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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 293 of 2025

Pinak Bose & Anr.
Vs.
The State of West Bengal & Anr.

For the Petitioners	:	Mr. Arjun Chowdhury Ms. Sunayana Parveen Ms. Riya Agarwal Mr. Bappaditya Roy Mr. Mantu Mondal
For the O.P. No.2.	:	Ms. Srishti Sarkar
For the State	:	Mr. Nilay Chakraborty, Ld. APP Mr. Sourav Ganguly
Heard On	:	31.10.2025
Judgment on	:	07.11.2025

Dr. Ajoy Kumar Mukherjee, J.

1. Petitioners herein have challenged the impugned proceeding being Maynaguri P.S. case no. 122 of 2025 under section 316 (2)/ 316 (5)/ 318 (4)/338/61(2)/3 (5) of BNS 2023 pending before CJM, Jalpaguri.

2. The petitioners have been arraigned in the said case as an accused alleging *interalia* that in the year 2021, the petitioner no.1 in criminal conspiracy with petitioner no.2 had compelled the opposite party no.2 to purchase 35 decimal of land at a consideration of Rs 50 lakhs but the petitioner had executed a deed of gift instead of a deed of sale and thereby the petitioners have evaded the public exchequer to the tune of Rs. 70,000/- which otherwise could have to be paid as stamp duty and registration fees to the government.

3. It is submitted on behalf of the petitioners that after the demise of Pradyut Kumar Bose, the father of petitioner no.1 and opposite party no. 2/complainant and father in law of petitioner no.2, the petitioner no. 1 and opposite party no.2 inherited the running saw mill business of their father. Petitioners' grievance is that inspite of repeated request, the complainant /opposite party no.2 refused for disclosure of books of accounts and for which he issued a letter to opposite party no.2 herein on 11.09.2024, asking him to furnish all the financial data for the last four years but inspite of receiving written request, the opposite party no.2 had not acted upon such request and continued to act arbitrarily and for which the petitioner no.2 preferred a representation before Divisional Forest Officer, Jalpaiguri who issued a show cause notice to all the parties, as to why their forest licence should not be cancelled. The petitioner no.1 also preferred a complain against opposite party no.2 on 18.11.2024 alleging that there exists certain partnership dispute between the parties and as such his land which he has consented to be used for the purpose of the saw mill business to be vacated as he intend to sell out the land citing financial crisis. Thereafter upon the order of DFO, Jalpaiguri division, dated 05.02.2025 the Forest licence issued by Directorate of Forest was suspended and the operation of the saw mill of the parties was kept in abeyance provisionally till the matter is amicably resolved between the parties.

4. Learned counsel appearing on behalf of the petitioner Mr. Arjun Chowdhury submits that in the above background opposite party no.2 preferred the instant complaint with the aforesaid allegation of depriving the government of its revenue to the tune of Rs.70,000/-. In this context Mr. Chakraborty further submits that his clients obtained anticipatory bail from the court of Sessions Judge where the public prosecutor submitted that government has not suffered any loss of revenue. The court also while granting anticipatory bail observed that the dispute between the parties is purely civil in nature and the case diary also revealed that the government has not suffered any monetary loss.

5. Mr. Chakraborty further submits that the instant case is a classic example of the abuse of the process of the court, which has arisen due to family dispute wherein an old transaction which took place about four years back has been brought into the picture to register the instant case. His further contention is the allegation in the FIR, even if, accepted in toto can at best constitute a civil or revenue dispute concerning intra family members land transfer as a gift deed instead of a sale deed and the alleged evasion of Rs. 70,000/- in stamp duty is a matter governed under the Indian stamp Act 1899 and at best attracts civil penalties but not criminal prosecution under the BNS.

6. He strenuously argued that in case of transaction through sale deed, it is the purchaser who has to bear the stamp duty charges and registration charges and as such it is the defacto complainant who ought to bear the said government charges and the petitioner no. 1 being the alleged seller is not at all responsible to bear such charges and as such the allegation of evading stamp duty applies on the defacto complainant himself and not upon the petitioner no.1 and as such no cognizable offence under the levelled sections of BNS are made out. In fact from the four corners of the allegations made in the complaint there is no element of deception, inducement or dishonest intention on the part of the petitioners as the transaction is consensual, transparent and took place between the relatives who are related by blood. The transaction took place in 2021 but the FIR was lodged in the year 2025 i.e. after a delay of 4 years. In fact after execution of impugned deed the complainant accepted the same and enjoyed for four years and has converted the land from agricultural land to bastu land on 28.06.2022 in order to obtain a mortgage loan from Chola Mondalam Finance Company. Therefore, petitioners contention is that if the complainant was aggrieved by the gift deed he could have converted the gift deed into a deed of sale by putting the appropriate government charges as he claimed himself as purchaser and for which he is solely liable to bear the stamp duty. Furthermore no explanation offered for the inordinate delay in lodging the FIR.

