

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

**CRR 2107 of 2018
I.A No. CRAN 10 of 2025
CRAN 12 of 2025**

**M/S. Sarada Jute Mills Pvt. Ltd. & Ors.
Vs.
M/S. P.G. Electricals.**

For the Petitioners : Mr. Sabyasachi Banerjee
Mr. Anirban Dutta
Mr. Saudull Abedin
Ms. Chitra Abedin
Ms. Pooja Singh

For the Opposite Party : Ms. Priyanka Agarwal
Ms. Priyanka Sarkar

Heard on : 06.01.2026

Judgment on : 20.04.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The petitioners herein have challenged the proceeding being complaint case no. 39665 of 2018 for alleged commission of offence punishable under section 406/409/420 read with 120B of Indian Penal Code (IPC) presently pending before learned judicial Magistrate, 8th court, Calcutta.

2. The gist of the allegations levelled in the said complaint is that the petitioners by representing themselves to be a profitable company and having goodwill in the field of business, induced the complainant to enter into business dealing with the petitioner. The complainant by virtue of such false representation made by petitioner no. 2 to 5, being the directors and executives of the company supplied electrical item/goods worth Rs. 11,15,297/- in favour of petitioner no. 1/company vide several invoices on and from 21.01.2015 to 22.08.2015, which were duly despatched and delivered to the petitioner. It is further alleged that inspite of repeated demand made by the complaint to repay the outstanding purchase amount, the petitioners herein failed and neglected to make the aforesaid payment and tried to consume time on plea of being in a financial crisis. Ultimately petitioners denied the transaction challenging authenticity of the bills.

3. Being aggrieved by the impugned proceeding learned counsel for the petitioner Mr. Sabyasachi Banerjee submits that the petitioners have made there earnest endeavour to comprehend the various letters that had been sent by the opposite party asking for payment of outstand bills, but the opposite party could not support their claims with valid or legitimate bills and/or delivery challan, signed by an authorised signatory of the opposite party. He further submits that it would be evident from the various communications that the petitioner have always shown there eagerness to make payment of outstanding legitimate bills, if any, arising out of their supply of electrical goods and had never intended to defraud or deceive the opposite party. However the opposite party herein failed to furnish the bills and challans in question for which payment was sought. By their letters

dated 12.05.2017 and 07.11.2017, petitioners had explicitly requested to produce the authenticated outstanding bills but it was never furnished and the opposite party instead sent only a mere list of bills, without any validation or authentication.

4. He further argued that the opposite party also did not provide any explanation for not furnishing the bills/challans in the instant revisional application. The petitioners have specifically averred in paragraph 12 that the petitioners were never in business with the opposite party and had there been any outstanding payment as claimed, the opposite party would not have failed or neglected or refused to supply valid documentation for the same, in support of their claims and no such record of alleged transaction were found and the opposite party also failed to substantiate the same. Opposite party could not even supply any lorry receipt or acknowledgement of delivery duly signed by the Mill Authorities of the purchased materials to support their claims. In paragraph 15 of the instant application, it has been further reiterated by the petitioners that they have/had never any business dealing with the opposite party and had neither purchased any material from them nor had placed any order to them. The list of bill is lacking of validation and it's a concocted document made in order to extract money from the petitioner. The petitioners herein had duly replied to the demand notice sent by opposite party on 29.03.2018 with request to furnish the valid bills and challan thereof, duly signed by the authorised representative of the mill. They have also duly replied the demand notice dated 30.03.2018 sent by opposite party herein.

