

CALCUTTA HIGH COURT
IN THE CIRCUIT BENCH AT JALPAIGURI
CRIMINAL REVISIONAL JURISDICTION
APELLATE SIDE

Present:

The Hon'ble Justice Partha Sarathi Chatterjee

CRR 312 of 2022

Karuna Greentech Pvt. Ltd.& Ors.

-Vs.-

V. B. Constructions Pvt. Ltd.

For the Petitioners : Mr. Joydeep Biswas,
Mr. Uday Sankar Sankar,
Mr. Kaushik Ghosh.

For the OppositeParty : Mr. Milinde Paul,
Mr. Nabankur Paul,
Ms. Sutapa Sen Paul,
Ms. Bedashruti Base,
Mr. Subham Das,
Mr. Bodhistya Ghosh.

Heard on : 28.04.2026

Judgment on : 12.05.2026

Partha Sarathi Chatterjee, J.:-

1. The present application has been filed by the petitioners, namely, Karuna Greentech Pvt. Ltd. and its 3 (three) Directors, under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “the Code”), seeking quashing of the proceeding arising out of C.R. Case No. 417 of 2022 under Sections 406/420 of the IPC, presently pending before the learned Judicial Magistrate, 1st Court at Siliguri, as well as all orders passed therein.
2. The record would reveal that on 08.03.2022, the O.P. filed a complaint under Section 200 of the Code before the Court of the learned Additional Chief Judicial Magistrate at Siliguri, inter alia, alleging therein that petitioner no. 1 Company deals in the “Nordusk Light Division” through its Directors, namely, petitioner nos. 2 to 4 herein. It was further alleged that, upon being approached by the representatives of petitioner no. 1 Company, the O.P. Company was appointed as a “Super Stockist” or “Prime Partner” for the Siliguri and adjoining North Bengal region for distribution of LED lighting products marketed under the brand “Nordusk.”
3. The dispute leading to the filing of the complaint originated from a commercial arrangement entered into in or about December, 2017, pursuant to which the petitioners allegedly induced the O.P. to purchase stock/goods worth Rs. 15,42,398/-. The structure of the said arrangement envisaged that the petitioners would provide all sorts of support, including necessary marketing, sales promotion, appointment of distributors, and collection support.

4. However, ultimately, no such support was extended to the O.P. Despite several reminders, conferences, and phone calls, the petitioners allegedly agreed to repurchase the unsold stock/goods and, accordingly, the O.P. dispatched the unsold stock worth Rs. 9,86,011/-. However, despite receipt of the said unsold stock, the petitioners neglected to pay the aforesaid amount. The O.P. also issued a legal notice claiming the said amount along with damages of Rs. 1 (one) lakh and interest accrued thereon at the rate of 18% per annum. However, the said amounts have not yet been paid. Hence, the complaint.
5. The record would further reveal that on 08.03.2022, cognizance was taken and the case was made over to the Court of the learned Judicial Magistrate, 1st Court at Siliguri for disposal. By an order dated 11.04.2022, the transferee Court called for a report from the Inspector-in-Charge of Siliguri Police Station to conduct an investigation and submit a police report indicating whether any prima facie case was made out against the accused persons, namely, the petitioners herein, for commission of the alleged offences punishable under Sections 406/420 of the IPC.
6. On 07.09.2022, upon perusal of the police report, the learned Court came to the conclusion that a prima facie case had been made out against the accused persons, namely, the petitioners herein, for commission of the alleged offences and, accordingly, process under Section 204 of the Code was issued against them. Upon receipt of the summons, the petitioners filed the present application.
7. Mr. Biswas, learned advocate appearing for the petitioners, while arguing on facts claimed that the O.P., being a relatively new player in the market, had been informed in clear and unambiguous terms about the nature and conditions of the

business arrangement. According to him, as per that arrangement, the opposite party would function as a regional distribution hub, responsible for procuring goods from the petitioner company, appointing and managing sub-distributors, and undertaking “market collection” of sale proceeds from such downstream channels and the responsibility for realization of payments from the market lay exclusively with the opposite party, and that the petitioner company did not undertake any obligation in respect of recovery from sub-distributors.

8. He further claimed that the parties carried on business for a substantial period of approximately three years, during which numerous transactions took place in the ordinary course of trade, as evidenced by invoices, delivery records, and a running statement of accounts maintained between the parties. According to him, the existence of a continuous course of dealings, reflected through debit and credit entries over a period of time, would demonstrate that the relationship between the parties was purely commercial in nature and had been acted upon without any dispute during the subsistence of the arrangement.
9. He contended that the amount of Rs. 9,86,011/- cannot be construed as “property entrusted for a specific purpose” in the legal sense; rather, it forms part of reciprocal financial obligations arising out of commercial transactions and, therefore, according to him, the dispute falls within the domain of civil law. It was further argued that there was no dishonest or fraudulent intention on the part of the petitioners at the inception of the arrangement in 2017 and that the prolonged and undisputed course of business dealings between the parties negates any allegation of initial deception, which is a necessary ingredient of the offence of cheating punishable under Section 420 IPC. The petitioners also

contended that the complaint does not disclose any specific act of misappropriation or conversion of property so as to satisfy the essential ingredients of the offence of criminal breach of trust punishable under Section 406 IPC.

