

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE

Present:-

HON'BLE JUSTICE CHAITALI CHATTERJEE DAS.

CRR 2354 OF 2023

M/S. TATA CAPITAL FINANCE LTD. & ORS.

VS

THE STATE OF WEST BENGAL & ANR.

For the Petitioners : Mr. Shabir Ahmed, Adv.
Mr. Sayak Ranjan Ganguly, Adv.
Ms. Srijani Ghosh, Adv.

Last heard on : 02.01.2026
Judgement on : 13.02.2026
Uploaded on : 13.02.2026

CHAITALI CHATTERJEE DAS, J. :-

1. This application has been filed to quash the proceeding being C – 222 of 2016 under Section 420/40/34 of the Indian Penal Code, 1860 pending before the court of learned Judicial Magistrate, 6th Court Alipore at 24 Parganas.

Fact of the case

2. The petitioner no. 1, namely Tata Capital Finance Limited is a company and extends financial assistance to the intending borrowers, both personal and corporate sectors and has its reputation in the field. The petitioner no. 2, 3 and 4 and 5 are the employees of the petitioner no. 1 company. All of them while discharging their official duties have been entangled in a criminal case for the

alleged violation of the loan agreement entered into by in between the Opposite Party no. 1 and the petitioner no. 1 company. In the month of November, 2014, Bothra Automotive Private Ltd entered into an agreement for a sum of Rs 1.50 crores for a tenure of 120 months at a variable rate of interest @ 10.50% per annum and monthly instalment payable to the tune of Rs 2,15,206 .In the month of November ,2013 Bothra Automotive Private Ltd. to loan to the tune of ₹2.40 crores and had settled interest @ 12.50% for a period of one month's payable at a monthly EMI of ₹3, 82, 390/-. It was in nature of loan against the residential property .Suddenly, the opposite party no. 1 asked for taking over the loan through H.T.B finance services and the loan was taken over by said H.D.B finance service from the petitioner no.1 - company and the account was foreclosed.

3. It is the further case of the petitioner that in consonance of the terms of the agreement, though the loan was against the residential property, the petitioner no. 1 company after statutory addition has closed the loan accounts of the Opposite Party no. 1. Two loans were extended to the Opposite Party no. 1 against the residential property and subsequently the repayment structure was agreed between the parties. The borrower was given liberty to pay the whole or any part of the loan amount in time with a condition that he has to issue a notice and subject to payment charges as agreed as specified at SL NO.8E of the schedule. 1 of the agreement. It was agreed that the petitioner no. 1 company would be entitled to recover the amounts as agreed by and between the parties on the strength of the loan against the residential property.

Submission

- 4.** Learned Advocate of the petitioner assailed about the arbitration clause mentioned in the agreement being not followed .The Opposite Party has not taken recourse to such clause. The relationship between petition no. 1 company and the Opposite Party no.1 is governed in terms of the agreement entered into by and between the parties for the purpose of loan against residential property and such terms are binding upon the parties, but the Opposite Party no.1 without adhering clauses of the agreement only with an intent to harass the petitioner no.1 company and its employees, lodged the complaint under Section 200 of the Code of Criminal Procedure, 1973 for the offences punishable under the above mentioned provisions.
- 5.** On August 20, 2016, the Learned Judicial Magistrate 6th Court at Alipore passed an order observing that the acts of the accused persons are beyond the jurisdiction of the Court and transferred the issue of process and asked for investigation to be done by a Police Officer and sent the same to the Shakespear Sarani P.S for investigation with a direction to file report.
- 6.** On December 20, 2022 report was received from the Alipore Police Station, and on that date, considering the statements of the complainant and the witnesses on oath and relying upon the police report the learned Magistrate observed that there is a prima facie case made out against the accused persons under Sections 420/406/34 of the Indian Penal Code, 1860 and the cognizance was taken against the accused persons and the summons was issued under Section 204 of the Code of Criminal Procedure, 1973.

7. It is submitted by the learned advocate of the petitioner that while passing the impugned order issuing the process the Learned Court failed to appreciate that the subject matter of the complaint arises purely out of alleged violation of the terms and condition of the agreement between the parties. The agreement admittedly contained an arbitration clause and therefore appropriate remedy was invocation of arbitral mechanism. The Ld. Magistrate mechanically issued the process for appearance without applying judicial mind. It was alleged in the said complaint that he took loan from the company and Opposite Party no. 1 intended to foreclose the loan which was ultimately took over by H.D.B finance service and at the time of foreclosure a sum of ₹16.45 lakhs was taken in excess of the loan amount which was for wrongful gain and causing wrongful loss to the complainant.

8. It is further submitted by the learned advocate that the content of the complaint has failed to satisfy the basic ingredients of the offence under Section 420 of the Indian Penal Code, 1860, as there has been no wrongful gain or loss and the accounts and calculation are made on the basis of the prevalent rules and regulations, relying on the terms of settlement arrived at by and between the parties. That apart, the report of the Officer-in-charge indicates about violation of the RBI guidelines which may have ramification for very legal recourse available to the Opposite Party no. 1, but in no manner that attracts a penal consequence. There is no *mens rea* and preparation and execution of the act.

