

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

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 3931 of 2022

Rajendra Ramesh chandra Chaturvedi Nee Rajendra Chaturvedi & Anr.

Vs.

The State of West Bengal & Anr.

For the petitioners	:	Mr. Ayan Bhattacharya, Sr. Adv. Mr. Neelesh Choudhury Mr. Arpit Choudhury Ms. Anuradha Poddar
For the Opposite Party No.2	:	Mr. Sabyasachi Banerjee, Sr. Adv Mr. Anand Keshri Mr. Ayan Poddar Ms. Syed Kishwar Mr. Soumen Mohanty Mr. Gourav Bose Mr. Agnish Basu
For the State	:	Mr. Rudradipta Nandy, Ld. APP Ms. Sonali Das
Heard on	:	05.02.2026
Judgment on	:	10.06.2026

Dr. Ajoy Kumar Mukherjee, J.

1. The instant application has been preferred seeking quashment of the proceeding being CGR case no. 381 of 2020 arising out of Kalighat P.S. Case

no. 19 of 2020 under section 406/418/420/467/468/471/120B of the IPC, pending before learned Chief Judicial Magistrate Alipore.

2. The allegations levelled in the FIR interalia states as follows:-

In the year 2009 the defacto complainant company Mrs. Akriti infrastructure PVT Ltd., being in search of suitable flat in Mumbai for expansion of its business was approached by the petitioner no.1, who introduced himself as the manging partner of M/s. Shreepati Investment, an erstwhile partnership firm and represented that his firm was a renowned real estate concern engaged in several large projects, including a mass housing project styled '*Shreepati Estate*' at greater Mumbai. The petitioners, thorough false assurances of reputation, financial soundness and project credential induced the complainant company to invest in two flats i.e. flat no. 2001 admeasuring 4323.15 square feet and flat no. 2002 admeasuring 4694.38 square feet both on the 20th Floor of the said project. The petitioners promised timely completion, modern amenities and also assured approvals from authorities. Believing such representations, the complainant reposed faith and confidence in the petitioners herein. The Opposite party (in short OP) no.2 was pressured into making advance payment even before approvals, citing high demand in the market. Based on the representations and assurances made by the petitioners herein, the OP no.2 was induced to part away from their hard earned money aggregating to a sum of Rs. 3, 30,00,000/- between August, 2009 and February, 2010 by way of RTGS, as an advance for the aforementioned flats. Subsequently an agreement for sale was entered into with M/s. Shreepati Investment dated 15.03.2011 for aforesaid two flats in the proposed building. The said payment was

acknowledged in the said agreement dated 15.02.2011 and later dated 01.04.2012. Despite execution of the said agreement for sale and receipt of advance given by the petitioner, they did not obtain the necessary sanction and permission which were requisite for the commencement of the said project. The representative for the OP No.2 continued to pursue the petitioners for completion but they neither commenced nor completed construction of the project. In 2013-2014, when questioned the petitioners produced fabricated documents and forged municipal sanction plan to mislead the opposite party no.2. Upon confrontation they admitted their inability to obtain approval, thereby confirming their dishonest intention. In order to avert legal consequences the petitioner requested that the advance be treated as a loan. By letter dated 31.05.2015, they undertook for repayment of the sum of Rs. 3,3,00,000/- with 12% cumulative interest per annum. The said liability further re affirmed in letter dated 08.07.2016 and again on 30.9.2017 on behalf of M/s. Shreepati Infra Investment Ltd. undertaking to repay with 15% cumulative interest compounded quarterly. Notwithstanding repeated written acknowledgements, the petitioner defaulted on repayment and by 2019, they dishonestly denied the entire transaction and evaded all responsibility and liability. Having left with no other alternative, the representative of the OP No.2 lodged the complaint in respect of which the abovementioned criminal proceeding has been initiated.

