IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 1768 OF 2022

ANCHAL SOOD

VS

M/S. DIAMOND TIMBER INDUSTRIES

For the Petitioner	**:**	**Mr. Pinak Kumar Mitra, Adv.**
		Ms. Subhanwita Ghosh, Adv.
		Mr. Kaustav Talukdar, Adv.
Last heard on	**:**	**28.01.2026**
Judgement on	**:**	**06.05.2026**
Uploaded on	**:**	**06.05.2026**

CHAITALI CHATTERJEE DAS, J. :-

1. This Revisional Application was filed for quashing of a proceeding in connection with complaint case no. 14738/2020 under Section 420/406 of the Indian Penal Code, now pending before the Learned Metropolitan Magistrate , 16th Court, Calcutta. It is pertinent to mention herein that none appears to represent the Opposite Party in this case despite service. The postal endorsement reflected that no such person resides in the said address which was mentioned in the written complaint. Therefore the matter was heard in absence of the Opposite Party.

2. The Learned Advocate argued that the complainant is a business partner firm represented by Mr. Ashok Kumar Sharma. The accused person came to the office of the complainant company and represented himself to be a sole proprietor of his concern Himachal Timber and Saw Mills and having experience in dealing with various types of Plywood in the retail market of Panchkula (Haryana) having good reputation and good will in the retail marker of Panchkula. It was assured that if various types of plywood and timber are sold and supplied to him he can have a good business with the company in future. Accordingly the complainant pursuant to the order of the accused person sold and supplied various types of plywood described in the invoice against its proper invoice cum challan which is as follows:-

Invoice No.	**Date**	**Amount**
1800020378	**04.03.2015**	**12,89,968/-**

3. It is the further case of the petitioner that after delivery of the goods an amount of Rs. 7, 89,968/- was paid to the petitioner company as a part payment and thereby a balance sum of Rs. 5, 00,000/- was left to be paid to the complainant company. Despite repeated request and reminders the accused did not pay the said amount and the complainant through its advocate issued a legal demand notice on February 10, 2020 which was posted on February 11, 2020. The said notice was sent to his correct address but neither A/D nor the unserved postal envelop returned to the complainant till date.

4. The present petitioner is a business man and is a proprietor of M/s Himachal Timbers & Saw Mills engaged in procurement of supply and manufacture of timber and in the State of Haryana and its adjoining states and in North India. It is the specific case of the present complainant that he has paid an amount of Rs. 17,89,968 to the Opposite Party but there was some dispute regarding quality of the products supplied to the Opposite Party and hence an amount is lying due .It is further submitted that he never received any demand notice from the firm of the Opposite Party and only after a long period of around 6 years received the summons dated 23/11/21 from the Court of Metropolitan Magistrate , 16th Court Calcutta whereby he was directed to appear before the Learned Court on March 8,2022.

5. The Learned Advocate argued that the complaint lodged by the Opposite Party no. 2 is primarily not maintainable as the entire cause of action arose within the jurisdiction of the criminal Courts of Bhavnagar, Gujrat and it is barred under Section 177 of Cr.P.C. Further submitted that a civil dispute could have been relating to part payment but no intention to deceive or defraud from the inception can be found from the four corners of the written complaint. It is further submitted that there is non-compliance provision of Section 202 of Cr.P.C. as the present petitioner /accused resides beyond the territorial jurisdiction of the Trial Court. Therefore the order summoning the present petitioner to appear is bad-in-law. More so there is a delay of almost 6 years in filing the impugned proceeding as the invoices are of March 20, 2015 and the case was filed in July 2020 without showing explanation in this regard. Lastly, it is argued that the petition of complaint does not constitute an offence of cheating or criminal breach of trust as there was no fraudulent or dishonest

mens rea to cause wrongful loss to the complainant and the dispute primarily arising out of commercial transaction. The Learned Advocate relied upon the decision regarding territorial jurisdiction are ***Y. Abraham Ajith & Ors. Vs. Inspector of Police, Chennai and Another***[1] and relied upon the relevant paragraph of 7-9, 12-19, ***Bhura Ram & Ors. Vs. State of Rajasthan***[2] **,** para 5 & 6***, Amarendu Jyoti and Others vs. State of Chattisgarh and Others***[3] para 11, ***Manoj Kumar Sharma and Others vs. State of Chattisgarh and Others***[4] para 25, 27 and ***Kaushik Chatterjee vs. State of Haryana and Others***[5] para 17-32, 36-38**.**

