

Form No. J(2)

In the High Court at Calcutta
Criminal Revisional Jurisdiction
Appellate Side

Present :

THE HON'BLE JUSTICE KAUSIK CHANDA

In Re : An application under Section 528 of the BharatiyaNagarik Suraksha Sanhita, 2023 corresponding to Section 482 of the Code of Criminal Procedure, 1973;

Case No.

C.R.R. No.1685 of 2026

with

CRAN 1 of 2026

CRAN 2 of 2026

In the matter of:

VIJAY KUMAR AGARWAL @ BIJAY KUMAR AGARWAL

...Petitioner

VS.

THE STATE OF WEST BENGAL & ANR.

...*Opposite Parties*

For the Petitioner : Mr. Pawan Kumar Gupta
Mr. S. S. Bhalotia
Mr. Anurag Bagaria

...Advocates

For the State : Mr. Krishnendu Bhattacharya
Mr. Anamitra Banerjee

...Advocates

For the Opposite Party no.2 : Mr. Abhijit Bhadra

...Advocate

Heard on : 15.06.2026, 17.06.2026 & 24.06.2026

Judgment on : 24th June, 2026

KAUSIK CHANDA, J.:-

1. The petitioner has filed the present application seeking quashing of the entire criminal proceeding, including the order dated March 19, 2026 passed in connection with Belur Police Station Case No. 47 of 2025 dated March 17, 2025 under Sections 420 and 406 of the Indian Penal Code, 1860, presently pending before the learned Chief Judicial Magistrate, Howrah as G.R. Case No. 1387 of 2025.

2. By the order dated March 19, 2026, the learned Magistrate permitted the investigating agency to freeze the bank accounts of the petitioner linked to his PAN. It appears that, pursuant to the said order, as many as five bank accounts of the petitioner have been frozen by the investigating agency.

3. Although this Court has heard the matter at length, a plain reading of the First Information Report itself appears sufficient to warrant consideration of the prayer for quashing, without entering into the other issues arising in the present proceeding. In this regard, the relevant portions of the First Information Report dated March 17, 2025 are reproduced below:

*“To
The officer-In-Charge,
Belur Police Station,
Howrah West Bengal*

Sub :- The Complaint against :-

*VIJAY KUMAR AGARWAL, Mobile No: -
9435049846*

Proprietor of M/S. M N TRADERS having its office at

*2nd Floor, P R. Complex, Assam Trunk Road,
Guwahati, Kamrup Metropolitan – 781001.
P.S-Bharalumuka Police Station.*

Sir,

I Rohit Agarwal Son of Narendra Kumar Agarwal, is one of the Partner of Vedika Iron and Steel I.LP having its Registered Office at 212, Girish Ghosh Road, 4th Floor Suit No. 417, Belur, District - Howrah, West Bengal – 711201.

Sir, I do hereby inform you that I am a Supplier of TMT Bar and on the basis of my said business I came across with one Mr. VIJAY KR. AGARWAL Proprietor of M/S. MN Traders who interested to purchase the TMT Bar from me and accordingly he placed his proposal to buy some TMT Bar from me and as such, on good faith I accepted his proposal and supplied him the proposed items, in between the period of 9th of June, 2023 to 22nd day of June, 2023, which was tune of Rs. 1,39,91,195/-. There after receiving the said goods Mr. Vijay Kr. Agarwal paid a tune of Rs.1,30,16,725/- only out of the total amount of Rs.1,39,91,195/- and the said amount send by him to me in various dates from 16th day of June to 21st day of September, 2023. The due amount of Rs.9,74,470/- is still due.

That I requested the said person several times through telephonic message and calls but he did not paid any heed of my request. I also sent personal messenger to his office at the said address for release of the said dues amount but all in vain he didn't attend my request he simply denied to pay the due amount, and moreover despite he blame dangerous

by his nature and threat to tell me by his local antisocial men of if I further ask him for my due amount. Lastly I also send one Lawyer's notice to the said person on dated 20.09.2024 but no response not any whispering came from him till to date.