5. Mr. Banerjee further argued that the impugned complaint had been filed by the opposite party suppressing material fact in order to harass the petitioners and extort money from them illegally. Learned Magistrate without considering the materials on record and without considering the fact that the opposite party failed to produce any document showing any transaction with the petitioner no. 1, had taken cognizance of the offence. Learned Magistrate ought to have dismissed the frivolous complaint filed by opposite party in absence of any documentary proof of valid transaction. He further argued that learned Magistrate failed to consider that the petitioner no. 2 to 5 are the directors of the petitioner no. 1 and have been made accused in their vicarious capacity, without mentioning a single averment regarding the involvement of petitioner no. 2 to 5 in the alleged offence. The court below also failed to consider while taking cognizance that the basic ingredients of section 406, which relate to entrustment of a property to another person who in turn would subsequently convert the same to his own use or part away with the same, are consequently absent in the present allegation. He also failed to consider that no ingredient of the offence under section 420 of the Indian Penal Code has been made out and therefore the impugned proceeding is an abuse of process of court.

6. In this context Mr. Banerjee on behalf of the petitioners further argued that the said complaint has been filed almost after three years from their alleged initiation of the period of transaction. The complaint was filed in April 18, 2018. Though a huge delay has been caused in filing the said complaint, but nowhere such delay has been explained as to why the opposite party no 2 waited for more than three years to redress a civil claim

in a criminal proceeding. He further argued that from the documents including the documents annexed in the supplementary affidavits, it is evident that the petitioner and the opposite party no. 2 had transaction in the past and therefore there was no deception from the initiation of transaction. There was also substantial payment made in respect of the bills, which have been raised by the opposite party. From the documents annexed to the affidavit in opposition, it is also evident that the said bills are unauthenticated and invalidated in the eyes of law. In this context he referred judgment of the Apex Court passed in ***Manish Vs. State of Maharashtra***, AIR Online 2025 SC 204 in support of his contention that in commercial dispute, to attract penal offence, it needs to be made out that the offending party from inception had made dishonest representation and induced the other party to deliver. It is evident from the document available in the record that the petitioners from very beginning had also agreed to make payments, in the event, valid authenticated bill are produced. The said communication shows there was no intention of the petitioners to cause any cheating which requires deception from the very initiation of a transaction or to cause parting away with property. It is also evident that for the alleged period there was no property which was entrusted and or handed over to the petitioners, which has been alleged by parted away with or converted into their own wrongful use by the petitioners. In absence of any *mens rea* on the part of petitioners, the offence of cheating cannot be made out and in this context he also relied upon the judgment of Apex Court in ***V.Y.Jos & Anr. Vs. State of Gujrat and Anr.***, reported in AIR 2011 SC (Criminal) 1887.

7. Mr. Banerjee further argued in this context that it is settled proposition of law that the ingredient of section 420 and 406 of IPC run contradictory to each other. The Supreme Court in various decisions including the ***Delhi Race Club (1940) Ltd. and other case***, reported in ***(2024) 10 SCC 690*** and in ***Lalit Chaturvedi Case, AIROnline 2024 SC 366*** have categorically held that the offence of section 420 and 406 cannot coexist on the basis of self-same set of facts. Therefore the opposite party has failed to make out any case fearless a case under section 420 or 406 of IPC and therefore the impugned proceeding is not sustainable in the eye of law.

8. Ms. Priyanka Agarwal learned counsel appearing on behalf of the opposite party vehemently opposed the submission made on behalf of the petitioners. She specifically submitted that the petitioners have taken false plea that there was never any business transaction between the petitioner and the opposite party in the instant Revisional Application to argue that the criminal proceeding is liable to be quashed. The petitioner's foundational ground is unequivocal but false and it cannot be said that the false averments featuring of several places in the instant Revisional Application are inadvertent or typographical errors. They are a conscious deliberate act of fraud and deception. She strenuously argued that the petitioners cannot deny the existence of any transaction at one hand and on the other hand demand from the opposite party to produce bills authenticating the transaction. The petitioners who at the same time approbate and reprobate, have not come before the court with clean hands and therefore not entitled to get discretionary or equitable relief under section 482 of the Code.

9. Ms. Agarwal further argued that the goods were delivered worth Rs. 11,15,297/- in between 21.01.2015 to 22.08.2015. In this context Ms. Agarwal further argued that repudiation/denial of transaction after receiving goods is strong *prima facie* evidence in support of dishonest intention since inception.

