

1.
13-11-2025
(ct. no.34)
debajyoti

**IN THE HIGH COURT AT CALCUTTA
Criminal Revisional Jurisdiction**

CRR 35 of 2025

**Lakshmi Narayan Pal
Vs.
The State of West Bengal & Ors.**

Mr. Arun Naskar

... For the Petitioner.

Mr. Ranabir Roy Choudhury

... For the State.

1. This application under Section 528 of the Bharatiya Nagarik Suraksha Sanhita (BNSS) has been filed against an order dated 31st December, 2021 pending before the Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas under Sections 420/506 of the Indian Penal Code.

2. It is the case of the petitioner that the opposite party being the defacto complainant lodged a complaint where this petitioner is arraigned as an accused with a false and concocted story. The defacto complainant with an ulterior motive made an application before the Court of Additional Chief Judicial Magistrate, Barrackpore, North 24-Parganas under Section 156(3) of the Code of Criminal Procedure/175(3) BNSS on the basis of which the learned Additional Chief Judicial Magistrate directed the concerned police station to treat the said petition as FIR with an observation that the petitioner has disclosed *prima facie* existence of cognizable offence which requires investigation.

3. The crux of the complaint as lodged by the defacto complainant is that a lease agreement was entered into between the parties for a period of five years executed on 01-04-2016 and it was mutually agreed that the defacto complainant would pay Rs.20,000/- per year to the above

noted accused persons. In accordance with the said agreement, the defacto complainant has paid the following amount to the accused persons as on date:-

- a) 01/04/2016 -- (for the period of 2016-17) ... Rs.20,000/-
(Rupees Twenty Thousand) in cash.
- b) 01/05/2017 -- (for the period of 2017-18) ... Rs.20,000/-
(Rupees Twenty Five Thousand) in cash.
- c) 18/06/2018 -- (for the period of 2018-19) ... Rs.25,000/-
(Rupees Twenty Thousand) in cash.
- d) 18/05/2019 -- (for the period of 2019-20) ... Rs.25,000/-
(Rupees Twenty Five Thousand) in cash.
- e) 17/05/2020 -- (for the period of 2020-21) ... Rs.25,000/-
(Rupees Twenty Five Thousand) in cash.

4. Therefore, it was the contention of the defacto complainant that he has paid an amount of Rs.1,00,000/- as per the terms of the lease agreement to the present petitioner despite that the present petitioner has sent a legal notice on 23-03-2021 to him with a direction to vacate the lease property by 31st day of March, 2021.

5. Furthermore the petitioner has no right, title and interest in respect of the disputed property leased in favour of the defacto complainant and in the year 2019, he intended to enter into an unlawful agreement with another person, namely, Jitendra Chowdhury, of the leased property irrespective of the fact that the said property has already been leased to the petitioner.

6. On the basis of this, the present case has been initiated and vide order dated June 18, 2024, the learned Magistrate considered the material and sent the same before the appropriate police station to treat the same as FIR, on the basis of which, investigation commenced and charge sheet has been submitted in this case.

7. It is the contention of the learned advocate for the petitioner that the entire dispute is civil in nature and it has been cloaked with criminal intention and, therefore, it is not maintainable on the fact of the case and no civil suit is pending between the parties as of now.

8. The learned advocate representing the State/opposite party fairly submits that the proceeding if allows to continue would amount to abuse in the process of law since the dispute is purely civil in nature.

9. Despite service of notice, none appears to represent the opposite party no.3 before this Court.

10. The complaint *prima facie* shows that the dispute is civil in nature. The present opposite party no.3 is in the status of a lessee/tenant and has challenged the right, title and interest after receiving the termination notice. The status of the petitioner is neither of a licensee or tenant and, certainly, cannot be equated with the right of the owner of the premises in question.

11. In the celebrated decision *The State of Haryana vs Bhajanlal* reported in 1992 SCC (Sup) 1 335, the parameters are given when an application under Section 482 of CrPc./528 BNSS can be considered are as follows ;

“ (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do

not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. ”

12. It was observed by the Hon'ble Supreme Court in the case of Shailesh Kumar Singh Vs. State of Uttar Pradesh, reported in 2025 INSC 869 following Bhajanlal that if a dispute is overwhelmingly civil ,crimal machinery cannot be deployed as a debt recovery tool. The Hon'ble court disapproved the practice of using criminal proceeding as a substitute of civil remedies .Admittedly in this case the status of the opposite party no3/defacto is either a tenant or a lessee under the petitioner and the lease was for a period of 5 years when the legal notice was sent to vacate the suit premises. Whether the said notice is legal or the petitioner had any authority to sent such notice can only be determined by a civil court . That apart in order to maintain an allegation u/s 420 IPC the essential element of cheating must be established when nothing can be found from the fore corners of the said complaint. Furthermore the learned Magistrate did not apply his judicial mind though perused the content of the complaint and mechanically forwarded the same to register the F.I.R .

13. Therefore, in the light of the above facts and circumstances and guidelines framed by the Hon'ble Supreme Court and the ratio decidendi of the case as the situation manifest clear civil dispute the High Court should not hesitate to quash the criminal proceeding, this Court is of the view that the present FIR along with the charge sheet and the entire proceeding pending before the learned Court below is liable to be quashed and if it is allowed to be continued, it would be an abuse of process of law.

14. Accordingly, CRR 35 of 2025 stands disposed of.

15. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

16. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[Chaitali Chatterjee (Das), J.]