

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 2012 of 2018

Rohit Patni & Anr.

Versus

G. Jagwani & Anr.

For the Petitioners : Mr. S. Talukdar, Adv.
Mr. Anirudhya Dutta, Adv.

For the Opposite Party No. 1 : Ms. Rajnandini Das, Adv.
Mr. Karan Bapuli, Adv.

Heard on : 22.12.2025

Judgment on : 07.01.2026

Ajay Kumar Gupta, J.:

1. This instant Criminal Revisional application has been filed by the petitioners/accused persons under Section 482 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.), seeking quashing of the proceeding arising out of Complaint Case No. C-4252 of 2016 under Sections 420/406/120B of the Indian Penal Code, 1860 (in short IPC) initiated by the Opposite Party No. 1 under Section 156(3) of the Cr.P.C. before the Learned Chief Judicial Magistrate, Alipore on 23rd November, 2016, which was subsequently converted to Section 200 of the Cr.P.C., now pending before the Court of the Learned 5th Judicial Magistrate, Alipore, South 24 Parganas.

FACTS OF THE CASE:

2. The aforesaid proceeding was initiated on the basis of a petition of complaint filed by the opposite party no. 1 alleging, *inter alia*, that the petitioners, being the Directors of M/s Ankit Metal & Power Ltd., introduced their company to opposite party no. 1's company, M/s. Jagwani Projects (P) Ltd. for purchasing and receiving regular supply of Iron Ores Fines with an assurance of payments in accordance with the supplies.
3. Based on such representation, the opposite party no. 1's company effected the supply of Iron Ores Fines from time to time, amounting to a total sum of Rs. 34,26,406/-. It was alleged that despite lapse of a

reasonable period of time, the petitioners deliberately neglected to make payments of the aforesaid dues, thereby causing financial loss to the complainant. Repeated requests were made, both written and verbal, including an advocate's notice demanding payment, but it was all in vain.

- 4.** It was further alleged that on 25.10.2016, when representatives of the opposite party no. 1's company visited the office of the accused persons demanding payment, the accused persons not only refused to clear the dues, but also abused and humiliated them. Such conduct of the accused revealed a clear modus operandi showing that the petitioners had, from the inception, dishonestly induced the complainant to supply goods without any intention to make payment, thereby committing offences under sections 420/406/120B of the IPC.
- 5.** Upon hearing the complainant and on perusal of the petition filed under Section 156(3) of the Cr.P.C., the learned Court below took cognizance under Section 190(1) of the Cr.P.C. after converting it to a complaint under Section 200 of the Cr.P.C. and transferred the case to the Learned 5th Judicial Magistrate for its disposal.
- 6.** The learned Trial Court, upon examining the witnesses on oath, found sufficient materials against the accused persons suggesting commission of offence punishable under Sections 420/406 of the

IPC. The petitioners contend that even considering the petition of the complainant and the statement of the witnesses, the learned Court took cognizance under Section 202 of the CrPC on solemn affirmation as sacrosanct, no case under Sections 406/420 of the IPC and inducement from the very inception can be said to have been made out against the petitioners. Hence, this Criminal Revisional application.

ARGUMENTS ON BEHALF OF THE PETITIONERS:

7. The petitioners contended that they are innocent and the complaint under Section 156(3) of Cr.P.C. is concocted and fabricated. The proceeding has been initiated on suppression of material facts and documents before the Learned Magistrate in the petition, and the same is wanting in bona fides and is frivolous, vexatious or oppressive, and as such, the same is liable to be quashed.
8. In course of hearing, learned counsel further submitted that the allegation made by the opposite party no. 1/complainant is purely civil in nature. The complainant admittedly supplied Iron Ore Fines, pursuant to business orders on different dates, to the petitioners' company. Whatever transaction was made between the parties was a business transaction. Disputes regarding dues could be decided by the Civil Court and not by the Criminal Court. The question of inducement or cheating to the supplier/complainant never arose

when there were terms of business transaction. Though the complainant has supplied the Iron Ores Fines on several dates to the petitioners' company but the complainant did not disclose the general terms of the purchase orders, being clause 5, that if any dispute arose between the parties, the matter would be referred to Arbitration.

