

(2025) 07 CAL CK 0779

In the Calcutta High Court, Appellate Side

Case No : CRR No. 21 Of 2016 With CRAN No. 9 Of 2019 (Old No.: CRAN 3387 of 2019) With CRAN 10 Of 2020

Satish Choudhary & Ors

APPELLANT

Vs

State Of West Bengal & Anr

RESPONDENT

Date of Decision : 07-07-2025

Acts Referred:

Constitution of India, 1950 — Article 226
Code of Criminal Procedure, 1973 — Section 155(2), 156(1), 482
Indian Penal Code, 1860 — Section 34, 120B, 405, 406, 415, 420, 463, 464, 467, 468, 469

Citation : (2025) 07 CAL CK 0779

Hon'ble Judges : Rai Chattopadhyay, J

Bench : Single Bench

Advocate : Sabyasachi Banerjee, P.P. Dasgupta, P. Sanchali, Amit Dey, B. Choudhury, Soubhik Mitter, Samarajit Basu, Arindam Dey, Joyjeev Medhi, Faria Hossain, Anand Kesh

Final Decision : Allowed

Judgement

Rai Chattopadhyay, J

(1) The petitioners have challenged in the instant revision the proceedings in G.R. Case No. 887 of 2014, now pending in the Court of the Chief Judicial Magistrate, Howrah, in connection with the Howrah Police Station Case No. 124 of 2014 dated 3.3.2014. The petitioners are the first three accused persons in the FIR as above, filed by the opposite party No. 2. The Howrah Police Station Case No. 124 of 2014 dated 03.03.2014, has been registered under sections 406, 420, 467, 468, 469, 120B and 34 of the Indian Penal Code.

(2) Chronology of events leading to filing of the FIR as above, may be narrated in a nutshell, as follows:-

- Pushpanjali Tie Up Private Limited, represented here by the opposite party No. 2, said to have invested a huge amount of money to purchase 5,25,000 shares of

Flexituff International Limited, worth Rs. 11,25,00,000/-. Thus, the complainant/opposite party No. 2 claims to be the owner of the entire share of Flexituff International Limited as above stated.

- In the month of March 2013, due to some financial crisis, the complainant/opposite party No.2 had decided to pledge those shares and was introduced to the petitioners, through the accused person No. 4 in the FIR (who is not a party in this revision). Allegedly, the petitioners had induced the opposite party No. 2/ complainant to entrust and invest, deceitfully assured and promised to provide required financial aid against pledging of shares as collateral security. Relying upon such false assurances to be true, the complainant/opposite party No. 2 pledged 5,25,000 shares of Flexituff International Limited worth Rs. 11,25,00,000/-, in the demat account of the petitioners, by executing two separate loan agreements. A sum of Rs. 5 crores was advanced by the petitioners to the complainant/opposite party No.2, in lieu of pledging those shares, in accordance with the terms of the agreements.

- Later on, allegedly, the accused persons on different false plea had made the complaint/opposite party No. 2 to refund Rs. 2 crores in favour of the petitioners No. 2 & 3 on the promise and assurance to release the shares earlier pledged, to the tune of Rs. 4.5 crores. But instead of returning back the shares worth Rs. 4.5 Crores, the petitioners, along with accused person No. 4 (in the FIR), allegedly have returned only 13,600 shares on October 15, 2013 and 27,100 shares on October 28, 2013. The complainant has alleged that rest of the shares, being 1,98,761 of those, were fraudulently sold in favour of CD Equisearch Private Limited, a company owned by the accused persons No. 5 to 7 (not parties in this revision) on October 29, 2013. Allegedly, such transaction has been made by the petitioners, without informing the complainant/opposite party No.2, and without his knowledge or consent. Thus, an offence of cheating and forgery has been alleged against the petitioners. The complainant/opposite party No.2 has stated that the petitioners were holding the shares as above as collateral security in trust for and on behalf of the opposite party No.2 and that they did not have any authority or right to sell the shares or transfer those. By such unauthorised transaction, the petitioners have unjustly enriched themselves and subjected the complainant to wrongful loss by cheating and breach of trust.