10. In relation to the individual petitioners, it was contended that they had been impleaded solely on account of their designation as Directors of the company, without any specific averments indicating their direct involvement, participation, or knowledge in the alleged transactions and that, in the absence of such specific allegations, no criminal liability could be attributed to them.
11. Referring to the provisions of Section 202 of the Code, he contended that the said section mandates that, in a case where the accused resides beyond the area in which the Magistrate exercises jurisdiction, the Magistrate shall either inquire into the case himself or direct an investigation to be made by a police officer or by such other person for the purpose of deciding whether there is sufficient ground for proceeding. However, in the present case, the Magistrate directed the police authorities merely to enquire whether a prima facie case had been made out, which, according to him, amounts to a clear violation of the legislative mandate engrafted in Section 202.
12. To invigorate his submissions, he relied upon the decisions reported in (2024) 10 SCC 690 (*Delhi Race Club (1940) Ltd. & Ors. vs. State of Uttar Pradesh & Anr.*) and 2023 SCC Online SC 3 (*Deepak Gaba and Ors. vs. State of Uttar Pradesh and Anr.*) for the proposition that, in order to sustain criminal charges such as Criminal Breach of Trust punishable under Section 406 IPC or Cheating punishable under Section 420 IPC, the complaint must satisfy the essential

statutory ingredients, namely, entrustment and dishonest intention at the very inception of the transaction. He further referred to the decision reported in *2023 SCC Online SC 82 (Sachin Garg vs. State of U.P. and Anr.)* and submitted that the Hon'ble Supreme Court quashed the criminal proceedings therein, holding that a commercial dispute relating to payment rates and outstanding invoices does not constitute "Criminal Breach of Trust" unless there is material to show dishonest entrustment or misappropriation.

13. He relied upon the decision reported in *(2019) 2 Supreme Court Cases 401 (Vinod Natesan vs. State of Kerala & Ors.)* for the proposition that a purely civil dispute cannot be given a "criminal cloak" with a view to exerting pressure upon an accused person. He cited a decision, reported in *2025 INSC 430 (Manish vs. State of Maharastra and Anr.)* for the proposition that mere breach of promise to repay *per se* does not infer dishonest intention. To buttress his submissions, he further referred to two unreported decisions delivered by two different Co-ordinate Benches of this Court in *CRR 1154 of 2005 (Krishna Kumar Bangur vs. State of West Bengal and Anr.)* and *CRR 3039 of 2007 (Kingshuk Neogi vs. The State of West Bengal & Ors.)* and a reported decision by a Coordinate Bench of this Court in *Krishna Kumar Bagur vs. State of West Bengal & Anr, 2008 (1) C.Cr. L.R. (Cal) 508*.

14. In rebuttal, Mr. Pal, learned advocate appearing for the O.P., argued that the O.P. had been induced by the petitioners to enter into a commercial arrangement on the basis of representations made by them regarding the commercial viability of the business, including assurances relating to market support, promotional backing, and the establishment of a robust distribution network.

15. Mr. Pal further argued that such representations were made with the intention of persuading the O.P. to invest capital and assume the role of Super Stockist, and that acting upon such representations in good faith, the O.P., pursuant to the said arrangement, procured goods from the petitioner company and made payments aggregating to Rs. 15,42,398/- during the course of the business relationship.
16. He contended that since the petitioners failed to provide the necessary support as assured, the O.P. suffered substantial losses and, ultimately, after several requests and deliberations in that regard, the petitioners agreed to buy back the unsold stock. Pursuant thereto, the O.P. dispatched unsold goods worth Rs. 9,86,011/- to the petitioners; however, despite receipt of the said goods, no payment whatsoever was made to the O.P. According to Mr. Pal, the said goods worth Rs. 9,86,011/- were entrusted to the petitioners and their failure to refund the value thereof amounts to misappropriation and criminal breach of trust.
17. Heard the learned advocates appearing for the respective parties and perused the materials on record placed before me.
18. Needless to emphasize, the power to quash a criminal proceeding is to be exercised sparingly, with circumspection, and in the rarest of rare cases. Though the power is wide, it is not unlimited. In *State of Haryana vs. Bhajan Lal*, reported in (1992) Supp (1) SCC 335, the Hon'ble Supreme Court delineated illustrative categories of cases in which quashing of criminal proceedings would be justified. However, in *Anukul Singh vs. State of Uttar Pradesh & Anr.*, reported in AIR 2025 SC 4567, it was held that the categories enumerated in *Bhajan Lal* are illustrative and not exhaustive, but they furnish guiding principles for balancing two competing considerations, namely, (a) prevention of abuse of

the process of law, and (b) ensuring that criminal proceedings are not stifled at the threshold on disputed questions of fact. Indisputably, it is the duty of the Court to quash a criminal proceeding where it appears that continuation thereof would amount to an abuse of the process of law.