6. The Learned Advocate further relied upon the decision reported in ***Abhhijit Pawar Vs Hemanth Madhukar Nimbalkar***[6] para 23-28 and ***Deepak Gaba and Others vs State of UP and Anr.***[7], ***Indian Oil Corporation vs. NEPC India Ltd and Ors.***[8] and ***V.Y. Jose and Anr. vs. State of Gujrat and Anr.***[9] in order to show that initial deception is a sine qua non to attract offence of cheating and mere breach of contract does not attract 420/406 IPC and civil dispute cannot be converted into a criminal litigation. ***Vesa Holdings Pvt. Ltd. and Anr. Vs. State of Kerala & Ors.***[10]***, HTC India Pvt. Ltd. & Ors. Vs. Link Telecom Pvt. Ltd.***[11]**.**Lastly, relied upon the decision of the case of ***Lalit***

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[1] (2004) 8 SCC 100
[2] (2008) 11 SCC 103
[3] (2014) 12 SCC 362
[4] (2016) 9 SCC 1
[5] (2020) 10 SCC 92
[6] (2017) 3 SCC 528
[7] (2023) 3 SCC 423
[8] (2006) 6 SCC 736
[9] (2009) 3 SCC 78
[10] (2015) 8 SCC 293
[11] 2023 SCC Online Cal 13

***Chaturvedi & Ors. Vs. State of Uttar Pradesh & Anr.*[12], *Arshad Neyaz Khan vs. State of Jharkhand & Anr*[13]** para 19-26 and ***Sekhar Sharma Vs. State of West Bengal & Anr.*[14].**

7. Heard the submission of the Learned Advocate. Ongoing through the complaint lodged under Section 200 of Code of Criminal Procedure before the Learned Chief Metropolitan Magistrate , Calcutta it appears that the complainant being a partnership firm had his office and place of business at 46C Rafi Ahmed Kidwai Road, Kolkata 16.It further transpires that the accused person the complainant/ the firm sold and supplied various types of plywood of total amount was Rs.12,89.968 and after delivery of the said goods an amount of Rs. 1, 7,968 was paid to the present complainant company and a balance of Rs. 5 lakhs was left to be paid. This amount was not paid in spite of repeated request made by the complainant and lastly a legal demand notice was sent in the month of February 2020. The invoice date is found to be of March 4, 2015 and the legal notice was sent on February 2020 that is long after 5 years. No other communication was mentioned in the complaint in order to show that there was any assurance on the part of the accused person to return the amount or any other cogent explanation which prompted them to send such legal notice long after 5 years. The petition of complaint was filed in the month of July 2020. Therefore prima facie a prolong delay in lodging such complaint is apparent. The cognizance was taken by the Learned Magistrate on July 27, 2020 subject to the question of maintainability in terms of the decision of the Hon'ble Apex Court in ***Satish Chandra Ratan Lal Sha Vs***

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[12] (2024) 12 SCC 483
[13] 2025 Live Law (SC) 950
[14] 2025 SCC OnLine Cal 2886

State of Gujrat and Another[15] and subject to the question of territorial jurisdictional competence. The matter was transferred to the Court of 16th Metropolitan Magistrate for enquiry and order. In the case of ***Abhhijit Pawar Vs Hemanth Madhukar Nimbalkar (supra)*** it was held by the Hon'ble Supreme Court that the object of enquiry by Magistrate in cases where the accused reside at place beyond his jurisdiction is mandatory mostly to ward off false complaint against such person residing at far of places in order to save them from unnecessary harassment. Therefore it was held, that before issuing the process it is mandatory on the part of the Magistrate to conduct such enquiry was to filter the false complaint and reject. It was further held that such enquiry before issuing the process is not an empty formality.

8. The Hon'ble Supreme Court took note of the decision of ***Vijay Dhanuka*** [16] where it was held :-

> *"No specific mode or manner of inquiry is provided under Section 202 of the Code. In the inquiry envisaged under Section 202 of the Code, the witnesses are examined whereas under Section 200 of the Code examination of the complainant only is necessary with the option of examining the witnesses present, if any. This exercise by the Magistrate, for purpose of deciding whether or not there is sufficient ground for, proceeding against the accused, is nothing but an inquiry envisaged under Section 202 of the Code."*

9. In the present case the complainant company after adducing evidence as P.W. 1 on January 13, 2021 stated that a part amount was paid to their company

[15] (2019) 9 SCC 148
[16] (2014) 14 SCC 638

and the balance amount was not paid. He also said that if it had been to their knowledge that the accused will not pay the amount they would not deliver goods and hence accused had intention to deceive from the very beginning. P.W. 2 Nripendra Krishna Dey was examined under Section 200 Cr.P.C who also said about the transaction with them for the first time and to create confidence the accused made part payment thereafter he did not pay.

