

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Before:
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRR 364 of 2023
TAPENDRANATH BANERJEE
VS
THE STATE OF WEST BENGAL & ANR.

For the Petitioner : **Mr. Saswata Gopal Mukherji, Sr. Adv.**
Mr. Ayan Kumar Boral, Adv.

For the State : **Mr. Suman De, Adv.**
Mr. Abhinaba Mukherjee, Adv.

Heard on : **10.04.2026**

Judgment on : **16.04.2026**

Uploaded on : **22.04.2026**

CHAITALI CHATTERJEE (DAS), J.:-

1. Challenging the order dated November 25, 2022 passed by Additional Chief Metropolitan Magistrate, Kolkata taking cognizance of the offence on the basis of a charge-sheet no. 172/22 dated November 18, 2022 under Sections 420/406 of the Indian Penal Code, this revisional application has been filed by the petitioner.

The brief facts of the case is as follows:-

2. The present petitioner is having a business of real estate development and under the nomenclature of '*D.K.B.Nirman Private Limited*'. A development agreement was entered into between Shebait and the trustee of *Shib Krishna Debutter Estate* with *D.K.B. Nirman Private Limited* on November 25, 2009 for construction of basement plus G+5 building thereon. A power of attorney dated 25.11.2009 was executed in favour of the developer by the owner of trust. On March 25, 2010 the said trust of *Shib Krishna Debutter Estate* and the opposite party entered into an unregistered agreement for sale with the Shebait Ashim Daw and the petitioner as one of the Director of DKB Nirman Pvt.Ltd .On May 06, 2021 the trustee and She bait of the said trust expired and dispute arose between the heirs of the deceased trustee on the management of trust. Various cases were filed before this Court as well as City Civil Court regarding the title of the declaration over the Shebaitship of the said debutter property. An order of injunction was passed by the learned Court and receiver was appointed.
3. Despite having knowledge about the entire above facts and circumstances, the opposite party no. 2 filed an application under Section 156(3) of the Code of Criminal Procedure against the *D.K.B. Nirman Private Limited* represented by the petitioner alleging of cheating and criminal breach of trust. Over the said complaint the investigation was completed and charge-sheet has been submitted against the present petitioner under Section 420/406 of IPC. The learned Chief Metropolitan Magistrate by an order dated November 25, 2022 took cognizance of

the said offence on the basis of the charge-sheet. Against the said order of cognizance the present revisional application has been filed.

4. Mr. Mukherji, learned senior advocate appearing for the petitioner raises the preliminary objection regarding the maintainability of the said complaint as the present petitioner is made as an accused as the representative of the said company *D.K.B. Nirman Private Limited* without impleading the said company as an accused. Moreover, the agreement was entered into with *D.K.B. Nirman Private Limited* and the present opposite party no. 2 and the Shebait/owner of the debottar property when none of the said debutter property is arrayed as an accused in the said complaint. It is specifically argued that the present petitioner is denuded of any power to execute any deed of transfer or to take any step which emanated from the agreement entered between the parties way back in the year 2010 since the Shebait expired on May 06, 2021. It is further argued that the complaint was lodged under Section 156(3) of the Cr.P.C. specifically alleging that the present petitioner had the intention to cheat the present opposite party no. 2 from the inception when the written complaint explicitly manifest that the present petitioner not only entered into that agreement, raised the construction and also put the present opposite party no. 2 into an alternative accommodation and continued to pay the rental amount as agreed till demise of such She bait that is in the year 2021. During this long span of time, no complaint was ever lodged by the present opposite party no.2 against the petitioner. It is further argued that it is wholly incorrect that only the present opposite party no.2 is aggrieved as no possession was handed over to her, but there are other complaints lodged before

the Consumer Forum by the parties who were deprived because of non-execution of the registered deed the Consumer Forum also held that the present petitioner is not legally entitled to further proceed with the said agreement in terms of the Power of Attorney which stood automatically cancelled with the demise of the *Shebait* in the month of May, 2021. Therefore, there is no ingredient to constitute an offence of cheating and hence, the allegation under Section 420 is not maintainable.

5. So far Section 406 of the Indian Penal Code is concerned, there was no entrustment of the properties as alleged since in view of the agreement, there was an arrangement when the present opposite party no.2 kept all her articles in a place, but since then, she never demanded to return of such articles and no case has been made out that the present petitioner ever refused to return those articles.