- The loan agreements are a record which have been entered into by the complainant/opposite party No. 2 and the present petitioners No. 2 and 3 respectively being dated March 8, 2013 and March 19, 2013 respectively. By executing the said deeds, the complainant has been provided with a sum of Rs. 5 crores as loan on certain terms and conditions and by keeping the 5,25,000 shares of Flexituff, held by him as the collateral security with the petitioners No. 2 and 3 that is, the lenders.

- In October, 2013, the complainant/opposite party No. 2 filed a Civil suit, being No. 978 of 2013, before the Bombay High Court for declaration, permanent injunction and recovery of money. In the said suit, on October 30, 2013, the

Bombay High Court passed an injunction thereby restraining the petitioners No. 2 and 3 from selling or trading further share.

(3) Further facts which may bear some relevance in this case are as follows:-

- The complainant/opposite party No.2, had first approached the Bombay High Court by way of filing a Civil Suit being No. 131 of 2014, before filing the instant FIR. However, the same was dismissed at motion stage on merits, vide order dated Feb 5, 2014.
- At this stage, the instant FIR has been filed by the complainant/opposite party No.2, on March 3, 2014.
- The complainant/opposite party No.2 had thereafter preferred an appeal being No. 92 of 2014, before the Division Bench of the Bombay High Court. The Appeal Court, vide order dated June 12, 2014, had appointed 'Receiver' upon the balance shares lying with the petitioners No. 2 and 3.
- As against an order of the Court dated April 30, 2014, the complainant/opposite party No.2 had filed a SLP before the Supreme Court being Civil Appeal No. 8539 of 2014. An order dated September 5, 2014, was passed in the same, on consent of the parties with the direction that the shares would be sold and the outstanding due amount of money would be recovered, from the sale proceeds of these shares. The residual shares shall be transferred to the Demat account of the 'Court Receiver'.
- Thereafter on January 4, 2016, the petitioners have filed the instant case.

(4) On this factual background of the case, this Court is now to consider whether the criminal proceedings against the petitioners would be maintainable or would not be, being abuse of the process of Court.

(5) The petitioners have been represented by Mr. Sabyasachi Banerjee. According to the petitioner, the dispute between the parties is predominantly civil in nature which has been given a colour of criminality, the complainant/opposite party No. 2 having failed to achieve desired results in civil proceedings. It is stated further that the criminal proceeding as impugned in this revision has been initiated only for the purpose of recovery of money, whereas the balance shares are lying in the possession of the Receiver appointed by the Hon'ble Apex Court.

(6) Mr. Banerjee indicates that the shares of Pushpanjali Tie Up Private Limited were pledged as collateral by the complainant/opposite party No. 2 in exchange of the loan amount to the tune of Rs. 5 crores advanced to him. The shares were placed as margin to trade in F & O segment, in terms of Clause 12 of the loan agreements. Later on, the shares of Flexituff International Limited were delisted by the National Stock Exchange and this way, the petitioners had suffered huge financial loss. The petitioners have stated further that the complainant/opposite party No. 2 failed to return the money with interest within the due date. Therefore, according to the petitioners, as per Clause 7 of the loan agreements

dated March 8, 2013 and March 19, 2013, they would be free to dispose of sale or deal with the securities on such terms and price as may be deemed fit by them. In this regard, it is mentioned that the agreements as above, have specified that in case of default the lenders that is, the petitioners here, shall have the full right to sell, dispose of or deal with the securities in any terms and price as they think fit and proper. According to the petitioners, in terms of the agreements as above, they are authorized to apply the net proceeds towards meeting the outstanding dues along with interest and become entitled to recover their dues by selling the shares in the market.