- 9.** The learned counsel further contended that there was nothing due and payable by the Petitioners' company against the transaction with the opposite party no. 1's company. The Petitioners' company had issued several letters to the complainant via e-mail regarding the low quality as well as short supply of Iron ore fines supplied by the opposite party no.1 company during the year 2014-15. However, they received no response. The same was also not referred to arbitration to resolve the issue between the parties.
- 10.** Even for the sake of argument, if any dues are pending, that would attract a civil suit for recovery. The complainant has filed this complaint with an allegation for offence punishable under Sections 406/420 of the IPC though no ingredients fulfilled either in complaint or through deposition. Therefore, the proceeding, initiated against the petitioners, is clearly abuse of process of law and same is liable to be quashed insofar as the petitioners are concerned.

- 11.** Finally, the learned counsel submitted that the written complaint made by the complainant before the Learned Trial Court is awful, vague and non-specific and same does not disclose sufficient grounds or ingredients to proceed against the petitioners. In such a situation, criminal proceeding should not be allowed to be continued for securing the ends of justice.
- 12.** Learned counsel has placed reliance on the following judgments in support of his submission as under:
- i. ***Anil Mahajan Vs. Bhor Industries Ltd. and Anr.***¹ particularly paragraphs 3, 5, 6 and 8 to 10;
 - ii. ***Krishna Lal Chawla and Ors. Vs. State of Uttar Pradesh & Anr.***² particularly paragraphs 17 to 23, 26 and 27;
 - iii. ***V.Y. Jose and Anr. Vs. State of Gujarat and Anr.***³;
 - iv. ***Naresh Kumar and Anr. Vs. State of Karnataka & Anr.***⁴;
 - v. ***Delhi Race Club (1940) Ltd. and Ors. Vs. State of Uttar Pradesh and Anr.***⁵.

ARGUMENTS ON BEHALF OF THE OPPOSITE PARTY NO. 1:

- 13.** Learned counsel appearing on behalf of the opposite party no. 1 vigorously objected the prayer for quashing of the proceeding and

¹ (2005) 10 SCC 228;

² (2021) 5 SCC 435;

³ (2009) 3 SCC 78;

⁴ 2024 SCC OnLine SC 268;

⁵ 2024 SCC OnLine SC 2248.

further submitted that the Petitioners have dishonestly induced the complainant's company to supply and deliver the iron ore fines on an undertaking that cost of product/material would be paid by them soon after receipt of the invoice/bills as they had placed orders after satisfying the quality of Iron Ores Fines but they intentionally did not pay the amount of Rs.34,26,406/- and further raised question about the quality of Iron Ores Fines intentionally and thereby caused huge loss to the complainant's company.

- 14.** It was further submitted that when some representatives were sent to the accused persons asking them to remit the amount of Rs. 34,26,406/-, but they did not pay any heed to make payment, rather insulted them in abusive language in order to avoid payment. It is alleged that the accused persons intentionally induced the complainant's company to supply goods under the impression that they had a good reputation in the market and would pay the invoices in time, but they did not do so, and instead, duped and cheated, causing huge loss. The accused persons deliberately refused to make the payment of the bill amount.
- 15.** The petitioners raised about the inferior quality of iron ore fines supplied in the year 2014 only to avoid payment. They continued to place fresh purchase orders in the year 2015 and received goods. Iron ore fines were supplied to the petitioners as per the standard

percentage, containing 57.03% of Iron (Fe) i.e. within the percentage stipulated in the purchase orders, and thus, the question of raising inferior quality was only to stall payment intentionally from the very inception. Not a single furtherance was paid to the complainant's company.