3. Being aggrieved by the said proceeding learned senior counsel for the petitioner Mr. Ayan Bhattacharya argued that in the FIR the complainant suppressed the NCLT proceedings. On March, 15, 2011 a similar agreement was entered into by and between one Abhiyan Developers Pvt. Ltd., a sister

concern of the FIR maker on one hand and Shreepati on the other. Subsequently in 2018 two company petitions being CP (IB) /4148 of 2018 and CP (IB)/4149 of 2018 were filed by the complainant herein before the National Company Law Tribunal, Mumbai Bench, under section 7 of the Insolvency and Bankruptcy Code 2016 (in short IBC) for initiation of Corporate Insolvency Resolution Process by the first informant and Abhiyan respectively. On February 5, 2019 the first informant filed another affidavit in connection with CP(IB)/4148 of 2018 wherein again there was no allegation of forgery or production of fake document by Shreepati. On being challenged by Shreepati the constitutional validity of the IBC, vide order dated March 11, 2019 in WP No. 277 of 2019 and WP(civil) No. 281 of 2019, the Supreme Court was pleased to stay all further proceedings pending before NCLT. Thereafter by an order dated August, 9 2019 the Supreme Court was pleased to dispose of the Writ Petition thereby upholding the constitutional validity of the amendment of section 5 (8) of IBC. On October, 29, 2021 Shreepati went into CIRP in a proceeding initiated by Abhijan being CP(IB) 4149 of 2018. The said proceeding was challenged before the NCALT being Company Appeal no. (AT) (INC) 939 of 2021, when NCLAT was pleased to set aside the order dated October 29, 2021 passed by Hon'ble NCLT. Taking exception to an order dated March 7, 2021 passed by NCLAT, Abhiyan filed a civil appeal being C.A. 3184 of 2022 before the Supreme Court, where the court recoded that counsel for the respondent has made available certain offers to the appellants to settle the dispute and it will be open for the appellants to consider those options available to him and if it is not acceptable the matter would be heard on merits. As Abhiyan declined to

accept the offer made by Shreepati, the case was argued on merit when after hearing, the Supreme Court was pleased to dismiss the same as withdrawn

4. Mr. Bhattacharya further argued that the first informant had suppressed in the FIR the factum of initiation of NCLT proceeding and its subsequent developments. The FIR was filed on 18th January, 2020 i.e. just after promulgation of the ordinance, dated December, 28, 2019 under section 7 of the IBC by prescribing that a creditor in class can maintain a petition under section 7 of IBC only if the petition is filed by 100 of such creditors or 1/10th of total number of such class.

5. Mr. Bhattacharya further argued that from the contour of the allegation as made in the FIR it would be evident that the claim of the FIR maker is essentially a civil one. It is evident that in 2009 a sum of Rs. 3.30 crore was paid to the Shreepati by the First informant for purchase of flats. Subsequently on march 15, 2011, an agreement for sale was entered into. The construction could not take place on account of objection from the jail authorities. Due to such objection raised by jail authorities in 2014, Shreepati filed a Writ Application under Article 226 of the Constitution of India before the High Court of Judicature at Bombay, being Writ petition (L) No. 6173 of 2014 when the court directed the State of Maharashtra to consider and decide the representation of the petitioner dated May 22,2014 and further directed the Municipal Corporation to consider and decide the representation of the petitioners for building permission after the State Government decides the representation. Subsequently as per mutual understanding on March 15, 2015, the said amount was converted into a loan amount payable with 12% cumulative interest per annum. IBC

proceedings were initiated in 2015. After failure in IBC proceeding in 2020 the present proceeding has been initiated as a substituted method of recovery. Infact the FIR was invented in order to realise the loan amount.

6. Mr. Bhattacharya further argued that the first part of the FIR deals with non-performance of contract by the petitioners thereby not handing over possession of flat to the first informant. The second part of the allegation made in the FIR revolves around conversion of the earnest money into a loan transaction at the behest of the first informant because it is the prosecution case that the earnest money was converted into a loan amount, which was payable with 12% cumulative interest per month, and was subsequently enhanced by 15%. Therefore, it is evident that on account of such conversion of earnest money the transaction becomes a pure and simple loan transaction.

7. He further argued that the fundamental objection of first informant was that the special leave petition preferred by the petitioners herein has foreclosed any further deliberation by the present petitioners. Such argument of the OP no.2 is misplaced as rejection against an interim order has no bearing at the final disposal stage. Furthermore the Supreme Court while disposing the Special Leave Petition was pleased not to interfere at that stage of the case only. Therefore the attempt of first informant to extrapolate the order of the Supreme Court cannot be countenanced.

8. Mr. Bhattacharjee also argued that in the instant case the complainant caused inordinate delay in lodging FIR. Therefore it is evidently clear from the narration of the aforesaid facts and circumstances that while the FIR maker had realized that he would be unsuccessful, before the NCLT

to recover the amount, it has changed its stance and ignited criminal machinery to recover its dues.