Sir, the said person Mr. Vijay Kr. Agarwal with his ill motive cheated me for which I am suffering a great loss and damage in respect of my business transaction. I am passing my days in fear and loss, Therefore I request you hereby take immediate action against the said person Mr. Vijay Kr. Agarwal and help me to recover my said due amount and also request you to treat this complaint as an F.I.R. and do needful.

Thanking you,

Yours faithfully,

For Vedika Iron & Steel LLP

Vedika Iron & Steel LLP

Partner,

Designated Partner."

4. A plain reading of the First Information Report makes it abundantly clear that the complaint was lodged nearly two years after the occurrence of the alleged cause of action and pertains essentially to a commercial transaction. Nevertheless, the police authorities proceeded to register the FIR on the very date of receipt of the complaint without conducting any preliminary enquiry. Prima facie, this Court is of the view that such action is contrary to the principles laid down by the Hon'ble Supreme Court reported at(2014) 2 SCC 1(***Lalita Kumari v. Government of Uttar Pradesh***).

5. Be that as it may, the contents of the FIR, as extracted above, reveal that the opposite party no. 2 supplied TMT bars to the petitioner during the period between June 9, 2023 and June 22, 2023. The total invoice value of the goods supplied was Rs. 1,39,91,195/-. It further appears that the petitioner made payments aggregating to Rs. 1,30,16,725/- between June 16, 2023 and September 21, 2023, leaving an outstanding balance of Rs. 9,74,470/-. In the aforesaid circumstances, the opposite party no. 2 lodged the complaint seeking assistance in recovering the said outstanding amount.

6. Learned advocate appearing on behalf of the opposite party no. 2 submits that the petitioner deliberately and wilfully failed to discharge the outstanding liability. It is contended that, despite repeated demands, the petitioner failed to make payment of the balance amount, thereby attracting the provisions of Sections 406 and 420 of the Indian Penal Code, 1860.

7. This Court is unable to accept the aforesaid contention. There can be little doubt that, on the basis of the allegations contained in the complaint, no criminal proceeding ought to have been initiated against the petitioner. The dispute, as disclosed in the FIR, is essentially contractual and commercial in nature. The FIR is, therefore, liable to be quashed in the light of the principles laid down by the Hon'ble Supreme Court reported at **1992 Supp (1) SCC 335 (State of Haryana v. Bhajan Lal)**, as the allegations contained therein do not disclose the commission of any cognizable offence.

8. The learned advocate appearing for the petitioner has rightly placed reliance upon the decision of the Hon'ble Supreme Court reported at (2024) 10 SCC 690 (*Delhi Race Club (1940) Ltd. v. State of Uttar Pradesh*), in support of the contention that, on the facts disclosed in the FIR, the registration of a criminal case under Sections 406 and 420 of the Indian Penal Code, 1860 was wholly unwarranted. The relevant observations contained in paragraphs 30 and 36 of the said judgment are reproduced below:

“30. 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 should be looked into which may be judged by a subsequent conduct, but for this, the subsequent conduct is not the sole test. 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, it is this intention, which is the gist of the offence. Whereas, for the criminal breach of trust, the property must have been entrusted to the accused or he must have dominion over it. The property in respect of which the offence of breach of trust has been committed must be either the property of some person other than the accused or the beneficial interest in or ownership of it must be of some other person. The accused must hold that property on trust of such other person. Although the offence, i.e. the

offence of breach of trust and cheating involve dishonest intention, yet they are mutually exclusive and different in basic concept. There is a distinction between criminal breach of trust and cheating. For cheating, criminal intention is necessary at the time of making a 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 any property. In such a situation, both the offences cannot co-exist simultaneously.

...

...