16. Learned counsel further contended that the judgments relied by the petitioners are not at all applicable in the present facts and circumstances of this case because if the facts prove one of several possible offences, the accused can be charged with all of them or in the alternative under the purview of Section 221 of the Cr.P.C. Therefore, the court should not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the complaint at the initial stage.

17. Learned counsel has placed reliance on the following judgments in support of her submission as under:-

- i. ***Arun Bhandari Vs. State of U.P and Ors.***⁶ particularly paragraphs 24 and 27;
- ii. ***S.R. Sukumar Vs. S. Sunaad Raghuram***⁷;
- iii. ***Rocky Vs. State of Telengana & Anr.***⁸;
- iv. ***Pinku Roy and Ors. Vs. Ranjit Debnath and Anr.***⁹.

⁶ (2013) 3 S.C.R. 961;

⁷ (2015) 9 S.C.R. 1105;

⁸ 2025 INSC 1384;

⁹ 2018:GAU-AS:218

FINDINGS AND ANALYSIS OF THIS COURT:

- 18.** Heard the arguments and submissions made by the learned counsels appearing on behalf of the respective parties and upon perusal of the judgments referred to by the learned counsels, this Court finds that the opposite party no. 1 had filed a petition of complaint alleging, *inter alia*, that criminal breach of trust and cheating were committed by the Petitioners with criminal conspiracy. The petitioners' failure to pay any amount indicates their culpable intention from the beginning. The petitioners allegedly did not clear any dues, in spite of repeated requests and written communication.
- 19.** The complainant alleged that the petitioners represented the company as a reputable one at the beginning. Based on that, the complainant supplied Iron ore fines worth Rs. 34,26,406/-, on credit on different dates. The dispute arises when the petitioners herein fail to make any payment despite repeated demands. The complainant claims that the petitioners have no intention to pay, leading to alleged cheating and misrepresentation. Whereas, the petitioners herein contended that the dispute is purely civil in nature and the criminal proceedings initiated against them are an abuse of process of law. The offence as alleged is not at all attracted.
- 20.** The petitioners raised concerns about the quality of Iron ore Fines. The quality was lower than the average quality. It also drew the

attention of this court to the arbitration clause, if any disputes arose between the parties in a business transaction, disputes should have referred to the Arbitrator. The criminal complaint was intentionally filed to recover the dues, basically based on a business transaction, even though it is a civil dispute. The allegations of offence committed by the accused are regarding breach of trust and cheating, as well as criminal conspiracy under Section 420/406/120B of the IPC.

21. Before deciding the case in hand, this court would like to assess the ingredients required for the aforesaid sections.
22. The differences in the ingredients required for an offence of Criminal Breach of Trust and Cheating have been highlighted by the Hon'ble Supreme Court in the case of **Delhi Race Club (1940) Ltd. & Ors vs. State of Uttar Pradesh & Anr.**¹⁰ in paragraph nos. 35 to 43 as under: -

“Difference between criminal breach of trust and cheating

35. *This Court in its decision in S.W. Palanitkar v. State of Bihar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241: 2002 SCC (Cri) 129] expounded the difference in the ingredients required for constituting of an offence of criminal breach of trust (Section 406 IPC) vis-à-vis the offence of cheating (Section 420). The relevant observations read as under: (SCC p. 246, paras 9-10)*

“9. The ingredients in order to constitute a criminal breach of trust are : (i) entrusting a person with property or with any dominion over property; (ii) that person entrusted : (a)

¹⁰ (2024) 10 SCC 690.

dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of that property or wilfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust.

10. The ingredients of an offence of cheating are : (i) there should be fraudulent or dishonest inducement of a person by deceiving him, (ii)(a) the person so deceived should be induced to deliver any property to any person, or to consent that any person shall retain any property; or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived; and (iii) in cases covered by (ii)(b), the act of omission should be one which causes or is likely to cause damage or harm to the person induced in body, mind, reputation or property.”