(7) Thus, according to the petitioners, the rights of the parties arise from the agreements entered into between them dated March 8, 2013 and March 19, 2013 being part of inter se business prosecution of them and thus no way related with the material ingredients in the relevant provisions of law lying down the offences as alleged against the petitioners.

(8) The petitioners have further stated that, admittedly 40,700 shares have been returned back by the petitioners to the opposite party No. 2/complainant, upon refund of Rs. 2 crores out of total loan amount of 5 crores. 1,98,761 shares were sold jointly by the petitioners No. 2 and 3 and the DP participant that is, CD Equisearch Private Limited, to square up the dues and losses owing to the complainant not returning the balance sum of Rs. 3 crores and interests and also for the fact that the shares of Flexituff International Limited were removed and/or delisted by the National Stock Exchange for which the petitioners had to suffer huge financial loss while trading in Future and Options.

(9) The petitioners have further stated that 2,05,504 shares were sold by the DP participant that is CD Equisearch, in compliance to the order of the Hon'ble Apex Court dated February 5, 2014, to recover the due amount accrued due to shortfall of the price of shares. It is submitted further that the balance 80035 were transferred to the Court Receivers.

(10) Therefore, Mr. Banerjee submits that it is purely a commercial transaction between the parties having no necessary ingredient ingrained therewith to constitute any offence of cheating as alleged. The Constitutional Courts including the Apex Court have already intervened into the dispute of the parties and passed various directions from time to time. Therefore, the present FIR filed by the complainant/opposite party No. 2, alleging certain charges of criminal nature against the petitioners is only an endeavour of him to abuse the Court's process in so far as by doing so a veil of criminality is being spread over a dispute which is of purely civil in nature.

(11) For the reasons as above, he says that the instant criminal proceeding should be quashed along with the orders which are passed by the Trial Court.

(12) Furthermore, Mr. Banerjee has submitted that a civil dispute can under no circumstances be cloaked with criminal ingredients as that could not be available

from the surrounding facts and circumstances of the dispute, as it has happened in the instant case. He says that the material ingredients of offence which are required to be disclosed in the FIR could not have been disclosed since there is no such ingredient available against the petitioners. As such, according to the petitioners there is no cognizable case made out against them in the FIR and taking that as it is, criminal imputation against the petitioners cannot be called for. To buttress his arguments as above, Mr. Banerjee has relied on the following judgments:

- i) Sheila Sebastian Vs. R. Jawaharaj & Anr. reported in (2018) 7 SCC 581.
- ii) Indian Oil Corporation Vs. NEPC India Ltd & Others reported in (2006) 6 SCC 736.
- iii) Vijay Jumar Ghai & Anr. Vs. State of W.B. & Others reported in (2022) 7 SCC 124.
- iv) V.Y. Jose & Anr. Vs. State of Gujarat & Anr. reported in (2009) 3 SCC 78.
- v) Deepak Gaba & Others Vs. State of U.P. & Anr. reported in (2023) 3 SCC 423.

(13) On the arguments as above, the petitioners have sought for quashing of the criminal proceeding against him.

(14) Mr. Soubhik Mitter has represented the opposite party No. 2 in this case. Mr. Mitter has submitted raising strong objection to the contentions of the petitioners. He has referred to the two agreements dated March 8, 2013 and March 19, 2013 to submit that by dint of the same, the petitioners were entrusted with the shares of Pushpanjali to the tune of 5,25,000 in number to be held in trust, which were returnable at the due point of time. Mr. Mitter has categorically argued that it is the petitioners along with the other accused persons who have deceitfully induced the opposite party No. 2 to make such transaction and entrust the shares so held by the opposite party No. 2, to themselves. Thereafter, allegedly, fraudulently without knowledge of the opposite party No. 2/complainant and behind his back and without putting him into notice, the petitioners have sold out the portion of shares to unjustly enrich themselves. This is an act of deception and cheating which the complainant/opposite party No. 2 seeks relief of in the criminal proceeding initiated by him against the petitioners.