10. She further argued that delivery challans bearing transporter endorsements are sufficient to prove *prima facie* sale of goods by the opposite party to the petitioner. Receipt of invoices by the petitioner through stamping and signing is not legally required for providing commercial transactions. A typical commercial proof of delivery includes delivery challans being transporter endorsement, stock/issue records, Vat/GST returns/ledger and bank entries. She further submits that the genuineness of delivery has been proved by delivery challans, transporter endorsement and ledger entries and not by customer stamping. Stamped invoice is not a legally required document for establishing sale/delivery of goods. Legally delivery challans, transporter acknowledgements, e-way bills/VAT/GST returns and bank entries are proof of sale. The petitioners cannot use selective, self-serving documents while denying the rest. This is classic after thought and manipulation. In this context she relied upon the judgment reported in **(2007) SCC Online Bom 1092** and **2021 SCC OnLine Del 3604**.

11. She further submits that though these are all subject matter of trial but it is matter of common prudence that in a supply transaction, the seller keeps the receipt copy, not the buyer. Seller sends invoice, original retained by buyer, deliver challans and sometimes duplicate and triplicate copies are

sent by seller. Buyer received the goods and signed one copy of the invoice/delivery challans as proof of receipt. The stamped copy is returned to the seller and not kept by the buyer. The seller keeps the receipt copy for accounting, taxation and reconciliation. Therefore the complainant is the custodian of receipt invoices not the accused and if any stamped or signed invoice exists, it must normally be kept with the opposite party not with the petitioners.

12. In this context Ms. Agarwal further argued that the petitioner never pleaded a purely civil dispute as a ground for quashing. Their case is that of total denial of transaction. Having pleaded such they cannot invoke “running account/part payment” to seek quashing. She further argued that each invoice is a separate contract even in a running account. Primarily the petitioners have made false statement and denied all the transaction in Revisional Application. Thereafter the petitioner had attempted to better their case by making false averment in their reply that there was no transaction in respect of the supply in question. By the denial of each transaction, intention to cheat from the inception has been clearly manifested. According to the counsel for the opposite party, the following elements have been satisfied in the instant application:

- (i)** False statement on oath both in the revisional application the affidavit-in-reply and supplementary affidavit filed by the petitioner.
- (ii)** Materiality to the decision on quashing.
- (iii)** Intent to procure favourable order and to stall criminal trial.
- (iv)** Subsequent contradictory and prevaricating stands.

13. Her argument is where falsehood is apparent and the administration of justice is obstructed, then the Application must be dismissed. In reply to the argument advanced by learned counsel for the petitioner, Ms. Agarwal submits that there was no delay in lodging the complaint. The complaint was filed immediately after the petitioners denied the transaction, as has been pleaded in the petition of complaint. Moreover if the opposite party had actually fabricated/manufactured the outstanding invoices and delivery challan as has been argued by the petitioners, then the opposite party would have done so for a period for which he would still have limitation to institute a civil claim. The petitioners herein intentionally did not plea the ground of part payment, past business relationship in quashing petition but they based their argument on the plea of no transaction. Therefore civil remedy co-exists with criminal prosecution where intention is dishonest. Though learned counsel for the petitioner argued much that they did not have any intention to cheat and that the invoices are forged or deliveries never occurred, but these are all factual defences and cannot stand as a ground for quashing. Court at this stage cannot take any decision without going for evidence as to whether *mens rea* was present or not. Delivery challans, transport L/R, Vat, Stock record, conduct are adequate at this stage in support of contention of the opposite party about the impugned transaction and therefore she prayed for dismissal of the instant Revisional Application proceeding and also for vacating the interim orders. She also filed CRAN 10 of 2025 seeking invocation of power under section 340 of the Cr.P.C for recording a *prima facie* satisfaction of false statement on oath and prays for

necessary direction for prosecution against the deponent and the petitioners.

