IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 3078 of 2022

Samar Seth
-Vs-
The State of West Bengal & Anr.

For the Petitioner	: Mr. Aritra Bhattacharya
For the Opposite Party No.2	: Mr. Abhra Mukherjee Mr. Sauradeep Dutta Mr. A. Mukherjee
For the State	: Mr. Madhusudan Sur, Ld. APP Mr. Manoranjan Mahata
Hearing concluded on	: 14.11.2025
Judgment on	: 05.12.2025

UDAY KUMAR, J.: –

1. The present Revisional Application, filed by the Petitioner, Samar Seth, invokes the inherent jurisdiction of this Court conferred by Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.). He seeks to quash the entire criminal proceedings in G.R. Case No. 581 of 2021, arising out of Arsha Police Station Case No. 45/2021, currently pending before the Learned Chief Judicial Magistrate, Purulia. The impugned proceedings culminated in a Charge Sheet under Sections 417/406/420/506 of the Indian Penal Code (IPC).

2. The prosecution's case is rooted in a financial transaction held in 2007, wherein the Petitioner's deceased father, late Ghaltu Ram Seth, took a cash

loan of Rs. 2,50,000/- from the Sirkabad Mohashasan Ashram against an unregistered agreement. A contractual stipulation purportedly made the Petitioner (Samar Seth) vicariously liable for the repayment of the debt upon his father's demise. The criminal action was initiated in 2020, following the Petitioner's alleged refusal to repay the outstanding debt. The essence of the dispute, therefore, pertains to a private contractual arrangement concerning a debt.

3. Upon careful consideration on the material placed on record and the arguments advanced by the Learned Counsel for the respective parties, the solitary question that arises for this Court's determination is:

> *"Whether the allegations contained in the First Information Report (FIR) and the subsequent Charge Sheet, primarily resting on the Petitioner's subsequent refusal to honour a contractual and vicarious liability (a debt guarantee), satisfy the essential ingredients of the criminal offences charged (Sections 417/406/420/506 IPC), or whether the continuation of these proceedings constitutes a gross abuse of the process of the Court by attempting to enforce a purely civil liability through the mechanism of criminal law."*

4. Mr. Aritra Bhattacharya, Learned Counsel for the Petitioner, assisted by Mr. Abhra Mukherjee, Mr. Subhradeep Dutta, and Mr. A. Mukherjee, contended that the prosecution is a palpable abuse of the process of law, designed merely as a mechanism for debt recovery. He submitted that the foundational requirement for charges under Sections 417/420 IPC (Cheating) is destroyed by the absence of the requisite dishonest intention (*mens rea*) *ab initio*, given the substantial thirteen-year gap between the loan being advanced and the alleged default. He relied upon the ratio of *Hridaya Ranjan Prasad Verma v. State of Bihar* in support of his contentions. Similarly, he argued that the

charge under Section 406 IPC (Criminal Breach of Trust) fails as the loan transaction inherently creates a debtor-creditor relationship, not one of entrustment, and the funds were never entrusted to the Petitioner himself. He cited *Sardul Singh v. State of Haryana*in support of this. The Learned Counsel further concluded that the proceedings ought to be quashed under the well-established guidelines enunciated in *State of Haryana v. Bhajan Lal*.

5. Mr. Madhusudan Sur, Learned Counsel for the Opposite Parties, assisted by Mr. Manoranjan Mahata, countered that the Petitioner's wilful refusal in 2020, in breach of his written undertaking, coupled with the alleged threats, demonstrates a sufficient criminal intent for trial. He submitted that the veracity of the dishonest intent and the severity of the alleged intimidation (Section 506 IPC) are matters of evidence that must be tested during trial and cannot be prematurely negated by this Court in its limited jurisdiction under Section 482 Cr.P.C.

6. This Court has given due consideration to the submissions advanced by the Learned Counsel for both sides and has perused the materials on record, shall now proceed to test the foundational facts against the established criminal jurisprudence to address the question for determination.

7. The thrust of the prosecution's case revolves around the refusal to repay a contractual debt. The legal distinction between a mere breach of contract and the criminal offence of cheating lies pivotally in the timing of the dishonest intent. As mandated by the Hon'ble Supreme Court in *Hridaya Ranjan Prasad Verma v. State of Bihar*, held that for the offence of cheating, it must be shown that the intention to deceive was present at the time of making the promise or entering the transaction. A subsequent failure to honour a promise or

discharge a debt amounts to a civil wrong, as it does not establish the requisite criminal intent (*mens rea*) at the time the transaction was initiated.