Analysis

9. The matter pertains to wrongful realisation of a sum of ₹16.45 lakhs from HDB financial services in the loan account as assailed by the opposite party no. 1. A case of false representation by the Senior Officials of Tata capital housing finance Limited to that extent that of disbursement that no foreclosure charges would be leviable has been made out on the basis of which the complainant agreed to foreclose the said loan account on good faith and hence the conduct attract criminal breach of trust .
10. On perusal of the loan sanction letter dated November 30, 2013 by the Tata Capital Housing Finance Limited ,in clause 6 of terms and condition it is found mentioned that ;

“Foreclosure shall be permitted within a year from the date of disbursement of loan with a charge of 4% and 2% thereafter. This amount if charged on Future principal outstanding at the time of closure and all the partial pre-payments made during the last 12 months prior to loan closure.”

The loan agreement at clause 7.1 regarding pre-payment it is clearly mentioned

‘ the Borrower may repay the whole or any part of the loan amount payable by the Borrower to TCHFL provided the Borrower gives TCHFL at least 10 prior notice written notice of such intention to prepays such charges as serial no.8 € of schedule 1. If the Borrower prepays the only a part of the amount payable by the Borrower to TCHFL, TCHFL shall be entitled to adjust the amount prepaid against the amount payable by the Borrower in such manner as TCHLF thinks fit’.

The complaint itself discloses that after closure of loan account with the petitioner from the statement it was detected that an amount of Rs 9, 89,090/- plus Rs. 6, 56,106/- was wrongfully realized by Tata Capital Housing Finances limited and the accused no.2 Head of operation Mr. Taskeen Khan along with other officials and the petitioner has paid an excess amount the complaint was lodged on January 20, 2016.

- 11.** On December 20,, 2022 the learned court considered the report as furnished by the police that the petitioner no. 1 company has violated the notification of RBI regarding the foreclosure of the loans and accordingly was of the view that a prima facie case has been made out and summons was issued.
- 12.** It is the stand taken by the petitioner that the Reserve Bank of India vide its circular dated October 22,2020 in order to review and revise the regulatory framework for housing finance companies aiming to harmonize their regulations with those of other Non-Banking Financial Companies transferred the regulatory power over HFCs from the NHB to the Reserve Bank of India .By such Notification and/or circular the Reserve Bank of India further affirmed that HFC s shall not impose foreclosure charges /pre-payment penalties on any floating rate term loan sanctioned for purposes other than business to individual borrowers . In the report the I.O mentioned about the notification of the year 2015-2016 and vide such notification the National Housing Bank in the month of August 2014 directed the HFCs not to charge foreclosure charges on all floating rate term loans sanctioned to individual borrowers with immediate effects .It was further clarified on September 2014 that loan in which company, firm etc. is a borrower or co-borrower is excluded from the purview of the provisions of the circular dated August 2014.

13. In the present case the foreclosure charges in respect of the loan agreement which were executed on November 2013 and November 2014 which are apparent from the statement of accounts of both the agreement that is prior to notification.

14. Learned Court concerned took cognizance against applicant in pursuance to Sections 406/ 420 IPC. It is to be considered further, how far the cognizance order is sustainable since it is no longer res Integra that Sections 420 and 406 IPC cannot be maintained simultaneously together in the same breath as per the proposition of law settled by Hon'ble Supreme Court in the case of **Delhi Race Club (1940) Ltd. and others vs. State of Uttar Pradesh and another reported in¹**. The relevant portion of the said judgment is being reproduced hereinbelow:-

"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 405 IPC, punishable under Section 406 IPC, 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 415 IPC, punishable under Section 420 IPC."

15. 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 is the decisive factor. Such intuition in

¹ 2024 10 SCC 690

appropriate may inappropriate cases be inferred from the subsequent conduct of the accused; however the subsequent conduct by itself cannot be the sole test to determine the existence of dishonest or fraudulent intention at the inception of the transaction.

16. 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.

Conclusion

17. Therefore there remains no room left for consideration that the report of the I.O regarding violation of RBI guidelines of the year 2014 per se itself cannot attract penal action as the basic allegation was that payment of excess amount at the time of foreclosure in respect of a loan. There was otherwise settlement of loan account pursuant to the terms of the agreement entered into. That apart there was no entrustment of money upon the petitioners who are mere loan sanctioning authority .The entrustment was pursuant to the loan against the property agreement, the onus never shifted and there was no entrustment on the petitioner no.1 -company. The Learned Court ought to have considered these factors before issuance process.

18. It is no longer res integral that a contractual dispute or breach of contract per se should not lead to initiate a criminal proceeding. The ingredients of cheating as defined under Section 415 of the Indian Penal Code is to be existed

of fraudulent or designed intention of making the initial promise or representation thereof from the very beginning of the formation of contract.

- 19.** In this case the report speaks of violation of the RBI rules but that right to have verified from the available materials which has not been done.
- 20.** Therefore the order issuing process is liable to be set aside.
- 21.** Hence, this Criminal Revisional Application is allowed.
- 22.** The proceedings pending before the Learned Court is hereby quashed.
- 23.** No order as to costs.
- 24.** 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.]