

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

Present:

Justice Bibhas Ranjan De

C.R.R. 3481 of 2022

With

IA NO: CRAN 4 of 2024

CRAN 5 of 2024

CRAN 10 of 2025

Pankaj Kumar Agarwal

Vs.

M/s. Panchiram Nahata

For the Petitioner	:Mr. Ayan Bhattacharjee, Sr. Adv. Ms. Minal Palana, Adv. Mr. Souvik Banerjee, Adv. Mr. Rahul Poddar, Adv.
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For the Opposite Party	:Mr. Pawan Kumar Gupta , Adv. Ms. B.N. Joshi, Adv. Ms. Sofia Nesar, Adv. Mr. Santanu Sett, Adv.
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Last Heard on	:16.06.2025
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Judgment on	:04.07.2025
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Bibhas Ranjan De, J.

1. The instant revision revolves around an application with a prayer for quashment of proceedings being case no. CN/470/2020 under Sections 420/406/120B of the Indian Penal Code (hereinafter referred to as IPC), presently pending before the Ld. Metropolitan Magistrate, 8th Court, Calcutta.

Backdrop:-

2. The genesis of the impugned proceeding is a complaint made by the opposite party herein against the petitioners before the Court of Ld. Additional Chief Metropolitan Magistrate (for short A.C.M.M). Calcutta alleging inter alia that the opposite party provided a loan of Rs. 15 lacs through RTGS along with interest @ 17% per annum purely on a short term basis i.e. a period of 120 days from October 25, 2011. Thereafter, the said loan was renewed from time to time for a period of 120 days each and upon every renewal fresh cheques were issued and previous cheques were replaced. But on one occasion when the petitioner had issued cheques to the opposite party towards payment of principal amount, the said cheques were returned dishonored with remarks 'funds insufficient'. Thereafter, on

22.01.2020 when the opposite party demanded the principle amount from the petitioner, the petitioner refused to pay such amount and as a sequel a legal notice dated 04.02.2020 was sent by the opposite party to the petitioner. Since an amount of Rs. 15,00,000/- had been lying due in respect of refund of principal amount, the opposite party filed a complaint alleging commission of offences under Section 406/420/120B of the IPC against the petitioner wherein the Ld. A.C.M.M. was pleased to take cognizance of the said complaint vide order dated 29.06.2020 and transferred the same to the Court of Ld. Metropolitan Magistrate, 8th Court, Calcutta for disposal. Ld. Magistrate issued summons and examined one witness under Section 200 of the Code of Criminal Procedure (for short CrPC) and accordingly issued process against the petitioner. Being aggrieved with the impugned proceeding, the petitioner approached this Court with a prayer for exercise of inherent jurisdiction.

Argument advanced:-

3. Mr. Ayan Bhattacharjee, Ld. Senior Counsel, appearing on behalf of the petitioner has argued that it is an admitted position which is also stated in the complaint that a loan was

provided by the opposite party to the petitioner in the year 2011 and it was renewed from time to time. It is also not disputed that payment of interest component to the tune of 17% per annum has also been paid by the petitioner till 2019. Therefore, the element of deception from inception is completely absent which is *sine qua non* for constituting an offence of cheating under Section 420 of the IPC.

4. Mr. Bhattacharjee has further submitted that there are material suppression of facts in the complaint in order to maliciously institute criminal proceedings against the petitioner with an ulterior motive for wrecking vengeance. The fact that the petitioner has time and again made payment to the tune of Rs. 8,27,115/- to the opposite party towards service of loan has been intentionally suppressed in the complaint. Moreover, when the opposite party initiated proceeding under the Negotiable Instrument Act (for short N.I. Act) against the petitioner for return of the three (3) cheques which were issued by the petitioner towards payment of interest, an amicable settlement took place between the parties after the petitioner had paid an amount of Rs. 2,41,200/-. Subsequently, the opposite party withdrew the three (3) N.I Act proceedings on

19.11.2018. But such course of events have been intentionally suppressed in the petition of complaint.

5. Before parting with, Mr. Bhattacharjee has tried to make this Court understand that the four corners of the complaint do not spell out any ingredients in order to constitute offence of criminal breach of trust. He has further added that mere inability to return the loan amount cannot give rise to a criminal prosecution if there is no *mens rea* at the beginning of the transaction. In the present case also, the petitioner has time and again till 2019 made payment towards service of loan. So in no stretch of the imagination it can be said that the petitioner had initial intention to deceive the opposite party. Therefore, Ld. Senior Counsel has contended that such an improbable proceeding should be nipped at the bud by invoking extra ordinary jurisdiction.