19. In *Bhajanlal (supra)*, it was, inter alia, observed that where the allegations contained in the FIR or complaint, even if taken at their face value and accepted in their entirety, do not constitute any offence, the proceeding may be quashed. However, at this stage, the Court is not expected to embark upon an enquiry into the reliability or genuineness of the allegations made in the FIR or complaint. Further, where the criminal proceeding is manifestly attended with mala fides and/or maliciously instituted with an ulterior motive for wreaking vengeance on the accused due to private and personal grudge, the proceeding may be quashed.

20. Indisputably, merely because the allegations disclose a civil dispute, the same by itself may not be a ground to hold that the criminal proceeding should not be allowed to continue. In support of this proposition, a useful reference may be made to the decision reported in *AIR 2014 SC 3352 (Mosiruddin Munshi vs. Md. Siraj)*. Simultaneous continuance of both criminal prosecution and civil proceedings is not prohibited if the two arise from distinct causes of action. However, if a reading of the complaint, taken as a whole, indicates that the dispute is essentially civil in nature and the ingredients of the alleged criminal offences are wholly absent, or that a purely civil dispute has been given an unwarranted criminal colour, such criminal prosecution would be liable to be quashed.

21. In *Ganga Dhar Kalita v. State of Assam*, reported in (2015) 9 SCC 647, the Court once again emphasized that initiation of criminal proceedings in disputes which are predominantly civil in nature, particularly property disputes, merely with a view to harass the accused persons or to exert pressure in pending civil litigation, amounts to abuse of the process of law. Similarly, in *Shailesh Kumar Singh @ Shailesh R. Singh v. State of Uttar Pradesh and others*, reported in 2025 INSC 869 [Criminal Appeal No. 2963/2025 decided on 14.07.2025], the Hon'ble Supreme Court deprecated the tendency of converting purely civil disputes into criminal cases and reiterated that criminal prosecution cannot be resorted to as a mechanism for recovery of money when the dispute is essentially civil in character.

22. As noted previously, in the present case, in the complaint, it was alleged that the petitioners induced the O.P. to enter into a commercial arrangement with the petitioner no.1 company on the basis of representations made by the petitioners regarding the commercial viability of the business, including assurances of market support, promotional backing, and the establishment of a robust distribution network and accordingly, O.P. entered into the role of Super Stockist, and pursuant to the said arrangement, O.P. procured goods from the petitioner company and made payments aggregating to Rs. 15,42,398/- over the course of the business relationship. However, the petitioner company did not provide such support and lastly, after several communications, the petitioner company agreed to buy back the unsold stock and following such agreement, the O.P. dispatched unsold goods of Rs. 9,86,011/-; however, the petitioners did not pay this amount.

Therefore, it is quite vivid that non-payment of Rs. 9,86,011/- prompted the O.P. launch the criminal prosecution.

23. In *Manish (supra)*, it was held that a mere breach of a promise to repay does not, by itself, infer dishonest intention, and failure to repay due to unfortunate business losses cannot be clothed with criminal culpability, nor can the process of criminal law be utilized for recovery of outstanding dues.

24. In *Vinod Natesen (supra)*, it was held that merely because the accused person failed to pay the amount due and payable under the agreement, it cannot, by itself, be said that he committed offences punishable under Sections 406 and 420 of the IPC. In *Anil Mahajan vs. Bhor Industries Ltd. & Anr.*, reported in 2006(1) SCC (Cri) 746 [as referred to in *Krishna Kumar Bangur (supra)*], it was held that mere failure of a person to subsequently keep up his promise does not permit a presumption that he had a culpable intention at the very inception, namely, at the time when the promise was made. A distinction must always be borne in mind between a mere breach of contract and the offence of cheating. The determinative factor is the intention of the accused at the time of inducement, and the subsequent conduct alone is not the sole test. Mere breach of contract cannot give rise to criminal prosecution for cheating unless fraudulent or dishonest intention is shown to have existed at the inception of the transaction.

