IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

APPELLATE SIDE

Present:-

THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

CRR NO.4163 of 2023

SUNIL KANTILAL MUTHIYAN
VS.
M/S. RAJSHREE CREATION PRIVATE LIMITED & ANR.

For the Petitioner : Mr. Sabir Ahmed, Adv.,
Mr. Dhiman Banerjee, Adv.,
Mr. Quazi Ezaz Ahmed, Adv.

For the State :

Last heard on : 05-02-2026.

Judgement on : 05-02-2026.

Uploaded on : 09-02-2026.

CHAITALI CHATTERJEE (DAS), J. :-

1. None appears on behalf of the Opposite Parties.

2. This revisional application is filed challenging the continuation of the proceeding being C.N.373 of 2021 pending in the Court of learned Metropolitan Magistrate, 14th Court, Calcutta, under Sections 406/409/420 and 120B of the Indian Penal Code.

3. The fact of the case in a nutshell is that the petitioner deals with the clothing business for a considerable period of time and created goodwill in the market and in course of the transactions of the said business, the petitioner got introduced with the opposite party no.1, M/s. Rajshree Creation Private Limited. On being presentation made by the representatives of the opposite party no.1 that they are the manufacturer of clothing goods in their workshop, the petitioner started doing business with the opposite party no.1 since the month of August, 2015. The business was continuing smoothly as the petitioner used to supply the orders and in turn the opposite party no.1 used to supply materials on seeing the catalogue while such continuous course of commercial business transaction was going on without any dispute with regard to the accounts but gradually the opposite party no.1 started sending materials of inferior quality. The petitioner returned the materials/sarees worth Rs. 45276/- to the complainant, which they received but the amount was never paid to the petitioner and also did not attend the issue of repayment of the said amount and the dispute with regard to the account. Suddenly, the petitioner came to learn that a proceeding has been initiated against the petitioner in the court of learned Additional Chief Metropolitan Magistrate at Calcutta being C.N.373 of 2021 under Sections 406/409/420 read with Section 120B of the Indian Penal Code (IPC hereinafter) with an allegation of misappropriation of money and cheating against the petitioner as in course of business entrusted the accused petitioner for delivery of materials worth Rs. 93749/- on September 13, 2019 which was received by the accused through transportation and despite several reminders and demands, the accused petitioner ignored the payment.It was further alleged that the accused induced the complainant to be part with this its goods by representing fabricated image of his enterprise and took delivery of the materials of the complainant company and thereby misappropriated the materials worth Rs.52473/- thereby committed criminal breach of trust against the complainant company. It was further alleged that a cheque was sent to them, but till date, no cheque has been delivered to the company and promised to issue a fresh cheque against the outstanding liability.

4. On receipt of the complaint, learned Magistrate recorded the initial deposition of one accountant and one store-keeper and issued process under Sections 406/409/420 read with Section 120B IPC. The petitioner on receipt of such process as was issued by the learned Magistrate on April 06, 2021, has come up before this Court challenging the proceeding for quashing on the ground that the complaint lodged under Section 200 of the Code of Criminal Procedure, it is crystal clear that there was a continuous business transaction by and between the petitioner and the opposite party no.1 and the goods allegedly delivered worth Rs.97749/- and the complaint has been made for non-payment of the residue amount Rs.52783/- which can be treated as a part payment made by the petitioner and, hence, question of criminal breach of trust does not arise.

5. In this regard, learned advocate representing the petitioner has relied upon the decision of ***Birla Corporation Limited Vs. Adventz Investments and Holdings Limited & Ors.***[1], ***Pawan Kumar Agarwal Vs. State of West***

[1] **(2019) 16 Supreme Court Cases 610**

Bengal & Anr.[2], ***Ram Biraji Devi & Anr. Vs. Umesh Kumar Singh & Anr.***[3] ***Delhi Race Club Limited & Ors. Vs. State of Uttar Pradesh & Anr.***[4] and ***Krishna Kumar Bangur Vs. State of West Bengal & Anr.***[5].

6. It is further submitted that the complaint is not maintainable in the eye of law as well as the cognizance taken by the learned Magistrate for violation of the mandate as stipulated by the Hon'ble Apex Court of India and, hence, liable to be quashed.

7. In this case, none appears to represent the opposite parties despite receiving the notice. Hence, this matter is taken up ex parte.

8. Heard the submission of the learned advocate for the petitioner. The material on record discloses that the complaint was lodged by Rajshree Creation against the present petitioner. The crux of the complaint pertains to a transaction between the parties and materials worth of Rs.97749/- was delivered and an amount of Rs.53473/- remain unpaid. This complaint was lodged because of non-payment of the residual amount as well as misappropriated the goods entrusted by the complainant company since the materials were also not returned. From the record it is unfolded that, there was transaction with the present complainant company since 2016 hence it prima facie established that the parties did not enter into such business transaction for the first time as stated in the complaint.

