

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

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 183 of 2024

**Bimbadhar Mohakud & Anr.
Vs
Bina Shah.**

For the Petitioners : Mr. Ayan Bhattacharya, Sr. Adv.
Mr. Milindo Paul,
Mr. Nabankur Paul,
Mr. Zulfiquar Ali Ali Quaderi,
Mr. Bedasruti Bose,
Mr. Subham Das,
Mr. Bodhisatya Ghosh,
Mr. Shisha Goyal,
Mr. Aditya Seal.

For the Opposite Party : Mr. Kishan Lal Lohia.

Hearing concluded on : 28.04.2025

Judgment on : 30.04.2025

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred praying for quashing of the proceeding of C.R. Case No.1344 of 2023 under Sections 420/409/406/418/425 of the Indian Penal Code, 1860

pending before the Court of the learned Judicial Magistrate, 1st Class, 1st Court at Siliguri.

2. The statement of the complainant on oath as made before the Magistrate issuing process is as follows:-

“C.R. Case No. 1344 of 2023

***Examination of the Complainant Smt. Bina Shah
on S.A. on 26-12-2023***

I have filed this case against accused M/S Dhani Loans & Others. That in the year 2018 the accused persons had approached me and my husband in Siliguri and introduced themselves to be the Directors of a company namely M/S IVL Finance Ltd to let my premises on lease to their company for nine years and also asked me to believe and trust them. On good faith I decided to lease the premises to the accused for a minimum of 9 years and after being satisfied with the verification and inspection. Thereafter, the accused took possession of my premises and started functioning. I invested Rs. 10 Lakhs to Rs. 15 Lakhs for the said office.

After three years of retaining the lease property (premises) the accused issued a pre time termination for leaving the lease out premises without any reason. The accused has caused serious mischief, damage and destruction of the leased premises causing loss to my property. The accused also asked me to refund the money paid by them as an advance with interest. I did not agree with pretime termination after spending Rs. 10 Lakhs to Rs. 15 Lakhs therein. That in the year 2022 several times I along with my agent asked the accused to come to Siliguri and pay for the damages, outstanding rent and electricity bills but in vain.

The accused persons have dishonestly and deliberately avoided my payment even and failed to fulfill their promises so made in the year 2018 to 2022.

The accused persons also threatened me with dire consequences.

For this reason I have filed this case.

I pray relief in terms of my prayer.

Dictated & corrected by me.

Sd/-

J.M. 1st Court, Siliguri.”

3. Learned Counsel for the Respondent has relied upon the following Judgments:-

- i. ***Khacheru Singh vs State of Uttar Pradesh & Anr., AIR 1982 SC 784(2).***
- ii. ***Chandra Kumar Poddar vs The State of West Bengal, (1999) 2 CALLT552(HC).***
- iii. ***Md. Allauddin Khan vs State of Bihar & Ors., AIR 2019 SC 1910.***
- iv. ***M/s. Indian Oil Corporation vs M/s. NEPC India Ltd. & Ors., AIR 2006 SC 2780.***

4. The Supreme Court in ***Rikhab Birani & Anr. Vs State of Uttar Pradesh & Anr., 2025 SCC OnLine SC 823, decided on 16.04.2025***, held:-

“15. *In Lalit Chaturvedi v. State of Uttar Pradesh, this Court quoted an earlier decision in Mohammed Ibrahim v. State of Bihar, wherein, referring to Section 420 of the IPC, it was observed that the offence under the said Section requires the following ingredients to be satisfied:*

“18. Let us now examine whether the ingredients of an offence of cheating are made out. The essential ingredients of the offence of “cheating” are as follows:

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission;

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived; and

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.”

16. Reference was also made to the decision in *V.Y. Jose v. State of Gujarat* and it was observed:

“7. Similar elucidation by this Court in “*V.Y. Jose v. State of Gujarat*”, explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of ‘cheating’, as defined under Section 415 of the IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 of the Cr. P.C. Section 482 of the Cr. P.C. saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint. This Court in *V.Y. Jose (supra)* placed reliance on several earlier decisions in “*Hira Lal Hari Lal Bhagwati v. CBI*”, “*Indian Oil Corporation v. NEPC India Ltd.*”, “*Vir Prakash Sharma v. Anil Kumar Agarwal*” and “*All Cargo Movers (I) (P) Ltd. v. Dhanesh Badarmal Jain*”.”

