

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 727 of 2025

**Arup Roy
Vs.
The State of West Bengal & Anr.**

For the Petitioners	:	Mr. Moyukh Mukherjee Mrs. Aishwarya Bazaz Ms. Sharmistha Basak
For the OP No.2	:	Mr. Mrityunjoy Chatterjee Ms. Mousumi Banerjee
For the State	:	Mr. Soumik Ganguly Mr. Ratul Ghosh
Heard On	:	13.01.2026
Judgment on	:	30.03.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioner herein has assailed the proceeding being Panchsaray PS Case no. 59 of 2024 under sections 318(4) /316(4)/61(2) of Bhartiya

Nyaya Sanhita 2023 (in short BNS) presently pending before learned ACJM, Alipore.

2. The allegation levelled in the complaint is that the petitioner, in the year 2021, came before the opposite party no.2 and introduced himself as reputed business person and had expressed his intention to join in the business of the opposite party no.2 as profit sharing partner and thereafter they entered into a partnership deed in the name and style “M/s Aavya Tech” on 15.04.2021. Opposite party no. 2 relied upon the petitioner and had handed over all the business related documents and maintenance of the business account and had also entrusted upon the petitioner for looking after the properties related to the business. However, till date the petitioner had failed to invest any capital amount upon the said partnership business. When the opposite party no.2 found himself unable to run to the partnership business, he requested the petitioner either to make investment in the said business or else tender resignation as partner from the partnership business and return all necessary documents, bounced cheques and all other documents of the business which was in his custody. Thereafter when the opposite party no.2 started to verify the accounts, he found a huge deficiency and discrepancies in the Income Tax return (in short ITR) portal, as well as the bank statement and also found misappropriation in the ITR file of the partnership firm. He also found some forged and fabricated documents and books of accounts, that has been uploaded in income tax portal as well as income tax return of the said partnership firm. When the opposite party no.2 had gone through the books of account of the said firm, he found that an amount of Rs. 16,33,000/- has

been misappropriated by the petitioner without his prior knowledge. It was also detected that the petitioner had taken a huge money from the account of partnership business on the pretext of paying the vender and supplier but he did not pay the money to them and instead misappropriated the same and converted to his own use. Thereafter the petitioner removed all the valuable documents from the office of the partnership business. In fact the petitioner entered into a criminal conspiracy along with his associates and thereby induced the opposite party no.2 to part with on good faith all necessary original documents, bounced cheques, promissory note, cash book, rubber stamp and many other bank account related document and thereafter the petitioner after getting the domain over the documents and property of the opposite party no.2, misappropriated the aforesaid amount of money to the tune of Rs. 16,33,000/-.

3. The Opposite party no. 2 went to the local police station but the police despite receiving the complaint did not start investigation and thereafter on the basis of the direction made by learned Magistrate vide order dated 31.07.2024 a preliminary enquiry was conducted and upon receipt of report learned Magistrate directed for investigation invoking his jurisdiction under Section 175(3) Cr.P.C. against the petitioner and his unknown associates.

4. Being aggrieved by the said proceeding, learned counsel for the petitioners submits that the allegation in the complaint are false and they are based on suspicion and no specific allegation has been attributed against the petitioner and he is no way connected with the alleged offence. He further argued that the genesis of the present FIR is a business disagreement between two partners of a registered partnership firm, relating

to the manner in which partnership firm and accounts are to be managed. As such, if the entire set of allegations are taken at their face value, it concerns civil and contractual rights arising out of partnership dealings and do not constitute any criminal offence. The complaint essentially accuses the petitioner of '*mishandling partnership funds*' and '*not returning certain business documents*' which squarely falls within the ambit of the Partnership Act 1932, and can be instituted before the civil jurisdiction of a competent court.