7. Mr. Chakraborty further contended that the instant FIR is nothing but a counter blast to the business dispute. The timing of the FIR which is immediately after the suspension of licence by the DFO on 05.02.2025 on the basis of the petitioners complain, clearly establishes the motivated and malicious act of the complainant to wreak vengeance upon the petitioners who happens to be the brother and sister-in-law of the opposite party no.2/defacto complainant. In other words the core issue is the family partnership dispute over accounts, access in business, management but does not constitute any criminal offence. Ld. Public prosecutor on behalf of government agency admitted that govt has not suffered any loss of revenue and the investigation so far done also supported the same. He further contended that the allegation of criminal breach of trust under section 316 BNS and cheating under section 318 BNS arising from the same transaction are mutually exclusive and therefore invocation of both sections is contradictory. The FIR is clearly a counter blast to the petitioners' prior complaints and notices and therefore continuance of such proceeding would be mere abuse of the process of the court.

8. Ld. Counsel appearing on behalf of the private opposite party no.2/ complainant contended that the High courts inherent power under section 528 of BNSS must be exercised sparingly and with caution. This power is not to be invoked when the allegation in the FIR and materials collected by the investigation agency clearly discloses the commission of a cognizable offence. Mrs. Sarkar on behalf of the opposite party no.2 further contended that an FIR cannot be considered as an encyclopaedia of all the events. The petitioner no.1/accused transferred a portion of the land claiming to be his own though he was not at all the owner of the property, which amounts to cheating and dishonestly inducing delivery of property. In the impugned gift deed the petitioner no.1 in conspiracy with petitioner no.2 transferred a land measuring 35 decimal whereas he was only entitled for 21.56 decimal of land. In the deed he has wrongly portrayed that he inherited said landed property as legal heir from his father which is totally a misrepresentation .

Infact he has impersonated himself to be the owner of an immovable property and by alienating the same in favour of the defacto complainant by way of gift deed instead of making sale deed has committed offence under section 318(4) BNS. Furthermore the petitioner dishonestly mis appropriated/converted his own property which he is not at all owner and dishonestly disposes the same in favour of defacto complainant and thereby committed offence under section 316(2) of BNS. Though the petitioners have taken a plea that the FIR has been lodged at a belated stage but mere delay in lodging FIR in cases based on documentary evidence does not shake the credibility and section 514 BNSS does not create any bar to take cognizance of such offence. Therefore the action of the petitioners resulted in quantifiable loss to both defacto complaint and the government. The allegation of cheating and fraud in the land transaction are specific, concrete and occurred in 2021. The alleged partnership dispute and complaint made by petitioner no.2 to the DFO regarding the saw mills financial affair only began in late 2024 and the so called partnership business dispute alleged by the petitioner is a self serving narrative introduced by the petitioners to divert attention from the substantive and independent criminal offence of cheating and fraud committed in the land transaction and therefore the said proceeding cannot be quashed as the FIR discloses prima facie case of committing serious cognizable offence of cheating and fraud resulting in a loss of over Rs. 50 lakhs to the defacto complainant and direct loss to the state exchequer and therefore he prayed for dismissal of the instant application.

9. Mr. Chakraborty learned counsel appearing on behalf of the state also opposed the petitioners' prayer of quashment contending that the FIR discloses prima facie cognizable offence which is not merely a civil wrong but contains elements of criminal offence. Both the petitioners acted in criminal conspiracy with a pre planned manner to deceive the complainant and from the allegations the *mens rea* has been established and the petitioners compelled to purchase 35 decimal of land for a consideration of Rs. 5 lakhs only by executing deed of gift instead of sale, thereby clearly portraying an act of deceiving and the nature of transaction has been deliberately mis represented to cause wrongful loss to the complainant and wrongful gain to the petitioners.

10. Mr. Chakraborty further contended that even if there is existence of family or business dispute but that does not bar the initiation of criminal proceedings. The onus of paying stamp duty is not the issue because it is not about who failed to pay but about who conspired to create a fraudulent document to evade payment. The petitioners action caused a direct revenue loss of Rs. 70,000/- which demonstrate that the crime has a public dimension. Contents of FIR clearly discloses cognizable offence which requires police investigation as the alleged agreement was to deceit the complainant and to defraud the government. The act of executing gift deed for a monetary transaction clearly pin pointed pre planned and co ordinate scheme. He further contended that petitioner and his wife started commotion in the family over the issue of saw mill business and compelled the complainant to purchase the said land which he showed as gift deed and thereby Knowingly creating such a document that falsely represent the nature of transaction, with the intention to cause damage or fraud falls under the purview of sections 316(2)/316(5) of the BNS. Complainant further submitted that the cause of lodging delayed FIR is not due to inaction on his part but due to late discovery of deception.