(15) Mr. Mitter has referred to the FIR and has contended that in the FIR, the manner in which the complainant/opposite party No. 2 has been deceived is narrated eloquently. It is further stated that the complainant has fallen prey to the manipulation and plot of the petitioners who deceitfully induced him to hand over the shares to themselves and thereafter, intentionally and for the purpose of cheating transmitted the same to gain unlawfully. Obviously that has resulted into unlawful loss of the complainant/opposite party No. 2.

(16) During the course of his argument, Mr. Mitter for the complainant/opposite party No. 2 has referred to the principles on the basis of which the Court should invoke its inherent jurisdiction to quash a criminal proceeding. In this regard, he has mentioned regarding the case of Rathish Babu Unnikrishnan Vs. State (Govt. of NCT of Delhi) and Another reported in 2022 SCC OnLine SC 513 and State of Haryana Vs. Bhajanlal reported in 1992 Supp (1) SCC 335 as mentioned by the Court in the said case. Also, a Three-Judges' Bench decision of the Supreme Court in R.P. Kapoor Vs. State of Punjab reported in AIR 1960 Supreme Court 866 has been mentioned in this regard.

(17) The facts regarding existence of litigations between the parties either before the Bombay High Court or the Hon'ble Apex Court, have not been specifically disputed or denied by the opposite party No. 2/complainant. It has also not been disputed or denied that, pursuant to the loan agreements dated March 8, 2013 and March 19, 2013 a total sum of Rs. 5 crores exchanged hands from the petitioners to the complainant/opposite party No. 2. The further fact which is undisputed in this case is that later on a sum of Rs. 2 Crores was returned back to the petitioners and the petitioners have released towards the opposite party No. 2/complainant, 40,700 shares due to repayment of such loan amount.

(18) Admittedly after return of those shares consecutively on two dates that is, October 15, 2013 and October 28, 2013, the complainant/opposite party No. 2 had filed a civil suit being No. 131 of 2014 before the Bombay High Court. The suit was dismissed on merits on February 5, 2014.

(19) Hence, the instant FIR was filed by the complainant against the accused persons including the petitioners, under Sections 406, 420, 467, 468, 469, 120B and 34 of the Indian Penal Code. The classical case of Bhajanlal (Supra) has prescribed the principles being followed since thereafter in innumerable judgments by the Constitutional Courts, on which a criminal proceeding should stand to evade abuse of any process of the Court. Let the relevant portion thereof be quoted as hereinbelow :-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

(20) The complainant/opposite party No. 2 has relied on the dictum of the Court in Bhajanlals’ Case (Supra) that power of quashing a criminal proceeding should be exercised by the Court very sparingly and only with circumspection that too, in the rarest of rare case. It is mentioned that the Court therein has directed not to embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint but only if those are present or not in the complaint should be the material consideration by the Court and also that the extraordinary or inherent powers do not confer the Court any arbitrary jurisdiction to act in accordance with its whims and caprice.

(21) Following the principles as delineated in the case of Bhajanlal (Supra) as mentioned above, this Court has now to consider whether material ingredients as elaborated in the FIR, as mentioned above, would constitute prima facie the commission of the offences as alleged against the petitioners or not. If it is so, the petitioners would be obliged under the law to face the rigors of trial and if not, the law would require not to proceed in a trial against them, as that would amount to abuse of the process of the Court. The accused persons in the FIR including the petitioners and the complainant/opposite party 2 are all business persons who maintain and promote businesses as their livelihood. Admittedly, as

a transaction in lieu of advancing loan amount to the complainant, the petitioners obtained possession of 5,25,000 shares of Flexituff, which were being held at that point of time by the complainant. He admittedly has transacted those shares to the petitioners No. 2 and 3, in lieu of 5 crore rupees. This transaction happened over two loan agreements dated March 8, 2013 and March 19, 2013 which contained certain terms and conditions.

