

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRR NO.3148 of 2012

**RABINDRA NATH SHAW
VS.
THE STATE OF WEST BENGAL & ANR.**

Amicus Curiae : **Mr. Imran Ali, Adv.**

For the State : **Ms. Faria Hossain, learned APP,
Ms. Snigdha Saha, Adv.**

Last heard on : **22-12-2025.**

Judgement on : **22-12-2025.**

Uploaded on : **23-12-2025.**

CHAITALI CHATTERJEE (DAS), J. :-

1. This revisional application under Section 482 of the Code of Criminal Procedure filed by the Proprietor of M/s. Rabindra Nath Shaw for quashing of the proceeding being GR Case No.405 of 2009 arising out of Gariahat Police Station Case No.18 of 2009 alleging commission of offence punishable under Section 420 of the Indian Penal Code, pending before the learned Judicial Magistrate, 8th Court, Alipore, South 24 Parganas.
2. The fact of the case in a nutshell is that the opposite party no.2 of the instant application is a Mechanical Engineer of Jadavpur University. He has obtained

a patent for 'Inverted Flexible Conduct Joining' and runs a business having name and style as 'M/s. Super Metals and Alloys'. The opposite party no.2 is engaged in manufacturing confidential and complicated items of spare parts used on Indian Railways and Railway Locomotive of Chittaranjan Locomotive Works. For manufacturing of said integral items continuous supply of electricity was required. Hence, the opposite party no.2 entered into an oral agreement for the supply of 63 KVA 440 volt 3 phases diesel generator set with Kirloskar alternator and Leyland 6 cylinders, water cool self-start engine at a price of Rs.1, 30,000/- on August 03, 2007. The Opposite Party no.2 made a payment of Rs.50, 000/- through cheque. The generator set was not supplied within time. After that, he lodged a complaint before the District Consumer Disputes Redressal Forum, Kolkata Unit-II. In the said complaint, it is alleged that non-supply of generator set due to negligence of the present petitioner has caused huge financial loss. A prayer was made on behalf of the opposite party no.2 before the Consumer Disputes Redressal Forum to direct the petitioner to supply the generator set forthwith or to refund the advance amount of Rs.1, 20,000/- with interest @18% per annum with effect from 03-08-2007 and also to pay Rs.10, 00,000/- as compensation for production loss and a cost of Rs.5, 000/- is also prayed for.

- 3.** The District Consumer Redressal Forum, on the basis of such complaint, passed an order directing the present petitioner to pay Rs.1,20,000/- or to supply the generator set within a fortnight from the date of receipt of balance amount of Rs.10,000/- and also pay a sum of Rs.50,000/- as compensation

for the negligence caused by the petitioner. The present petitioner preferred an appeal against the same before the State Consumer Disputes Redressal Commission, West Bengal, and there also it was held that all the facts clearly constitute the deficiency in service on the part of the petitioner. Finally the appellate forum dismissed the appeal. Against that, an appeal was preferred before the National Consumer Disputes Redressal Commission, New Delhi challenging the order dated February 24, 2012 passed by the State Consumer Disputes Redressal Commission.

4. During pendency of such proceeding, the Opposite Party no.2 lodged a complaint under Section 156(3) of the Code of Criminal Procedure before the learned Court of Chief Judicial Magistrate at Alipore, 24 Parganas (South). A direction was also given by the said Magistrate to the Officer-in-Charge of Gariahat Police Station to register an FIR against the present petitioner. On completion of investigation, charge sheet has been submitted in that case whereby prima facie a case under Section 420 of the Indian Penal Code has been established and now the present petitioner has come up before this Court for quashing of the said proceeding.
5. It is the contention of the learned advocate representing the petitioner that the admittedly, an amount of Rs.50, 000/- was paid by the present petitioner and subsequently, an amount of Rs 50,000/- and Rs.20, 000/- was paid, but the amount of agreement that was entered into was Rs.1, 30,000/- and part by part an amount of Rs.1, 20,000/- only has been paid which is apparent from the complaint as lodged by the opposite party no.2. It is further argued by the

learned Advocate that it was a commercial transaction between the parties with regard to supply of generator set and because of non-supply of the generator set or non-refund of money, a civil dispute should have been arisen however, this has been given a colour under the garb of a criminal proceeding and, therefore, interference of this Court is necessitated. It is further submitted that in order to attract Section 420 of the IPC, there must be a deception at the inception and that deception is the prime ingredient to continue the proceeding under Section 420 of the Indian Penal Code which is absolutely missing in this case. That apart, the Opposite Party no.2 initially lodged the complaint describing him as a consumer and on the ground of negligence on the part of the present petitioner to supply the generator set and that cannot be a ground to deal with in terms with Section 420 of the IPC.

