

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

**PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR**

CRR 161 of 2025

**Bishal Sarkar & Anr.
-Vs.-
The State of West Bengal and Anr.**

For the Petitioners : Mr. Deborshi Dhar
Mr. Rahul Agarwal
Ms. Taniya Bhowmick

For the State : Mr. Ujjwal Luksom

Hearing concluded on : 21.07.2025

Judgment on : 23.07.2025

Uday Kumar, J.:-

1. This revisional application, filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)—a provision corresponding to the erstwhile Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.)—has been preferred by employees of the OLA showroom in Siliguri Bishal Sarkar and Souvik Das (hereinafter referred to as "the petitioners"), who prayed for quashing of Siliguri Police Station Case No. 46/2025, dated January 20, 2025, under Sections 316(2), 318(2), and 318(4) of the Bharatiya Nyaya Sanhita (BNS) 2024, as it amount to the abuse of process of court, and no *prima facie* case is established against

them. This case was registered following a complaint by Arun Kumar Bothra (the complainant), the purchaser of an OLA scooter.

- 2.** Facing incessant mechanical and operation problems in newly purchased Ola S1X+ Scooter (registration no. WB74BR9464) on February 8, 2024, from an OLA showroom near Jhankar More, Burdwan Road, Siliguri, for Rs. 1,05,728/-, it the root cause of this dispute. The complainant, Arun Kumar Bothra, noticed continuous mechanical and operational issues with the scooter, including sudden power-offs, unexpected shifts to parking mode, and starting failures, from the very date of purchase, and he reported the same to the authorized service centre.
- 3.** Despite repeated visits to the service centre for repairs, the problems persisted, and new issues consistently emerged. Initially, the showroom failed to respond adequately to his complaints. The complainant communicated with Mr. Souvik Das, the Service Manager, who assured him of service. However, on September 19, 2024, a new problem arose: the scooter's screen turned off. Consequently, on September 30, 2024, the scooter was returned for servicing to the OLA Electric Burdwan Road Showroom, Siliguri, where it remained in a dismantled state until October 20, 2024, without proper repair. Subsequently, Mr. Bishal Sarkar, a salesperson, advised the Complainant to take the scooter to the OLA Electric Bhanu Nagar Showroom-cum-Service Centre.
- 4.** The complainant eventually received the scooter on November 3, 2024, but a new issue emerged in the scooter on the very next day, i.e., on November 4, 2024, necessitating another service drop-off. As of January

20, 2025, the scooter remained at the showroom. The complainant further alleged receiving a message on the OLA App stating, *"Your S.I. Scooter is delivered to you after service completion,"* despite the scooter never having been delivered. He contended this constituted a *"fake message with mala fide intention."* When he approached Souvik Das, he allegedly received no satisfactory explanation.

5. Consequently, the complainant sought criminal proceedings against Bishal Sarkar and Souvik Das. He alleged dishonest misappropriation of his scooter, criminal breach of trust (claiming the scooter was entrusted for servicing), and fraudulent deception, which he asserted caused him wrongful loss, physical and mental harassment, and monetary loss. Specifically, he claimed that the authorized representatives knowingly sold a defective scooter and defrauded his interest. These allegations led to the registration of Siliguri P.S. Case No. 46/2025 under Sections 316(2), 318(2), and 318(4) of the BNS 2024, forming the subject matter of this revisional application (CRR).
6. Mr. Deborshi Dhar, Learned Advocate for the petitioners, submitted that his clients bear no responsibility for any mechanical defects in the scooter and never influenced the complainant's purchase. Therefore, he argued, no question of deceiving or misappropriating his property arises. Instead, the petitioners acted diligently, even informing the complainant to collect the scooter from another store (Mahananda Para) on November 15, 2024. Furthermore, he stated that after repairing of the scooter, the job card was closed at the complainant's verbal request, but the

complainant failed to take delivery of his scooter despite several follow-ups, which prevented the opening of a fresh job card.