(22) In the agreements as above, the complainant was mentioned as the 'borrower', whereas the petitioners No. 2 and 3 were mentioned as the 'lenders' respectively. It was determined that shares worth Rs. 4.5 crores will be kept as a security for availing the loan. The clauses in the contract have also enumerated as to how these shares have to be dealt with and that it would be dealt with differently, under different circumstances. The repayment date was fixed to be on June 19, 2013. A renewal clause was inserted that the 'lenders' at their discretion may agree to renew the facility, on a written request received from the 'borrower', that is, the complainant. In absence of any such written consent for renewal, repayment of loan would be a compulsory formality to be made up by the 'borrower' (complainant). The following two clauses of the agreement are of some relevance. Hence, quoted below-

"5. In consideration of the said Loan facility, the original securities mentioned in Schedule 'A' attached to this Agreement are hereby provided by the borrower in favour of the lender as exclusive charge to the lender towards repayment of the principal amount, interest, costs and any other charges, etc., due to the lender under the Loan agreement or otherwise. Any change in the securities hereby provided may be effected by execution of as supplementary schedule(s).

Such Supplementary Schedule (s) would be deemed to form part and parcel of this Agreement and would not require execution of a fresh agreement. Such change in the Schedule would, inter alia, include substitution/ replacement with fresh securities or additional securities.

6. If at any time the value of the said securities falls below 10 % so as to create a deficiency in the coverage required under clause 2 hereof, the Borrower on being asked by the lender shall deposit within 3 working days with the lender additional securities which may be acceptable to the lender or repay short fall amount, failing which the lender shall be at liberty at its discretion to sell, dispose of or otherwise realize any or all of the said securities without being liable for any loss or damage or diminution in value sustained thereby and adjust the proceeds towards dues of the lender. In case the sale proceeds of the securities are not sufficient to liquidate the Loan and interest thereon and all charges payable to the lender by the borrower, the borrower shall remain liable to pay the remaining Loan amount, interest and other charges with interest provided under clause 4 hereinbefore."

(23) Hence, the value of the securities that is, equity shares falling below 10 per cent and thereby creating a deficiency in the coverage, would require the

'borrower' (complainant,) to make good the shortfall amount. According to the agreed terms between the parties, the operator failing to do that would render the lender the authority and liberty to sell, dispose of or otherwise realise any or all the said securities, without being liable for any loss or damage or diminution in value sustained thereby and adjust the proceeds towards dues of the 'lenders'. Pertinent is to note that in the said agreements, there is no stipulated pre-condition that the 'borrower' is to be put into notice, before the shares are dealt with appropriately by the 'lenders', in case deficiency in coverage is created and the 'lenders' have suffered financial loss for the same.

(24) Before proceeding any further, the Court may note as to what might be the material considerations, so as to find the prima facie ingredients of offence being available in the FIR, as against the petitioners. The petitioners have been levelled with the allegations under sections 406, 420, 467, 468, 469, 120B and 34 of the Indian Penal Code. Therefore, it is imperative to examine the ingredients of the said offences and whether the allegations made in the complaint, read on their face value, attract those offences under the Penal Code or not. In this regard the relevant portion of the judgment in Vijay Kumar Ghai (supra), may be quoted as herein bellow:

"27. Section 405 IPC defines "criminal breach of trust" which reads as under:

"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 direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits "criminal breach of trust"."

The essential ingredients of the offence of criminal breach of trust are:

- (1) The accused must be entrusted with the property or with dominion over it,
- (2) The person so entrusted must use that property, or;
- (3) The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,
 - (a) of any direction of law prescribing the mode in which such trust is to be discharged, or;
 - (b) of any legal contract made touching the discharge of such trust.