9. Therefore, a mere breach of agreement cannot constitute an offence of cheating. Simply because a party to an agreement fails to perform its promise, criminality cannot be attributed to it. Even if the *mens rea* developed at a subsequent stage it cannot constitute the offence under section 420 of the IPC. It is trite law that invitation to treat is no offence per se as the same is not offer but mere invitation. The petitioners have already deposited the said amount of 3.30 crores which is lying with the Registrar General of the Hon'ble Court in terms of the interim order passed by this Court.

10. The learned counsel for the petitioner further argued that the instant criminal proceeding at the behest of the first informant is an attempt to recover civil dues which became barred by the law of limitation. Though there were two agreements by FIR maker and its sister concern Abhiyan with Shreepati but only one criminal proceeding has been initiated as a test case in order to recover the amount. The prevaricating stand taken in the FIR and the NCLT proceeding are mutually destructive.

11. The petitioner also challenged the creation of jurisdiction. He argued that the jurisdiction was created on the premises that in 2009 the registered office of First informant was in Kolkata. But it cannot be lost sight of the fact that NCLT proceeding was filed by the first informant at Mumbai and not in Kolkata. No part of agreement was entered into in Kolkata. However the present FIR has been filed at a particular police station of Kolkata, which no way has territorial competence to investigate.

12. Mr. Sabyasachi Banerjee learned senior counsel appearing on behalf of the Op No.2 argued that the petitioner in their agreement dated 15.03.2011 had proposed to sell of flats in Shreepati Estate, wing A but in the annexure 2 of the said agreement the petitioners had unilaterally changed the description of the structure to Shreepati Jewels Diamond “D” wing. From the supplementary affidavit filed by the petitioner, it is evident that the petitioner had made a representation before the Hon’ble Home Minister for obtaining sanction for construction of the flats in rehab wings. Again the petitioner moved before Bombay High Court who directed the State Authorities to consider the representations of the petitioner without going into the merits of the case. Therefore, the petitioner, were very much aware about the fact that they did not have the necessary sanction to construct the flat and yet the accused/petitioner retained the advance amount paid to them by the defacto complaint. Furthermore the petitioners unilaterally transferred the said advance to unsecured loan amount, which clearly demonstrates the intention to defraud the defacto complainant. The conduct of the petitioner, both preceding and subsequent to the transaction in question clearly reveals a pattern of deliberate mis-representation and concealment, indicative of a *malafide* intent to deceive from the very inception. The petitioners actions were neither inadvertence nor the product of any *bonafide* mis understanding but rather formed part of a calculated design to induce reliance through false assurance and thereafter make the defacto complainant deliver a substantial sum of money as advanced for the said properties. The sequence of events if viewed in their entirety unmistakably establishes that the petitioner had no genuine intention to act

in good faith and that deceit was embedded at the core of the transaction itself.

13. The contention of the petitioner that the dispute is purely civil in nature is wholly untenable. The FIR in the present matter, if taken at face value discloses allegations constituting cognizable offence which necessarily warrant investigation. The veracity of such allegation cannot be adjudicated at this stage. Mr. Banerjee further argued that the existence of a particular office where the cause of action is said to have accrued is a pure question of fact and anything which is a question of fact necessarily falls within the domain of investigation so long as the complaint discloses a prima facie cognizable offence. At the interim stage when a challenge was raised as to whether the FIR disclosed a prima facie case fit for investigation, this Hon'ble Court answered in the affirmative thereby indicating that the FIR is liable to be investigated. The jurisdiction of Kalighat police station was duly attracted as the OP No.2 maintained corporate office at the address specified in the complaint. The OP no.2 operated from two offices and was within its right to lodge the complaint from either location. In such circumstances, the question of jurisdiction becomes inconsequential particularly where the complaint discloses a cognizable offence warranting investigation.

14. He further argued that the conduct of the petitioner in taking contradictory stand before the Hon'ble High Court and the Hon'ble Supreme Court demonstrates an attempt to mislead the judicial system. This is because the petitioner contended before High Court that the contract stood novated as the advance paid was treated as a loan at the instance of the OP no.2, whereas in the Special Leave Petition before the Supreme Court, the

petitioner pleaded that it was a unilateral decision on their part to convert the advance towards flats into a loan in their books of account. Such contradictory pleadings were not disclosed before this High court which clearly reflects a *malafide* intention.