36. *What can be discerned from the above is that the offences of criminal breach of trust (Section 406 IPC) and cheating (Section 420 IPC) have specific ingredients:*

In order to constitute a criminal breach of trust (Section 406 IPC)

(1) There must be entrustment with person for property or dominion over the property, and

(2) The person entrusted:

(a) Dishonestly misappropriated or converted property to his own use, or

(b) Dishonestly used or disposed of the property or wilfully suffers any other person so to do in violation of:

(i) Any direction of law prescribing the method in which the trust is discharged; or

(ii) *Legal contract touching the discharge of trust (see : S.W. Palanitkar [S.W. Palanitkar v. State of Bihar, (2002) 1 SCC 241 : 2002 SCC (Cri) 129]).*

Similarly, in respect of an offence under Section 420 IPC, the essential ingredients are:

- (1) *Deception of any person, either by making a false or misleading representation or by other action or by omission;*
- (2) *Fraudulently or dishonestly inducing any person to deliver any property, or*
- (3) *The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit (see : Harmanpreet Singh Ahluwalia v. State of Punjab [Harmanpreet Singh Ahluwalia v. State of Punjab, (2009) 7 SCC 712 : (2009) 3 SCC (Cri) 620]).*

37. *Further, in both the aforesaid sections, mens rea i.e. intention to defraud or the dishonest intention must be present, and in the case of cheating it must be there from the very beginning or inception.*

38. *In our view, the plain reading of the complaint fails to spell out any of the aforesaid ingredients noted above. We may only say, with a view to clear a serious misconception of law in the mind of the police as well as the courts below, that if it is a case of the complainant that offence of criminal breach of trust as defined under Section 405IPC, punishable under Section 406IPC, is committed by the accused, then in the same breath it cannot be said that the accused has also committed the offence of cheating as defined and explained in Section 415IPC, punishable under Section 420IPC.*

39. *Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his*

remedy for damages in civil courts but, any breach of trust with a mens rea, gives rise to a criminal prosecution as well. It has been held in Hari Prasad Chamaria v. Bishun Kumar Surekha [Hari Prasad Chamaria v. Bishun Kumar Surekha, (1973) 2 SCC 823: 1973 SCC (Cri) 1082] as under: (SCC p. 824, para 4)

“4. We have heard Mr Maheshwari on behalf of the appellant and are of the opinion that no case has been made out against the respondents under Section 420 of the Penal Code, 1860. For the purpose of the present appeal, we would assume that the various allegations of fact which have been made in the complaint by the appellant are correct. Even after making that allowance, we find that the complaint does not disclose the commission of any offence on the part of the respondents under Section 420 of the Penal Code, 1860. There is nothing in the complaint to show that the respondent had dishonest or fraudulent intention at the time the appellant parted with Rs 35,000. There is also nothing to indicate that the respondents induced the appellant to pay them Rs 35,000 by deceiving him. It is further not the case of the appellant that a representation was made by the respondents to him at or before the time he paid the money to them and that at the time the representation was made, the respondents knew the same to be false. The fact that the respondents subsequently did not abide by their commitment that they would show the appellant to be the proprietor of Drang Transport Corporation and would also render accounts to him in the month of December might create civil liability for them, but this fact would not be sufficient to fasten criminal liability on the respondents for the offence of cheating.”

40. *To put it in other words, the case of cheating and dishonest intention starts with the very inception of the transaction. But in the case of criminal breach of trust, a person who comes into possession of the movable property and receives it legally, but illegally retains it or converts it to his own use against the terms of the contract, then the question is, in a case like this, whether the*

retention is with dishonest intention or not, whether the retention involves criminal breach of trust or only a civil liability would depend upon the facts of each case.