Decision

14. On perusal of the record it appears that court below issued process against the petitioners on the basis of written complaint, where allegations ascribed against them inter alia are as follows:-

- (i) *accused no. 2 to 5 being the mastermind showing there imaginary portal convinced the complainant to supply its electrical materials and to that effect generated inducement in their mind by virtue of various imaginary portal to have a good business and margin which convinced the complainant to entrust with the electrical materials to accused no.1, following an assurance that there shall be no difficulty in payment (para-3).*
- (ii) *the complainant considering the representation inducement and deceptions as true and genuine and with a hope to have a good business in long term time to time parted with its materials total valued Rs. 11,15,297/- on and from 21.01.20215 to 22.08.2015 and despatched the same which were time to time delivered to the accused persons and/or their representatives from Murshidabad Road Transport and the same was received by the accused persons.(para).*
- (iii) *Inspite of repeated demand for the payment the accused no. 2 to 5 verbally intimated the complainant that due to financial crisis they could not arrange the funds and also intimated that cheques for the payment will be send but inspite of several visits and demand, the accused persons failed and neglected to send the cheques and ultimately denied the transaction and refused to make payment of Rs.11,15,397/-. The complainant to his utter surprise came to learn that the accused persons misappropriated the sale proceeds of the materials amongst themselves and created story of internal dispute between the directors and the accused no.,1 to defraud the complainant.(para-6,7,8)*
- (iv) *The complainant would not have parted with and or entrusted with the valuables and also would not have given the accused persons liberty to consume such period but to file case under the appropriate provision of law. (para-9)*
- (v) *From the aforesaid it is crystal clear that the accused no. 2 to 5 being the directors/executive of accused no. 1 being merchant and mastermind of the commission of offence by entering into criminal conspiracy with others, criminally misappropriated the prices of the materials, so entrusted upon accused no.1 and has caused wrongful gain to themselves and wrongful loss to the complainant company to the tune of Rs. 11,15,297/- and thereby they have committed the offence punishable under the provision of section 406/420/120B of the Indian Penal Code.(para-12)*

15. Complainant in his initial deposition on 15.05.2018 has also stated that accused no. 2 to 5 who are the directors and executives of accused no.

1 being the master mind showed their imaginary portal and thereby convinced him and other staff to supply electrical materials. The accused persons also convinced him to entrust with electrical materials in favour of accused no.1, stating that payment will be cleared on time. He further stated that as per representation, inducements and deceptions made by the accused persons as true and genuine, the complainant entrusted/parted with electrical materials total valued at Rs. 11,15,297/- on and from 21.01.2015 to 22.08.2015 against 17 invoices and despatched the materials and delivered the same to the accused persons or their representatives from the Murshidabad Road Transport. The accused persons did not pay the said amount inspite of repeated demand and had it been known that all representation and inducements were false, he would not have parted and/or entrusted with the said valuables

16. The other witness Rabi Kumar Patwari, who used to look after the said business had stated that he is conversant with the facts and circumstances of the case. The accused persons with the motive of cheating had made false and fraudulent representation that they will make payment in time and procured the electrical materials. He also stated that in utter surprise they later on came to know that the accused persons having intention of cheating and criminal breach of trust have criminally misappropriated the price of the materials and have caused wrongful gain to themselves and wrongful loss to the complainant to the tune of Rs. 11,15,297/-.

17. The petitioner/accused person at the time of filing the instant Application *inter alia* averred in the grounds for preferring the revisional application as follows:-

(i) The petitioners are in noway involve with the commission of the alleged offence since the petitioner was never in any business dealings with the opposite party and as such no materials have been found to show any direct nexus of the petitioners with the alleged commission of offence.