17. This Court, in *Delhi Race Club (1940) Limited v. State of Uttar Pradesh*, highlighted the fine distinction between the offences of criminal breach of trust and cheating, observing that the two are antithetical in nature and cannot coexist simultaneously. Police officers and courts must carefully apply their minds to determine whether the allegations genuinely constitute the specific offence alleged.

18. In *Kunti v. State of Uttar Pradesh*, this Court referred to *Sarabjit Kaur v. State of Punjab* wherein it was observed that a breach of contract does not give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. Merely on the allegation of failure to keep a promise will not be enough to initiate criminal proceedings. Thus, the dishonest intention on the part of the party who is alleged to have committed the offence of cheating should be established at the time of entering into the transaction with the complainant, otherwise the offence of cheating is not established or made out.

19. *It is the duty and obligation of the court to exercise a great deal of caution in issuing process, particularly when the matter is essentially of civil nature. The prevalent impression that civil remedies, being time-consuming, do not adequately protect the interests of creditors or lenders should be discouraged and rejected as criminal procedure cannot be used to apply pressure. Failure to do so results in the breakdown of the rule of law and amounts to misuse and abuse of the legal process.*

20. *In yet another case, again arising from criminal proceedings initiated in the State of Uttar Pradesh, this Court was constrained to note recurring cases being encountered wherein parties repeatedly attempted to invoke the jurisdiction of criminal courts by filing vexatious complaints, camouflaging allegations that are ex facie outrageous or are pure civil claims. These attempts must not be entertained and should be dismissed at the threshold. Reference was made to a judgment of this Court in *Thermax Limited v. K.M. Johny*, which held that courts should be watchful of the difference between civil and criminal wrongs, though there can be situations where the allegation may constitute both civil and criminal wrongs. Further, there has to be a conscious application of mind on these aspects by the Magistrate, as a summoning order has grave consequences of setting criminal proceedings in motion. Though the Magistrate is not required to record detailed reasons, there should be adequate evidence on record to set criminal proceedings into motion. The Magistrate should carefully scrutinize the evidence on record and may even put questions to the complainant/investigating officer etc. to elicit answers to find out the truth about the allegations. The summoning order has to be passed when the complaint or chargesheet discloses an offence and when there is material that supports and constitutes essential ingredients of the offence. The summoning order should not be passed lightly or as a matter of course.*

21. *Lastly, we would refer to another detailed judgment of this Court in *Sharif Ahmed v. State of Uttar Pradesh*, which draws out the ingredients required to establish an offence under Sections 406, 415, 420, 503 and 506 of the IPC in the following terms:*

“36. An offence under Section 406 of the IPC requires entrustment, which carries the implication that a person handing over any property or on whose behalf the property is handed over, continues to be the owner of the

said property. Further, the person handing over the property must have confidence in the person taking the property to create a fiduciary relationship between them. A normal transaction of sale or exchange of money/consideration does not amount to entrustment. Clearly, the charge/offence of Section 406 IPC is not even remotely made out.

37. The chargesheet states that the offence under Section 420 is not made out. The offence of cheating under Section 415 of the IPC requires dishonest inducement, delivering of a property as a result of the inducement, and damage or harm to the person so induced. The offence of cheating is established when the dishonest intention exists at the time when the contract or agreement is entered, for the essential ingredient of the offence of cheating consists of fraudulent or dishonest inducement of a person by deceiving him to deliver any property, to do or omit to do anything which he would not do or omit if he had not been deceived. As per the investigating officer, no fraudulent and dishonest inducement is made out or established at the time when the agreement was entered.

38. An offence of criminal intimidation arises when the accused intends to cause alarm to the victim, though it does not matter whether the victim is alarmed or not. The intention of the accused to cause alarm must be established by bringing evidence on record. The word 'intimidate' means to make timid or fearful, especially : to compel or deter by or as if by threats. The threat communicated or uttered by the person named in the chargesheet as an accused, should be uttered and communicated by the said person to threaten the victim for the purpose of influencing her mind. The word 'threat' refers to the intent to inflict punishment, loss or pain on the other. Injury involves doing an illegal act.