15. It is admitted position that the construction over the property remains incomplete till date and the petitioner has not acted in *bonafide* manner despite having no sanction from the competent authorities. Petitioner accepted money from the complainant which itself speaks to their dishonest conduct. The accused persons were fully conscious of the fact that the necessary sanctions might not be forthcoming, yet they deliberately induced the defacto complainant to part with a substantial sum of money towards consideration for two flats. Furthermore to assure them of the viability of the petitioner's project they furnished forged and fabricated documents, including the approved sanction plan and others, showcasing that the necessary permission had been obtained. Such conduct amounts to deliberate misrepresentation and dishonest inducement and forms the very subject matter of investigation.

16. He further argued that a bare perusal of letter of complaint it clearly indicates that the said amount of money was collected by inducing the representatives of the complainants through false representation and assurance to the effect that flats were selling like hot cake and that approvals and sanctions would follow, thereby persuading them to part with the funds without awaiting such approvals. The act of collecting crores of rupees without possessing the requisite rights or permissions to undertake construction, clearly demonstrate *malafide* intent and a calculated design to

defraud and cheat the OP no.2 herein. The deception was not confined to the initial inducement but also it was perpetuated when the petitioners was sought to convert the earnest money into a loan, enticing the OP 2 with the promise of interest accrual and portraying it as a financially advantageous arrangement. Such actions reveal a continuous course of dishonest conduct aimed at lawful gain at the cost and peril of the OP no.2

17. He further argued that the law is well settled that an FIR need not be an encyclopaedia which would contain details of all the factual information relating to the case. Therefore, the factum of NCLT proceeding has got no bearing in deciding the present quashing application as jurisdiction of this court is confined to examining as to whether allegations levelled in the complaint at its face value discloses the commission of cognizable offences or not. He further argued that the mere availability of a civil remedy cannot by itself be a ground to quash criminal proceeding, where the allegations disclose commission of a cognizable offence. Civil and Criminal proceedings may validly arise from the same cause of action. The Apex Court in a catena of judgments has consistently held and reiterated that the jurisdiction of criminal court is not ousted merely because the same set of facts may give rise to civil liability. What is material is whether the allegation as levelled in the FIR, if taken at its face value satisfy the ingredients of a criminal offence. If they do, the pendency of the civil proceeding is no bar to the continuance of criminal proceeding. Therefore he prayed for dismissal of the instant Revisional Application.

18. Mr. Nandi appearing on behalf of the state adopted the argument made on behalf of OP no. 2.

Decision

19. In the instant case the petitioners are booked under section 406/418/420/467/468/471 read with 120B of the Indian Penal Code. It is not in dispute in the present case that over the self same issue one NCLT proceeding was initiated. However, said NCLT proceedings and its subsequent developments have got no reflection in the FIR. From the gist of allegations as made in the FIR, it is clear that initially FIR makers inquired whether M/s Shreepati Investment/accused had obtained necessary approval and sanctions from appropriate authorities to commence the proposed project, though it is also there case that the accused persons assured them that they were in process of obtaining such approval. In the FIR the complainant also alleged that even after knowing that they do not have necessary approval and sanctions, being induced by the petitioners flowery representation they made advance payment of Rs. 3, 30,00,000/-. It is also admitted position that thereafter the parties entered into an agreement for sale on March, 15, 2011. The petitioners defence is that the construction could not take place on account of objection from the jail authorities as would be evident from the correspondences relied on in the FIR. It is not in dispute that on account of such objection raised by the jail authorities in 2014, Shreepati filed a Writ Application under Article 226 of the Constitution of India before the High Court of Judicature at Bombay being writ petition (L) no. 6173 of 2014. Said Writ Court by an order dated July 24, 2014 directed the State of Maharashtra to consider and decide the

representation of petitioner dated May, 2022, 2014 and further directed the Municipal Commissioner to consider the petitioner's application for building permission, after the State Government decides the representation. Such facts needs no corroboration and is based on unimpeachable documents.

20. In the middle portion of lengthy FIR complainant made following averments.

“When we threatened the accused persons with criminal action for forging documents and cheating us the accused persons got nervous and tried their best to pacify us and thereby requested us to convert the said money lying entrusted with them into loan on account of their financial crunch. In doing so, M/s Shreepati build infra investments Ltd through its chairman cum managing Director, being the said Rajendra Rameshchandra Chaturvedi, vide letter dated 31 March, 2015, assured us that the entire amount of RS. 3,30,00,000/- would be paid along with 12% cumulative interest per annum if they were unable to obtain requisite permission from the appropriate authorities to commence construction, and that the same would be converted to a loan account. However, thereafter there was no response from their end.