41. *The distinction between mere breach of contract and the offence of criminal breach of trust and cheating is a fine one. In case of cheating, the intention of the accused at the time of inducement should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. Mere breach of contract cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right from the beginning of the transaction i.e. the time when the offence is said to have been committed. Therefore, it is this intention, which is the gist of the offence.*

42. *Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence i.e. the offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept.*

43. *There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver any property. In such a situation, both the offences cannot co-exist simultaneously.”*

23. The Hon'ble Supreme Court further laid down legal propositions of law with regard to the application of Sections 406 and 420 of the Indian Penal Code in the said particular case as follows:

“54. When dealing with a private complaint, the law enjoins upon the Magistrate a duty to meticulously examine the contents of the complaint so as to determine whether the offence of cheating or criminal breach of trust as the case may be is made out from the averments made in the complaint. The Magistrate must carefully apply its mind to ascertain whether the allegations, as stated, genuinely constitute these specific offences. In contrast, when a case arises from an FIR, this responsibility is of the police — to thoroughly ascertain whether the allegations levelled by the informant indeed fall under the category of cheating or criminal breach of trust. Unfortunately, it has become a common practice for the police officers to routinely and mechanically proceed to register an FIR for both the offences i.e. criminal breach of trust and cheating on a mere allegation of some dishonesty or fraud, without any proper application of mind.

55. It is high time that the police officers across the country are imparted proper training in law so as to understand the fine distinction between the offence of cheating vis-à-vis criminal breach of trust. Both offences are independent and distinct. The two offences cannot coexist simultaneously in the same set of facts. They are antithetical to each other. The two provisions of IPC (now BNS, 2023) are not twins that they cannot survive without each other.”

- 24.** This Court also relied on a judgment of the Hon'ble Supreme Court in the case of ***The State of Kerala v. A. Pareed Pillai and Anr.***¹¹, wherein it was held as follows: -

"16. To hold a person guilty of the offence of cheating, it has to be shown that his intention was dishonest at the time of making the promise. Such a dishonest intention cannot be inferred from the mere fact that he could not subsequently fulfill the promise."

- 25.** Similarly, in the case at hand, there is nothing to show that the petitioners had dishonest or fraudulent intentions at the time of placing an order for supply of iron ore fines to the opposite party no. 1. The complainant raised a question about the outstanding dues amount. Non-payment of outstanding dues amount or even breach of contract, in a commercial transaction, by no stretch of imagination, can be called dishonest inducements. It was/is purely a non-fulfilment of contract to pay the outstanding Bill amount of a commercial transaction, which definitely comes under civil dispute. Mere unpaid dues will not make it a case of willful or dishonest inducement or deception. In the present case, the petitioners have raised about the quality of goods supplied time to time by email even then the complainant's company supplied goods time to time till 2015.

¹¹ **1972 Cri.L.J.1243**

- 26.** The purchase orders, annexed with the application, clearly show that from 2014 to 2015, several orders were placed time to time for the supply of Iron ore Fines (RM) involving crores of rupees. It appears the petitioners have paid crores and crores to the complainant's company. Only disputes arise when a sum of Rs. Rs. 34,26,406/- became due.
- 27.** The purchase order further indicates some general terms before supply of Iron ore fines (RM). Out of those terms, two are stipulated herein in verbatim.
- i. In the event, the supplier fails to deliver the goods of the ordered quality or deliver different and/or sub-standard make/quality, the company reserves right to reject the material and inform the supplier to lift the material from our stores at his own cost. Incoming freight, if any, paid for these shall also be recovered. Breakage/loss if any during transit due to poor packing or handling shall be to supplier's account.*
 - ii. ARBITRATION: All disputes of differences whatsoever arising between the parties out of or in relation to work/supply of work order/purchase order or effect to dis-contract or breach thereafter shall be settled amicably. However, if the parties are unable to solve them amicably, the same shall be finalized setting by arbitration and reconciliation. The award may in pursuance thereafter shall be final and binding on the parties.*