11. Mr. Chakraborty further submits that truthfulness of the allegations such as whether the complainant is truly 'compelled' or if there was 'criminal conspiracy' are matters of fact that required thorough investigation by the police and quashing of the FIR at this nascent stage would prevent discovery of evidence. Accordingly he also prayed for dismissal of the instant Application.

12. Having gone through the complaint which was registered as FIR and the assertion made therein it is clear that the opposite party no.2's grievance is regarding criminal conspiracy entered into between two petitioners who had compelled him to purchase 35 decimal of land at a consideration of Rs. 50 lakhs but the petitioner No.1 has executed a deed of gift instead of deed of sale thereby evaded the public exchequer to the tune of Rs. 70,000/-.Even if I assume that the assertion made in the complaint are correct even then it hardly constitutes any offence either under section 316/318/338/61 or section 3 of the BNS. In this context I have also gone through the case diary where the investigating agency has recorded the statement of some of the witnesses who has categorically stated that they have heard that the petitioner no. 1 herein Pinak Bose have sold 35 decimal of land to his brother Bidyut Bose at a consideration price and some amount of the consideration price still remains unpaid and the petitioner does not want to sell rest portion of the land adjacent to the factory as its price had gone high and over the said issue parties are facing trouble. Even complainant Pradyut Bose was also examined during investigation who stated to police that he has purchased 35 decimal of land at a consideration of Rs. 50 lakhs but the petitioner no.1 in order to evade tax and registration cost executed gift deed instead of sale deed and for which government has suffered revenue loss.

13. On perusal of the case diary and the materials placed before me it appears that during investigation police could not seize anything in support of any of the allegations of cheating or criminal breach of trust as mentioned in the FIR. The recorded statement of the witnesses also does not disclose any offence at all. I do not find any entrustment of property to petitioners by opposite party no.2 nor there appears to be any dishonest mis appropriation to attract 316(2) or 316(5) of BNS. Dispute is partnership related and not breach of trust. The allegation of section 318(4) of BNS is also unfounded since there appears to be no deception inducing delivery of property. The gift deed was apparently consensual family arrangement. No allegation of forgery has also been alleged specifically in the FIR. Furthermore neither party has challenged the said deed nor any competent civil court has declared said deed as fraudulent deed till date.

14. In such view of the matter I find that the dispute between the parities is purely civil in nature where the complainant has tried to give a colour of criminality. The allegation made in the FIR coupled with materials collected so far during investigation leads to such an inherent absurdity that no law knowing person can reach a just conclusion that there is a ground for proceeding against the petitioners herein and as such even if proceeding is allowed to continue conviction of present petitioners at the end of trial is bleak. Furthermore it is settled law that the allegation under section 316, and 318 of BNS cannot run concurrently.

15. In ***Indian Oil Corporation Vs. NEPC (India ltd)*** reported in **(2006) 6 SCC 736** the Apex Court specially observed that any effort to settle civil dispute and claims which do not involve any criminal offence by applying pressure through criminal prosecution should be deprecated and discouraged. In the instant case, it remains unchallenged that the complainant/opposite party had accepted the deed and made conversion on 28.06.2022 for the purpose of mortgaging for said land for obtaining loan from a finance company. Therefore, the grievance, if any, ventilated in the written complaint are inherently civil in nature arising out of family dispute and has been sought to be given a criminal colour with *malafide* intention and thereby FIR has been lodged after 4 years of alleged transaction, without having any satisfactory explanation about delay, which demonstrate that the FIR has been lodged as a revenge in response to the steps taken by the petitioners. The High Court while disposing WPA 2712 of 2024 has already directed the DFO to adjudicate the partnership dispute and the suspension of forest licences has already been ordered. And therefore the civil remedies have already been opted in this behalf to resolve the family dispute and none of their actions attracts any criminality. Since the FIR is apparently a counter blast to the business dispute, the present case falls under the 1^{st}, 3^{rd}, 5^{th} and 7^{th} category set out in para 102 of the judgment in ***State of Haryana Vs. Bhajanlal*** reported in **1992 supp (1) SCC 335.** Therefore continuance of criminal proceeding in the facts and circumstances of the present case will result mis carriage of justice and will cause prejudice to the petitioners and as such is liable to be set aside.

16. In view of the above the impugned proceeding being Maynaguri P.S. case no. 122 of 2025 under section 316 (2)/ 316 (5)/ 318 (4)/338/61(2)/3 (5) of BNS 2023 pending before CJM, Jalpaguri is hereby quashed.

17. **CRR 293 of 2025** is allowed.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)