Upon numerous request, reminders and follow-ups by our representative, Rajendra Rameshchandra Chaturvedi and other directors of M/S Shreepati Build infra investments ltd vide letter dated 8th july 2016, while confirming such conversation into a loan account, categorically undertook to repay the entire amount with a mutually agreed interest/compensation before 30 August 2016. However, despite such assurances, they did not make any payment to our company and bargained time from us on various false pleas and fake assurances.”

21. It is further averred in the FIR that the said accused persons did not make any payment and once again confirmed that the sum of Rs. 3,30,00,000/- received by them during the period 2009-2010 would be repaid to the complainant along with 15% cumulative interest compounded quarterly, which the complainant reasonably believed that the accused persons would make the entire payment along with 15% cumulative interest compounded quarterly as per their confirmation of accounts.

22. In the above backdrop let me consider the applicability of sections 406 /418/420 IPC in the facts and circumstances of the present case. It is needless to say that each of the said offences have specific ingredients.

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

- (1) There must be entrustment with persons 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 disposes of the property or wilfully suffers any other persons so to do in violation of:*
 - (i) Any direction of law prescribing the method in which the trust is discharge; or*
 - (ii) Legal contract touching the discharge of trust (see; S.W. Palanitkar).*

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 persons to deliver any property, or*
- (3) The consent that any persons shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.*

In order to constitute offence of cheating with knowledge that wrongful loss may ensue to person whose interest offender is bound to protect, following essential ingredients must present under section 418 IPC

- (i) the accused cheated a person*
- (ii) at the time of offence, accused was bound by law or legal contract to protect the interests of the person whom he cheated the obligation related to the transaction involving the cheating and*
- (iii) accused had the knowledge that the act was likely to cause wrongful loss to the person cheated and whose interest he was bound to protect.*

24. In all the three 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.

25. So far as allegation of criminal breach of trust is concerned prosecution in order to succeed must show at least *prima facie* that there was an entrustment, that there must be misappropriation or conversion to one's own use or use in violation of a legal direction or of any legal contract and the misappropriation or conversion or disposal must be with a

dishonest intention. In the instant case FIR itself makes it clear that the accused firm had undertaken housing project and they assured the complainant that the flats would be constructed by them and their said project would have all facilities and amenities of modern life and the entire project would be completed in a time bound fashion and they also represented that the real estate market was on a rise and that such investment would yield substantial returns to the company. In the FIR it has also been made clear that when the complainant inquired whether M/S Shreepati investment had obtained necessary approval and sanctions from appropriate authorities to commence the proposed project, the accused persons assured them that they were in the process of obtaining such approval. It is also alleged in the FIR that the accused persons wrongfully represented that due to a boom in the real estate market the flats were selling like hot cakes and the complainant should not wait for sanctions and approvals to be granted and should make advance payment so as to ensure that accused reserve their rights over the intended properties and to enter into a proper agreement later so that they will hold on to the flats from being sold off to any other intending buyer.

26. From the materials available so far and the unimpeachable documents relied by the petitioner there is nothing to say that aforesaid representations were found to be false at the material time. Regarding the promotion of the project by painting a rosy picture that the property is being sold like a hot cake is not an inducement but can be taken as 'invitation to treat'. Infact the delay in constructing the project was apparently beyond the control of the petitioners. The complainant had also earlier invoked civil

remedy. This court while granted interim stay directed the petitioner to deposit a sum of Rs. 3.30 crores to the Registrar General of this High Court and the petitioners in compliance of the said order have already deposited the same amount which is lying with this High Court. Therefore, neither money was misappropriated nor the petitioners have avoided to deposit the said amount before the court. The opposite party/complainant in their FIR has prayed for recovery of money which they have paid to the accused persons by way of advance. Infact the purpose for which the amount was paid by first informant i.e. for allotment of flat in the housing project is still subsisting. The deposit of such amount pursuant to the direction of this court bears the testimony of such fact and therefore, the allegation of criminal breach of trust hardly attracts.

27. So far as the allegations of cheating with knowledge that wrong full loss may ensue to person under section 418, it is required to be shown that accused must have the knowledge that his act would likely to cause wrongful loss to the person cheated whose interest he is going to protect. Similarly, in case of cheating and dishonestly inducing delivery of property under section 420 there must be false representation and dishonest intention and it must be from the beginning. In ***Md. Ibrahim Vs. State of Bihar*** reported in **(2009) 8 SCC 751** the Apex Court had laid down that the following ingredients of offence of cheating are essential.