10. The Learned Magistrate on January 13, 2021 held that prayer was made for issuing process on behalf of complainant company against accused person under Section 204 of Cr.P.C and considering the decision judgement of ***Lalita Kumari Vs. Govt. of UP***[17] and observed that the mandate of 202 Cr.P.C must be followed when the accused is residing outside the jurisdiction beyond the area in which the Magistrate exercised his jurisdiction. The Learned Magistrate vide his order dated 13.1.21 directed the complainant to further adduce evidence to satisfy the court with regard to legality of issuing process against the accused person under Section 204 of Cr.P.C and postponed the process under Section 202 of Cr.P.C for further enquiry .After that the employee of the complainant company deposed as P.W.2 on S/A under section 200 Cr.P.C. The Learned Magistrate considered the evidence adduced and ,observed that the complainant company delivered good of Rs. 12,89,000/-to the accused person and an amount of Rs. 7,89,968 /-was paid leaving an amount of Rs. 5lacs as due amount. He further considered that despite repeated approach made by the complainant company the accused did not pay and killed time and even after the demand of notice sent upon him he did not pay .The Learned Magistrate also considered that the quality of the goods were not complained of

[17] (2014) 2 SCC 1

by the accused person and also did not raise any dispute hence he had a mens rea from the very beginning to deceive the complainant and also held that the prima facie it is established that the accused has cheated the company and induced him to deliver the goods.

11. In the judgement of ***Y. Abraham Ajith (supra)*** the Hon'ble Supreme Court dealt with the jurisdiction of the Learned Magistrate where all the offences were taken place at a different place and no part of cause of action arose within the jurisdiction of the Learned Magistrate's Court .Section 177 of the Code of Criminal Procedure deals with ordinary place of inquiry and trial which reads as follows;

> *"**177. Ordinary place of inquiry and trial-***
> *Every offence shall ordinarily be inquired into and tried by a court within whose local jurisdiction it was committed."*

Section 178 Cr.P.C deals with the place of inquiry or trial which reads as follows:

> ***"178. Place of inquiry or trial-***
> *a) when it is uncertain in which of several local areas an offence was committed ,or*
> *b)Where an offence is committed partly in one local area and partly another ,or*
> *c) where an offence is continuing one, and continues to be committed in more local areas than one ,or*
> *d) where it consists of several acts done in different local areas,*
> *it may be inquired into or tried by a court having jurisdiction over any of such local areas."*

It was held in this case that *"while in civil cases, normally the expression "cause of action" is used, in criminal cases as stated in section 177 of the Code, reference is to the local jurisdiction where the offence is committed. Theses variations in etymological expression do not really make the position different. The expression "cause of action" is, therefore, not a stranger to criminal cases."*

In this case the complainant company is having his place of business within the jurisdiction of park street police station and the accused person came there and then the transaction commenced but the goods were delivered at the address of the accused company situated at Panchkula ,Haryana and the order was placed at Haryana . However the petitioner has prayed for quashing of the entire proceeding where one of the other ground is lack of jurisdiction.

The pertinent point falls for consideration whether the allegations levelled against the petitioner are even considered on the face of it whether it would constitute any offence under Section 420 and 406 of the IPC .In the case of ***G. Sagar Suri vs State of UP***[18] which has been taken note by the Learned Co-ordinate Bench in 2023 SCC Online Cal 13 , it was observed ;

> *"'It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to*

[18] (2000) 2 SCC 636

be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted and his remedy lies only in civil law, should himself be made accountable, at the end of such misconceived criminal proceedings, in accordance with law. One positive step that can be taken by the courts, to curb unnecessary prosecutions and harassment of innocent parties, is to exercise their power under Section 250 Cr.P.C. more frequently, where they discern malice or frivolousness or ulterior motives on the part of the complainant. Be that as it may."

In this case the part payment was not in dispute which was out of a transaction between the parties and after having discussion over the matter. Certain goods were also supplied so how far it can fall within the four corner of Section 420 is to be ascertained. Section 420 IPC laid down-

"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 *party 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 sever years, and shall also be liable to fine.*

Ingredients of offence.*- The essential ingredients of the offence under Sec. 420 are as follows:-*

(1) There should be fraudulent or dishonest inducement of a person by deceiving him;

(2) (a) The person so induced should be intentionally induced to deliver any property to any person or to consent that any person shall retain any property, or

(a) the person so induced to do anything which he would not do or omit if he were not so deceived, and

(b) in cases covered by second part of clause(a), the act or omission should be one which caused or was likely to cause damage or harm to the person induced in body, mind or property.