25. In *Thermax Limited & Others vs. K.M. Johny*, reported in (2011) 13 SCC 412, it was highlighted that the Court should remain watchful of the distinction between civil and criminal wrongs, although there may be situations where the allegations constitute both civil as well as criminal wrongs. The Court must cautiously examine the facts to ascertain whether they merely disclose a civil wrong,

inasmuch as the ingredients constituting a criminal offence may be absent. It was further observed that, since an order of summoning carries grave consequences by setting the criminal law in motion, conscious application of mind to the aforesaid aspects is imperative. The requirement under Section 204 of the Code is that the Magistrate must carefully scrutinize the evidence, namely, the pre-summoning materials brought on record. The Magistrate may also put questions to the complainant under Section 200 of the Code in order to elicit answers for ascertaining the truthfulness of the allegations.

26. In *Dipak Gaba & Others vs. State of Uttar Pradesh & Anr.*, reported in (2023) 3 SCC 423, it was held that for section 405 to be attracted, the following have to be established:

- ‘i) the accused was entrusted with property, or entrusted with dominion over property ;
- ii) that accused had dishonestly misappropriated or converted to their own use that property, or dishonestly used or disposed of that property or willfully suffer any other person to do so; and
- iii) such misappropriation, conversion, use or disposal should in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract which the person has made, touching the discharge of such trust.’

27. In *Delhi Race Club (1940) Ltd. (supra)*, it was held that in respect of an offence under Section 420 IPC, the following are the essential ingredients:

- i) Deception of any person, either by making a false or misleading representation or by other action or by omission;
- ii) Fraudulently or dishonestly inducing any person to deliver any property, or
- iii) The consent that any person shall retain any property and finally intentionally inducing that person to do or omit to do anything which he would not do or omit.

28. Therefore, the only principle that emerges from the aforesaid discussion is that every breach of trust does not ipso facto constitute the penal offence of criminal breach of trust or cheating; however, where such breach is accompanied by the requisite *mens rea*, it may give rise to criminal prosecution. On the other hand, if the breach merely gives rise to a civil wrong, the aggrieved person must seek appropriate remedy before the competent civil court.

29. In the present case, as noticed earlier, the transaction between the parties commenced in December, 2017 and, subsequently, in the year 2022, the complaint came to be filed alleging that the petitioners had taken back certain unsold goods worth Rs. 9,86,011/- from the O.P., but failed to make payment thereof. However, in the complaint petition, no pre-summoning materials were brought on record to demonstrate, even prima facie, that the petitioners had the requisite *mens rea* right from the inception of the transaction.

30. The materials on record disclose that the petitioners had initially sold the goods to the O.P.; however, for certain reasons, the O.P. could not sell those goods and, ultimately, upon persuasion by the O.P., the petitioners agreed to take back the unsold goods. The grievance of the O.P. is essentially that payment for such

returned goods was not made. Thus, the dispute appears to be purely commercial in nature since in view of the proposition laid down in the decision of Manish (*supra*), mere breach of promise to repay per se does not infer dishonest intention and such breach cannot be clothed with culpability.

31. The term “inquiry”, as defined under Section 2(g) of the Code, relates to a judicial act and not to the steps taken by the police (See the judgment delivered in *Lalita Kumari vs. Government of Uttar Pradesh*, reported in *AIR 2014 SC 187*), and the scope of an inquiry under Section 202 of the Code is limited to deciding whether or not sufficient grounds exist for proceeding against the accused. Needless to state, Section 202 mandates that where the accused resides beyond the territorial jurisdiction of the Magistrate, the Magistrate shall either inquire into the case himself or direct an investigation to be conducted by a police officer or by such other person as he thinks fit, for the purpose of deciding whether sufficient grounds exist for proceeding. However, in the present case, the jurisdictional police was directed to conduct an inquiry to ascertain whether a *prima facie* case had been made out against the accused persons and based upon the police report, the Magistrate issued the process.

32. In the present case, it is equally evident that no specific averments have been made against the individual directors of petitioner No. 1 Company. The complaint does not contain any allegation indicating their direct involvement, participation, or knowledge in the alleged transactions, and they appear to have been impleaded solely on account of their designation. It is a well-settled principle of criminal jurisprudence that directors cannot be held vicariously liable for the alleged financial misdeeds of a company in the absence of specific allegations or

material demonstrating their active role or participation therein. Therefore, the aforesaid issues raised by Mr. Biswas cannot be disregarded.

33. Therefore, applying the propositions laid down in the judgments referred to in the preceding paragraphs and having regard to the discussions made in the foregoing paragraphs, I am of the view that if the criminal proceeding at hand is allowed to continue, the same would amount to an abuse of the due process of law.

34. Accordingly, the present application stands allowed. Consequently, the proceeding arising out of C.R. Case No. 417 of 2022, presently pending before the Court of the learned Judicial Magistrate, 1st Court, Siliguri, together with all orders passed therein, stands quashed.

35. With these observations and order, the present application being CRR 312 of 2022 is, thus, disposed of.

(Partha Sarathi Chatterjee, J.)