6. In order to bolster his argument Mr. Bhattacharjee has referred to the ratio of the following cases:-

- ***Lalit Chaturvedi & Ors vs State of Uttar Pradesh & Anr, 2024 SCC Online SC 171***
- ***Manish vs State of Maharashtra, AIR 2025 SC 1773***

- ***Vir Prakash Sharma vs Anil Kumar Agarwal & Anr,***
(2007) 7 SCC 373
- ***Uma Shankar Gopalika vs State of Bihar, (2005) 10 SCC***
336
- ***Satischandra Ratanlal Shah vs State of Gujrat & Anr,***
(2019) 9 SCC 148
- ***Delhi Race Club (1940) Ltd. vs State of U.P. (2024) 10***
SCC 690

7. Per contra, Mr. Pawan Kumar Gupta, Ld. Counsel, appearing on behalf of the opposite party has submitted that the act of the petitioner in not refunding the principle amount is an act of fraud and misappropriation as it is an admitted position that the petitioner took a loan of Rs. 15,00,000/-. Moreover, the petitioner himself has referred to the withdrawal of the proceedings under the N.I. Act upon payment of due interest over the principle amount. At this juncture, Mr. Gupta has vehemently denied the plea taken by the petitioner that the N.I Act proceedings were withdrawn upon payment of the specified amount towards repayment of principle amount.

8. In this regard, Ld. Counsel has tried to make this Court understand that whether the payment made by the

accused/petitioner can be construed as part payment or payment of interest is a question of fact which cannot be agitated before the revisional court under the garb of Section 482 of the CrPC.

9. In his concluding argument, Mr. Gupta has categorically contended that the petitioner never had the intent to repay the principle amount and only killed time by making payment of interest. Therefore, there is enough incriminating material to make out the offences alleged against the petitioner and exercise of inherent power is not at all required considering the factual aspect of the case at hand.

10. In support of his submission, Mr. Gupta has taken assistance of the following cases:-

- ***Atamjit Singh vs. State & Anr 2024 SCC OnLine SC 99***
- ***Davinder Kaur vs. State of WB, CRR No. 1341 of 2015***

Ratio of the Cases relied on:-

11. In the case of ***Lalit Chaturvedi*** (supra) the Hon'ble Apex Court has deprecated the practice of igniting criminal jurisdiction as recovery proceedings.

12. In the cases of ***Manish*** (supra), ***Vir Prakash Sharma*** (supra), ***Satischandra Ratanlal Shah*** (supra) & ***Uma***

Shankar Gopalika (supra) it has been observed that mere under payment and /or non-payment or inability to return the loan amount as promised cannot be the touch stone for initiation of criminal proceedings unless fraudulent or dishonest intention is shown right at the beginning of the transaction which *in tern* would substantiate the presence of *mens rea*.

13. In the case of **Delhi Race Club** (supra) Hon'ble Apex Court has held that practice of incorporating charges under Section 420 & 406 of the IPC on the self same allegation and conversion of civil case into criminal case is nonest in the eye of law.

14. In **Atamjit Singh** (supra) the Hon'ble Apex Court has stated that mixed question of law and fact with regard to time barred nature of underlying debt ought not to be decided by the High Court while exercising jurisdiction under Section 482 of the CrPC.

15. In **Davinder Kaur** (supra) Hon'ble Co-ordinate Bench of this Court has suggested that quashing at a belated stage of proceeding should not be permitted when the Trial Court has already framed charge and major part of the evidence of the prosecution has been already recorded.

Analysis:-

16. I have gone through all the cases referred on behalf of the parties. After evaluation it has come to my notice that the cases especially relied on behalf of Mr. Bhattacharya pertain to non-payment of due balance amount simpliciter. But, the factual matrix of the case I am dealing with has got no similarity to the cases relied on behalf of Mr. Bhattacharya. Therefore, it cannot be said that the ratio enumerated in those cases squarely apply here as well.

17. Before going into the merit in terms of no love lost relationship between the parties, I propose to focus on nitty-gritty of the Provisions of Section 420 & 406 of the IPC as under:-

“ S. 420. 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.

S. 406. Whoever commits [criminal breach of trust](#) shall be punished with imprisonment of either

description for a term which may extend to three years, or with fine, or with both.”

18. It is thus paramount that in order to attract the provisions of Section 420 IPC, the prosecution has to not only prove that the accused has cheated someone but also that by doing so, he has dishonestly induced the person who is cheated to deliver property. Therefore, this offence is committed when a person dishonestly induces another person to deliver any property to any person, ought 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 valuable security.

19. There are, thus, three components of this offence, i.e.,

(i) the deception of any person,

(ii) fraudulently or dishonestly inducing that person to deliver any property to any person, and

(iii) *mens rea* or dishonest intention of the accused at the time of making the inducement. There is no gainsaid that for the offence of cheating, fraudulent and dishonest intention must exist from the inception when the promise or representation was made.