36.From the aforesaid, there is no manner of any doubt whatsoever that in case of sale of goods, the property passes to the purchaser from the seller when the goods are delivered. Once the property in the goods passes to the purchaser, it cannot be said that the purchaser was entrusted with the property of the seller. Without entrustment of property, there cannot be any criminal breach of trust. Thus, prosecution of cases on charge of criminal breach of trust, for failure to pay the consideration amount in case of sale of goods is flawed to the core. There can be civil remedy for the non-payment of the consideration amount, but no criminal case will be maintainable for it. [See : Lalit Chaturvedi

and Others v. State of Uttar Pradesh and Another: 2024 SCC OnLine SC 171 & Mideast Integrated Steels Ltd. (MESCO Steel Ltd.) and Others v. State of Jharkhand and Another: 2023 SCC OnLineJhar 301]"

9. This This Court is of the considered view that a purely civil dispute cannot be permitted to be transformed into a criminal proceeding. Criminal law cannot be invoked as a means of enforcing contractual obligations or recovering outstanding dues arising out of commercial transactions. The use of criminal proceedings for such purposes amounts to an abuse of the process of law. This view finds support in the decision of the Hon'ble Supreme Court reported at **2025 SCC OnLine SC 2060**(**Anukul Singh v. State of Uttar Pradesh**).

10. In the opinion of this Court, the facts of the present case are squarely covered by the decision of the Hon'ble Supreme Court reported at **2025 SCC OnLine SC 1293**(**Shrichand Rajaram Kukreja. v. State of Maharashtra**). The principles laid down therein are directly applicable to the controversy involved in the present proceeding. The relevant paragraphs of the said judgment are reproduced below:

"18. Coming to the prosecution of the appellants based on the impugned-FIR No. 443 of 2015 lodged by complainant (respondent No. 2 in Criminal Appeal @ SLP (Crl.) No. 9857 of 2018), we find that the allegations levelled therein, even if taken to be true on their face value, do not disclose the necessary ingredients of any offence,

what to say of a cognizable offence/s. The allegations, on the face of it, disclose a dispute which is purely civil in nature. The complainant came out with an admitted case in his complaint that he had received a part payment to the tune of Rs.3,68,15,612/- from the appellants, towards the work which was carried out in furtherance of the sub-contracts awarded initially through the sub-contractor, namely SWD Infra, and thereafter directly to the complainant's company. Apparently thus, the admitted facts as available on record reveal that the complainant's claim is for reimbursement of the remaining amount claimed by him towards the works executed in furtherance of a contract. The allegations, made in the complaint, present a dispute which is purely commercial and civil in nature. It seems that the complainant has contrived to somehow of the other, involve the police machinery to act as recovery agents on his behalf. The complaint, on the face of record, did not disclose any offence whatsoever and no FIR should have been registered based thereupon.

19. This Court has time and again come down heavily on the attempts of the over-zealous litigants in trying to settle their civil disputes by misusing the police machinery and resorting to criminal proceedings. A gainful reference in this regard may be made to a decision of three-judge bench of this Court in Inder Mohan Goswami v. State of Uttaranchal, which involved a contractual dispute among the parties wherein a part payment had been made to the complainant

by the accused. This Court, while exercising jurisdiction under Article 136 of the Constitution of India, quashed the FIR/criminal proceedings."

11. In view of the foregoing discussion, this Court is of the considered opinion that no criminal proceeding could have been initiated against the petitioner for the purpose of recovering the alleged outstanding amount. The dispute, as disclosed from the materials on record, is essentially civil and commercial in nature and does not disclose the commission of any cognizable offence.

12. The present criminal proceeding is, therefore, a clear abuse of the process of law and warrants interference by this Court in exercise of its revisional and inherent jurisdiction.

13. Accordingly, the entire proceeding arising out of Belur Police Station Case No. 47 of 2025 dated March 17, 2025 under Sections 420 and 406 of the Indian Penal Code, 1860, together with all consequential proceedings arising therefrom, stands quashed.

14. As a necessary consequence thereof, the order dated March 19, 2026 passed by the learned Chief Judicial Magistrate, Howrah in G.R. Case No. 1387 of 2025 also stands quashed and set aside.

15. The bank accounts of the petitioner, which have been frozen pursuant to the aforesaid order of the learned Magistrate, shall be defreezed forthwith by the concerned authorities upon communication of this order.

16. With the above observations and directions, the instant revisional application, being CRR 1685 of 2026, stands disposed of.

Consequently, the connected applications, being CRAN 1 of 2026 and CRAN 2 of 2026, shall also stand disposed of.

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

18. Urgent Photostat certified copy of this judgment and order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Kausik Chanda, J.)