(ii) The petitioner has neither committed any fraudulent act or deception upon the complainant as they are had been no such transaction or supply of materials from the complainant to the petitioner

(iii) Petitioners on being informed about the alleged outstanding payment had been agreeable to even pay the same if only bills or challans authenticated by authorized representative of the mills were furnished. But the complainant could not furnish any legitimate bills/challans not even lorry receive or delivery acknowledgements to the petitioner to prove the existence of any transaction and the petitioners was provided with a mere list of invoice from the record of the complaint without any validation or authentication whatsoever which is in actuality a concocted and fake list as the petitioners never entered into business with them.

(iv) The petitioners were willing to pay legitimate dues, however, no such proof was provide to them and the petitioners on perusal of their own records could not find any relevant record to show that there was any transaction as claimed by the complainant.

18. However when OP complainant filed affidavit in opposition along with outstanding invoices dated 21.01.2015 to 22.08.2015 with corresponding delivery challans bearing transporter endorsement of Murshidabad State Transport, banks statements, ledger extracts, reconciliation and confirmation of accounts dated 01.04.2015, reflecting existence of the commercial transactions between the parties and the correspondences dated 15.02.2017 and 24.02.2017 issued by the petitioners by which the petitioners returned all the bills, on the pretext that they were not in proper manner, the petitioners herein filed affidavit in reply, where they have shifted their stand and stated that alleged invoices lack the acknowledgment of the petitioner company and there is no official seal of the company or the signature of its representative and bears no details of despatch, which falsifies the bills and therefore the alleged invoices have been manufactured and created by the opposite party with the ill motive to extort pecuniary benefits for the petitioner. The petitioners were never in business with the

opposite party at that point of time during which the supply and the delivery has alleged to have been made. It has also been stated in the said affidavit in reply that even if it is taken to be true that at same point of time the petitioner company was dealing with the opposite party, the fact that the complaint was filed for alleged non-payment from 21.01.2015 to 22.08.2015, and the bank statement show payments made in 2014 which has got no connection with the alleged impugned transaction. The tax invoice challans of the opposite party for the period 2013 to 2014, which has been annexed, has also got no relevance with the impugned transaction.

19. It further appears that in the same revisional application the petitioners have stated that they had never any business dealings with the opposite party and had neither purchased any materials from them nor placed any order to them, but in a different paragraph the same petitioners stated that they are eager to make payment of outstanding legitimate bills. Therefore only after affidavit in opposition filed by the opposite party with copies of outstanding invoices, the petitioners shifted their stand from “*there was never any business between the parties*” to there being no business in connection with the ‘*supply in question*’. It also appears that their such stand that ‘*there was never any business transaction*’ can hardly be said to be a mistake because it appears from the interim order dated 13th March, 2019 passed by this High Court that the petitioners were granted the interim stay on the basis of arguments that there was no business transaction between the petitioner and the opposite party, which were subsequently extended from time to time.

20. Now in order to constitute offence of cheating following ingredients are required'

- (i) Deception of any person
- (ii) Fraudulently or dishonestly inducing any person to deliver any property
- (iii) To consent that any person shall retain any property and finally intentionally inducing that persons to do or omit to do anything which he would not do or omit.

21. In this context it is also relevant to quote the internal aid available by way of illustration (f) and (g) to section 415 which are as follows:-

(f) A intentionally deceives Z into a belief that A means to repay any money that Z may lend to him and thereby dishonestly induces Z to lend him money. A not intending to repay it. A cheats.

(g) A intentionally deceives Z into a belief that A means to deliver to Z a certain quantity of indigo plant which he does not intend to deliver, and thereby dishonestly induces Z to advance money upon the faith of such delivery. A cheats; but if A, at the time of obtaining the money, intends to deliver the indigo plant, and afterwards breaks his contract and does not deliver it, he does not cheat, but is liable only to a civil action for breach of contract.