8. The facts incontrovertibly demonstrate that the loan was taken by the deceased father in 2007. The Petitioner's alleged default occurred only in 2020. For the Petitioner to be held liable for the offence of cheating, the prosecution was obligated to show that the deceased father, or the Petitioner himself, possessed the intention to deceive the Ashram at the time of the delivery of the money in 2007. The current facts only point to a failure to fulfil a contractual promise thirteen years later.

9. The liability sought to be imposed on the Petitioner is entirely vicarious and contractual, based on an unregistered agreement. Such an attempt to enforce a contractual guarantee through criminal law clearly fails the legal test of *mens rea* at the inception. This is contrary to established criminal jurisprudence, which mandates individual criminal culpability founded upon *mens rea*.

10. I, therefore, find that the criminal proceedings fail to demonstrate the requisite element of dishonest intent at the inception of the transaction, rendering the charges under Sections 417/420 IPC legally unsustainable. Accordingly, the charges under Sections 417/420 IPC are legally unsustainable.

11. The argument advanced by the Petitioner’s counsel that a loan transaction inherently lacks the element of entrustment is legally sound. For the offence defined under Section 406 IPC, the indispensable prerequisite is "entrustment" or dominion over property in a fiduciary capacity.

12. The transaction was a loan advanced to the father for his business, which, by its very nature, transforms the relationship into one of debtor and creditor. The Ashram surrendered ownership over the cash. The funds became the property of the borrower, not property held in a fiduciary capacity for the Ashram.
13. Furthermore, and critically, the Petitioner, Samar Seth, never received or was entrusted with the funds himself. The charge of criminal breach of trust against him, therefore, fundamentally collapses due to the absence of the core element of entrustment. The ratio in *Sardul Singh v. State of Haryana* is directly applicable here: in the absence of evidence of specific entrustment to the accused (Samar Seth), the charge under Section 406 IPC cannot stand.
14. Thus, the charge under Section 406 IPC is fundamentally missing the necessary legal ingredients.
15. While the Mr. Sur, Learned Counsel for the Opposite Parties-State pressed the charge under Section 506 IPC, it is a settled position of law that the criminal machinery cannot be allowed to continue when the primary and substantial dispute is civil in nature.
16. The alleged threats in 2020 arose merely as an ancillary incident during a heated dispute over debt recovery. This Court, guided by the decision of the Hon'ble Supreme Court in *Indian Oil Corporation v. NEPC India Ltd.* [(2006) 6 SCC 736], holds that the criminal process cannot be utilized as a tool or lever to pressurize the accused to settle a civil claim.
17. The continuance of this prosecution, where the main and foundational charges are legally groundless, would amount to a gross abuse of the process of the Court, thereby warranting intervention under Section 482 Cr.P.C. To

secure the ends of justice, the Court must intervene when the prosecution is overwhelmingly an effort to enforce a civil liability.

18. In light of the detailed analysis and findings, the allegations against the Petitioner, Samar Seth, do not disclose the necessary *mens rea* or the essential ingredients for the commission of the principal offences of cheating (Sections 417/420 IPC) or criminal breach of trust (Section 406 IPC). The prosecution, being founded upon the non-repayment of a long-standing civil debt, is an unwarranted attempt to enforce a contractual liability in the guise of a criminal prosecution. The continuation of G.R. Case No. 581 of 2021 constitutes a gross abuse of the process of the court and must, therefore, be quashed.

19. Accordingly, and by exercising the inherent powers vested in this Court under Section 482 of the Code of Criminal Procedure, 1973, in order to secure the ends of justice and prevent the abuse of the process:

    a. The Revisional Application, CRR No. 3078 of 2022, is hereby allowed.

    b. The entire criminal proceedings in G.R. Case No. 581 of 2021, presently pending before the Court of the Learned Chief Judicial Magistrate, Purulia, arising out of Arsha Police Station Case No. 45/2021, including the Charge Sheet submitted under Sections 417/406/420/506 IPC, are hereby quashed.

    c. The Complainant/Opposite Party No. 2, Alok Sen, shall be at liberty to pursue his remedy by way of a civil suit for the recovery of the alleged debt of Rs. 2,50,000/- against the Petitioner, Samar Seth, in accordance with the provisions of the law.

20. All consequential Interim order/orders, if any, shall stand vacated

21. Any application, if any, is also disposed of.

22. There shall be no order as to costs.

23. The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.

24. Case diary, if any, be returned forthwith.

25. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

(Uday Kumar, J.)