The two essential ingredients of the offence under this section are-

(A) Deceit, that is to say dishonest or fraudulent misrepresentation, and

(B) Inducing the person deceived to part with property."

On close scrutiny of the entire complaint and the nature of allegation levelled no material can be found which suggest that the petitioner dishonestly induced the complainant to deliver property at the inception .In innumerable cases the Hon'ble Apex court pointed out the clear distinction between a civil wrong and in the form of breach of contract, non-payment of money or disregard to and violation of the contractual terms, and the offence under Section 420 and 406 IPC. In a recent decision of the Hon'ble Supreme Court in ***Lalit Chaturvedi and others vs State of Uttar Pradesh and Anr. (supra)*** it was observed and held in para 7 taking note of the decision of ***V.Y Jose vs State of Gujarat***[19]***;***

> *"7. Similar elucidation by this Court in* ***V.Y. Jose v. State of Gujrat***[20] *explicitly states that a contractual dispute or breach of contract per se should not lead to initiation of a criminal proceeding. The ingredient of "cheating", as defined under Section 415 IPC, is existence of a fraudulent or dishonest intention of making initial promise or representation thereof, from the very beginning of the formation of contract. Further, in the absence of the averments made in the complaint petition wherefrom the ingredients of the offence can be found out, the High Court should not hesitate to exercise its jurisdiction under Section 482 Cr.P.C. Section 482 Cr.P.C saves the inherent power of the High Court, as it serves a salutary purpose viz. a person should not undergo harassment of litigation for a number of years, when no criminal offence is made out. It is one thing to say that a case has been made out for trial and criminal proceedings should not*

[19] (2009)3 SCC 76
[20] (2009) 3 SCC 78

be quashed, but another thing to say that a person must undergo a criminal trial despite the fact that no offence has been made out in the complaint.

This Court in V.Y. Jose placed reliance on several earlier decisions in ***Hira Lal Hari Lal Bhagwati v. CBI[21], Indian Oil Corpn. V. NEPC India Ltd.[22], Vir Prakash Sharma v. Anil Kumar Agarwal[23], and All Cargo Movers (India) (P) Ltd. V. Dhanesh Badarmal Jain.[24].***

12. In the case of ***Arshad Neyaz Khan[25],*** the Hon'ble Apex court held that Section 406 and 420 of the Indian Penal Code cannot co-exists on same allegation .The offence of cheating involves criminal intention from inception, and for criminal breach of trust there is lawful entrustment at the beginning, which is later misappropriated .It was held that both these offences cannot exits simultaneously on same facts as they are 'antithetical 'to each other. It is settled law that for establishing the offence of cheating the complaint/respondent no 2 was required to show that the appellant had a fraudulent or dishonest intention at the time of making promise or representation of not fulfilling the alleged agreement for transaction more so nothing can be found to establish such a culpable intention, right at the beginning. In the said case there was a delay of 8 years in lodging the complaint and the complainant failed to impress the court about the reason for the delay and hence it created suspicion about the bona wwfides of the complainant .The Hon'ble apex court was of the view that:

[21] (2003) 5 SCC 257
[22] (2006) 6 SCC 736
[23] (2007) 7 SCC 373
[24] (2007) 14 SCC 776
[25] 2025 Live law (SC) 950

"Further, the complainant /Respondent no. 2 had an alternative remedy of filing a civil suit claiming damages for the alleged violation of his contractual rights which has not been availed but a route through criminal proceedings, when no ingredient of offence is made out ,cannot be permitted. Criminal law ought not to become a platform for initiation of vindictive proceedings to settle personal scores and vendettas."

In ***2024 Delhi Race Club (1940) ltd vs State of Uttar Pradesh***[26] also the distinction between "criminal breach of trust" and "cheating" was discussed and observed that for cheating ,criminal intention is necessary at the time of making false or misleading representation ;i.e. since inception and in criminal breach of trust mere proof of entrustment is sufficient.

13. In the case in hand although the complainant tried to maintain that in order to convince the company that the petitioner had a shop at Haryana at that address the goods were delivered and to create confidence the petitioner made part payment in reality and the goods were delivered at the said address at Haryana arranged and part payment was made. So question of fraudulent representation from the inception is absolutely missing ,on the contrary the complainant send the goods at that address which was duly received and more than 7 lacs were paid leaving a due of Rs 5lacs which were alleged not to have paid. The invoice is dated 2015 and the legal notice was given in the year 2020 when the complaint was lodged in the year 2020 and the petitioner/accused for long 5 years assured him of paying the dues so no action was taken earlier.

