punishable under section 420 & 417 of IPC and the case of the complainant is that the petitioner showed a cheque for Rs. 10 cores being cheque no. 017749 drawn on PNB dated 05.10.2021, in order to assure a loan transaction and thereby induced complainant, who transferred Rs. 42.28 lakhs to the bank account of the petitioner. During the course of argument learned Counsel appearing on behalf of the petitioner has drawn my attention to an order passed by sessions judge Howrah, while disposing petitioners anticipatory bail prayer in connection with CR Misc. Case 133 of 2022 where the session judge Howrah has made clear observation in respect of self same cause of action as follows:-

“from the materials on record, documents filed at this stage including the documents filed on behalf of the de facto complainant and the materials in the case diary, it is found that admittedly there is a professional relationship between the complainant and the accused/petitioner. Several cases are pending between the parties. The present case is based in respect of the cheque mentioned earlier. The defense has placed before the court the original cheque bearing No. 017749 dated 05.10.2021 drawn on Punjab National Bank, Manicktala Branch. It is seen by this court that the cheque is blank and there is not a single word written in the said cheque and the said cheque is still attached to the original cheque book and the said cheque book has also been filed by the Ld. Lawyer for the defense. (The original cheque book along with cheque is returned on proper receipt).

Ld. P.P. has contended that the report received from the Punjab National bank, Manicktala Branch dated 28.12.2021 being at page 58 of the case diary shows a different IFSC Code being BO New Manicktala (008220)

On going through the official website of Punjab National Bank, Manicktala Branch, this court finds that IFS Code is the same as in the disputed cheque as placed before the court. From the report of Punjab National Bank, Manicktala Branch dated 28.12.2021, this court also finds that in point No. VI it has been categorically stated by the Bank that

no transaction has been made by the cheque No. 017749. In view of the report of the Punjab National Bank, Manicktala Branch dated 28.12.2021 placed by the prosecution and the blank cheque in original (Which is supported by the said report), this court prima facie finds that the statement as made by the complainant in the petition u/s. 156(3) Cr.P.C, on which the FIR was registered is not supported by the documents as placed before the court.”

11. It is undoubtedly well settled that while dealing with an application under section 482 of Cr.P.C, the court is not supposed to act on the basis of annexure filed by the petitioner. However, it is equally well settled that documents which are unimpeachable in character can be considered to decide about continuation of criminal proceeding and to consider whether complaint has been filed only to harass the accused. The observation of the District Judge in the criminal Misc. case 133 of 2022 on the basis of the report of Punjab National Bank, Maniktala branch dated 28.12.2021, that no transaction has been made by the impugned cheque no. 017749 and that he has seen that the cheque is blank and that not a single word has been written in the cheque and the said cheque is still attached to the original cheque book and the original cheque book was also filed before the court as well as report of the concerned bank, upon which the court came to a decision, are all impeachable character of evidence, which the court can very well taken into consideration for the disposal of instant application.

12. Needless to say that in order to attract an offence under section 417 read with section 420 of the Indian Penal Code, the prosecution is required to prove firstly that the accused dishonestly induced and thereby he deceived the complainant to deliver some property and that accused intentionally induced the complaint to do a thing, which he would not do or omit to do or which he would not have done, if not induced and such act

caused some damage to the complaint. In the instant case the allegation made by the complainant that petitioner showed a cheque of Rs. 10 cores being cheque no. 017749 drawn on PNB dated 05.10.2021 by which the complainant was induced, does not hold water for the reason quoted above and the witnesses who were examined during investigation have not uttered a single word about such imputation made by complainant.

13. It further reflects from the judgment passed by a Division Bench of this court in CRM (DB) 686 of 2022 dated 27.06.2022, and as claimed by the petitioner that there is Jural relationship between the petitioner and the private opposite party and it involves investment in a company and the petitioner herein received alleged brokerage for the purpose of investment which has an element of civil dispute between the parties. It is submitted on behalf of petitioner that present complainant had instituted other complaints through his employees and further case of the accused/petitioner herein is that, the complainant herein was suffering from financial crunch due to paucity of fund and the petitioner/accused used to help the complainant with money and in lieu of that the respondent/complainant issued post-dated cheques and that the petitioner herein sold his ancestral properties to render monetary help to the complainant and different post-dated cheques issued by complainant in favour of accused herein got bounced and for which petitioner herein instituted proceedings under section 138 of N.I. Act against the complainant and his persons, whose name were incorporated in the post-dated cheques. It has been further alleged that the opposite party no.2 previously deceived the petitioner in another instance by issuing a cheque amounting to Rs.

2,50,000/- on 2nd August, 2021 signed by CEO of Sanjiban Hospital who in fact died about one year before issuance of the cheque. So he submitted that out of fear of losing dignity, the complainant herein paid the said amount of Rs. 42.28 lakhs to clear a part due. The charge sheet also discloses:-

“During investigation it is found that admittedly there is a professional relationship in between the complainant and the accused. Several cases are pending in between them. The present case is based in respect of the cheque mentioned earlier”

14. Accordingly there may be a breach of contract and the charge sheet discloses also contractual obligation and breach thereof, for which remedy is available to the civil court. Refusal to return money which was given for processing loan and towards advance interest cannot constitute offence under section 420 of the IPC. Therefore offence under section 420 or 417 of the IPC has not been made out in the absence of any dishonest inducement on the part of the petitioner herein.