7. Mr. Dhar vehemently contended that the petitioners, being mere employees, cannot be held accountable for manufacturing defects inherent in the OLA scooter. He emphasized that the essential ingredients of cheating and criminal breach of trust are entirely absent in the present case. There was no deception at the time of sale, as the complainant purchased the scooter based on his own informed choice.
8. Mr. Dhar further submitted that no dishonest misappropriation of the scooter occurred; it was merely kept for servicing and remained available for collection. He argued that the core of this dispute concerns a defective product and alleged deficiency in service, which are purely civil in nature, falling squarely within the jurisdiction of the Consumer Protection Act. Relying on established legal principles, he asserted that allowing criminal proceedings for what is essentially a civil dispute constitutes a gross abuse of the process of law. He reiterated that if the complainant has a grievance, his appropriate remedy lies before the Consumer Forum, and the initiation of criminal proceedings in this context represents an abuse of the legal process.
9. Conversely, Mr. Ujjwal Luksom, Learned Advocate for the State, made a candid submission, conceding that "none of the ingredients of 316 and 318 of BNS is attracted here." The State acknowledged that, based on the material available on record, the allegations made by the complainant do not satisfy the legal requirements for the criminal offenses alleged. It was further submitted that the allegations are

inherently civil in nature, and the Consumer Court remains the appropriate forum for the complainant to seek redressal. The State, however, remained silent regarding the progress of the investigation.

- 10.** On the basis of the above facts, the fundamental question to be decided is:

"Whether a criminal proceeding for offenses of cheating and criminal breach of trust can be sustained against employees of a sales and service centre solely on the ground that a product sold by the company is found to be defective and service thereof is unsatisfactory."

- 11.** To address the question, it is imperative to examine the essential ingredients of the offenses under Sections 316 and 318 of the BNS 2024 and assess whether the facts presented in the complaint satisfy these requirements.

- 12.** Section 318 of the BNS 2024 defines cheating. The core elements are:

- i. Deception: The accused must have deceived the victim. This can be through false representation, dishonest concealment of facts, or any other act or omission intended to mislead.
- ii. Fraudulent or Dishonest Inducement: The deception must have fraudulently or dishonestly induced the person so deceived to:
 - a. delivers any property to any person; or
 - b. consent that any person shall retain any property;
 - or
 - c. intentionally induces the person so deceived to do or omit to do anything which he would not do or

omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property.

13. In the present case, the complainant alleges that the petitioners cheated him by selling a defective scooter and later sending a "fake message." However, the crucial aspect of cheating is "deception" and "dishonest inducement" at the inception of the transaction or a specific dishonest intent to cause wrongful loss. The petitioners contend that the complainant purchased the scooter on his own volition, and there is no material on record to suggest that the petitioners, as sales or service employees, deceived him with an intent to defraud at the time of sale. The problems with the scooter manifested *after* the purchase. A product becoming defective post-sale, even if recurrent, does not automatically imply a dishonest intent to cheat at the moment of sale. While the "fake message" concerning delivery is problematic, it must be viewed in the context of service and not necessarily as a primary act of cheating for property delivery. The complaint, read as a whole, appears to highlight a post-sale deficiency and service failure rather than an initial fraudulent inducement.

14. Similarly, Section 316 of the BNS 2024 defines criminal breach of trust.

The essential elements are:

- i. Entrustment of Property: The accused must have been entrusted with property or with any dominion over property.

ii. Dishonest Misappropriation or Conversion: The accused must have dishonestly misappropriated or converted that property to their own use, or dishonestly used or disposed of that property in violation of any direction of law or contract.

15. Indubitably, the scooter was entrusted to the service centre for repair. However, for criminal breach of trust, "dishonest misappropriation" or "conversion to their own use" must be proven. The facts reveal that the scooter was kept for servicing and remained available for collection—even if at another service centre—and that the Complainant subsequently failed to take delivery. The mere failure to repair a product or provide satisfactory service, even if negligent or inefficient, does not, by itself, translate into "dishonest misappropriation" of the scooter by the employees for their personal gain. The primary objective of the service centre was to repair and return the scooter, not to permanently deprive the owner of it for their own benefit. The complainant's allegation of "dishonestly misappropriating his scooter with *mala fide* intention and converted the same for dishonest/illegal gain" lacks specific factual basis on record to suggest such criminal intent on the part of the individual employees.
16. It is a well-settled principle of law that every breach of contract or civil wrong does not automatically give rise to a criminal offense. The Hon'ble Supreme Court of India has repeatedly emphasized the need to distinguish between a purely civil dispute and a criminal offense. Criminal law addresses acts that are offenses against society,

characterized by *mens rea* (guilty mind) and a clear intention to commit a crime.