(i) deception of a person either by making a false or misleading representation or by dishonest concealment or by any other act or omission

(ii) fraudulent or dishonest inducement of that person to either deliver any property or to consent to the retention thereof by any person or to

intentionally induce that person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived.

(iii) such act or omission causing or is likely to cause damage or harm to that person in body, mind, reputation or property.

In other words offence of cheating consist of two classes of cases:-

(i) where the complainant has been induced fraudulently or dishonestly.

(ii) When by reasons of such deception, the complainant has not done or omitted to do anything which he would not do, or omit to do if he was not so deceived or induced by the accused.

The facts and circumstance of the case it as stated above do not indicate that any of the essential ingredients to constitute offence under section 418 or 420 of IPC is present.

28. In *Delhi Race Club, 1940 Ltd. Vs. State of UP*, reported in **(2024) 10 SCC 690** Supreme Court observed that the distinction between mere breach of contract and the offence of criminal breach of trust and offence of cheating is a fine one and 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 though for this subsequent conduct it is not the sole test. However, 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, simply because a party to an

agreement fails to perform its promise does not attract criminality. It is also well settled that even if guilty mind develop at a subsequent stage, it does not constitute an offence punishable under section 420 of the IPC.

29. In the instant case it is evident from the FIR that in 2009 a sum of Rs. 3.30 crores was paid to Shreepati by the first informant for purchase of flats. Subsequently on March, 2011 an agreement for sale was entered into. As the possession was not delivered to the first informant, on a mutual understanding dated March 15, 2015 the said amount, was converted into a loan amount payable with 12% cumulative interest per annum. Such interest component was subsequently enhanced to 15%. It is also evident that the construction could not take place on account of objection raised by jail authorities as appearing from the correspondences exchanged and relied in the FIR and for which upon mutual understanding on March 15, 2015, the said amount was converted into a loan amount.

30. It is also not in dispute that IBC proceeding were initiated, in 2018 which did not succeed and thereafter the present criminal proceeding has been initiated where in the FIR the complainant has claimed that Shreepati had caused wrongful gain to itself and wrongful loss to the first informant to the tune of Rs. 14,66,08,563/- as on 30th January, 2020, whose interest the said accused persons are liable to protect under the said transaction. Furthermore at the end of the FIR the complainant clearly urges for recovery of the amount. Therefore, from the aforesaid conspectus it is evident that the grievance of the first informant is about the alleged wrong retention of money so paid in 2009 and which was converted into a loan transaction in 2015. Needless to say that neither wrongful retention of earnest money nor

non-payment of loan amount can give rise to a criminal prosecution since criminal prosecution, cannot be construed to be a recovery proceeding.

31. It is not the case of the prosecution that Shreepati was not a developer. It is also not the case of the prosecution that the land was not in existence. Rather the writ petition filed before the Hon'ble High Court at Bombay demonstrate the stage wise progress regarding the construction work. It is also nobody's case that the flat was constructed but the possession was not handed over to the first informant. There is no dispute that the petitioner/real estate company had taken earnest money from the intending purchasers and it is apparent that no other customer has filed any criminal prosecution against them. The proceeding initiated by the first informant under section 7 of the IBC failed as the threshold of 10% home buyers was not achieved by the first informant. It is also required to be mentioned in this context that in the pleading filed in connection with NCLT proceedings, neither the first informant nor its sister concern has ever alleged the case of cheating or criminal breach of trust, forgery etc. Mr. Bhattacharya on behalf of the petitioner argued that till date the agreement dated 15th March, 2011 against which Rs. 3.30 crore had been paid by the first informant to Shreepati has not been cancelled. Therefore, in true sense no money could be said to be due from the petitioners. Therefore, the complainant though executed agreement for purchase and paid advance consideration price in 2010 and though they had converted the same into a loan agreement in the year 2015 but at the same time they have also retained their allotment of the said flats in the project simultaneously.

32. It is also well settled in view of judgment passed in **Delhi Race Club 1940 Ltd.** (Supra), 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. From the assertion made in the FIR, it is quite clear that the complainant's grievance is regarding failure of the appellants to pay the outstanding amount inspite of complainants repeated demands. Therefore essentially the present dispute between the parties at best relates to a breach of contract. A mere breach of contract by one of the parties would not attract prosecution for criminal offence in every case, unless it is shown that the accused had fraudulent or dishonest intention at the time of making of promise, which is conspicuously absent in the present case. In fact the novation of contract on mutual understanding i.e. substituted agreement gave a new cause of action.