- 20.** It is well known that every deceitful act is not unlawful, just as not every unlawful act is deceitful. Some acts may be termed both as unlawful as well as deceitful, and such acts alone will fall within the purview of Section 420 IPC. It must also be understood that a statement of fact is deemed 'deceitful' when it is false, and is knowingly or recklessly made with the intent that it shall be acted upon by another person, resulting in damage or loss. 'Cheating' therefore, generally involves a preceding deceitful act that dishonestly induces a person to deliver any property or any part of a valuable security, prompting the induced person to undertake the said act, which they would not have done but for the inducement.
- 21.** On the other hand, nuts and bolts of Section 406 of IPC is when a person entrusted with property or with dominion over property dishonestly misappropriates or converts to his own, uses that property or uses or disposes of that property in violation of any direction of law, the same is said to be an offence of criminal breach of trust.
- 22.** However, in terms of ratio of referred cases (supra) it is apt to notice that in order to invoke Sections 406 & 420 of the IPC, it is essential that 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.

23. Having fully addressed the contours of the offences alleged, let us now advert to the facts of the instant case to appreciate whether the allegations made by the opposite party are sufficient to prima facie establish a case against the petitioner.

24. In the instant case, the opposite party came up with an allegation that in the month of October 2011, the petitioner approached the opposite party for a personal loan of Rs. 15,00,000/- along with interest @ 17% per annum for a period of 120 days from 25.10.2011. The said loan was extended from time to time and interest was also paid till 2019. But whenever the opposite party demanded back the principal amount, it was never repaid. In the meantime, an incident regarding dishonor of cheque also took place wherein the petitioner allegedly issued three (3) cheques towards payment of interest on the said loan. Due to which the opposite party initiated proceedings under Section 138 of the N.I. Act before the Court

of Ld. Chief Metropolitan Magistrate, Calcutta. However, on a subsequent amicable settlement between the parties wherein the petitioner paid an amount of Rs. 2,41,200/-, the opposite party withdrew the said proceedings. But, subsequently even after repeated communications made by the opposite party the petitioner did not make any attempt to refund the principal amount. Moreover, the opposite party sent a legal notice through their Ld. Advocate for refund of the said amount but to no use. In this regard, the plea of the petitioner is that he has made payment totaling to amount of Rs. 8,27,115/- towards the service of the said loan and the complaint does not disclose any of the ingredients required for constituting the offences alleged.

- 25.** The factual nomenclature of the case at hand, along with chronology of events squarely indicate that the main contentious issue involved in this revision application is that whether the payment made by the accused was a part payment towards repayment of loan or payment of interest. It is the touch stone of **dispute related to question of facts** which can only be ascertained after catering to due process of extensive trial.

26. In this regard, it would be wise to remind one and all that the Hon'ble Apex Court in various landmark decisions has made a very clear suggestion that the High Court's while exercising its power under Section 482 of the CrPC **is not required to conduct a mini trial** as this is not the stage where the prosecution/ investigating agency is required to prove the charges. The charges are required to be proved during trial on the basis of the evidence led by the prosecution.

27. As at the stage of discharge and /or while exercising the power under Section 482 of the CrPC, the Court has a very limited jurisdiction and is only required to consider "whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not." In addition to that the Hon'ble Apex Court has further held that at the **initiation of the Criminal Proceedings, whether the criminal proceedings are malicious or not, is not required to be considered at the stage of quashing as it is required to be considered only at the conclusion of the Trial.** The only material requirement which is to be considered is a prima facie case and the material collected during investigation, which warrants the accused to be tried.

28. To exercise the inherent power under Section 482 of the Cr.P.C is not the rule but it is an exception which can be applied only if it appears to the Court that miscarriage of justice would be committed if the trial is allowed to proceed further.

29. In light of the above principle, I am unable to interfere with impugned proceeding at this stage by invoking power under Section 482 of CrPC as all the material contradictions with regard to the alleged occurrence is a subject matter of trial and from careful perusal of the available evidence this Court cannot conclude that the allegations made in the complaint do not prima facie make out any offence as the petitioner on earlier occasion also issued cheques which were dishonoured due to insufficiency of funds and the ingredient of *mens rea* cannot be scrutinized at this juncture. Nor can it conclude that the allegations made therein are patently and inherently improbable which will make the instant revision application a fit case for quashing as per the exhaustive guidelines of the Hon'ble Apex Court as this Court is not oblivious to the settled proposition of law that this Court cannot function here either as a **Court of appeal or revision** and this power can only be

exercised to prevent abuse of the process of the Court. In addition to that, in the present case, the nature of allegation is not in respect to mere failure to repay loan amount between the parties simpliciter.

30. In the premises set forth above, the revision application no. 3481 of 2022, being devoid of merits, stands dismissed.

31. Interim order, if any, stands vacated.

32. Considering the pendency of the application, Ld. Trial Judge is requested to dispose of the same strictly in accordance with law as expeditiously as possible without affording any unnecessary adjournment to either of the parties. I would also make it clear that none of the observations made hereinabove is related to the merit of the case and the Ld. Trial Judge is requested to not get influenced by it in any manner whatsoever.

33. Connected applications, if there be any, stand disposed of accordingly.

34. All parties to this revisional application shall act on the server copy of this order duly downloaded from the official website of this Court.

- 35.** 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.]