6. The learned advocate representing the State, on the other hand, raises strong objection and it is submits that there was no continuous transaction between the parties and it is in respect of a specific article that is the generator set over which such agreement was entered into. Admittedly, the Opposite Party no.2 paid Rs.1,20,000/- part by part out of Rs.1,30,000/-but despite giving assurance by the petitioner, he failed to comply with the same. It is further submitted that the motive was there from the very inception and because of that, despite a direction given by the Consumer Disputes Redressal Forum either to return the money or to supply the generator set, he has intentionally avoided to pay that which clearly attracts Section 420/- IPC since his intention

of not refunding the money is established. Accordingly, it is submitted that since the charge sheet has been submitted, the petitioner must face the trial.

7. Having heard the submissions of the learned Advocates and on a careful perusal of the entire content of the FIR, prima facie the factum of an agreement entered into between the parties to supply the generator set within three weeks from the date of taking advance money is glaringly visible. It is also not in dispute that the petitioner also received Rs.50,000/- on August 03, 2007 by cheque no.239406 drawn on Bank of Baroda, Jodhpur Branch, Kolkata-68 as advance but the petitioner did not supply the generator set within three months pursuant to such agreement and the complainant paid a further amount of Rs.50,000/- vide cheque no.239439 dated November 03, 2007 drawn on Bank of Baroda, Jodhpur Branch as further payment towards the agreed amount of Rs.1,30,000/- and also expressed that he was in extreme need of the generator set. The present petitioner who assured that the generator set was almost ready, but he did not supply the same. Subsequently, a further amount of Rs.20,000/- was also asked for with a promise to supply the generator set within 2-3 days and the said amount was paid by the present opposite party no.2 on January 05, 2008 by a cheque drawn on Bank of Baroda. Therefore, the balance amount remained to be paid was Rs.10, 000/- which was said to be paid after getting the supply of the generator set. Since no response was made by the present petitioner, a notice was sent to him on August 13, 2008 requesting him either to supply the generator set to him or to refund the money. The petitioner after that also did

not deliver the generator set and this conduct clearly manifest the mens rea of the petitioner to cheat the complainant. The order of the District Consumer Disputes Redressal Forum clearly depicts the entire facts and circumstances and the defence taken by the present petitioner therein for non-supply of the generator set. The direction of District Consumer Disputes Redressal Forum to the present petitioner was to supply the generator set within a fortnight from the date of receipt of the balance amount of Rs.10, 000/- failing which the entire payment of Rs.1, 20,000/- is to be refunded to the complainant within one month, in default, the amount will carry interest @12% per annum from the date of filing of the complaint till full realization. The question the petitioner never disclosed the reason for not delivering the generator set or not repaying the amount admittedly received by him.

- 8.** The stand taken by the petitioner about the delay in lodging the F.I.R on account of filing the case before the Consumer Forum which should be factored in for considering the case for quashing the proceeding this court is of the view that delay caused in lodging the complaint does not absolve the liability of the present petitioner to comply with the direction of the consumer forum or the terms agreed upon. On repetitive occasions, the different forum passed direction against the present petitioner holding him liable to pay despite that, the petitioner instead of making refund of the said amount or deliver the said generator set raising the issue of maintainability and is evading the Court and despite receiving intimation he never made attempt to appear and the petitioner has been represented by the Learned Amicus Curie

which clearly shows the mala fide intention on the part of the present petitioner

9. In view of the various judicial pronouncement it is observed by the Hon'ble Supreme Court that a contractual dispute or breach of contract per se should not lead to initiate a criminal proceeding. The ingredients to attract cheating as defined in Section 415 of the Indian Penal Code is existence of fraudulent or dishonest intention of making initial promise or representation thereof from the very beginning of the formation of contract is necessary. The test is whether the allegation in the complaint discloses any criminal offence or not, is to be ascertained from the content of the complaint and the mere fact that the complaint relates to a commercial transaction or breach of contract for which civil remedy is available, does not by itself a ground to quash the criminal proceeding.

10. In the instant case there was no continuous commercial relation between the parties and they entered into the agreement only in respect of delivering a particular product. In this case, the petitioner seems to have a dishonest intention at the very inception and therefore he did not raise the issue that unless the entire payment is made he will not deliver the Generator set or that he has any difficulties for which he needed time and the petitioner has also not made out a case as to why despite repeated orders passed by the Consumer Disputes Redressal Forum as well as the appellate court, he did not comply with the direction and also is not appearing before this Court and/or not repaying the amount that was received by him but kept this revisional

application alive where the order of admission was passed considering the nature of dispute arises out of breach of contract but at that time the proceeding was pending before the Consumer Redressal Forum. Subsequently he continued to flout the orders passed by the Consumer forum and therefore, this Court is of the view that on the ground of technicalities, the petitioner should not be favoured with any direction which inure in his favour by not relegating the proceeding before the trial court. Therefore, the petitioner must face the trial when the charge sheet has been submitted.

- 11.** In view of this, the revisional application stands dismissed.
- 12.** This Court appreciates the assistance rendered by the Amicus Curiae.
- 13.** The Case Diary be returned.
- 14.** All parties shall act on the server copies of this judgment duly downloaded from the official *website* of this Court.
- 15.** Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]