

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
(APPELLATE SIDE)**

Present:

The Hon'ble Justice Md. Shabbar Rashidi.

CRR 5269 of 2025

Dinesh Kumar Goyal & Anr.

Vs.

The State of West Bengal & Ors.

For the petitioner : Mr. Pratush Patwari.

Judgment on : 13/01/2026

Md. Shabbar Rashidi, J.:-

1. The instant revisional application has been filed at the behest of the accused persons in criminal trial being G.R.N No.1391 of 2019 arising out of Posta Police Station Case No.162 of 2019 dated November 29, 2019 seeking quashing of the entire proceeding therein.
2. It is submitted by the learned Advocate for the plaintiff that no case under Section 406/420 of the Indian Penal Code was made out in the first information report lodged by the private opposite party, nevertheless, the police authority submitted charge-sheet under the aforesaid Sections of law against the petitioners.
3. The learned Advocate for the petitioner also submits that the petitioners are the Directors of Company. There were business transaction between the company of the petitioners and that of the

private opposite parties. In course of the business transaction, certain disputes with regard to the payment of consideration money or the purchased money cropped up for which several proceedings between parties were initiated.

4. The learned Advocate for the petitioner submits that the petitioners also approached the Civil Court at Rajasthan seeking recovery of money against the private opposite parties. As a counter blast of such civil suit, a complaint under Section 156(3) of the Code of Criminal Procedure was filed against the petitioner by the private opposite parties.
5. The learned Advocate for the petitioner relied upon a judgment of the Hon'ble Supreme Court in ***Inder Chand Bagri Vs. Jagadish Prasad Bagri & Anr.*** reported in ***2025 INSC 1350*** in support of his contention that the offence of criminal breach of trust and the offence of cheating cannot go side by side.
6. The learned Advocate for the petitioner also cited a judgment of the Hon'ble Supreme Court in ***Tuhin Kumar Biswas Vs. The State of West Bengal*** reported in ***2025 INSC 1373*** on the proposition that where there are civil dispute between the parties, the criminal court should go slow in proceedings a criminal case.
7. The petitioner approached to obtain loan from the private opposite parties and failed and neglected to repay the said loan. As per the case of the complainant, the private opposite party's firm exported 5 containers of pomegranate to one of its existing buyers. The petitioners approached the private opposite party's firm to supply

containers of pomegranate. In such business one of the petitioners approached the complainant and made a requested to provide temporary accommodation of Rs.70,00,000/- . The complainant firm provided with an amount of Rs.55,46,000/- . There were business transaction between the firm and the petitioners. After sometime, when the complainant firm demanded back money from the petitioners, they tried to kill time. It was alleged that the petitioners had cheated the complainant firm with a sum of Rs.1,96,44,378.80/-.

8. The private respondent then lodged a written complaint which was registered as Posta P.S Case No. 162 of 2019 dated November 29, 2019 under Sections 420//406/120B of the Indian Penal Code, 1860 against the petitioner.
9. According to the learned Advocate for the petitioner, since there were business dealings in between the petitioner and the private opposite party firm, the petitioners cannot be alleged to have committed fraud or cheating of any money lent and advanced by the private opposite party. The learned Advocate for the petitioner also submitted that they had approached the Civil Court for realization of their dues prior to the institution of the First Information Report.
10. In the case of ***Tuhin Kumar Biswas (supra)*** it was held by the Hon'ble Supreme Court in paragraph 28 which is reproduced below:-

“28. Before parting with this case, this Court would like to emphasise that where there is a pending civil dispute between

the parties, the Police and the Criminal Courts must be circumspect in filing a chargesheet and framing charges respectively. In a society governed by rule of law, the decision to file a chargesheet should be based on the Investigating Officer's determination of whether the evidence collected provides a reasonable prospect of conviction. The Police at the stage of filing of Chargesheet and the Criminal Court at the stage of framing of Charge must act as initial filters ensuring that only cases with a strong suspicion should proceed to the formal trial stage to maintain the efficiency and integrity of the judicial system. The tendency of filing chargesheets in matters where no strong suspicion is made out clogs the judicial system. It forces Judges, court staff, and prosecutors to spend time on trials that are likely to result in an acquittal. This diverts limited judicial resources from handling stronger, more serious cases, contributing to massive case backlogs. Undoubtedly, there can be no analysis at the charge framing stage as to whether the case would end in conviction or acquittal, but the fundamental principle is that the State should not prosecute citizens without a reasonable prospect of conviction, as it compromises the right to a fair process.”

11. Similarly, in ***Inder Chand Bagri (supra)*** it was held by the Hon'ble Supreme Court in paragraph 23 which is reproduced below:-

“Furthermore, it is pertinent to mention that if it is the case of the complainant/respondent No.1 that the offence of criminal breach of trust as defined under Section 405 of the IPC, punishable under Section 406 of the 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 in Section 415, punishable under Section 420 of the IPC. This Court in Delhi Race Club (1940) Limited vs. State of Uttar Pradesh, (2024) 10 SCC 690 observed that there is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making false or misleading representation i.e. since inception. In criminal breach of trust, mere proof of entrustment is sufficient. Thus, in case of criminal breach of trust, the offender is lawfully entrusted with the property, and he dishonestly misappropriated the same. Whereas, in case of cheating, the offender fraudulently or dishonestly induces a person by deceiving him to deliver a property. In such a situation, both offences cannot co-exist simultaneously. Consequently, the complaint cannot contain both the offences that are independent and distinct. The said offences cannot coexist simultaneously in the same set of facts as they are antithetical to each other.”

12. At the time of hearing the learned Advocate for the petitioner also submits that by lodging a First Information Report against the

petitioners the private opposite party not only suppressed the civil suit filed at the behest of the present petitioner but suppressed also a criminal proceeding in Baishali Nagar Police Station Case No.402 of 2019 dated June 10, 2019.

13. The First Information Report so filed on behalf of the private opposite parties was taken up for investigation by the police authority and upon completion of such investigation, the charge-sheet was filed. The aforesaid facts were also intimated to the Investigating Officer of the case by a letter written by the present petitioner, nevertheless, the investigation ended in a charge-sheet.
14. At the time of hearing, the learned Advocate for the petitioner, however, informed that the trial of the proceeding has already commenced. Charges stood framed and prosecution witnesses are being examined at the trial.
15. Since, the trial of the case has already commenced, and an appropriate Court has already started considering the evidence in respect of the offence alleged as against the present petitioner, it would not be appropriate to quash the entire proceeding at this stage.
16. The petitioners are at liberty to raise all such issues before the learned Trial Court.
17. With such observation CRR 5269 of 2025 is disposed of.

18. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(MD. SHABBAR RASHIDI, J.)