39. This Court in *Manik Taneja v. State of Karnataka*, had referred to Section 506 which prescribes punishment for the offence of 'criminal intimidation' as defined in Section 503 of the IPC, to observe that the offence under Section 503 requires that there must be an act of threatening another person with causing an injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested. This threat must be with the intent to cause alarm to the person threatened or to do any act which he is not legally bound to do, or omit to do an act which he is entitled to do. Mere expression of any words without any intent to cause alarm would not be sufficient to bring home an

offence under Section 506 of the IPC. The material and evidence must be placed on record to show that the threat was made with an intent to cause alarm to the complainant, or to cause them to do, or omit to do an act. Considering the statutory mandate, offence under Section 506 is not shown even if we accept the allegation as correct.”

22. Significantly, this Court in *Sharif Ahmed (supra)* cautioned courts to check such attempts of making out a criminal case on the basis of vague and *ex facie* false assertions.”

5. In ***Ramesh Chandra Gupta vs. State of Uttar Pradesh and Ors., 2022 LiveLaw (SC) 993, Criminal Appeal No(s). of 2022 (Arising out of SLP (Crl.) No(s). 39 of 2022)***, the Supreme Court held:-

“**15.** This Court has an occasion to consider the ambit and scope of the power of the High Court under Section 482 CrPC for quashing of criminal proceedings in ***Vineet Kumar and Others vs. State of Uttar Pradesh and Another, (2017) 13 SCC 369*** decided on 31st March, 2017. It may be useful to refer to paras 22, 23 and 41 of the above judgment where the following was stated:

“22. Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.

23. This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in *State of Karnataka v. L. Muniswamy (1977) 2 SCC 699* held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends

of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated :

'7. ... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.'

*41. Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335. Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with mala fides and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 which is to the following effect :*

'102. (7) Where a criminal proceeding is manifestly attended with mala fides 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.’ Above Category 7 is clearly attracted in the facts of the present case. Although, the High Court has noted the judgment of *State of Haryana v. Bhajan Lal* 1992 Supp (1) SCC 335 but did not advert to the relevant facts of the present case, materials on which final report was submitted by the IO. We, thus, are fully satisfied that the present is a fit case where the High Court ought to have exercised its jurisdiction under Section 482 CrPC and quashed the criminal proceedings.”

16. The exposition of law on the subject relating to the exercise of the extra-ordinary power under Article 226 of the Constitution or the inherent power under Section 482 CrPC are well settled and to the possible extent, this Court has defined sufficiently channelized guidelines, to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. This Court has held in para 102 in **State of Haryana and Others v. Bhajan Lal and Others, 1992 Supp. (1) 335** as under :

“**102.** In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(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.”

17. *The principles culled out by this Court have consistently been followed in the recent judgment of this Court in **Neeharika Infrastructure Pvt. Ltd. v. State of Maharashtra and Others, 2021 SCC Online SC 315.***

- 6.** The present case falls under category 1, 3 and 7 of Para 102 of **Bhajan Lal (Supra).**
- 7.** It appears that **the dispute in the present case is regarding a grant of lease** for a period of 9 years and the grievance of the complainant is that there has been a pre-term termination of the said lease, causing loss to the complainant, who allegedly has spent an amount for renovation of the property.

8. It appears that admittedly there is a security deposit which allegedly the accuseds are asking for.
9. **The dispute is clearly a civil dispute** and in such cases of any breach of agreement, the security deposit normally stands forfeited.
10. The materials on record, do not prima facie show presence of the ingredients required to constitute the offences alleged against the petitioners herein and as such the proceeding in this case are liable to be quashed in the interest of Justice and to prevent an abuse of the process of law.
11. **CRR 183 of 2024 is thus allowed.**
12. The proceeding being C.R. Case No.1344 of 2023 under Sections 420/409/406/418/425 of the Indian Penal Code, 1860 pending before the Court of the learned Judicial Magistrate, 1st Class, 1st Court at Siliguri, **is hereby quashed in respect of the petitioners namely Bimbadhar Mohakud and Manoj Kumar Routa.**
13. All connected Applications, if any, stand disposed of.
14. Interim order, if any, stands vacated.
15. Copy of this judgment be sent to the learned Trial Court for necessary compliance.
16. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)