22. The complainant in the complaint has stated that he supplied the goods by 17 invoices worth Rs. 11,15,297/- between 21.01.2015 to 22.08.2015 delivered via Murshidabad Road Transport which has been denied by the petitioner. The complainant also averred that repeated demands were made but the petitioners avoided their liability by several excuses and thereafter denied all the transactions. However, the annexure filed by the opposite party along with their affidavit in opposition, prima facie discloses business transaction between the parties. Learned Counsel for the opposite party strenuously argued that petitioner had maliciously

returned all the bills issued and shared by the opposite party which makes clear inference that the petitioners' intention to cheat existed since inception, which is also evident from the subsequent conduct and circumstances and if such conduct is looked into, there are sufficient grounds to infer about the *mens rea* of the accused persons. He further pointed out that it is settled law that establishing deception by express words is not always possible but the subsequent conduct of the accused and circumstances can be looked into.

23. It is true that petitioners raised dispute after denying transaction that bills challans do not bear signature by an authorized signatory of the mill. OP however, argued that such demand of petitioner in support of genuineness of bill is a manufactured unilateral standard being imposed by the petitioners. Issues such as whether the deliveries occurred, whether transporter's endorsement are genuine, whether VAT/Stock Ledger tally with the entries, whether petitioners initially denied all dealings through the correspondences are all triable issues requiring evidence and cross examination.

24. In the affidavit in reply the petitioners no doubt have produced old invoices issued by the complainant bearing the seal and signature of the accused, in contrast to the impugned outstanding invoices but in this context learned counsel for the opposite party argued that the invoices previously issued by the opposite party/complainant were all delivered to the petitioner over the years and the petitioners are in exclusive control of its internal stamps, seals, signature mechanism etc. and the petitioners had the opportunity to fabricate self-serving endorsement on any past invoice.

25. In this context learned counsel for the opposite party also relied upon a judgment of Delhi High Court passed in **CM 1185 of 2021 (Flexed Studios Pvt. Ltd. Vs. Gravity Entertainment Pvt. Ltd dated 20.12.2021)** where the court held that in modern day business, all communications are generally made through emails invoices and are routinely sent through email and such invoices are not signed by the parties. Therefore there is no such thing as “the original of the invoice”.

26. Moreover while entertaining a petition under section 482 of Cr.P.C, the materials furnished by the defence cannot be looked into and the defence materials can be entertained at the time of trial, unless they are unimpeachable in character. As held in ***Ravindra Kumar Madanlal Goenka & Another Vs. Rugmini Ram Raghav Spinners Pvt. Ltd.***, reported in **(2009) 11 SCC 529**, the defence case is required to be considered at a later stage and not at this stage. The petitioners would have ample opportunity to raise all the issues urged in this Application at an appropriate later stage, where such pleas would be and could be property analysed and scrutinised.

27. There is always a distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made and a case where there is legal evidence which on appreciation may or may not support the accusation. At this stage High Court is not supposed to embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it, accusation would not be sustained. That would obviously be the function of the trial court.

28. From the aforesaid facts and circumstances of the case and on perusal of the materials as discussed above, it appears that a prima facie case has been made out against the accused which is required to be decided by conducting a proper trial. At the stage of considering application under section 482 Cr.P.C., the High Court is not supposed to decide whether the documents submitted by the OP in support of delivery of goods is genuine or false, to form an opinion whether on the basis of the allegations an offence alleged has been made out or not.

29. It cannot be said at this stage also that the dispute between the parties is only civil in nature. This is a case where serious allegations have been made against the petitioners, in connection with deception at the inception. Just because the allegation involved the factum of recovery of money, it cannot be concluded that the complaint is purely civil in nature, when other serious allegations prima facie attract the penal provisions.

30. In this context reliance is placed upon the judgment of ***Lal Moni Devi Vs. State of Bihar and Ors.*** reported in **(2001) 2 SCC 17** para 8 as follows:-

“8. There could be no dispute to the proposition that if the complaint does not make out an offence it can be quashed. However, it is also settled law that facts may give rise to a civil claim and also amount to an offence. Merely because a civil claim is maintainable does not mean that the criminal complaint cannot be maintained. In this case, on the facts, it cannot be stated, at this prima facie stage, that this is a frivolous complaint. The High Court does not state that on facts no offence is made out. If that be so, then merely on the ground that it was a civil wrong the criminal prosecution could not have been quashed.”