28. "Entrustment" of property under Section 405 of the Penal Code, 1860 is pivotal to constitute an offence under this. The words used are, "in any manner entrusted with property". So, it extends to entrustments of all kinds whether to clerks, servants, business partners or other persons, provided they are holding a position of "trust". A person who dishonestly misappropriates property entrusted to them contrary to the terms of an obligation imposed is liable for a criminal

breach of trust and is punished under Section 406 of the Penal Code.”

(25) It is pertinent to note that along with the other material ingredients of offence, it is necessary to be manifested that the accused have dishonestly used or disposed of that property in violation of the mode in which such trust is to be discharged. In other words, the fraudulent or dishonest intention is the basis of the offence in accordance with the settled law.

(26) Likewise in the said judgment, it has been held further, as follows:

“31. Section 415 IPC defines “cheating” which reads as under:

“415. Cheating.—Whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheat”.”

The essential ingredients of the offence of cheating are:

1. Deception of any person

2. (a) Fraudulently or dishonestly inducing that person—

(i) to deliver any property to any person; or

(ii) to consent that any person shall retain any property; or

(b) intentionally inducing that person to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

32. A fraudulent or dishonest inducement is an essential ingredient of the offence. A person who dishonestly induces another person to deliver any property is liable for the offence of cheating.”

(27) Also that :

“34. Section 420 IPC is a serious form of cheating that includes inducement (to lead or move someone to happen) in terms of delivery of property as well as valuable securities. This section is also applicable to matters where the destruction of the property is caused by the way of cheating or inducement. Punishment for cheating is provided under this section which may extend to 7 years and also makes the person liable to fine.

35. To establish the offence of cheating in inducing the delivery of property, the following ingredients need to be proved:

(i) The representation made by the person was false.

- (ii) The accused had prior knowledge that the representation he made was false.
- (iii) The accused made false representation with dishonest intention in order to deceive the person to whom it was made.
- (iv) The act where the accused induced the person to deliver the property or to perform or to abstain from any act which the person would have not done or had otherwise committed.

36. As observed and held by this Court in *R.K. Vijayasathathy v. Sudha Seetharam* [*R.K. Vijayasathathy v. Sudha Seetharam*, (2019) 16 SCC 739, the ingredients to constitute an offence under Section 420 are as follows:

(i) a person must commit the offence of cheating under Section 415; and (ii) the person cheated must be dishonestly induced to:

- (a) deliver property to any person; or
- (b) make, alter or destroy valuable security or anything signed or sealed and capable of being converted into valuable security. Thus, cheating is an essential ingredient for an act to constitute an offence under Section 420 IPC."

(28) The Court may also profitably note the findings in this regard of the Supreme Court, in the case of *V.Y. Jose* (supra), which is as follows:

"14. An offence of cheating cannot be said to have been made out unless the following ingredients are satisfied:

- (i) deception of a person either by making a false or misleading representation or by other action or omission;
- (ii) fraudulently or dishonestly inducing any person to deliver any property; or to 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.

For the purpose of constituting an offence of cheating, the complainant is required to show that the accused had fraudulent or dishonest intention at the time of making promise or representation. Even in a case where allegations are made in regard to failure on the part of the accused to keep his promise, in the absence of a culpable intention at the time of making initial promise being absent, no offence under Section 420 of the Penal Code can be said to have been made out."

(29) Hence, the law is settled that inducement and deception with fraudulent and dishonest intent, would render the perpetrator within the binds of the criminality and offence as enumerated in the Code. In this regard the other judgment of the Supreme Court in *Hriday Ranjan Prasad Verma vs State of Bihar* (2000) 4 SCC 168, may be mentioned. The Court in the said judgment has held that the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to the criminal prosecution for cheating, fraudulent or dishonest intention is the basis of

the offence of cheating. Therefore, for the offence as alleged against the petitioners, mens rea i.e, intention to defraud or the dishonest intention must be present from the very beginning or inception without which the charges under those sections cannot be invoked or said to have been brought on record. Every act of breach of trust may not result in a penal offence of criminal breach of trust unless there is evidence of manipulating act of fraudulent misappropriation. An act of breach of trust involves a civil wrong in respect of which the person may seek his remedy in civil Courts but any breach of trust with a mens rea gives rise to a criminal prosecution as well.