6. Learned Senior Advocate relied upon the decision in the cases of **Arshad Neyaz Khan Vs. State of Jharkhand &Anr.**¹ and **Uma shankar Yadav and Ors Vs Vs. State of Uttar Pradesh through Chief Secretary &Anr**² (para 11).

7. The learned advocate representing the State, on the other hand, raises objection and submits that the agreement was entered into in the year 2010 where in paragraphs 4 and 5 of the agreement, it was held that within six months such flat will be handed over to the opposite party no. 2 which the petitioner miserably failed and dragged for long ten years. The other flat owners have already been

¹2025 INSC 1151

²2025 INSC 653

handed over the possession in favour of the petitioner. It is submitted that since the father was the tenant under the *Shebait* who has expired, knowing that fully well this has been done with an intention to cheat the present opposite party no.2 without handing over any possession of the said flat. It is further argued that from the materials collected in course of investigation reveals that no vacant flat is lying as on date. There are enough materials collected in course of the investigation which prima facie constitute an offence against the present petitioner under Sections 420/406 of the Indian Penal Code and accordingly prayed for dismissal of this revisional application .

8. The learned prosecution further relied upon a decision in the case of ***Rocky Vs. State of Telangana &Anr***³ where the High Court of Telangana quashed the proceeding under Section 406 and it was set aside by the Hon'ble Supreme Court with the specific observation that the Court was not justified in exercising inherent jurisdiction under Section 482 of the Code of Criminal Procedure when the benchmark set out in the judgment of the ***State of Haryana &Ors. Vs. Bhajanlal&Ors.***⁴ as well as ***Pradeep Kumar Kesharwani Vs. State of Uttar Pradesh &Anr.***⁵, was not substantiated.

Analysis

9. Heard the submissions of the learned advocates for the parties. Pursuant to an agreement, the company of the petitioner was entrusted to raise the construction over the said old dilapidated building in terms of the order passed in connection

³2025 INSC 1384

⁴1992 Supp(1) SCC 335

⁵2025 SCC Online SC 1947

with a civil suit filed before the Hon'ble High Court. The permission was granted to the shebait of Shib Krishna Debutter Estate, Ashim Chandra Daw, to enter into such development agreement and accordingly, a development agreement was executed in the year 2009 and subsequently the Agreement for Sale was executed between the trust of Shib Krishna Debutter Estate represented by she bait, Shri Ashim Chandra Daw, and the present opposite party no.2, being the tenant/occupier and M/s. D.K.B. Nirman Private Limited, represented by one of its directors, Mr. Tapendra Nath Banerjee, that is the present petitioner.

- 10.** In terms of the said agreement, the owner and the developer after delivering possession of the allotted portion shall be liable to execute and register a proper deed of convenience for transfer of the allotted portion of the newly constructed building in favour of the present opposite party no.2. Mrs. Eti Bose. It was further agreed between the parties that the tenanted portion occupying the existing building of the said premises shall continue during construction period in spite of vacating the tenanted portion which will run without any demand whatsoever and will be lawful till delivery of the possession of both the allotted portions to the occupants in the newly constructed building. The delivery of possession was supposed to be handed over within six months from the date of execution of such agreement. But it is apparent that the said possession was not handed over till the year 2022 that is till the lodging of the FIR by the opposite party no.2. The specific contention of the opposite party no.2 as well as the prosecution that there is no vacant flat lying in the said construction and the

flats are already handed over to the respective purchasers and, therefore, there was an intention on the part of the present petitioner to cheat the present opposite party no.2.

11. The factual matrix canvassed before this Court so far the said First party/she bait with whom the Agreement for sale was executed has died. With the demise of the said She bait Amit Daw the Power of attorney executed in favour of the petitioner on behalf of his company also becomes nonest in the eye of law. Additionally a civil suit is pending between the other legal heirs regarding declaration of the she baits in respect of such trust property. The fact remains that the agreement was executed pursuant to a judicial order passed in a civil suit by the this court and with demise of said she bait in whose favour the permission was given to enter into the development of the project cannot act further unless his successor is nominated . That apart from the charge sheet it is found that the present petitioner is one of the directors of the said D.K.B. Nirman Private Limited who put the opposite party no. 2 who was paying the tenant shifting charges as per agreement till 2021 that means till demise of that she bait in the year 2021 i.e for last 10/11 years and at no point of time, the opposite party no.2 raised any complaint against the present petitioner regarding violation of any of terms of the agreement , alleging cheating . Even though it is found that the developer constructed the building much after the agreed stipulated time period ,no proceeding was initiated against him though the opposite party could have dragged him to civil court .The petition of complaint

further discloses that two agreement was executed with her but there is breach of agreement as the possession of the flat as agreed was not handed over to her ,so prima facie it manifest that there was breach of terms of agreement which attracts civil remedy .