[26] (2024)10 SCC 690

He also alleged of threatening with dire consequences and abused him but no specific time or date is mentioned. In the case of ***Vijay Dhanuka***[27] it was held that the requirement of conducting enquiry or directing investigation before issuance of process is not an empty formality .This exercise by the Magistrate is for the purpose of deciding whether or not there is sufficient ground for proceeding against the accused which is an enquiry envisaged under Section 202 Cr.P.C . In this case the learned Magistrate did the enquiry but found that allegations of 420 and 406 are maintainable as the transaction was admitted and there was a part payment on delivery of goods observed that the allegation of cheating and criminal breach of trust is prima facie well established. This Court is unable to accept the view of the Learned Magistrate as he did not apply his mind regarding the territorial jurisdiction, the prolong delay and that the offences as alleged failed to attract any required ingredients and then issued the process. The accused person had to surrender and obtain bail on the basis of such erroneous observation. The basic purpose of the enquiry under Section 202 Cr.P.C which is to ascertain the truth or falsehood is found to be frustrated due to the non-application of mind of the Learned Magistrate.

14. The principles relating exercise of power under 482 Cr.P.C to quash the complaint and criminal proceedings are dealt with in a catena of decisions some which were mentioned in the decision of ***Indian oil Corporations NEPC India Ltd (supra)*** which are as follows-

> *"12. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have*

[27] (2014)14SCC 638

*been stated and reiterated by this Court in several decisions. To mention a few —**Madhavrao Jiwajirao Scindia v. Sambhajirao Chandrojirao Angre**[28] , **State of Haryana v. Bhajan Lal** [29]**, Rupan Deol Bajaj v. Kanwar Pal Singh Gill** [30], **Central Bureau of Investigation v. Duncans Agro industries Ltd.**[31] **,*** **State of Bihar v. Rajendra Agrawalla**[32] ***, Rajesh Bajaj v. State NCT of Delhi**[33]** , Medchl Chemicals & Pharma (P) Ltd. v. Biological E. Ltd.**[34]** , Hridaya Ranjan Prasad Verma v. State of Bihar**[35] **, M. Krishnan v. Vijay Singh**[36]* and ***Zandu Pharmaceutical Works Ltd. v. Mohd. Sharaful Haque**[37]* . The principles, broadly are:-

(i) A complaint can be quashed where the allegations made in 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 the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material

[28] (1988) 1 SCC 692 : 1988 SCC (Cri) 234
[29] 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426
[30] (1995) 6 SCC 194 : 1995 SCC (Cri) 1059
[31] (1996) 5 SCC 591 : 1996 SCC (Cri) 1045
[32] (1996) 8 SCC 164 : 1996 SCC (Cri) 628
[33] (1999) 3 SCC 259 :1999 SCC (Cri) 401
[34] (2000) 3 SCC 269 : 2000 SCC (Cri) 615
[35] (2000) 4 SCC 168 : 2000 SCC (Cri) 786
[36] (2001) 8 SCC 645 : 2002 SCC (Cri) 19
[37] (2005) 1 SCC 122 : 2005 SCC (Cri) 283

nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence.

(v) A given set of facts may make out: (a) purely a civil wrong; or (b) purely a criminal offence; or (c) a civil wrong as also a criminal offence. A commercial transaction or a contractual dispute, apart from furnishing a cause of action for seeking remedy in civil law, may also involve a criminal offence. As the nature and scope of a

> *civil proceeding are different from a criminal proceeding, the mere fact that the complaint relates to a commercial transaction or breach of contract, for which a civil remedy is available or has been availed, is not by itself a ground to quash the criminal proceedings. The test is whether the allegations in the complaint disclose a criminal offence or not."*

Therefore on conspectus of the entire above factual matrix and the law laid down in this regard this Court and the nature of allegations as the complaint did not disclose a criminal offence or not is of the view that the proceeding pending before the learned Metropolitan Magistrate is liable to quashed since if allowed to be continued would be an abuse of the process of the court.

15. Hence this CRR is allowed in absence of the Opposite Party.

16. The entire proceeding pending before the learned Magistrate is hereby quashed.

17. Let a copy of this order be forwarded to the concerned Court forthwith for taking appropriate action.

18. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance of all necessary formalities.

[CHAITALI CHATTERJEE (DAS), J.]