

IN THE HIGH COURT AT CALCUTTA
CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.R. 68 of 2025

Sri Ganesh Prasad Kushwaha & Anr.
versus
The State of West Bengal & Ors.

For the Petitioner : Mr. Narendra Nath Das
Mr. Tapas Prasad
Ms. Binapani Singha

For the State : Mr. Nilay Chakraborty, ld. APP
Ms. Namrata Das

For the Defacto-complainant : Mr. Jaydeep Kanta Bhowmik

Heard On : 19.06.2025

Judgement On : 19.06.2025

Tirthankar Ghosh, J. :

The petitioner has challenged the proceeding arising out of Matelli P.S. Case No. 171 of 2024 dated 11.09.2024 under Sections 406/420/34 of the IPC. The investigating authority on receipt of the information, furnished by one Nityananda Saha which was addressed to the Inspector-in-charge of Matelli P.S. registered the case.

The allegations made in the letter of complaint, which has been treated as FIR of the instant case, are to the effect that the informant was a purchaser in respect of green tea leaves and requested the petitioners namely, Ganesh Prasad Kushwaha and Sambhu Sah to purchase the green tea leaves for which he gave a sum of Rs.3,29,22,206.00/- and, after such payment was made, the same tea leaves were supplied but after 24.07.2023, such supply was stopped by the accused persons/the petitioners herein.

The petitioners in a tabular manner has expressed the time period of the payment so made, which is as follows:

- “1. Balance Forward (2021)= 51,75,000.00**
- 2. Payment by Bank (2022)= 1,54,68,570.00**
- 3. Payment by Cash (2022)= 47,73,636.00**
- 4. Payment by Bank (2023)= 68,05,000.00**
- 5. Payment by Cash (2023)= 7,00,000.00”**

It is further contended that in the year 2022 an amount of Rs. 1,77,84,332.00/- was paid for 6,00,096 kgs of green tea leaves and in the year 2023, 1,07,547 kg were delivered which had a value of Rs.35,16,674.00/- (approx) and the same was duly paid. Out of the total amount of Rs.3,29,22,206/- (approx), the amount to which green tea

leaves supplied were Rs.2,13,01,006/- (approx). There has been an outstanding of Rs.1,16,21,200/- (approx).

The informant on several occasions sent reminders for supply of the goods and/or for return of the amount towards the outstanding, neither there had been any supply of green tea leaves nor the due amount has been returned. The informant, therefore, alleged that such due amount has been misappropriated by the accused persons/the petitioners herein, and as such, requested the Inspector-in-charge to take appropriate steps against the accused persons/the petitioners herein.

Learned advocate appearing for the petitioners challenges the very initiation and further continuance of the proceedings/case, as, according to him, for recovery of the balance amount of due, no criminal case can be initiated, as such, the informant has failed to make out a case where there was any deception from the initial stage of the transactions. There were continuous business transactions according to the petitioners for which major supplies were effected and for reasons beyond control, further supply could not be effected.

Additionally, it has been submitted that the case which has been made out by the petitioner is for effecting the regular remedies available before the civil Court and the process of criminal law has been invoked

with the purpose of wreaking vengeance for recovery of the outstanding amount.

Learned advocate for the opposite party has submitted Written Notes of Argument wherein it has been contended that the accusations made in the FIR, if accepted to be true, the same makes out an offence under Section 406/420 of the IPC.

Relying on a judgment reported in **2023(6) SCC 559 [The State of Chattisgarh & Anr.-v- Aman Kumar Singh & Ors.]**, it is submitted that the investigation process should not be scuttled by taking the advantage of draft of the letter of complaint. It was further submitted that since the investigation has commenced, it would not be appropriate for embarking upon an enquiry to test the genuinity of the investigation as also against the allegations as made out in the FIR.

Additionally, it has been submitted that there has been embezzlement of the fund to the tune of more than Rs.1 crore (approx) and the petitioners are enjoying the said money which calls for the investigation to continue, as such, the offence under Sections 406/420 of the IPC is made out.

Learned advocate has also relied upon a judgment reported in **2021 (9) SCC 35 [Kaptan Singh -v- The State of Uttar Pradesh & Ors.]** and submitted that the allegations which have been made out is a triable offence, as such, continuity of the investigation is required.

Reference has also been made on a judgment reported in **2019(10) SCC 686 [CBI –v- Arvind Khanna]** and it has been contended that the correctness of the defence can only be gone into after appreciation of the evidence.

Learned advocate for the State has produced the Case Diary and submitted that since the investigation of the case has already commenced, the State agency must be allowed to continue with the investigation and logical conclusion should be reached after all materials are collected by the investigating officer.

I have taken into account the statement advanced by the learned advocate appearing for the petitioner, State as well as the defacto-complainant.

Prima facie, on an assessment of the accusations/allegations made in the letter of complaint addressed to the Inspector-in-charge of Matelli Police Station, I find that there were continuous business transactions between the petitioners and the defacto-complainant which would be evident from the subject-matter of the complaint which has a reference to two financial years.

It is also admitted in the complaint that out of Rs.3.29 crore (approx), goods/green tea leaves worth Rs.2.16 crore (approx) were also delivered to the defacto-complainant/informant.

The case has been initiated for recovery of the outstanding/balance amount of Rs.1.16 crore (approx).

Considering that the FIR which has been registered only for investigating the charges under Section 406/420 for the outstanding amount, I am of the view that a civil dispute has given the colour of a criminal proceeding. There were continuous business transactions, as such, there cannot be deception from the very beginning. Subsequent non-payment or failure to keep promise cannot give rise to a case under Section 420 of the IPC and had there been a case of non-payment of a part of the money, then the same would amount to breach of the agreement for which appropriate remedies would be available before the learned Civil Court as the same has been pronounced by the Hon'ble Supreme Court in the Case of ***Rajesh Bajaj -v- State of NCT of Delhi*** reported in **AIR 1999 SC 1216** and the subsequent decisions.

Having regard to the totality of the circumstances, *particularly*, the foundation on which the case was registered for investigation, I am of the considered view that the same was for the purpose of recovery of outstanding dues which cannot be permitted by setting the criminal law into motion.

As such, I am of the opinion that further continuation of the proceeding arising out of Matelli P.S. Case No. 171 of 2024 dated

11.09.2024 would result in abuse of the process of law and consequently, the same is hereby quashed.

With the aforesaid observations, CRR 68 of 2025 is **Allowed**.

Pending application(s), if any, is also disposed of.

Case Diary be returned to the learned advocate for the State.

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

Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)