(30) Furthermore, the petitioners have been alleged of the offences of forgery of valuable securities and that for the purpose of cheating under sections 467, 468 and 469 of the Indian Penal Code. Section 463 of the IPC has laid down as to what would constitute a 'forgery'. Making of false document with the intent to cause damage, injury or fraud, is an offence of forgery in accordance with the law. Dishonest overt act by the offender to make the other person to sign or execute a document which purports to give the offender authority to make or transfer any valuable security done for the purpose of cheating should bring the offender within the binds of law for an offence of forgery. In this regard the Supreme Court holds in the case of Sheila Sebastian (*supra*), in the following words:

"25. Keeping in view the strict interpretation of penal statute i.e. referring to rule of interpretation wherein natural inferences are preferred, we observe that a charge of forgery cannot be imposed on a person who is not the maker of the same. As held in plethora of cases, making of a document is different than causing it to be made. As Explanation 2 to Section 464 further clarifies that, for constituting an offence under Section 464 it is imperative that a false document is made and the accused person is the maker of the same, otherwise the accused person is not liable for the offence of forgery."

(31) Coming back to the facts of the present case after having discussed the settled principles of law, in this regard, the Court finds on the basis of the materials on record and the case diary (perused), that the business motive of the parties germane their mutual relationship and terms. Admittedly in lieu of money advanced as a loan, the equity shares have been pledged. The entire transaction is governed under the two agreements entered into between the parties, as mentioned above. Both of them were well aware about the terms and conditions of the agreements and as a mark of acceptance of those terms and conditions both have signed therein. The agreements have provided with the specific and unequivocal terms regarding the course of action to be undertaken by the 'lenders', that is the petitioners in this case, in case of default by the 'borrower' to make good the shortfall of share prices. For that the 'borrower' was not required to be put on prior notice, as per the said agreements. In this case the facts that the shares pledged with the petitioners were delisted and price of those were dropped, have not been denied. The complainant could not even

dispute the mutually agreed terms of the agreements so entered into between the parties. As a matter of fact, the complainant himself has first knocked the doors of a Civil Court, to seek redress, but in vain, as his suit was dismissed at the very threshold. Hence, the complainant might have thought it right as why not to test his luck before a criminal Court.

(32) It is however undeniable that all had started with a business oriented intention of the parties bearing only civil consequences, in case of any breach of conditions by any of the parties in those agreements. Such is fortified with the follow up activities of the parties when the complainant repays a portion of loan amount to the tune of Rs. 2 crores to the petitioners and in exchange a portion of the equity shares have been returned to the complainant by the petitioners. Later, the events had turn around otherwise as the company was delisted from the National Stock Exchange and there occurred shortfall of the price of its shares. At this juncture the petitioners have invoked the clauses of the agreements, as mentioned above and might have sold some shares to make good their losses. The question is whether from the factual background of the case as above, it can be construed that the petitioners had from the very inception of their mutual transaction, an intention to gain unlawfully by manipulating with the shares entrusted with them in lieu of money, by deceiving and cheating the complainant or not. Till the time the shares were delisted from the Stock Exchange, everything went right and there is no complain about the same. It is only there after that the complainant has become aggrieved. Alleging breach of contract he himself has moved the Civil Court. Therefore, on the basis of these facts, the Court is unable to find any intention of the petitioners from the very inception to defraud the complainant in any manner whatsoever. As a matter of fact, the complainant can be seen to have acted only in terms of the agreements and that both the parties have surrendered to the jurisdiction of the Civil Court itself.