5. He further submits that inspite of the petitioner's repeated cooperation the investigating officer reported to the Magistrate alleging non-cooperation, which is factually incorrect and not supported by records. The petitioner appeared before the investigating officer on multiple occasions with relevant documents and explanations. However, the investigation has proceeded in a mechanical and biased manner without any material to suggest commission of a cognizable offence. There is no specific instance of forgery, fabrication or dishonest intention at the inception and therefore essential ingredients of the offences alleged under BNS are conspicuously absent. The partnership deed itself demonstrates that both parties voluntarily agreed to the terms of the business and there is no allegation that the petitioner entered into the partnership with any dishonest intention. The complaint refers to '*unknown associates*' as conspirator but does not name or describe any co-conspirator nor any specific act of conspiracy. Therefore section 61(2) BNS has got no application. As there is no entrustment, section 316 (2) BNS has got no application in view of law laid down by this court in ***Jayanta Saha Vs. State of West Bengal & Anr.***

Another reported in **(2004 SCC Online Cal 161)**, which held that in partnership matters, each partner has an equal and undivided interest in the partnership property and therefore no entrustment arises between partners, which is an essential ingredient for criminal breach of trust. It was further held that entire allegation arises from internal partnership affairs and lacks specific assertions of fraudulent inducement or dishonest misappropriation. The offence of cheating under section 318 (4) BNS has also not been made out. In this context he also relied upon judgment of **Krishna Chandra Banik and Ors. Vs. Harkishan Modak** reported in **(1924) SCC Online Cal 245**.

6. Referring the judgment, passed in **Delhi Race Club 1940 Ltd. and Ors. Vs. State of U.P and Another.**, **(2024) 10 SCC 690**, he contended that this judgment strongly criticised the mis-application of criminal provisions by the Magistrate and the High Court and noted that invoking criminal law in purely civil, commercial disputes constitutes an abuse of the process of the law. In this context he also relied upon the judgement of Allahabad High Court in **Naseem Bano Vs. State of U.P and Ors.** and contended that the criminal proceedings cannot be permitted to continue, where the allegations are general, vague or do not disclose the essential ingredients of alleged offence. He further contended that the present case reflects an attempt to criminalise a purely civil disagreement and thereby attracts the principles laid down in **State of Haryana Vs. Bhajan Lal** reported in **AIR 1992 Supreme Court 604**. Therefore further continuance of the instant proceeding will be mere abuse of the process of the court and therefore she prayed for quashing the impugned proceeding.

7. Mr. Chatterjee, learned counsel appearing for Opposite party no.2 argued that though complaint has invested his entire share in the partnership business but the accused has not invested a single penny in the business of the company, since the signing of the partnership agreement on 15.4.2021 and the petitioner/accused instructed the banks to keep their business accounts in debit freeze mode which denied the complainant to obtain statements also. The accused misappropriated Rs. 11,33,000/- from the HDFC business account which the complainant came to know after going through the business account, prepared by the chartered accountant of the accused. The complainant further astonished to know that the accused had transferred Rs.11,000,000/- plus Rs.33,000/- to his own bank account for the convenience of UPI payment to be made to the supplier and contractors, which he did not pay and they are still waiting for their payments for many months. The accused/petitioner invested the said amount of money which he transferred in his own account to purchase a flat at Mascot Pearl 2619, Nayabad. The accused even after submitting the IT return showed a different picture in the books of account, prepared by his appointed chartered accountant. Income tax return showed loses whereas books of account shows profits. The petitioner in the IT return of assessment year 2023-2024, has even changed the address of registered office to his own residential address. Furthermore the accused did not deposit Rs. 5,00,000/-, which he took from the office on 04.04.2024 for depositing the same to the HDFC Bank. The accused unlawfully removed all the documents and items as mentioned in the check list of items, stolen from the registered office and for such unlawful action of the accused,

complainant could not submit the IT return as well as GST for this financial year. He further pointed out that the documents relied by the petitioner in the present application are not the uncontroverted documents and issued by any statutory authority. Moreover throughout investigation, petitioner did not make cooperation with the investigating agency and as such no seizure could be made till date to unearth the truth.

