

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

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

CRR 507 of 2024

**Arup Raha
-Vs.-
The State of West Bengal & Anr.**

For the Petitioner	: Mr. Arnab Saha Md. Shoaib Akhtar
For the State	: Mr. Aditi Shankar Chakraborty, Ld. APP Mr. Abhijit Sarkar
Hearing concluded on	: 30.07.2025
Judgment on	: 02.08.2025

Uday Kumar, J.:-

1. The present revisional application, has been preferred by the petitioner under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, (akin to Section 482 of the Code of Criminal Procedure, 1973) seeks quashing of the entire criminal proceedings of General Register Case No. 627 of 2024, originated from Alipurduar Police Station Case No. 135 of 2024, dated April 3, 2024, under Sections 406, 420, and 506 of the Indian Penal Code, 1860, and is currently pending before the learned Chief Judicial Magistrate, Alipurduar.

- 2.** The essence of the Petitioner's contention is that the criminal proceedings initiated against him are patently false, fabricated, and constitutes a flagrant abuse of the process of law, thereby occasioning a gross miscarriage of justice. It is asserted that the criminal complaint is a malicious attempt to lend a criminal colour to what is, at its core, a civil dispute.
- 3.** The factual matrix, as delineated by the Petitioner, he being the owner of two vehicles, namely, a Maruti Suzuki Baleno (WB 70P 2424) and a Maruti Alto (WB 70H 1212), entered into an agreement with Opposite Party No. 2 for the sale of the Maruti Suzuki Baleno. Opposite Party No. 2 took possession of the Maruti Suzuki Baleno upon payment of an advance money, with a promise to settle the remainder and effectuate ownership transfer. This promise, however, allegedly remained unfulfilled. Subsequently, the Petitioner was purportedly persuaded to hand over the Maruti Alto under similar assurances, which too were allegedly reneged upon, leading to the forceful and illegal detention of both vehicles by Opposite Party No. 2.
- 4.** In response to this alleged illegal detention, the Petitioner took recourse to law, filing a petition under Section 94 of the Code of Criminal Procedure, 1973 (Petition No. 22/2024) on March 4, 2024, before the learned Sub-Divisional Executive Magistrate, Alipurduar, for the recovery of his vehicles. The Magistrate, by an order of the same date, directed the Alipurduar Police Station to recover the vehicles by issuing a search warrant. Pursuant to this order, both vehicles were voluntarily

surrendered by Opposite Party No. 2 to the Alipurduar Police Station on March 28 and March 29, 2024, respectively.

5. The Petitioner thereafter applied for the release of the seized vehicles. Crucially, on April 3, 2024, the Officer-in-Charge of Alipurduar Police Station submitted a "no objection" report for the release of the vehicles to the Petitioner. Following this, on April 4, 2024, the learned Sub-Divisional Executive Magistrate ordered the release and handover of both vehicles to the Petitioner, who duly took possession.
6. It is at this juncture that the pivotal and indeed suspicious aspect of the matter arises. On April 3, 2024, the very day the police expressed their "no objection" to the release of the vehicles to the Petitioner, Opposite Party No. 2 lodged a written complaint. This complaint precipitated the registration of Alipurduar Police Station Case No. 135 of 2024 against the Petitioner under Sections 406, 420, and 506 IPC. The FIR, *inter alia*, alleged that Opposite Party No. 2 had advanced a sum of Rs. 7,90,000/- for the vehicles, which the Petitioner dishonestly retained without transferring ownership, evidencing a dishonest intention from the very inception, and further, that the Petitioner had criminally intimidated him on March 8, 2024.
7. Subsequent to the registration of the FIR, the Petitioner contends that no mandatory notice under Section 41A of the CrPC (now Section 35 BNSS) was served upon him, compelling his surrender before the learned Chief Judicial Magistrate, Alipurduar, on April 30, 2024, following which he was taken into judicial custody until his bail on May 15, 2024. The Petitioner further claims that certain documents, including a Sale Deed

and Power of Attorney purportedly seized from Opposite Party No. 2 on May 1, 2024, are fabricated and inauthentic. Ultimately, a charge-sheet (No. 179/24 dated May 23, 2024) was filed on August 6, 2024, and cognizance was taken by the learned Magistrate, which the Petitioner asserts was done mechanically.

8. Mr. Arnab Saha, Learned Counsel for the Petitioner strenuously argued that the impugned proceedings are a blatant example of the abuse of process of law. He submitted that the allegations are entirely false and fabricated, lacking any factual or legal basis. The timing of the FIR, lodged precisely on the day the police formally recognized the Petitioner's ownership of the vehicles and agreed to release them, speaks volumes about the complainant's ulterior motive. This, combined with the inordinate delay in lodging the FIR concerning alleged events of July/September 2023, makes the prosecution's story appear to be an afterthought and a counterblast to the Petitioner's legitimate efforts to recover his property. Ld. Counsel stressed that a mere breach of promise does not *ipso facto* attract the ingredients of Sections 406 or 420 IPC, particularly when there is no proof of dishonest intention at the inception of the transaction. He vehemently challenged the veracity of the alleged payments and the authenticity of the documents seized, branding them as manufactured.
9. Mr. Saha relied heavily on the principles enunciated by the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal and Ors.* (AIR 1992 SC 604), asserting that this case falls squarely within the categories

warranting the exercise of inherent powers to quash the proceedings to prevent a miscarriage of justice.