33. Section 62 of the contract Act states if the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed. In this context reliance can be placed upon observation made by Apex court in para 6 of the judgment passed in the **Union of India Vs. Subba Rao** reported in **AIR 1959 SC 1362** where it was held that the substituted agreement gave a new cause of action and obliterated the earlier one and if there was a valid defence for the enforcement of the new contract in whole or in part, the party affected must take the consequences. Therefore on account of such conversion of earnest

money, the transaction became a pure and simple loan transaction in terms of the provision under section 62 of the Indian Contract Act which deals with novation of contract. As a result when the present case has been novated in terms of section 62 of the Contract Act, all allegations prior to loan transaction may not stand as the doctrine of novation erases the prior transaction by an between the parties.

34. The petitioners are also booked under section 467/468/471 of IPC. It is alleged that till 2013 Shreepati went on giving false assurance to the first informant and in 2013 when the first informant approached Shreepati, they showed certain documents claiming to be grant of permission from the Municipal Authorities. However, such documents were not handed over to the first informant. It is further alleged that in 2014, on enquiry the first informant came to learn that those documents were not original. Subsequently after confronting with Shreepati they accepted that they had not received final and necessary permission and that they had shown forged and fabricated document to the first informant.

35. However the facts remains that though the alleged forged/false document were allegedly produced by the petitioners to the complainant much prior to filing of the NCLT proceedings, yet in the said proceedings there was no whisper by the first informant regarding production of any forged/false document. Therefore, there appears to be every reasons to believe that the allegation of production of forged/ false document is an afterthought. It is also important to mention that the money was paid in the year 2009 which is much prior to the alleged production of forged and false documents allegedly in 2013. Therefore, even by going the allegations in the

FIR qua forgery no initial deception was made on the strength of the alleged forged /false documents and therefore it has hardly any impact in the impugned transaction. From the unimpeachable document annexed by the petitioner, it appears that the petitioners obtained NOC of Chief Fire Officer on 2nd February, 2013 and also obtained NOC of High Rise Buildings on 21.03.2013. Petitioners specific case is that since there was no response from the Hon'ble Home Department in respect of representation made for Jail NOC, the petitioner again applied for Jail NOC to the Hon'ble Home Department on 12th February, 2014. It is submitted in the writ petition no. 1734 of 2013 that the Hon'ble Court by its order dated 08.05.2014 directed the State Authorities to grant NOC in respect of buildings mentioned therein. After passing the aforesaid order of High Court the petitioner again made a representation to the Hon'ble Home Department on 22.05.2014, requesting them to give the Jail NOC. It is also submitted by the petitioner that subsequently they shifted 346 tenants to temporary alternate accommodation and paid them license fee since the Municipal Corporation were to demolish the unsafe buildings. As a result Shreepati filed another Writ Petition no. 1673 of 2014 where the petitioners prayed for necessary direction upon the State Authorities to grant Jail NOC and to consider and dispose of the application for sanctioning the plans of Shreepati. Said writ petition was disposed of on 27.04.2014 directing the State authorities to consider and decide the petitioners representation dated 22.05.2014. It is petitioner's specific case that in the month of July 2024 the State authorities have approved the sanction plan and have also issued commencement certificate in favour of Shreepati and Mrs. Bhattacharya

learned counsel appearing on behalf the petitioners submits that presently the construction of proposed building is going on.

36. To attract penal consequences under section 464 of IPC the prosecution must establish that the accused had made the fake document. In the present case no such document connecting the appellant to the making of fake document has been produced. Similarly offences under section 468 IPC and section 471 IPC are not attracted if the requisite *mens rea* i.e. dishonest intention to cause wrongful loss to the complainant and the wrongful gain to the petitioner has been demonstrated. In the present case admittedly the payment of Rs. 3.30 crores in 2009 was not dependent on the production of alleged forged municipal documents allegedly procured in 2013. It is also interesting in note that even on 05.02.2019 when the complainant filed affidavit in connection with CP (IB) /4148 of 2018 there was no allegation of forgery or production of fake documents by Shreepati. The charge of forgery was only levelled in the FIR in 2020, though such charges of forgery bereft of any material, in as much as the First Informant could not produce any document to substantiate even *prima facie* the charge of forgery.

