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

PRESENT:
THE HON'BLE JUSTICE UDAY KUMAR

CRR 502 of 2024

Ashok Prasher
-Vs.-
The State of West Bengal and Anr.

For the Petitioner : Mr. Sourav Lohani
Mr. Amit Kumar Pandey

For the State : Mr. Aditi Shankar Chakraborty, Ld. APP
Mr. Kallol Acharjee

Hearing concluded on : 29.07.2025

Judgment on : 01.08.2025

Uday Kumar, J.:-

1. This revisional application, has been preferred by Sri Ashok Prasher (hereinafter referred to as "the Petitioner"), seeks to invoke the extraordinary and inherent jurisdiction of this Court under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (analogous to Section 482 of the Code of Criminal Procedure, 1973), for the quashing of G.R. Case No. 1438/2018, originated from Matigara Police Station Case No. 275 of 2018, dated June 1, 2018, under Sections 406 (criminal breach of trust), 420 (cheating), and 34 (acts done by several persons in furtherance of common intention) of the Indian Penal Code, 1860, and is currently pending before the Learned Additional Chief Judicial

Magistrate, Siliguri, following the submission of Charge Sheet No. 440/2018 dated August 28, 2018 under the same sections.

2. The Petitioner fundamentally asserts that he has been falsely implicated in this case without any underlying criminal intent, contending that the dispute is purely civil in nature, arising from a mercantile transaction, and thus constitutes a patent abuse of the legal process.

3. The factual matrix of this proceeding commenced with a commercial transaction held on January 13, 2024, when Associated Brokers Private Limited (Opposite Party No. 2), through its General Manager Shri Rana Bijay Chowdhury (the de facto complainant), supplied tea leaves worth Rs. 19,20,920/- (Rupees Nineteen Lakhs Twenty Thousand Nine Hundred and Twenty only) to M/s. Nitesh Trading Co., a proprietorship firm of Smt. Indu Agarwal (hereinafter referred to as the 'principal accused'), who used to purchase tea regularly.

4. The outstanding amount claimed by the complainant was Rs. 6,98,057.38/- as of August 23, 2016. Crucially, it is alleged that the present Petitioner, Sri Ashok Prasher, of Paramount Tea Marketing Pvt. Ltd., provided a personal guarantee for the recovery of this outstanding amount. However, despite this guarantee, both the Petitioner and the principal accused are alleged to have wilfully failed and neglected to make the payment. This failure led the complainant to believe that they were induced and cheated through collusion for their mutual wrongful gain.

5. Pursuant to the complaint lodged by Shri Rana Bijay Chowdhury, Matigara Police Station registered FIR No. 275/2018 on June 1, 2018, under Sections 406/420 IPC. During the investigation, the Petitioner duly complied with a notice issued under Section 41A Cr.P.C. on July 2, 2018. The Investigating Officer, after collecting various documents including computer-generated delivery orders and tax invoices, and recording statements, submitted Charge Sheet No. 440/2018 on August 28, 2018, against both Smt. Indu Agarwal and Sri Ashok Prasher under Sections 406/420/34 IPC. The Petitioner was subsequently enlarged on bail by the Learned Additional Chief Judicial Magistrate, Siliguri, on October 3, 2018.

6. Significantly, on the very same cause of action, Associated Brokers Pvt. Ltd. (Opposite Party No.2) had also instituted a civil suit, Money Suit No. 65 of 2018, before the Learned Civil Judge (Senior Division), Siliguri. This Money Suit was disposed of by an order dated June 23, 2023, as the plaintiff therein stated that "the matters have been amicably settled between the parties" and expressed unwillingness to proceed further, seeking to withdraw the suit without liberty to sue afresh. The Petitioner has also apprised this Court of a pending application preferred under Section 482 Cr.P.C. by the principal accused, Smt. Indu Agarwal (CRR No. 2230 of 2018), before the Principal Bench of this Hon'ble Court.

7. The petition seeks the quashing of these criminal proceedings primarily because the underlying dispute is civil in nature and has already been amicably settled between the parties in a parallel money suit. Therefore, continuing the criminal prosecution is seen as arbitrary, illegal, and without any legitimate basis in law, as it allegedly lacks the essential elements of criminal offenses and serves merely to harass the petitioner.