- 28.** Despite of aforesaid clear terms, the complainant's company did not avail the remedy rather filed a criminal complaint before the magistrate under Section 156 (3) of the CrPC. However, the learned magistrate converted the said complaint under Section 200 of the CrPC and issued process against the petitioners. The Magistrate should have considered the allegations made in the said complaint. It is the duty of the Magistrate to issue process after being satisfied with the prima facie materials, but there was failure on the part of the Magistrate. It is clear from the substance that the dues are basically from long-standing business transactions due to issue of quality of goods supplied and are purely civil in nature. Requisite averments so as to make out a case of cheating and criminal breach of contract are absolutely absent.
- 29.** The Hon'ble Supreme Court has emphasised on the duty of the Magistrate while taking cognizance before issuing process in the Case of ***Krishna Lal Chawla (supra)***, particularly paragraph nos. 17, 18 and 19 thereof are stipulated herein below:

“17. Immediately after the criminal justice system is set in motion, its course is almost entirely dependent on the judicial application of mind by the Magistrate. When a police complaint is filed on the commission of a cognizable offence under Section 154 CrPC, the Magistrate decides if the charge against the accused person is made out before the trial begins. Separate

procedure is prescribed if the complaint under Section 200 CrPC is filed. The aforesaid provisions make it abundantly clear that the Magistrate carries the stream of criminal proceeding forward after it is set in motion by the informant/complainant. Consequently, and automatically, the Magistrate also carries the responsibility for ensuring this stream does not carry forward in cases where it should not.

18. *The aforesaid powers bestowed on the Magistrate have grave repercussions on individual citizens' life and liberty. Thus, these powers also confer great responsibility on the shoulders of the Magistrate — and must be exercised with great caution, and after suitable judicial application of mind. Observations in a similar vein were made by this Court in **Pepsi Foods Ltd. v. Special Judicial Magistrate [Pepsi Foods Ltd. v. Special Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] : (SCC p. 760, para 28)***

“28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator

at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused.”

(emphasis supplied)

This Court, thus, clearly emphasised that the power to issue a summoning order is a matter of grave importance, and that the Magistrate must only allow criminal law to take its course after satisfying himself that there is a real case to be made.

19. *Similarly, the power conferred on the Magistrate under Section 202 CrPC to postpone the issue of process pursuant to a private complaint also provides an important avenue for filtering out of frivolous complaints that must be fully exercised. A four-Judge Bench of this Court has eloquently expounded on this in **Chandra Deo Singh v. Prokash Chandra Bose [Chandra Deo Singh v. Prokash Chandra Bose, AIR 1963 SC 1430 : (1963) 2 Cri LJ 397] : (AIR p. 1433, para 7)***

“7. ... No doubt, one of the objects behind the provisions of Section 202 CrPC is to enable the Magistrate to scrutinise carefully the allegations made in the complaint with a view to prevent a person named therein as accused from being called upon to face an obviously frivolous complaint. But there is also another object behind this provision and it is to find out what material there is to support the allegations made in the

complaint. It is the bounden duty of the Magistrate while making an enquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made. Whether the complaint is frivolous or not has, at that stage, necessarily to be determined on the basis of the material placed before him by the complainant.”

(emphasis supplied)

Thus, it is clear that, on receipt of a private complaint, the Magistrate must first, scrutinise it to examine if the allegations made in the private complaint, inter alia, smack of an instance of frivolous litigation; and second, examine and elicit the material that supports the case of the complainant.”

30. In the decision in the case of **Haridaya Ranjan Prasad Verma and Ors. v. State of Bihar and Anr.**¹², the Hon’ble Apex Court also held that: -

“15. *In determining the 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 but for this subsequent conduct is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction, that is the time when the offence is said to have been committed. Therefore, it is the intention which is the gist of the offence. To hold a person guilty of cheating it is*

¹² (2000) 4 Supreme Court Cases 168

necessary to show that he had fraudulent or dishonest intention at the time of making the promise. From his mere failure to keep up promise subsequently such a culpable intention right at the beginning, that is, when he made the promise cannot be presumed.”