15. The opposite party no.2/complainant herein has made an alternative argument contending that the petitioner induced the complainant in delivering Rs. 42.28. lakhs as advanced interest and thereby the petitioner was clearly entrusted with the said amount in advance to be adjusted subsequently towards the interest component, in view of the assurance by the petitioner that he would immediately make the loan available to the complainant. According to the complainant the said amount of Rs. 42.28. lakhs was entrusted to the petitioner to act as a trustee over the said amount until the loan had been given by the petitioner in which event the petitioner could adjust the same amount towards the interest on the loan. However, the loan was never given to the petitioner and therefore, no

question of payment of any interest arises and the petitioner was required to account for the advance interest paid to him but the petitioner has instead proceeded to mis-appropriate the said amount of Rs. 42.28 lakhs for his exclusive ulterior use to the exclusion of the complainant and thereby the petitioner has committed offence under section 406 of IPC.

16. Having considered the background principles applicable in section 405 read with section 406 of IPC, it appears that the instant dispute arises out of non-refund of Rs. 42.28 lakhs allegedly given by the complainants for accommodating loan of Rs. 12 crores. It is undisputed from the facts of the case that the complainant/opposite party no.2 knew the petitioner and the attending circumstances before making payment of the aforesaid amount.

17. Needless to say that the ingredients of the offence under section 406 IPC are:-

“(1) a person should have been entrusted with property, or entrusted with dominion over property;

(2) that person should have dishonestly misappropriated or converted to his own use such property, or dishonestly used or disposed of that property or wilfully suffer any other person to do so;

(3) that such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.”

18. Entrustment therefore, means entrusted with property or having dominion over it, which implies a situation where someone is given responsibility or control over a specific property, even if he do not have ownership rights. Thereafter dishonest misappropriation or converting that

property using it contrary to the terms of the entrustment, constitutes criminal breach of trust under section 405. In the present case the complaint clearly states that Rs. 42.28 lakhs was paid on account of service charges of the petitioner for arranging the fund and also towards advance interest

19. The law clearly recognises difference between simple payment or investment of money towards service charge or paid towards advance interest with that of '*entrustment of money or property*'. A mere breach of a promise does not ipso fact constitutes the offence of the criminal breach of trust contained in section 405 of IPC without there being a clear case of entrustment. In the present case there is nothing either in complaint or the material placed before me pointing to the fact that any property was entrusted as such to the complainant which he dishonestly converted for his own use to satisfy the ingredients of section 405 IPC punishable under section 406 IPC. Hence the learned Magistrate committed a serious error in taking cognizance for the alleged offences. The mere alleged inaction of the petitioner to return the amount paid towards processing loan and towards advanced interest, cannot give rise to criminal breach of trust. Therefore, if all the facts and materials are taken into consideration, no such dishonest representation or inducement or entrustment could be found or inferred. I have also gone through the materials in the case diary which does not suggest about constituting offence of cheating or criminal breach of trust. High Court is not supposed to carry away by the moral elements involved in the breach of promise. The supreme court in number of cases has cautioned against criminalizing civil dispute such as breach of contractual obligation

[**Gyan Singh. Vs. State of Punjab** reported in (2012) 10 SCC 303]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent dishonest or deceptive inducement, which resulted in involuntary and inefficient transfer

20. There are also decisions which hold that the same act or transaction cannot result in an offence of cheating and criminal breach of trust simultaneously as for the offence of cheating dishonest intention must exist at the inception of the transaction, whereas in case of criminal breach of trust there must exist a relationship between the parties whereby one party entrust another with the property as per law, and the dishonest intention comes later. In this case entrustment is missing and infact not even alleged in the complaint. Only before this High Court, opposite party has tried to come up with a case that said amount of Rs. 42.28 lakhs was entrusted to the petitioner to act as a trustee over the said amount, until the loan had been given to the petitioner.

21. It is well settled in view of **common cause of union of India case (1999) 6 SCC 667** that a trust contemplated by section 405 would arise only when there is an entrustment of property or dominion over property. There has therefore, to be a property belonging to someone which is entrusted to the person/accused of the offence under section 405. The entrustment of property creates as trust which is only an obligation annexed to the ownership and arises out of a confidence reposed as accepted by their owner.

22. In **Indian Oil Corporation Vs. NEPC (India) Ltd.** reported in (2006) 6 SCC 736 Apex Court made clear observation that any effort to settle civil

dispute and claims which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged. The court also noticed a growing trend in business circle to convert purely civil dispute into criminal cases.

23. Considering the abovementioned facts and circumstances of the case I find that there is no substance in the allegation and no materials exist to prima facie make out the complicity of the petitioner either under section 406 or 417 or 420 of the IPC. Accordingly present application being **CRR 2732 of 2022** stands allowed. The impugned proceeding being GR. Case 2828 of 2021 in connection with Uluberia P.S case no. 384 of 2021 dated 08.12.2021 presently pending before learned ACJM, Uluberia, stands quashed.

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

(DR. AJOY KUMAR MUKHERJEE, J.)