8. Mr. Sourav Lohani, Learned Advocate for the Petitioner, contended that the criminal proceeding is a blatant attempt to recover a commercial debt by improperly attributing a criminal colour to what is fundamentally a civil dispute. He emphasized that the sole allegation against the Petitioner is that he became the guarantor for the said mercantile transaction. He argued that this would not attract the essential ingredients for offenses under Section 406 and 420 of IPC, as it lacks the dishonest intention (*mens rea*) at the very inception of the transaction. According to him, the amicable settlement of the Money Suit, evidenced by the order dated June 23, 2023, exclusively proves the civil nature of the dispute and negates any element of criminal culpability. He further asserted that allowing criminal proceedings to persist despite the civil settlement would amount to grave injustice and an abuse of the process of the Court.

9. Mr. Lohani further submitted that police authorities acted mechanically, arbitrarily, and under the influence of the complainant in registering the FIR and filing the charge-sheet, thus transforming the civil case into an instrument of harassment.

10. He relied heavily on paragraph 12 of the *Naresh Kumar and Anr. Vs. The State of Karnataka* (2024 INSC 196), wherein the Hon'ble Supreme Court quashed criminal proceedings arising from a contractual dispute over bicycle assembly payments, emphasizing the predominantly civil nature of the dispute, a lack of dishonest intention from the beginning and gave significant weight to the admitted settlement reached between the parties, stating that continuing criminal proceedings would be an abuse of process.

11. In *Mariam Fasihuddin &Anr. Vs. State by Adugodi Police Station and Anr.* (2024 SCC Online Supreme Court 58) where the Hon'ble Supreme Court quashed the proceedings of forgery and cheating in a matrimonial dispute on the ground that essential elements of cheating, deceit, or injury were not met, and there was insufficient evidence to substantiate *mens rea* for forgery or cheating, indicating a misuse of criminal process in a marital discord.

12. Similarly in *Ashok Kumar Jain Versus State of Gujarat and Anr.* (2025 SCC OnLine SC 998) the Hon'ble Supreme Court quashed an FIR concerning criminal breach of trust and cheating for non-payment of sale price for exported goods, on the ground that mere non-payment, especially where contract documents showed no direct privity between the complainant and the accused, lacked the fraudulent or dishonest intention *at inception* necessary for these offenses, confirming it was a civil dispute. Mr. Lohani relied on these precedents where the Hon'ble Supreme Court that consistently caution against the criminalization of purely civil disputes arising from commercial transactions. Therefore, Mr. Lohani prays for quashing of this proceeding.

13. Conversely, Mr. Aditi Shankar Chakraborty, Learned Additional Public Prosecutor, strongly opposed the quashing of proceedings. He contended that the charge-sheet, filed after a thorough investigation, establishes a prima facie case against both the Petitioner and the principal accused under Sections 406/420/34 IPC. He argued that the act of providing a personal guarantee, coupled with the alleged conspiracy to wilfully neglect payment of a substantial sum, points towards a concerted effort to cheat and commit criminal breach of trust.

14. While acknowledging the withdrawal of the civil suit, he asserted that the existence of a civil remedy or its subsequent settlement does not automatically dilute or extinguish criminal liability if the elements of the alleged offenses are, in fact, discernibly present. He contended that the intricate question of criminal intention and the actual *modus operandi* of the accused can only be fully unearthed and established during a full-fledged trial. Quashing the proceedings at this nascent stage, it was submitted, would prematurely stifle a legitimate prosecution and impede the course of justice. Therefore, he vehemently opposed the prayer for quashing of the proceeding at this nascent stage and prayed for the dismissal of this instant revisional application.

15. Considering the divergent submissions and the facts on record, the central question that demands the Court's deliberation is:

> *"Whether the present case, despite the amicable settlement of the related civil dispute, sufficiently discloses prima facie materials indicating the commission of offenses under Sections 406 and 420 of the Indian Penal Code, such that the criminal proceedings should be allowed to continue for a full trial, or if they constitute a clear abuse of process warranting their quashing in exercise of this Court's extraordinary revisional jurisdiction."*

16. The power to quash criminal proceedings, exercised under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, is an extraordinary and inherent jurisdiction. It is a tool for preventing manifest injustice and protecting citizens from vexatious prosecution, but it must be used sparingly and with great caution. This Court is not a Trial Court; its role at this stage is not to meticulously weigh the evidence or predict the outcome of a trial. Instead, the focus is on whether the allegations in the FIR and the material collected during investigation, culminating in the charge-sheet, *prima facie* disclose the commission of a cognizable offense. If they do, then the normal course of criminal law must be allowed to run.