12. So far the invoking of the power of this court the learned prosecution relied upon the decision of **Rocky (supra)**, where the Hon'ble Supreme Court discussed the celebrated decision in the case of **State of Haryana Vs. Bhajan Lal** ⁶ whereby the categories were enumerated to provide illustrative circumstances in which quashing under Section 482 by the High Court was justified. The Hon'ble Supreme Court further discussed the decision of **Pradeep Kumar Kesarwani Vs. State of Uttar Pradesh & Anr.**⁷ where a structured four-step test were outlined under Section 482 Cr.P.C. It was held that:-

'the materials relied on by the accused must be (i) of sterling and impeccable quality, (ii) sufficient to completely negate the allegations, (iii) uncontested or incapable of legitimate contest by the prosecution, and (iv) such that continuing the trial would amount to abuse of process. It was further held that unless all four tests are satisfied, quashing is unwarranted'.

13. In the present case, the apprehension expressed on behalf of the opposite party no.2 as found from the contents of the complaint that the other flat owners are

⁶ (1992) Supp (1) SCC 335

⁷ 2025 SCC On Line SC 1947

given possession in respect of their respective flat and she has only been left with and, therefore, alleged that the petitioner had an intention not to transfer the flat in her name. However, it appears from the record as well as from the submission advanced by the learned Senior Advocate representing the petitioner, over the same issue a further case was filed before the Consumer Dispute Redressal Commission against the said DKB Nirman by another purchaser who alleged about non execution of the Deed of Sale and vide an order dated 16th August, 2022 ,the commission after discussing the facts and circumstances and the execution of agreement of development being prompted by the shebait, Ashim Chandra Daw, pursuant to a judicial order observed that the property belongs to Trust Estate, Shib Krishna Debutter Estate, and the present petitioner has got no individual right in excess of whatever was agreed between the parties in terms of such agreement executed by the Shebait who is dead.

14. The learned Senior Advocate representing the present petitioner has relied upon a decision in the case of **Arshad Neyaz Khan (supra)** where the ingredients of Sections 406 and 420 of the Indian Penal Code were discussed. In paragraph 16 of the said decision, both the sections of 406 as well as 420 were vividly discussed, which is as follows:-

“16 The contents of the complaint as well as the FIR would have to be read in light of the ingredients of Sections 406 and 420 IPC and the law settled by this Court through various judicial dicta. On perusal of the complaint dated

29.01.2021, it is noted that the complainant/respondent No.2 has filed the said complaint invoking Sections 406, 420 and 120B IPC. For ease of reference, the aforesaid Sections are extracted as under:

406. *Punishment for criminal breach of trust.- Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.*

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420. *Cheating and dishonestly inducing delivery of property.- Whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.*

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120B. *Punishment of criminal conspiracy.- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in*

the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both. ”

15. The Hon'ble Apex Court held that for establishing the offence of cheating, the complainant/respondent no.2 is required to show that the appellant had a fraudulent or dishonest intention at the time of making a promise or representation for not fulfilling the agreement for sale of the said property. So, the culpable intention must be there right from the beginning when such promise was made and it should be established with cogent facts. In the said decision, there was an agreement for sale and no allegation was found in the FIR or in the written complaint indicating either expressly or impliedly any intention of deception or fraudulent/dishonest intention on the part of the appellant right from the time of making the promise or misrepresentation. Nothing was found on what the misrepresentations were and how the appellant intentionally deceived the complainant/respondent no. 2. Therefore, it was held that mere allegations by the complainant/respondent no. 2 that the appellant failed to execute the agreement for sale and failed to refund the money paid by the complainant/respondent no. 2 does not satisfy the test of dishonest inducement

to deliver a property or part with a valuable security as enshrined under Section 420 IPC.