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[2] *2023 SCC Online Cal 2740*
[3] *(2006) C Cr L R(SC) 118*
[4] *(2024) 10 Supreme Court Cases 690*
[5] *(2008) 1 C Cr L R (Cal) 508*

9. In the case of ***Birla Corporation Limited (supra)***, the Hon'ble Supreme Court discussed the relevant provisions of Section 200 of the Code of Criminal Procedure and the enquiry contemplated under Section 202 of the Code of Criminal Procedure regarding issuance of process considering the severeness of issue of process. It was held therein as follows:

> *"Under Section 200 of the Code of Criminal Procedure, on presentation of the complaint by an individual, the Magistrate is required to examine the complainant and the witnesses present, if any. Thereafter, on perusal of the allegations made in the complaint, the statement of the complainant on solemn affirmation and the witnesses examined, the Magistrate has to get himself satisfied that there are sufficient grounds for proceeding against the accused and on such satisfaction, the Magistrate may direct for issuance of process as contemplated under Section 204 CrPC. The purpose of the enquiry under Section 202 CrPC is to determine whether a prima facie case is made out and whether there is sufficient ground for proceeding against the accused. "*

10. In this case, on perusal of the order passed by the learned Magistrate, on April 06, 2021, it is seen excepting mentioning about that "*considering the original documents on record and as such a prima facie case is made out*", no other reason can be found regarding enquiry as mandated in terms of the provision as well as by the Hon'ble Supreme Court. The word 'cognizance' means becoming aware of and it indicates point when a Magistrate takes judicial notice of an offence with a view to initiate proceedings. So while taking cognizance Magistrate has to be satisfied whether there are sufficient grounds for proceeding in the matter .He need not examine whether there are sufficient grounds for convicting the accused. Therefore, it goes without saying that the learned Magistrate did not apply his mind while taking cognizance and issuing summons against the accused under Sections 406/409/420 IPC knowing fully well that summoning is a serious issue.

11. In the case of ***Ram Biraji Devi & Anr. (supra)***, the Hon'ble Supreme Court discussed the essential ingredients required to attract the offence committed under Sections 406/419/420/120B IPC. It is settled law that the petition of complaint, must disclose the prima facie materials to constitute criminal offence either under Section 420 or Section 120B IPC .On the contrary from the nature of complaint it can be seen that admittedly an amount towards part payment was made and the further payment was withheld and also the articles which were supposed to be delivered at the instance of the petitioner to the complainant company was not delivered But either of these acts fails to attract the essential ingredients to constitute commission of the offence under Sections 420 or 406 IPC.

12. In terms of Section 405 IPC, the criminal breach of trust has been described where it is mentioned as follows:

> *" 405. Criminal breach of trust.-Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any discretion of law prescribing the mode in which such trust is to be discharges, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do, commits "criminal breach of trust". "*

13. So far as Section 406 is concerned, the criminal breach of trust as discussed in Section 405 is to be complied with. The basic ingredient to attract the same is that whoever in any manner is entrusted with the property or with any domain of the property dishonestly misappropriates the same, which reflects that there must be an intention to misappropriate the money or the article from the very inception of the transaction which is prima facie found missing since admittedly a part payment to the entire process was made by the present petitioner.

14. In a very recent decision of the Hon'ble Supreme Court, it has been categorically distinguished that offence under Sections 406 and 420 IPC cannot go simultaneously since there are two different sets of ingredients for offence; the charges cannot be levelled against a person for commission of offence both under Sections 406 and 420IPC at a time.

15. In the case of ***Murari Lal Gupt vs Gopi Singh***[6] in paragraph 6 it was held

> "*We have perused the pleadings of the parties, the complaint and the orders of the learned Magistrate and the Sessions Judge. Having taken into consideration all the material made available on record by the parties and after hearing the learned counsel for the parties, we are satisfied that the criminal proceedings initiated by the respondent against the petitioner are wholly unwarranted. The complaint is an abuse of the process of the court and the proceedings are, therefore, liable to be quashed. Even if all the averments made in the complaint are taken to be correct, yet the case for prosecution under Section 420 or Section 406 of the Penal Code is not made out. The complaint does not make any averment so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent*

[6] ***(2006) 2 SCC (Cr) 430***

parted with the money. It is not the case of the respondent that the petitioner does not have the property or that the petitioner was not competent to enter into an agreement to sell or could not have transferred title in the property to the respondent. Merely because an agreement to sell was entered into which agreement the petitioner failed to honour, it cannot be said that the petitioner has cheated the respondent. No case for prosecution under Section 420 or Section 406 IPC is made out even prima facie'

16. In this case as the complaint itself prima facie discloses that the materials supplied was worth Rs 97,749/- and the petitioner received the items but did not pay the amount of Rs 52,473/- and this glaringly manifest that the balance amount was paid by the petitioner though the said fact has not been mentioned in the com-plaint .It was never the case of the complainant that the petitioner did not pay the entire amount of Rs 97,749/-.The petitioner took the specific stand that they returned sarees worth rs 42,276/-and the opposite party no.1 never attended to deliver goods and it also did not attend the issue of repayment of the said amount and also threatened him with dire consequences. The Learned Magistrate ought to have considered this aspect of the matter before issuing the summon to the petitioner.

17. It is settled law that the power under Section 482 of the Code of Criminal Procedure is to be exercised in three circumstances i) to give effect to an order Cr.P.c ii)to prevent abuse of process of court and iii) to otherwise secure ends of justice though the inherent jurisdiction is wide, it has to be exercised sparingly , carefully and with caution .

18. In view of the above facts and circumstances of the case, this Court is of the view that there remains noting to constitute the offence as alleged in the complaint itself and the order of issuing summon is purely a result of non-application of mind and hence is liable to be set aside .Hence the proceeding if allowed further before the learned Magistrate it would otherwise be a gross abuse of process of law.

19. The revisional application is thus, allowed.

20. The entire proceeding pending before the learned Magistrate and all the orders passed in connection with that proceeding is hereby quashed.

21. All parties shall act on the server copies of this judgment duly downloaded from the official *website* of this Court.

22. 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.]