

10.03.2026
Sl. no. 637
Ct. No. 29
P.M. / Kausik

CRR 1741 OF 2024
+
CRAN 1 of 2024
M/s. Simplex Castings Limited
- Vs -
The State of West Bengal & Anr.

Mr. Moyukh Mukherjee
... for the petitioner.

Mr. Nirat Kumar Singh
Mr. Dev Kumar Sharma
... for the respondent No. 2

In the instant Application, the petitioner has prayed for quashing of the proceeding being Case No. CS/4302/2022 under Section 406 of the Indian Penal Code presently pending before learned 14th Judicial Magistrate, Calcutta.

The allegation levelled in the written complaint is that the petitioner represented to the complainant that it has also engaged in similar business like the complainant in the name and style of M/s. Simplex Castings Limited and the petitioner approached the complainant/firm to supply various items on petitioner's requirement on credit basis and the petitioner assured the complainant to pay the amount as per invoice / outstanding dues, after receiving the delivery of the consignment/items.

The complainant upon the persistent efforts and inducement from the petitioner/accused, agreed to supply the items sought by the accused on certain terms which was acceptable by the accused and the total amount of sales made thereby was Rs. 30,11,851/- (rupees thirty lakhs eleven thousands eight hundred and fifty one only). Out of the said amount the payment received by the complainant is Rs. 17,67,928/- (rupees seventeen lakhs sixty seven thousands nine hundred twenty eight only).

Further allegation is that the petitioner deliberately and intentionally did not pay the said outstanding amount despite delivery of all the items at the address given by the petitioner which was also confirmed by him.

Being aggrieved by the aforesaid proceeding learned counsel for the petitioner Mr. Mukherjee submits that the dispute between the parties, if any, is purely civil in nature and does not warrant any interference by a criminal court.

He further submits that the averments made in the complaint, even if taken in its entirety does not reflect the essential ingredients to constitute offence under Section 406 of the Indian Penal Code. The complainant herein have failed to bring on record any evidence to show that the petitioner had an inherent motive to cheat or to defraud or had made any criminal breach of trust to the opposite party since the inception of their communication. In fact

the opposite party No. 2 has tried to give a criminal colour to a civil/business dispute to settle the score. Therefore, further continuance of the impugned proceedings shall be mere abuse of the process of law.

Learned counsel for the opposite party raised objection contending that in the allegation there might be texture of civil dispute but that alone cannot be a ground for quashing of the proceeding.

He in this context relied upon a judgement of **Rajesh Bajaj Vs. State NCT of Delhi & Ors. reported in (1999) 3 SCC 259** and contended that the fact narrated in the present complaint may reveal a civil transaction but this can hardly be a reason for holding that the offence of cheating or criminal breach of trust would elude from such a transaction. He further quoted that cheating in many cases were committed in the course of commercial and business transaction.

He further relied upon the judgement of **Kathyayini vs. Sidharth P.S. Reddy & Ors. 2025 INSC 818** and argued that in certain cases the very same set of facts may give rise to remedies in civil as well as in criminal proceedings and even if a civil remedy is available to a party, he is not precluded from setting in motion the proceedings under the criminal law.

He further submits that the petitioner herein has taken three different stand in three different places. First of all he had taken a defence that the materials supplied are inferior quality and despite repeated reminders the issue was not resolved. Thereafter he has also raised complain about short supply and lastly he had taken a plea that the complainant has failed to provide the proper bills for the clearance of dues. This clearly indicates that the petitioner has an intention to cheat and to misappropriate the money at the inception.

He further contended that it is also well settled that each case must raise on its own facts and the similarity of the facts in one case cannot be used to determine the conclusion of fact in another case, and in this context he relied upon two judgements of the Apex Court passed in **M/s. Iveco Magirus Brandschutztechnik GmbH Vs. Nirmal Kishore Bhartiya & Anr. 2023 INSC 880 and Ezajhussain Subdar Hussain & Anr. Vs. State of Gujarat, (2019) 14SCC 339.**

Therefore he submits that since the allegation of cheating and criminal breach of trust has been well established from the allegations leveled in the complaint, this is not a fit case to interfere or to invoke the Court's jurisdiction under Section 528 of the BNSS.

I have considered the submissions made on behalf of both the parties. In order to constitute an offence under Section 406 of the Indian Penal Code, the essential ingredients of the offence are (i) mens rea (ii) there must be an entrustment (iii) the accused was entrusted with the property (iv) he dishonestly misappropriated or converted to his own use of such property (v) Accused dishonestly used or disposed of that property.

On perusal of the contents of the written complaint it is very much clear that there was no deception at the inception since in the complaint, complainant has admitted that out of the total outstanding amount of Rs. 30,11,851/- the petitioner has made payment of a substantial amount of Rs. 17,67,928/-. There is no allegation of entrustment of any property to the petitioner by the defacto complainant. On the contrary, there is clear admission that a business transaction was going on between the parties for a considerable period of time, at least from the month of April, 2016 till 2019-2020. There is nothing to show either in the complaint or any other document that the petitioner has made any willful misrepresentation. According to the complaint they entered into an agreement and in terms of the agreement, the complainant supplied the materials to the petitioners and the petitioners were supposed to repay along with

interest. It is admitted position that the petitioner has made part payment but it may be that he has failed to discharge his contractual obligation to pay the rest amount. The complaint in clear term demonstrates an allegation, where complainant has alleged breach of contract on the part of the petitioner in not making the entire payments for the services rendered to him. Reason for non-payment may be either due to short supply or defective title or for want of proper bills in violation of terms of agreement and are deficient in nature. It is not the allegation that the agreement was entered into with fraudulent or dishonest intention on the part of the petitioner in inducing the opposite party to enter into such an agreement. Therefore, the dispute herein between the parties, as appearing in the averments made in the complaint, is a civil dispute and it is settled law that non-payment or under-payment of the alleged outstanding amount by itself does not amount to commission of an offence of cheating or criminal breach of trust.

In Hriday Ranjan Prasad Verma vs. State of Bihar reported in (2000) 4 SCC 168 the Apex Court held that while determining such question it has to be kept in mind that the distinction between mere breach of contract and the offence of cheating is a fine one. It depends upon the intention of the accused at the time of inducement which

may be judged by his subsequent conduct, though for this subsequent conduct is not the sole test. However, mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention shown right at the beginning of the transaction.

I am not unmindful to the contention of learned Counsel for the opposite party, that the same act or transaction may give rise to both civil and criminal action in appropriate cases but here the allegations leveled in the complaint does not constitute offence of criminal breach of trust or cheating and therefore, I find that further continuation of the impugned proceeding will be mere abuse of the process of the Court.

In such view of the matter, **CRR 1741 of 2024** is allowed.

The impugned proceeding being Complaint Case No. C.S. 4302 of 2022 presently pending before learned 14th Metropolitan Magistrate, Kolkata is hereby quashed.

However this quashment order will not prevent the petitioner to seek for his appropriate civil remedy, if any, subject to other provisions of law.

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

(Dr. Ajoy Kumar Mukherjee, J.)