- 31.** In the instant case, the opposite party no. 1 does not allege that the petitioners were deceived by fraudulent or dishonest inducement from the beginning or at the time of order of supply of iron ore fines. Rather, it appears that the complainant/opposite party no. 1 supplied iron ore fines on different occasions from 2014 to 2015. Therefore, culpable intention, right from the beginning when the orders were made, cannot be presumed simply from mere failure of a person to keep up a promise subsequently. It depends upon the intention of the accused at the time of inducement. The subsequent conduct is not the sole test. The Court must decide on the basis of the substance of the complaint and not on the basis of mere use of the expression “cheating” in the complaint. It cannot be presumed that an outstanding amount of Rs. 34,26,406/-, as alleged by the opposite party no. 1, is not the outcome of the dishonest intention of the petitioners from the very inception of the transaction.
- 32.** This Court is of the view that neither the offence of cheating punishable under Section 420 of the Indian Penal Code, 1860, nor the offences punishable under Sections 406/120B of the Indian Penal

Code, 1860, are made out from the complaint converted under Section 200 of the CrPC.

- 33.** Upon perusal of the copy of petition of complaint, it further shows that there was no fraudulent or dishonest inducement or deception by intentional practice by the petitioners right from the inception of order of supply of iron ore fines even if no payment has been made, that will neither tantamount to deception, fraudulent or dishonest inducement nor would it amount to deception by intentional means right from the beginning. The petitioners represented the company as a reputable one at the beginning is not sufficient. Therefore, the case either under Section 420 or 406 of IPC, in the facts of this case, has not been made out. Non-payment of the outstanding amount cannot be termed as criminal act in the facts of this case. The disputes between the parties apparently appear as civil disputes.
- 34.** In the case of ***Paramjeet Batra v. State of Uttarakhand***¹³, the Hon'ble Court recognized that although the inherent powers of a High Court under Section 482 of the Code of Criminal Procedure, 1973 should be exercised sparingly, yet the High Court must not hesitate in quashing such criminal proceedings which are essentially of a civil nature. This is what was held:

¹³ (2013) 11 SCC 673

“12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has hesitate to quash the criminal proceedings to prevent abuse of process of the court.”

(Emphasis supplied)

- 35.** In light of the above discussions, together with averments contained in the petition of complaint, this Court finds that the ingredients of the offences alleged by the opposite party no. 1 are absent. Mere non-payment of the outstanding amount based on quality dispute of goods supplied does not constitute offences punishable under Sections 406 and 420 of the Indian Penal Code, 1860. The allegation in the complaint does not spell out any essential ingredients for the commission of an offence under Sections 406 and 420 of the Indian Penal Code, 1860.
- 36.** The disputes between the parties are purely civil in nature, and criminal proceedings of such nature should not be allowed to continue any further against the present petitioners, otherwise it

would be an abuse of process of law. The Hon'ble Supreme Court has time and again deprecated the proceedings initiated under Section 406/420 of the Indian Penal Code on the allegation of non-payment of outstanding dues occurring in a commercial transaction. Attempt to convert a civil dispute into a criminal matter, potentially aimed at pressurizing the petitioners into settling the dispute or recovering dues, by way of filing the criminal complaint, should not be encouraged. Accordingly, this Court would like to invoke its inherent power under Section 482 of the Code of Criminal Procedure, 1973 for quashing of the said criminal proceeding.

- 37.** Consequently, **CRR No. 2012 of 2018** is **allowed**. Connected applications, if any, are, also thus, disposed of.
- 38.** The proceeding being Complaint Case No. C-4252 of 2016 under Sections 420/406/120B of the Indian Penal Code, 1860 (in short IPC) initiated by the Opposite Party No. 1 now pending before the Court of the Learned 5th Judicial Magistrate, Alipore, South 24 Parganas is hereby quashed insofar as the petitioners are concerned.
- 39.** Let a copy of this Judgment be sent to the Learned Trial Court for information.
- 40.** Interim order, if any, stands vacated.
- 41.** All parties shall act on the basis of a server copy of this judgment duly downloaded from the official website of this Court.

- 42.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)