17. The essence of an offense under Section 420 IPC lies in "deception since inception." This means a dishonest intention (*mens rea*) must exist at the very moment the promise or representation was made, leading to the inducement and delivery of property. The Petitioner contended that the transaction was purely commercial and that his actions, including any guarantee, do not reflect such initial dishonest intent. However, the complainant's allegation, as reflected in the FIR and amplified in the charge-sheet, is that both accused, acting in collusion, induced the delivery of tea leaves on credit and subsequently cheated the company for their "wrongful mutual gain." The specific language used implies a pre-conceived plan or dishonest intent.

18. While it is true that a mere failure to pay a debt, even if a guarantee was given, does not automatically constitute cheating, the surrounding circumstances are critical. The Investigating Officer, after examining documents such as delivery orders and invoices, and recording statements, concluded that a *prima facie* case was established. The presence of a personal guarantee, coupled with the alleged wilful failure to clear a substantial outstanding amount, could, in certain factual scenarios, be interpreted as part of a larger scheme to defraud, particularly if the initial inducement was tainted with a dishonest intention to default. Determining whether such a dishonest intention existed from the very beginning is a complex factual inquiry that requires a deeper examination of evidence, including the intent of all parties involved at the time of the transaction, their subsequent conduct, and the circumstances surrounding the default. This crucial determination cannot be conclusively made by this Court in its revisional jurisdiction based solely on the material presently before it. It squarely falls within the purview of the Trial Court, which can hear evidence, assess credibility, and draw inferences.

19. To constitute the offense of Criminal Breach of Trust defined under Section 406 of IPC, entrustment of property and subsequent dishonest misappropriation or conversion is required. While the primary facts presented revolve around a commercial transaction and debt, the inclusion of Section 406 in the charge-sheet implies that the investigating agency found elements suggestive of entrustment of the tea leaves, which were then allegedly dishonestly dealt with. Whether such entrustment and subsequent dishonest misappropriation can be proved in a commercial context is a matter of evidence. This is another factual dimension that necessitates a trial to ascertain the exact nature of the relationship and whether the elements of criminal breach of trust are indeed met.

20. The Petitioner's strongest point is the amicable settlement of the parallel Money Suit. Indeed, the order dated June 23, 2023, clearly indicates that the civil dispute was settled, leading to the withdrawal of the suit. It is a well-recognized principle that where a criminal proceeding arises out of an overwhelmingly civil dispute, and especially when the civil dispute has been amicably settled between the parties, the High Court may, in appropriate cases, quash the criminal proceedings to prevent abuse of process and promote peace. This principle has been upheld by the Hon'ble Supreme Court in numerous cases, particularly where the dispute essentially revolves around a private wrong.

21. However, it is equally important to remember that the amicability of a civil settlement does not automatically wipe out criminal liability, especially for non-compoundable offenses, if the criminal elements are distinctly present. The criminal justice system's purpose extends beyond merely resolving private financial disputes; it also aims to punish societal wrongs. While the settlement might be a crucial mitigating factor and could even be a ground for compounding if the offenses were compoundable, or for a lenient view during sentencing, it does not *per se* negate the *prima facie* commission of a criminal offense if such elements are otherwise discernible from the charge-sheet. The ultimate effect of the civil settlement on the criminal case is a matter that the Trial Court would consider at the appropriate stage, including at the time of final adjudication. To quash the criminal proceedings solely on this ground at an early stage, without a full examination of the evidence related to the criminal intent, would be a premature exercise of jurisdiction.

22. The judgments cited by the Petitioner, including *Mariam Fasihuddin & Anr. versus State by Adugodi Police Station and Anr., Ashok Kumar Jain*

Versus State of Gujarat and Another., and *Naresh Kumar and Anr. Vs. The State of Karnataka*, are valuable precedents that emphasize the necessity of *mens rea* at the inception for a cheating charge and caution against the criminalization of purely civil disputes. However, the application of these principles is inherently fact-dependent, and the present case carries distinct allegations.