8. Mr. Soumik Gangully learned counsel appearing on behalf of the State of West Bengal argued that according to the partnership deed both the partners have equal share of the profit and loss and each of them are supposed to invest to Rs. 2,50,000/-. Though the opposite party no.2 invested his share of investment but till date petitioner did not invest his share of Rs. 2,50,000/- and during investigation, it has been learnt that in the month of April, 2024, said firm sold a flat and received cash amount of Rs. 5,00,000/- which was handed over to the petitioner for depositing the same in the bank account of partnership firm but he kept the said amount in his possession and on being asked the petitioner failed to give any reply. Thereafter it has been detected that the petitioner had withdrawn a sum of Rs. 11,33,000/- without the knowledge of opposite party no.2. During investigation it has also been learnt that the petitioner used his home as office address during filing of income-tax return 2022-2023, where he stated that the firm incurred loss in their business but it appears that the petitioner sent an email through a chartered accountant, where he mentioned that the firm has earned profit in their business. He further pointed out that during investigation the petitioner preferred anticipatory bail before this High Court, but it was rejected and the petitioner was

directed to meet the investigating officer along with documents and thereby the conduct of the petitioners was also not appreciated. He further submits that during investigation, a warrant of arrest was issued against the petitioner and several attempts were made, but till now he is absconding and for which the State has made a prayer on 23.07.2025 for taking next course of action relating to an absconding accused. He therefore submits it is not a fit case where the proceeding can be quashed invoking this Court's jurisdiction under section 528 of the BNSS.

9. I have considered submissions made by both the parties.

10. The petitioner herein/accused person in the instant criminal proceeding has been booked under section 318(4)/316(2) /61(2) of the BNS. Therefore at the very outset let me recollect the essential ingredients to constitute offence of cheating and criminal breach of trust. In order to constitute and offence of cheating the essential ingredients are :-

- (i) *The accused made a false or misleading representation, either directly or by concealing facts.*
- (ii) *The victim was induced to deliver property, consent to the retention of property, or do/omit to do something, the victim otherwise would not.*
- (iii) *The Act or omission must cause or likely to cause damage or harm to the person in body, mind, reputation or property.*
- (iv) *The intention to defraud must be present from the very beginning of the transaction.*

11. Similarly in order to constitute offence of criminal breach of trust, the prosecution must prove that:

- (i) *The accused must receive property or dominion over it, holding it on behalf of another.*
- (ii) *The accused must dishonestly converted the property for his own use or dispose of it wrongfully.*
- (iii) *There must be violation of obligation.*
- (iv) *There must be mens rea, i.e. the act must be intentional and not accidental.*

12. It is well settled that while considering an application under section 482, the allegation in the complaint will have to be accepted on the face of it and the truth or falsity of which would not be gone into by the Court at this stage. Whether the allegations in the complaint are true or not is to be decided on the basis of the evidence led at the stage of trial. It is also well settled that for the purpose of quashing of the proceeding, though the power under section 482 of the Cr.P.C. is to be used sparingly but it may be so exercised if,

(a) *the allegations in complaint even if taken at its face value makes no case or disclosed essential ingredients of offence.*

(b) *where the allegations are patently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there are sufficient grounds for proceeding.*

(c) *where discretion exercised by the Magistrate in issuing process is capricious and arbitrary and having based on no evidence or those are wholly irrelevant and inadmissible*

(d) *where it suffers from fundamental legal defects, such as want of sanction etc.*

(e) *in order to prevent miscarriage of justice*

(f) *to prevent abuse of the process of law*

(g) *continuance of the proceeding would not sub-serve the cause of justice.*

13. Now let me consider the well settled principle of law and the ingredients of offences as above, in the light of the facts of the present case.

14. In the written complaint

(a) complainant, has alleged in paragraph 2 that the petitioner Arup Roy introduced himself to the complainant as a reputed business person and though complainant was initially reluctant to accept him as partner, but due to persistent request and persuasion the

complainant admired the accused/petitioner as partner of the firm namely M/S. Aavya Tech and thereby both of the them executed a partnership deed on 15.04.2021.