37. One more aspect of the present case is that without offering any valid explanation the FIR has been lodged after making inordinate delay of 11 years from the date of payment. In the instant case the money was paid in 2009 whereas the agreement for sale entered into in March, 15, 2011. Such amount was converted to a pure and simple loan on March, 15, 2015, however the FIR was lodged only on January, 18, 2020. No explanation for such delay was found in the FIR. Approaching the court at a much belated

stage for a rightful cause is generally considered as good ground for its rejection at the threshold. Learned counsel for the petitioners submits even if all the allegations in the complaint are taken as correct complaint has been filed in the year 2020 while the agreement for sale was executed in 2011. No suit for specific performance of contract was filed within a period of more than 9 years and in this circumstances the complaint is an abuse of court process to enforce civil rights which had become legally unenforceable. Therefore, if the facts of the case is appreciated there remains no shadow of doubt that the complaint filed by the complainant after an inordinate unexplained delay of about 11 years from the date of payment, is nothing but sheer misuse and abuse of the process of law to settle the personal scores with the petitioners and therefore, continuation of such malicious prosecution would only be further abuse and misuse of process of law, more particularly when neither the allegations made in the complaint disclose any prima facie case against the petitioners. The allegations made against the petitioners are absurd and improbable and that no prudent persons can ever reach to a conclusion that there is sufficient ground for proceeding against the petitioner/accused.

38. Mr. Banerjee learned counsel for the OP while opposed prayer for quashment heavily relied upon the order passed by the Supreme Court on 17.11.2022 is SLP (Criminal NO. 36500/2022), whereby the court observed that the High Court's interim order directing to stay arrest on condition of the petitioner's depositing the amount of Rs. 3.30 crore and the direction upon the petitioner to join investigation while staying the arrest does not

call for interference by Supreme Court. Therefore, according to Mr. Banerjee the investigation must not be quashed in view of aforesaid order.

39. This court by an order dated 20.10.2022 stayed the warrant of arrest and search warrant with the observation that the investigation in this case shall proceed in accordance with law. Such order was passed while moved the stay application by the petitioners as an interim relief against which the aforesaid SLP was preferred and the order was passed. Therefore, the order by which the Apex Court refused to interfere is purely interim in nature and has been granted only till final disposal of the Application. The instant case pertains to prayer for quashment of the proceeding. The Apex court in that order also clarified that they do not find any reason to interfere with the order “at this stage”. which means the effect of order was confined to a particular stage.

40. It is well settled that the finding arrived at in dealing with interim order pending disposal of the main petition, even if it relates to any material question involved in the main petition, it may not take place of finding in the final decision of the petition. The Apex Court in the case of ***Amaresh Tiwari Vs. Lalta Prasad Dubey and another*** reported in **(2000) 4 SCC 440** held in para 10 that it is settled law that interim orders even though they may have been confirmed by the higher courts never bind and do not prevent, passing of contrary order at the stage of final hearing.

41. In conclusion I am of the view that the allegations made in the FIR even if given face value and taken to be correct in its entirety do not disclose any criminal offence. For the purpose of adjudication of the present application this Court has taken into consideration not only the admitted

facts but also the pleading of the parties. What has been depicted may at best amounts to negligence/and or breach of contract on the part of the petitioners, which simplicitor does not constitute offences as alleged in the FIR. Allegations must disclose the necessary ingredients which is completely lacking in the present context. In ***All Cargo Movers India Pvt. Ltd. Vs. Dhanesh Badarmal Jain and another***, reported in **(2017) 14 SCC 776**, the court categorically observed, it is one thing to say that the court at this juncture would not consider the defence of the accused but it is another thing to say that for exercising the inherent jurisdiction of this court it is impermissible also to look to the admitted documents. It was further observed criminal proceeding should not be encouraged when it is found to be *malafide* or otherwise an abuse of the process of the court. The Superior courts while exercising this power should also strive the ends of justice (para 16).

42. In view of aforesaid discussion **CRR 3931 of 2022** stands allowed.

43. The impugned proceeding being Kalighat P.S. Case no. 19 of 2020 under section 406/418/420/467/468/471/120B of the IPC pending before learned Chief Judicial Magistrate Alipore is hereby quashed.

44. However since it is admitted position that petitioner received an amount of Rs.3.30 crores from the first informant, which has been kept deposited before Registrar General of this Court in view of the direction passed on 20.10.2022, the first informant/opposite party would be at liberty to pray for refund of said amount from Registrar General of this court and in the event of making such prayer by the op no. 2, the Registrar General shall

pay the said amount along with accrued interest to Opposite party no.2 on proper receipt

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.)