23. In *Naresh Kumar and Anr. Vs. The State of Karnataka*, the Hon'ble Supreme Court quashed proceedings primarily because it found the dispute to be predominantly civil, lacking a dishonest intention *from the very beginning*, and significantly, an admitted settlement had been reached. While a settlement is present in the current case, the key distinguishing factor here lies in the specific allegations of "collusion" and "wrongful mutual gain" which, if proven, could establish a dishonest intent *at the inception* of the transaction. Unlike *Naresh Kumar*, where the initial criminal intent was deemed unestablished by the complainant, this High Court in the present case views the allegations as *prima facie* suggestive of such intent, thereby necessitating further factual inquiry.

24. Similarly, *Ashok Kumar Jain Versus State of Gujarat and Another* involved non-payment of a sale price for exported goods, where the Court found no fraudulent or dishonest intention at inception, characterizing it as a civil dispute. The *Ashok Prasher* case differs due to the direct allegations of collusion and the element of a personal guarantee, which, in the High Court's view, add a layer that could potentially establish pre-meditated deception, unlike a mere failure to pay a contractual debt as seen in *Ashok Kumar Jain*.

25. *Mariam Fasihuddin & Anr. versus State by Adugodi Police Station and Anr.* involved allegations of forgery and cheating in a matrimonial dispute, where the Court found the essential elements of cheating or injury missing and insufficient evidence for *mens rea*. While also dealing with the absence of criminal intent, the *Ashok Prasher* case is distinct due to its commercial context and specific allegations of inducement and cheating related to a business transaction, which the High Court believes warrants a deeper examination of the alleged "scheme to defraud."

26. In essence, while these precedents underscore that criminal proceeding should not be used as a debt recovery mechanism, the High Court finds that the allegations in the FIR and charge-sheet, read as a whole, suggest a possible element of pre-meditated collusion and "wrongful mutual gain." This potential differentiating factor means that the initial inducement might have been tainted with a dishonest intention to default, setting it apart from a mere simple breach of contract where initial honest intent is clear. Whether this inference is ultimately proven correct is for the Trial Court to decide. The fact that the investigating agency, after its probe, found sufficient material to file a charge-sheet means that there are *prima facie* grounds to believe that the elements of the alleged crimes may be present, warranting a trial.

27. In any event the extraordinary power to quash proceedings should not be invoked to stifle a legitimate prosecution where the allegations, if eventually proven true, would unequivocally reveal cognizable offenses. The vexed questions of fact regarding the Petitioner's precise role, his specific intention, and the intricate details of the alleged collusion leading to cheating and criminal breach of trust, are best adjudicated upon only after a full trial, where the evidence from both sides can be rigorously led and tested under cross-examination.

28. In view of the aforesaid detailed analysis of the facts, the relevant legal provisions, and the arguments advanced by the Learned Counsels, this Court finds that the FIR and the subsequent charge-sheet prima facie disclose cognizable offenses punishable under Sections 406 and 420 read with Section 34 of the Indian Penal Code. While it is undisputed that a civil dispute concerning the financial transaction has been amicably settled between the parties, this circumstance does not, by itself, conclusively negate the *prima facie* existence of criminal elements as alleged by the prosecution. The complex questions regarding the Petitioner's *mens rea* at inception, the precise nature of the alleged entrustment, and the purported collusion for wrongful gain are quintessential factual matters that necessitate a full-fledged trial for their definitive resolution.

29. This Court, in its limited revisional jurisdiction, is not the appropriate forum to delve into such intricate factual determinations or to pre-empt the outcome of a trial by arriving at a conclusive finding regarding the absence of criminal intent. The criminal justice system must, in the larger public interest, be allowed to take its due course where *prima facie* materials unequivocally justify such a progression.

30. Consequently, I find no compelling reason to exercise the extraordinary power to quash the ongoing criminal proceedings. The revisional application is, therefore, found to be without merit.

31. Accordingly, the revisional application being CRR 502 of 2024 stands dismissed.

32. There shall be no order as to costs.

33. The interim order or orders, if any, granted heretofore, stand vacated with immediate effect.

34. The Trial Court Records (TCR), if any, shall be sent down to the Learned Additional Chief Judicial Magistrate, Siliguri, forthwith.

35. The Case Diary, if any, be returned forthwith.

36. Let a copy of this judgment be sent to the learned court below forthwith for necessary information and compliance.

37. 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.)