(33) The Court therefore finds the dispute between the parties, if at all, to be a civil dispute in nature. However, the law is also well settled in this regard that a dispute between the parties which is essentially civil in nature cannot be cloaked with criminality or if done, cannot be maintainable. In this regard the relevant paragraph in the judgment of Indian Oil Corporation (supra) can be mentioned as follows:

"13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors. Such a tendency is seen in several family disputes also, leading to irretrievable breakdown of marriages/families. There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure through criminal prosecution

should be deprecated and discouraged. In *G. Sagar Suri v. State of U.P.* [(2000) 2 SCC 636 : 2000 SCC (Cri) 513] this Court observed: (SCC p. 643, para 8)

"It is to be seen if a matter, which is essentially of a civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which the High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice."

(34) In the case of *Vijay Kumar Ghai* (supra), the Supreme Court has similarly held as follows:

"38. There can be no doubt that a mere breach of contract is not in itself a criminal offence and gives rise to the civil liability of damages. However, as held by this Court in *Hridaya Ranjan Prasad Verma v. State of Bihar* [*Hridaya Ranjan Prasad Verma v. State of Bihar*, (2000) 4 SCC 168 : 2000 SCC (Cri) 786], the distinction between mere breach of contract and cheating, which is criminal offence, is a fine one. While breach of contract cannot give rise to criminal prosecution for cheating, fraudulent or dishonest intention is the basis of the offence of cheating. In the case at hand, complaint filed by Respondent 2 does not disclose dishonest or fraudulent intention of the appellants."

(35) The allegations as made in the FIR as well as the materials on record have thus not disclosed inducement of the complainant by the petitioners with any dishonest or fraudulent intention to make him part with his valuable property. It only appears to be a voluntary business transaction between the parties which they have started inter se, by executing agreements between themselves. The petitioners are not the sole makers of those documents and there is no material to come to a prima facie finding that the complainant has agreed to the terms and conditions thereof believing the same to mean something excepting what is written thereon in plain language. Since it is to be found that the petitioners have made the complainant intentionally and deceitfully to sign in those documents rather than merely having made those documents, the Court is unable to find any material regarding inducement of this kind exercised by the petitioners. There appears no reasonable cause or prima facie material to come to a finding that the complainant has signed the agreements being fraudulently induced by the petitioners. The terms of those private contracts would govern the mutual commercial relationship of the two parties. This Court sitting in the criminal revisional jurisdiction is not to look into if there is any infringement of the terms of the said private contract between the parties, by any of them. The complainant vide his allegations as made in the FIR, has not been able to cross the fine line of distinction from those being as regards mere breach of contract, if any, to those being an act of cheating, entailing criminal intentions of the petitioners to defraud at the time of initiation of the transaction. Rather the

dispute if any, appears to be essentially of civil nature, which the complainant has tried to cloak with the materials involving criminality, though after having surrendered before the civil Court's jurisdiction by himself. It appears to be an after thought process, evidently malicious and motivated perhaps due to failure to procure an order in the civil Court. The Court is not in any doubt that to proceed with such a case in the criminal Court would amount to gross abuse of the Court's process.

(36) For all as discussed above, the Court finds that the allegations disclosed in the FIR against the present petitioners, even if taken at its face value, have not made out any cognizable case against the petitioners/accused persons. Rather a dispute of civil nature has been tried to be cloaked with the veil of criminality, which is not maintainable in the eye of law. In such circumstances maintaining the criminal proceeding any further against the present petitioners would amount to gross abuse of the process of the Court. For the reasons as above the present revision should succeed.

(37) Hence, CRR No.21 of 2016 is allowed. G.R. Case No. 887 of 2014 [connected with the Howrah Police Station case No. 124 of 2014 dated 03.03.2014 under sections 406, 420, 467, 468, 469, 120B, 34 of the Indian Penal Code], now pending before the Court of Chief Judicial Magistrate, Howrah is hereby quashed as against the petitioners in this revision. Application/s if any, also stand/s disposed of. Case Diary be returned immediately.

(38) Urgent certified website copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.