10. Mr. Aditi Shankar Chakraborty, Learned Counsel for the State, on the other hand, contended that the FIR and the charge-sheet clearly disclose cognizable offenses. He submitted that the complainant's specific allegations of payment, non-transfer of ownership, refusal to refund, and threats constitute a *prima facie* case of cheating, criminal breach of trust, and criminal intimidation.
11. Mr Chakraborty, argued that the Petitioner's previous involvement in similar criminal cases, if any, underscores a pattern of conduct. It was submitted that the High Court, in its inherent jurisdiction, should not conduct a mini-trial or delve into disputed questions of fact, which ought to be resolved during a full-fledged trial. The recovery of the vehicles, they might argue, does not negate the criminality of the initial act of cheating or breach of trust if *mens rea* existed at that time.
12. Having heard the learned counsel for the Petitioner and perused the materials on record, this Court finds substantial force in the arguments advanced for quashing the proceedings. The central issue revolves around whether the allegations, even taken at face value, disclose the commission of a cognizable criminal offense, or whether the proceedings constitute an abuse of the legal process.
13. The Hon'ble Supreme Court, outlined broad parameters for the exercise of inherent powers in the celebrated judgment of *State of Haryana v. Bhajan Lal* (1992 AIR 604). Amongst these are instances where the allegations, even if accepted in their entirety, do not *prima facie*

constitute any offense, or where the criminal proceeding is manifestly attended with *mala fide* and is maliciously instituted with an ulterior motive.

14. Applying the principles of *Bhajan Lal* to the facts at hand, this Court observes several disconcerting aspects. Firstly, the very nature of the dispute, as gleaned from the Petitioner's successful recovery of his vehicles through a lawful judicial process, strongly suggests a civil transaction involving a breach of contractual terms rather than a premeditated criminal act of cheating or criminal breach of trust. The essential ingredients for these offenses, particularly the dishonest intention at the inception for cheating or entrustment for criminal breach of trust, appear to be conspicuously absent in the Petitioner's narrative, especially when viewed against the backdrop of the recovery proceedings.
15. Secondly, and more critically, the timing of the lodging of the FIR raises serious questions about the motive behind the criminal complaint. The complaint was filed on April 3, 2024, precisely the day when the police indicated their "no objection" to the release of the vehicles to the Petitioner, following the Magistrate's recovery order. This remarkable synchronicity, coupled with the significant delay in filing the complaint regarding alleged events of July/September 2023, irresistibly points towards a malicious intent and an attempt to use the machinery of criminal law to frustrate the Petitioner's lawful possession of his vehicles. Such conduct squarely falls within the ambit of *mala fide* prosecution contemplated by *Bhajan Lal*.

16. Furthermore, the Petitioner's claim of non-service of the mandatory Section 41A CrPC notice (now Section 35 BNSS) before his arrest is significant. The Hon'ble Supreme Court, in *Arnesh Kumar v. State of Bihar & Anr.* (2014) 8 SCC 273 and *Satender Kumar Antil v. CBI & Anr.* (2022) 10 SCC 51), has underscored the mandatory nature of this provision. While this procedural lapse alone might not quash the entire FIR, it certainly highlights concerns about the fairness and legality of the investigation, further supporting the Petitioner's narrative of a tainted process. The Magistrate's alleged "mechanical" cognizance also deserves scrutiny, as judicial application of mind is expected, especially when the facts presented by the accused indicate a possible abuse of process.
17. Having thoroughly considered the facts, the arguments presented, and the guiding legal principles, I find substantial merit in the Petitioner's contentions. The undeniable sequence of events, particularly the lodging of the FIR precisely when the police were agreeable to release the vehicles to the Petitioner based on a judicial order, leads to a strong and compelling inference of *mala fide* intention and an ulterior motive on the part of Opposite Party No. 2. It appears that the criminal proceedings were initiated not out of a genuine desire for justice against actual criminal acts, but rather as a coercive and retaliatory measure to exert pressure in what is, at its core, a civil or commercial dispute. This conduct constitutes a clear abuse of the process of law. Allowing these proceedings to continue, where the allegations appear to be "manifestly attended with *mala fide*" and primarily designed to convert a civil dispute into a criminal prosecution, would undoubtedly cause undue

harassment to the Petitioner and result in a gross miscarriage of justice. This is precisely the kind of exceptional case that warrants the exercise of this Court's inherent powers to secure the ends of justice and prevent such an abuse.

- 18.** In view of the above, I am of the considered opinion that the continuation of the criminal proceedings in General Register Case No. 627 of 2024 would amount to nothing short of an abuse of the process of law. It appears to be a clear attempt to convert a civil dispute into a criminal one, with an ulterior motive of harassing the Petitioner. Allowing such a proceeding to continue would not secure the ends of justice but would rather perpetuate an injustice.
- 19.** Accordingly, the revisional application being CRR 507 of 2024, succeeds.
- 20.** The impugned proceeding in General Register Case No. 627 of 2024, arising from Alipurduar Police Station Case No. 135 of 2024 dated April 3, 2024, being a manifest abuse of the process of law and having been instituted with an apparent *mala fide* intention, is hereby quashed.
- 21.** There shall be no order as to costs.
- 22.** Any interim order or orders, if any, granted hitherto, stand vacated with immediate effect.
- 23.** The Trial Court Records (TCR), if any, shall be forthwith transmitted to the Learned Chief Judicial Magistrate, Alipurduar, for necessary action in respect of the other accused, if any.
- 24.** The Case Diary, if any, be returned forthwith.
- 25.** Let a copy of this judgment be sent to the learned court below forthwith for necessary information and compliance.

- 26.** An urgent certified copy of this judgment and order, if applied for, be issued to the parties, as expeditiously as possible, upon compliance with all necessary legal formalities in this regard.

(Uday Kumar, J.)