17. The Hon'ble Supreme Court, in various pronouncements, has cautioned against the misuse of criminal machinery for the recovery of money or for settling civil disputes. For instance, in *Hridaya Ranjan Prasad Verma v. State of Bihar & Anr.* [(2000) 4 SCC 168], the Hon'ble Supreme Court held that for an offense of cheating, dishonest intention must be present at the very inception of the transaction. A mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction. More recently, the Hon'ble Supreme Court has reiterated that "invoking criminal law by filing an FIR for recovery of money by a person is an abuse of the process of law as it is a civil dispute," and that High Courts should quash such proceedings where "the plain reading of FIR does not disclose any element of criminality."
18. Crucially, the materials on record do not disclose any *prima facie* case against the petitioners, which would, in itself, be a ground for quashing, as per the principles laid down in *State of Haryana v. Bhajan Lal*, AIR 1992 SC 604.
19. In the present case, the complainant's allegations, primarily concerning mechanical defects and unsatisfactory service of a purchased product, clearly fall within the ambit of a consumer dispute. The Consumer Protection Act, 2019, provides a robust mechanism for consumers to seek redressal for defective goods and deficient services, including demands for replacement, refund of the price paid, or compensation for

damages and mental agony. The Consumer Forums possess the power to direct removal of defects, replacement of goods, refund of price, and award compensation.

- 20.** The petitioners are merely employees. Holding them personally liable criminally for product defects, which are largely the responsibility of the manufacturer or the company owner, without specific evidence of their direct criminal intent to cheat or misappropriate, would constitute an unwarranted extension of criminal law. The complaint, even at its highest, describes a series of service failures and product malfunctions—classic grounds for a consumer complaint.
- 21.** Furthermore, the candid submission by the Learned Advocate for the State, acknowledging that the ingredients of the criminal offenses are not made out and that the matter is civil in nature, strongly supports the quashing of the criminal proceedings. This indicates an absence of sufficient prosecutable material that could reasonably lead to a conviction.
- 22.** Having meticulously perused the material on record, the contentions of the parties, and the relevant legal provisions, I find that the essential ingredients necessary to constitute the offenses of "cheating" under Section 318 BNS 2024 and "criminal breach of trust" under Section 316 BNS 2024 are not satisfied against the petitioners. The allegations, at their core, pertain to a dispute arising from a defective product and alleged deficiency in service, which are matters inherently civil, squarely falling within the purview of consumer law.

- 23.** In view of the aforesaid deliberations, I am convinced that allowing the continuation of criminal proceedings against the petitioners—who are merely employees of the company—for product defects and service issues, without a clear demonstration of their individual criminal intent to cheat or misappropriation, would undoubtedly constitute an abuse of the process of law. Such an action would unnecessarily burden the criminal justice system with a dispute that can be effectively and appropriately resolved through the consumer dispute redressal mechanism.
- 24.** In any event, I am in agreement with the contentions of the petitioners and the concession made by the Learned Advocate for the State that this proceeding appears to be an attempt to resolve a civil dispute, which is impermissible in law.
- 25.** Therefore, the present revisional application being CRR 161 of 2025 is allowed.
- 26.** The criminal proceeding, being Siliguri Police Station Case No. 46/2025 dated January 20, 2025, pending before the Learned Additional Chief Judicial Magistrate, Siliguri, against petitioners Bishal Sarkar and Souvik Das, is hereby quashed.
- 27.** The complainant, Arun Kumar Bothra, is at liberty to pursue his remedies for the redressal of his grievances before the appropriate Consumer Forum in accordance with the provisions of the Consumer Protection Act, 2019, and other applicable laws.
- 28.** There shall be no order as to costs.
- 29.** Interim order/orders, if any, stands vacated.

- 30.** The Trial Court Record (TCR), if any, shall be sent down to the Trial Court, at once.
- 31.** The Case Diary, if any, be returned forthwith.
- 32.** The department concerned is directed to communicate this judgment to the Learned Additional Chief Judicial Magistrate, Siliguri and the Officer-in-Charge, Siliguri Police Station, for necessary action.
- 33.** Urgent Photostat certified copy of this order, if applied for, be given to the parties as expeditiously as possible, upon compliance with the necessary formalities in this regard

(Uday Kumar, J.)