31. Therefore even if the facts narrated in the present complaint have the origin of a commercial transaction, that hardly stands as a ground for holding that the offence of cheating has not been made out from such transactions. In ***Rajest Bajaj Vs. State of NCT Delhi***, reported in **(1999) 3**

SCC 259, Supreme Court has made it clear that infact many a cheatings were committed in the course of commercial and also money transactions.

The relevant paragraph of the said judgment may be reproduced below:-

11. The crux of the postulate is the intention of the person who induces the victim of his representation and not the nature of the transaction which would become decisive in discerning whether there was commission of offence or not. The complainant has stated in the body of the complaint that he was induced to believe that the respondent would honour payment on receipt of invoices, and that the complainant realised later that the intentions of the respondent were not clear. He also mentioned that the respondent after receiving the goods had sold them to others and still he did not pay the money. Such averments would prima facie make out a case for investigation by the authorities.

32. Section 482 of the Cr.P.C. makes it clear that such inherent power of High Court are meant to be exercised sparingly and with circumspection when there is reason to believe that the process of law is being misused to harass a citizen. It is well settled that proceeding against an accused at the initial stage can be quashed only if on the face of the complaint or the papers accompanying the same, no offence is constituted. In the instant case this court having carefully considered the submission of the counsel for both the parties and on perusal of the record, with specific reference to the contents of the complaints and the annexing documents, finds prima facie ingredients required for constitution of the offence, alleged in the complaint and therefore allowing the proceeding to continue against the petitioners would not amount to an abuse of process of court, to harass the petitioners. The materials in the record do not pertain to a purely commercial transaction. The subsequent conduct of the petitioners prima facie shows that they had no intention of making the full payment, thus the inducement is apparent, right from the inception of the business relationship between the parties. The subsequent conduct of changing stand from “*never had any*

transaction” to “*transaction pertains to present dispute*” shows prima facie dishonest intention on the part of the petitioners. In any case it cannot be said that no offence has been made out from the allegations levelled in the written complaint. It is also pertinent to note that in the reply sent to the notice of the opposite party no.2 making demand of the amount, the petitioners have not only challenged the genuineness of bill but also delivery of goods and when subsequently bills were sent to them, they had returned the same, disputing its genuineness and called those bills as manufactured and concocted. Therefore, from the averments made in the affidavit in reply, it can very well be said that it is not a simpliciter breach of contract or merely a civil dispute, but some criminal elements is definitely involved therein.

33. As observed by the supreme Court in **Shivanarayan Kabra Vs. State of Madras** reported in **AIR 1967 SC 986**, it is not necessary that a false pretence should be made in express words by the accused. It may be inferred from all the circumstances, including the conduct of the accused in obtaining the property. In the true nature of things, it is not always possible to prove dishonest intention by any direct evidence. It can be proved by a number of circumstances from which a reasonable inference can be drawn.

34. For the reasons stated above, without expressing any opinion on the merits of the case, I have no other option but to come to a conclusion that this is not a fit case where the criminal proceeding can be quashed invoking this court’s jurisdiction under section 482 of the Cr.P.C. Therefore the instant application is liable to be dismissed.

35. CRR 2107 of 2018 thus stands dismissed.

36. So far as the connected application being **CRAN 10 of 2025** which pertains to prayer for preliminary enquiry under section 379 of BNSS and to furnish security and to register a complaint in writing for sending the same to magistrate for adducing evidence, I find that the allegation of suppression of materials fact which can amount to fraud and/or alleged false statements on affidavit which may amount to contempt of court and/or interference with the administration of justice, which warrants prosecution under section 340 of the Cr.P.C. shall be kept open for future consideration after adjudication of the issues but at this stage since such allegations are at a pre mature stage, it would be too early to draw a proceeding under the aforesaid provisions and therefore it can be reopened for future consideration, if situation demands.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)