- (b) It is further alleged in paragraph 3 of the complaint that the complainant have relied upon him and handed over all the business related document and maintenance of the business accounts and had also entrusted upon the accused person for looking after the properties, related to the business and had also handed over all the necessary original documents, bounced cheques, promissory notes, cash books rubbers stamps and many other bank account related documents on good faith.
- (c) In para 4 of the complaint it is alleged that till date the petitioner had not invested any capital amount in the said partnership business, inspite of execution of partnership agreement and had fraudulently assured him to make the said investment shortly.
- (d) In para 5, a specific allegation has been made against the petitioner that when the complainant started to check the accounts of the business, he found a huge deficiency and discrepancies in the Tax Return Portal as well as in the bank statement of M/S Aavya Tech and also found misappropriation in the Income Tax Return file of the said partnership firm, which was entirely looked after as well as maintained by the petitioner and his associates. Complainant has also discovered some forged and fabricated documents/books of account, that has been uploaded in the Income Tax Portal as well as Income Tax Return of the said Partnership Firm. After going through the

books of account of the said business, it was detected that an amount of Rs. 16,33,000/- has been misappropriated by the petitioner without the knowledge of the complainant.

(e) In para 6 of the complaint it is alleged that the petitioner has destroyed a huge number of documents related to the said partnership business and had threatened with dire consequences.

(f) In para 7 it is further alleged that the petitioner had taken huge money from the possession of the partnership business on the pretext of paying the vendors and supplier but he did not pay the money to them and instead misappropriated the same.

15. After receiving the complaint filed under section 175 (3) of BNSS learned Trial court asked the Police to make a preliminary investigation in order to verify the truth and veracity of the allegation, relying upon ***Priyanka Srivastava Case (AIR 2015 SC 1758)*** and accordingly police submitted report. The relevant portion of the report runs as follows:-

“While , the u/signed was starting to ask some question regarding the complaint letter but he did not want to speak the u/signed regarding the matter and he said that he will face the matter on ld, court, so, he did not co operate with the u/signed regarding the enquiry in c/w above noted matter. On 28.08.2024, received a petition with some documents through the ld. Advocate of Shri Arup Roy where he mentioned that the complainant and he equal share holder (50%-50%) as per agreement and the complainant had registered a property in his own name using bank account money of M/S AAVYA TECH without consent of him.”

16. It further appears from the case diary, that petitioner preferred anticipatory bail application before this High Court being CRM (A) 3374 of 2024, wherein such bail application was dismissed on merit vide order dated 26.09.2024, in view of the fact that the petitioner failed to comply with the direction of the High Court dated 19th September, 2024, by which the petitioner undertook that he shall provide all the necessary documents

including the bank statement for the purpose of proper investigation and also shall co operate with the investigating agency.

17. In support of constituting elements of offence under section 318 (4) of BNS, which basically deals with deception from inception, learned counsel for the state argued that during investigation, it transpired that opposite party no.2 and the petitioner entered into a partnership business by executing partnership deed and according to the deed both the partners having equal share of the profit and loss, each of them agreed to invest Rs. 2.5 lakhs at the beginning. Though the opposite party no.2 invested his share of investment and though the petitioner was requested several times to invest his share, by the opposite party no.2 but the petitioner on several occasion assured to pay but did not pay a single penny towards his share of Rs. 2.5 Lakhs, which clearly indicates the *mens rea* on the part of the petitioner and the intention to deceive defacto complainant was there from the very beginning.

18. In support of the allegation of criminal breach of trust learned counsel for the State argued that during investigation it could be learnt that in the month of April, 2024 M/S Aavya Tech sold a flat and received cash Rs. 5 lakhs which was handed over to petitioner Arup Roy for depositing it in the bank account of M/S Aavya Tech but the petitioner misappropriated the said amount for his personal gain and did not deposit the said amount to the account of partnership business. Learned counsel for the State further argued that during investigation it prima facie discloses that an amount of Rs. 11,33,000/- had been withdrawn by the petitioner from the partnership business without the knowledge of the complainant and he had not return

the articles like office stamp, bills, voucher, ITR file, the documents related to partnership business etc., which he had illegally taken away from the office, in violation of partnership agreement. Learned counsel for the State further argued that during investigation it was also learnt that the petitioner used his house as office address during filing of Income Tax Return for the year 2022-2023, instead of their business address of M/S Aavya Tech, where again the petitioner mentioned that the said partnership firm had incurred loss in their business. But the same petitioner sent e-mail through a chartered accountant namely Tapas Maity, where he mentioned that the firm earned profit in their business.