16. In the decision of **Umashankar Yadav & Anr. (supra)**, relied upon by the learned Senior Advocate for the petitioner, the Hon'ble Supreme Court observed and held as follows:—

“However prior to arriving at such finding it is the duty of the High Court to ascertain whether the uncontroverted allegations in the FIR/Chargesheet constitute an offence, or continuation of the proceeding suffers from a legal bar or is wholly vexatious and an abuse of process of law. ”

17. In the said case, the accused was summoned which was seriously deprecated by the Hon'ble Apex Court in paragraph 11 of the said judgment which is as follows:

“11. Summoning of an accused is a serious matter which affects liberty and dignity of the individual concerned. Judicial intervention under Section 482 Cr.PC to weed out vexatious proceedings is of pivotal importance in order to protect individuals from untelling harassment and misery and to ensure unmerited prosecutions do not crowd overflowing dockets of criminal courts and yield space for deserving

cases. Faced with the agony of a lame prosecution, it is of little solace to a litigant to be told that inherent powers are shut out as he is entitled to approach the trial court and pray for discharge. The inherent power of the High Court to prevent abuse of process of court is much wider in amplitude than the discharge powers and cannot be whittled down on the plea of existence of such remedy (Ashok Chaturvedi & Ors. vs. Shitul H. Chanchani &Anr., (1998) 7 SCC 698. ”

18. Learned Senior Advocate further relied upon ***Mulakala Malleshwara Rao & Anr. Vs. State of Telangana***⁸, where in paragraph 23, the Hon’ble Supreme Court taking note of the decision of ***R. K. Vijayasathya Vs. Sudha Seetharam***⁹ identified the ingredients required for a charge under Section 406 to be justified which are as follows:

“23. This Court in R. K. VijayasathyaVs. SudhaSeetharam identified the ingredients required for a charge under Section 406 to be justified: (SCC p.744, para 13)

“13. A careful reading of Section 405 shows that the ingredients of a criminal breach of trust are as follows:

⁸(2024) 16 Supreme Court Cases 35

⁹ (2019) 16 SCC 739

13.1. A person should have been entrusted with property, or entrusted with dominion over property;

13.2. That person should dishonestly misappropriate or convert to their own use that property, or dishonestly use or dispose of that property or willfully suffer any other person to do so; and

13.3. That such misappropriation, conversion, use or disposal should be in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust. ”

19. The document annexed with this revisional application also manifest that a civil suit is pending between the legal heirs of the said Ashim Chandra Daw with regard to that of Shib Krishna Debutter Estate for holding seva puja for managing and administering the said estate and to that extent, an interim order was also passed on September 21, 2022 in FMAT 265 of 2022 where a prayer for appointment of Receiver or Special Officer was under consideration.

20. Hence, from the above nature of facts and circumstances and the law laid down in this regard, this Court is unable to accept the contention of the learned prosecution that there was any intention of deception from the inception when entered into an agreement to develop the Debutter property.

21. So far as the charge of Section 406 is concerned, in terms of charge sheet, a number of articles are found to have been seized and admittedly those were kept in the Godown of the present petitioner when the arrangements were made between the parties and the present opposite party no.2 was put into the possession of a tenanted property. It appears that nowhere it can be found that any demand was raised on behalf of the opposite party no.2 to return her articles for the last 10-11 years and no such case has been made out in the complaint also however those articles are already seized and none of the articles were convert for his own use . The contention of learned prosecution about deficit of two articles and, therefore, have been misappropriation do not have any force as at the time of taking Zimma the opposite party never raised an issue in this regard. Additionally the question remains even after 10/11 years as and when the petitioner claimed by filing the complaint ,the articles were found and were seized and handed over to the claimant so mere nonavailability of one or two articles do not give rise to criminality and therefore a proceeding under Section 406 cannot be allowed to continue.

22. In the present case while taking cognizance the Learned Magistrate did not assign any reason as to whether primary material are present to take cognizance for the offences sunder section 420/406 of IPC when as per the ratio decidendi that both the provision cannot go simultaneously .

23. On the scores of the factual context it goes without saying that the opposite party no 2 is entitled to take appropriate steps either before a civil court or before

the receiver if any appointed in respect of the debutter property but the criminal culpability cannot be attracted.

24. Therefore this Court is of the view that if this proceeding is allowed to be continued, it would be an abuse of process of law.

Conclusion

25. Hence, this revisional application stands allowed. The entire proceeding pending before the learned Additional Chief Metropolitan Magistrate, Calcutta whereby cognizance of the offences was taken on the basis of the charge sheet and any order passed in connection with the same is hereby quashed.

26. No order as to costs.

27. Let the Case Diary be returned.

28. All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

29. Criminal Section is directed to supply certified copies of this order to the parties, if applied for, upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]