19. I have carefully perused the contents of the complaint as well as materials placed before me, which were collected during investigation. In my opinion, it cannot be said that the materials do not disclose the commission of any cognizable offence. Merely because the offence was committed during the course of a partnership business transaction, it would not be sufficient to hold that the complaint does not warrant a trial. Whether the allegations levelled in the complaint are true or not will be decided on the basis of evidence to be led at the trial but it is certainly not a case in which the criminal trial should have cut short. The quashing of the complaint will result a grave miscarriage of justice. Moreover it is further submitted by the state that the petitioner has prayed for quashment but for the reasons best known to him, he is still absconding and has never cooperated with the investigating agency.

20. In **M/S Pepsi Foods limited Vs. Special Judicial Magistrate** reported in **(1998) 5 SCC 749** the Apex Court citing the judgment of **State**

of Haryana and Ors. Vs. Bhajanlal, 1992 supp (1) 335 held that power under section 482 can be exercised with the sole purpose to prevent the abuse of the process of any court or otherwise to secure the ends of justice.

Para 20 of said judgment runs as follows:-

21. *It is settled that the High Court can exercise its power of judicial review in criminal matters. In State of Haryana v. Bhajan Lal [1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : JT (1990) 4 SC 650] this Court examined the extraordinary power under Article 226 of the Constitution and also the inherent powers under Section 482 of the Code which it said could be exercised by the High Court either to prevent abuse of the process of any court or otherwise to secure the ends of justice. While laying down certain guidelines where the court will exercise jurisdiction under these provisions, it was also stated that these guidelines could not be inflexible or laying rigid formulae to be followed by the courts. Exercise of such power would depend upon the facts and circumstances of each case but with the sole purpose to prevent abuse of the process of any court or otherwise to secure the ends of justice. One of such guidelines is 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. Under Article 227 the power of superintendence by the High Court is not only of administrative nature but is also of judicial nature. This article confers vast powers on the High Court to prevent the abuse of the process of law by the inferior courts and to see that the stream of administration of justice remains clean and pure. The power conferred on the High Court under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits but more the power more due care and caution is to be exercised while invoking these powers. When the exercise of powers could be under Article 227 or Section 482 of the Code it may not always be necessary to invoke the provisions of Article 226. Some of the decisions of this Court laying down principles for the exercise of powers by the High Court under Articles 226 and 227 may be referred to.*

22. In **State of M.P. Vs. Awadh Kishore Gupta and Ors.** reported in **(2004) 1 SCC 691** it has been clearly held that at this stage, court is not supposed to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused and the relevant portion of the judgment may be profitably quoted herein.

13. *It is to be noted that the investigation was not complete and at that stage it was impermissible for the High Court to look into materials, the acceptability of which is essentially a matter for trial. While exercising jurisdiction under Section 482 of the Code, it is not permissible for the Court to act as if it was a trial Judge. Even when charge is framed at that stage, the Court has to only prima facie be satisfied about existence of sufficient ground for proceeding against the accused. For that limited purpose, the Court can evaluate material and documents on records but it cannot appreciate evidence. The Court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused. In Chand Dhawan v. Jawahar*

Lal [(1992) 3 SCC 317 : 1992 SCC (Cri) 636] it was observed that when the materials relied upon by a party are required to be proved, no inference can be drawn on the basis of those materials to conclude the complaint to be unacceptable. The Court should not act on annexures to the petitions under Section 482 of the Code, which cannot be termed as evidence without being tested and proved. When the factual position of the case at hand is considered in the light of principles of law highlighted, the inevitable conclusion is that the High Court was not justified in quashing the investigation and proceedings in the connected case (Crime No. 116 of 1994) registered by the Special Police Establishment, Lokayukta, Gwalior. We set aside the impugned judgment. The State shall be at liberty to proceed in the matter further.

23. In the result, I find that this is not a fit case where the proceeding can be quashed at its threshold, invoking this court's jurisdiction under section 482 Cr.P.C read with section 528 of BNSS.

24. CRR 727 of 2025 thus stands dismissed.

25. However, I make it clear that I have not expressed any opinion on the merits of the allegations. The investigating agency shall proceed with the matter expeditiously, uninfluenced by any observation made by this court. 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.)